



EUROPEAN COMMISSION
DG Competition

CASE AT.40136 – Capacitors

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 21/03/2018

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EUROPEAN
COMMISSION

Brussels, 21.3.2018
C(2018) 1768 final

COMMISSION DECISION

of 21.3.2018

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement**

(AT.40136 – Capacitors)

(Text with EEA relevance)

(Only the English text is authentic)

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COMMISSION DECISION

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,¹

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty,² and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission Decision of 4 November 2015 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty,³

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,⁴

Whereas:

¹ OJ C 115, 9.5.2008, p. 47.

² OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

³ OJ L 123, 27.4.2004, p. 18.

⁴ Final report of the hearing officer of 16 March 2018.

1. INTRODUCTION

- (1) Nine undertakings⁵ – Elna, Hitachi AIC, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con, Rubycon and Sanyo – were involved in a cartel concerning capacitors that lasted from 26 June 1998⁶ until 23 April 2012.⁷ They coordinated their pricing behaviour on a global basis (including the European Economic Area (EEA)) in relation to the supply of aluminium electrolytic capacitors ("AECs") and tantalum electrolytic capacitors ("TECs").
- (2) The Commission considers that the anti-competitive arrangements between the involved undertakings constituted a single and continuous infringement of Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") and Article 53(1) of the Agreement on the European Economic Area (the "EEA Agreement").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

- (3) Capacitors are electrical components that store energy electrostatically in an electric field, and are used in a wide variety of electronic products such as PCs, tablets, cell phones, smart phones, air conditioners, refrigerators, washing machines, automotive products and industrial appliances. They can be divided into three main groups: a) electrolytic, b) film and c) ceramic capacitors.⁸ This Decision covers conduct relating to electrolytic capacitors only (namely, AECs and TECs). Electrolytic capacitors are generally used when very large capacitance values are required.

Description of the sector

- (4) Electrolytic capacitors are used in virtually all electronic products. Hence, customers are very diverse. Many customers opt to purchase products of the same specification from multiple suppliers rather than one manufacturer alone in order to ensure stability of supply. Capacitors are produced according to varying technical characteristics. However, capacitors complying with those different technical characteristics produced by different companies are homogenous products, in respect of which price is an important parameter of competition.
- (5) Smaller customers undertake periodic price negotiations by requesting quotes for a single product of a certain specification from a selection of 'candidate' suppliers. Major customers that purchase multiple products of many varieties of specification conduct these price negotiations by way of a request for quotations ("RFQ"). The RFQ indicates the specifications and required quantities of the products that need to be supplied in a given time period. Manufacturers will then use this information to quote their best unit price for each given product.

⁵ See Section 0 for the description of the undertakings subject to the present proceedings.

⁶ See recitals (108)-(111) and (971).

⁷ See recitals (651)-(654) and (971).

⁸ [...].

- (6) Currently, Japanese manufacturers produce a significant part of the world's AECs, with more than 60% of the global market in 2013. Four of those Japanese manufacturers rank among the top five players worldwide.⁹
- (7) Based on the information supplied by the undertakings subject to the present proceedings, their EEA direct sales of AECs and TECs together into the EEA amounted to approximately EUR 200 million per year.

2.2. Undertakings subject to the present proceedings

2.2.1. Elna

- (8) ELNA CO., LTD. ("Elna") is based in Japan. Elna manufactures and sells AECs. In 2009, Elna ceased production of TECs, however, Elna continued to sell TECs from its own stock and was also selling TECs produced by another manufacturer,¹⁰ until August 2010.¹¹
- (9) Elna had direct sales of AECs billed into the EEA throughout the period of its participation in the cartel and had direct sales of TECs billed into the EEA from the beginning of its participation in the cartel until August 2010.¹²

2.2.2. Hitachi AIC

- (10) Hitachi AIC Inc. (on 1 October 2009 renamed Hitachi Chemical Electronics Co., Ltd.) (this entity under its former and current name will be referred to as "Hitachi Electronics" throughout this Decision, unless otherwise specified)¹³ is based in Japan. Hitachi Electronics manufactured and sold AECs until 30 September 2009¹⁴ and TECs until March 2010.¹⁵
- (11) From 1 August 2001 until at least 9 January 2015 Hitachi Chemical Co., Ltd. ("Hitachi Chemical"), based in Japan, and listed on the Tokyo stock exchange, owned 100 % of the shares in Hitachi Electronics.¹⁶ Hitachi Chemical and the legal entities directly or indirectly controlled by it, including Hitachi Electronics, sold AECs and TECs into the EEA until March 2010.¹⁷
- (12) Hitachi Electronics and Hitachi Chemical will be together referred to as "Hitachi AIC" throughout this Decision, unless otherwise specified.

⁹ [...].

¹⁰ [...].

¹¹ [...].

¹² [...].

¹³ [...].

¹⁴ [...]. Following a restructuring of the capacitors business of Hitachi Electronic's parent company Hitachi Chemical Co., Ltd. (as set out in recital (11), referred to as "Hitachi Chemical" in this Decision) and its subsidiaries, on 1 October 2009, Hitachi Electronics transferred its AECs business to its wholly owned subsidiary Shinmachi Condenser Co., Ltd. and sold 100 % of the shares in Shinmachi Condenser Co., Ltd. to Shin-Kobe Electric Machinery Co., Ltd. From at least 31 March 1999 until 30 March 2012, Hitachi Chemical owned a majority of shares in Shin-Kobe Electric Machinery Co., Ltd. (the precise ownership varying over the years from 52.4 % to 58.9 % of shares).

¹⁵ [...]. On 31 March 2010, Hitachi Electronics transferred its TECs business to Holy Stone Polytech Co., Ltd.

¹⁶ [...].

¹⁷ [...].

- (13) Hitachi AIC had direct sales of AECs and TECs billed into the EEA throughout the period of its participation in the cartel.¹⁸

2.2.3. *Holy Stone*

- (14) Holy Stone Polytech Co., Ltd. ("Holy Stone Polytech") was based in Japan. Holy Stone Polytech was formed on 5 January 2010. On 29 March 2010 and on 1 April 2010, Holy Stone Polytech entered into an asset purchase agreement with Hitachi Electronics to buy their TECs manufacturing facilities. Holy Stone Polytech was not active in the capacitors industry before this transaction.¹⁹
- (15) Holy Stone Polytech manufactured and sold TECs. Holy Stone Polytech did not manufacture nor sell AECs.²⁰
- (16) From 5 January 2010 until 11 June 2014, Holy Stone Holdings Co., Ltd. ("Holy Stone Holdings"), based in Samoa, owned 100 % of the shares in Holy Stone Polytech.²¹
- (17) From 5 January 2010 until 11 June 2014, Holy Stone Enterprise Co., Ltd. ("Holy Stone Enterprise"), based in Taiwan owned 100 % of the shares in Holy Stone Holdings.²²
- (18) On 11 June 2014, Holy Stone Enterprise sold all the shares in Holy Stone Polytech to Vishay Israel Ltd. Vishay Israel Ltd. is based in Israel and is a subsidiary of Vishay Intertechnology, Inc., based in the United States ("the US"). As of 1 November 2014, Holy Stone Polytech was renamed Vishay Polytech Co., Ltd. (this entity under its former and current name will be referred to as "Holy Stone Polytech" throughout this Decision, unless otherwise specified).²³
- (19) Holy Stone Polytech, Holy Stone Holdings and Holy Stone Enterprise will be together referred to as "Holy Stone" throughout this Decision, unless otherwise specified.
- (20) Holy Stone had direct sales of TECs billed into the EEA throughout the period of its participation in the cartel.²⁴

2.2.4. *Matsuo*

- (21) Matsuo Electric Co., Ltd. ("Matsuo") is based in Japan.²⁵ Matsuo manufactures and sells TECs.²⁶ Matsuo does not manufacture nor sell AECs.²⁷
- (22) Matsuo had direct sales of TECs billed into the EEA throughout the period of its participation in the cartel.²⁸

¹⁸ [...].

¹⁹ [...].

²⁰ [...].

²¹ [...].

²² [...].

²³ [...].

²⁴ [...].

²⁵ [...].

²⁶ [...].

²⁷ [...].

²⁸ [...].

2.2.5. *NEC Tokin*

- (23) NEC TOKIN Corporation was based in Japan. On 1 April 2002 NEC TOKIN Corporation acquired the Capacitors Division of NEC Corporation, based in Japan. NEC TOKIN Corporation was not active in the capacitors business prior to 1 April 2002.²⁹
- (24) NEC TOKIN Corporation designed, manufactured and sold TECs.³⁰ NEC TOKIN Corporation did not manufacture nor sell AECs.³¹
- (25) NEC TOKIN Corporation was listed on the Tokyo Stock Exchange until July 2009, shortly before it became a 100 % subsidiary of NEC Corporation on 1 August 2009.³²
- (26) From 1 August 2009 until 31 January 2013, NEC Corporation owned 100 % of the shares in NEC TOKIN Corporation.³³
- (27) On 19 April 2017, KEMET Corporation, through its wholly owned subsidiary, KEMET Electronics Corporation, acquired NEC TOKIN Corporation and NEC TOKIN Corporation was renamed TOKIN Corporation (this entity under its former and current name will be referred to as "NEC TOKIN Corporation" throughout this Decision, unless otherwise specified).³⁴
- (28) NEC TOKIN Corporation and NEC Corporation will be together referred to as "NEC Tokin" throughout this Decision, unless otherwise specified.
- (29) NEC Tokin had direct sales of TECs billed into the EEA throughout the period of its participation in the cartel.³⁵

2.2.6. *Nichicon*

- (30) Nichicon Corporation ("Nichicon") is based in Japan. Nichicon is listed on the Tokyo Stock Exchange, with a widely dispersed shareholding.³⁶ Nichicon manufactures and sells AECs³⁷ and until [confidentiality claim pending] manufactured and sold TECs.³⁸
- (31) Nichicon had direct sales of AECs and TECs billed into the EEA throughout the period of its participation in the cartel.³⁹

2.2.7. *Nippon Chemi-Con (NCC)*

- (32) NIPPON CHEMI-CON CORPORATION is based in Japan. NIPPON CHEMI-CON CORPORATION manufactures and sells AECs,⁴⁰ and until March 2005 manufactured and until January 2011 sold TECs.⁴¹ [confidentiality claim pending].⁴²

29 [...].
30 [...].
31 [...].
32 [...].
33 [...].
34 [...].
35 [...].
36 [...].
37 [...].
38 [...].
39 [...].

(33) NIPPON CHEMI-CON CORPORATION [...] will be [...] referred to as "Nippon Chemi-Con" or "NCC" throughout this Decision, unless otherwise specified.

(34) NCC (mostly, but not exclusively, [...]) had direct sales of AECs billed into the EEA throughout the period of its participation in the cartel.⁴³ NCC ([...]) had direct sales of TECs billed into the EEA from the beginning of its participation in the cartel until February 2005.⁴⁴

2.2.8. *Rubycon*

(35) Rubycon Corporation is based in Japan. From at least 1 January 1997 to 31 January 2007, Rubycon Corporation was the ultimate parent company of the Rubycon group.⁴⁵

(36) Rubycon Corporation manufactures and sells AECs.

(37) On 1 February 2007, Rubycon Holdings Co., Ltd. ("Rubycon Holdings"), (until 9 November 2006 Shinei Ltd.), based in Japan, became the ultimate parent company of the Rubycon group by acquiring 100 % of the shares in Rubycon Corporation.⁴⁶

(38) Rubycon Corporation and Rubycon Holdings will be together referred to as "Rubycon" throughout this Decision, unless otherwise specified.

(39) Rubycon had direct sales of AECs billed into the EEA throughout the period of its participation in the cartel.⁴⁷

2.2.9. *Sanyo*

(40) SANYO Electric Co., Ltd. ("Sanyo Electric") is based in Japan. Sanyo Electric manufactures and sells AECs and TECs.⁴⁸

(41) Sanyo Electric directly or indirectly owned 100 % of the shares in SANYO Electronic Components Co., Ltd. ("Sanyo Electronic"), based in Japan, from 1 January 1997 until 31 December 2003.⁴⁹ On 1 January 2004 Sanyo Electronic and Sanyo Electric merged and Sanyo Electronic ceased to exist.⁵⁰

(42) Panasonic Corporation ("Panasonic"), based in Japan, acquired 50.2 % of the shares in Sanyo Electric on 21 December 2009 and the remaining shares on 1 April 2011. Panasonic is listed on the Tokyo Stock Exchange and its shares are widely dispersed. No person or entity owns or controls more than 5 % of the issued shares in Panasonic.⁵¹

⁴⁰ [...].

⁴¹ [...].

⁴² [...].

⁴³ [...].

⁴⁴ [...].

⁴⁵ [...].

⁴⁶ [...].

⁴⁷ [...].

⁴⁸ [...].

⁴⁹ [...].

⁵⁰ [...].

⁵¹ [...].

- (43) Sanyo Electronic, Sanyo Electric and Panasonic will be together referred to as "Sanyo" throughout this Decision, unless otherwise specified.
- (44) Sanyo had direct sales of AECs and TECs billed into the EEA throughout the period of its participation in the cartel.⁵²

3. PROCEDURE

3.1. The Commission's investigation

- (45) On 4 October 2013, Panasonic and its subsidiaries applied for a marker to protect their place in the queue as applicants for immunity from fines under points 14 and 15 of the Commission's Notice on Immunity from fines and reduction of fines in cartel cases⁵³ (the "Leniency Notice"). [*confidentiality claim pending*]. [...].
- (46) On 28 March 2014,⁵⁴ the Commission sent requests for information under Article 18 of Council Regulation (EC) No 1/2003⁵⁵ to the undertakings subject to the present proceedings, as well as other undertakings.
- (47) Following the requests for information, the following undertakings applied for immunity and/or reduction of fines under the Leniency Notice and provided corporate statements and contemporaneous evidence:
- (1) On 4 April 2014, Hitachi Chemical and its subsidiaries;
 - (2) On 25 April 2014, Holy Stone Polytech;
 - (3) On [*confidentiality claim pending*], NEC TOKIN Corporation, its subsidiaries, its parent companies and their subsidiaries;
 - (4) On 26 May 2014, Rubycon Corporation, its parent company and their subsidiaries;
 - (5) On [*confidentiality claim pending*], Elna and its subsidiaries.
- (48) Those applications and the replies to the Commission's requests for information led the Commission to address further requests for information under Article 18 of Regulation (EC) No 1/2003 and letters under point 12 of the Leniency Notice to the undertakings subject to the present proceedings, as well as other undertakings.
- (49) On 19 February 2015, the Commission granted conditional immunity from fines to Panasonic and its subsidiaries pursuant to point 8 of the Leniency Notice.
- (50) [*confidentiality claim pending*], the Commission carried out inspections pursuant to Article 20(4) of Regulation (EC) No 1/2003 at the premises of NIPPON CHEMICON CORPORATION [...], from 3 until 6 March 2015.
- (51) The Commission adopted a Statement of Objections ("SO") on 4 November 2015. The Commission sent a first Letter of Facts ("LoF") in relation to certain aspects of

⁵² [...].

⁵³ Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

⁵⁴ To Elna on 1 April 2014.

⁵⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

the SO on 4 May 2016 to all the addressees of the SO. All the parties received access to file⁵⁶ and submitted their replies to the SO and (except Elna, Matsuo, NEC Corporation and Rubycon)⁵⁷ the first LoF.

- (52) An Oral Hearing took place on 12-14 September 2016 and all the parties, except Matsuo, attended.
- (53) The Commission sent a second LoF in relation to certain aspects of the SO on 28 February 2017 to all the addressees of the SO. All the parties, except Matsuo, NEC Corporation and Rubycon, submitted their replies to the second LoF.
- (54) The Commission sent a third LoF in relation to certain aspects of the SO on 1 December 2017 to all the addressees of the SO. All the parties, except Elna and NEC Corporation, submitted their replies to the third LoF.

3.2. The evidence relied on

- (55) The evidence relied on consists mainly of contemporaneous documents, corporate statements and replies to the Commission's requests for information.
- (56) The contemporaneous documents⁵⁸ relied on consist, in particular, of meeting minutes,⁵⁹ often presented in emails relating to multilateral meetings and bi-/tri-lateral contacts between some or all of the undertakings. Those minutes are typically internal to a particular undertaking, where individual representatives of the undertakings who participated in the multilateral meetings and bi-/tri-lateral contacts reported within that undertaking.
- (57) Besides the contemporaneous documents, the Commission also relies on corporate statements and replies to the Commission's requests for information that provide further context to the contemporaneous documents based on interviews with relevant representatives, company information, or sector knowledge. For example, corporate statements and replies to the Commission's requests for information confirm that [*confidentiality claim pending*] even where the Commission does not have contemporaneous evidence for each individual meeting.⁶⁰ They also clarify certain aspects of the contemporaneous documents, for example, by confirming that a particular product under discussion is an electrolytic capacitor, or by confirming the identity of undertakings that are sometimes referred to by abbreviations.⁶¹
- (58) Annex I sets out a chronological list of the involvement of the undertakings at each of the multilateral meetings and bi-/tri-lateral contacts described in Section 4.3.6. Annex I forms an integral part of this Decision.

⁵⁶ Further access to file took place in June 2017 and in December 2017.

⁵⁷ Hitachi AIC and Nichicon replied that they had no comments.

⁵⁸ For example, [...]. [...]. The full chronology of the multilateral meetings and bi-/tri-lateral contacts with the supporting evidence is set out in Section 0 and Annex I.

⁵⁹ The Commission uses the generic term "minutes" to refer to the contemporaneous documents bearing in their titles references to "minutes", "memo" (memorandum) or "report".

⁶⁰ [...].

⁶¹ These abbreviations are explained in relevant corporate statements and replies to Commission RFI: for example, [...].

- (59) Annex II sets out a non-exhaustive list of the main employees involved in the multilateral meetings and bi-/tri-lateral contacts described in Section 4.3.6. Annex II forms an integral part of this Decision.

4. DESCRIPTION OF THE EVENTS

4.1. Overview

- (60) The cartel participants coordinated their behaviour during the period from 26 June 1998⁶² until 23 April 2012.⁶³ The cartel operated through multilateral meetings accompanied by *ad hoc* bi-/tri-lateral contacts. In this case, a uniform and sizeable group of Japanese companies got together to form a united front against their customers and against other competitors.⁶⁴ As part of the collusion, the cartel participants aimed to avoid price competition and coordinated their future conduct, thereby reducing uncertainty on the market.
- (61) The coordination between the cartel participants concerned supplies of AECs and TECs to their customers globally, including in the EEA. It consisted of the frequent, regular and systematic exchanges of information, including on future prices and future supply and demand information concerning AECs and TECs. In some instances, the participants even concluded price agreements and monitored their implementation. The purpose of the competitor contacts was to provide a coordinated response to the market developments and challenges posed by the market conditions, such as fluctuations of the currency exchange rates and increases in raw material costs.
- (62) Examples of conduct between cartel participants include:
- exchanges of information in relation to future supply and demand (such as production volume, increase or decrease of shipments);⁶⁵
 - exchanges of information related to price maintenance / a refusal to decrease prices;⁶⁶
 - exchanges of information on future price reduction and the ranges for the price reduction;⁶⁷
 - exchanges of information on future prices / pricing intentions: exchanges of information on intentions to raise prices;⁶⁸ exchanges of information on

⁶² See recitals (108)-(110) and (971).

⁶³ See recitals (651)-(654) and (971).

⁶⁴ [...].

⁶⁵ For example, meeting of 19 March 2002, see recitals (156) and (158); meeting of 17 December 2003, see recital (217); meeting of 17 June 2004, see recitals (238) and (239); meeting of March 2005, see recital (270); meeting of 12 April 2006, see recital (296); meeting of 12 July 2006, see recital (307); meeting of 14 February 2007, see recital (351); meeting of 13 February 2008, see recital (414); bi-lateral contact of May 2009, see recital (520); meeting of 21 August 2009, see recital (539); meeting of 18 February 2010, see recital (575); meeting of 29 August 2011, see recital (646).

⁶⁶ For example, meeting of 17 December 1999, see recital (125); meeting of 15 May 2003, see recital (193); meeting of 11 November 2004, see recital (249); meeting of 13 May 2004, see recital (229); the meeting of 19 February 2003, see recital (186).

⁶⁷ For example, meeting of 29 January 2003, see recital (182).

indicative percentages to be applied for future price increase negotiations;⁶⁹ exchanges of information on intentions to raise prices due to the increase in prices of raw materials;⁷⁰ exchanges of information on future price increases with a clear timeline;⁷¹ exchanges of information on intentions to increase prices so as to cover currency fluctuations;⁷²

- agreements to increase prices⁷³ with a common strategy for implementation of price increases;⁷⁴ reporting on the status of the price negotiations as part of the monitoring of the price agreements;⁷⁵
- coordination on answers to be given to specific customers in case of a quotation request;⁷⁶ exchanges of information on target prices for negotiations with specific customers;⁷⁷
- discussions on encouraging production shortage so as to maintain prices.⁷⁸

(63) The cartel lasted for almost 14 years and was primarily organised through multilateral meetings, [*confidentiality claim pending*].⁷⁹ For the purposes of this Decision, eighty-eight multilateral meetings are relied on to describe the cartel.⁸⁰ The multilateral meetings were organised on two levels – a majority of the meetings was held at the level of senior sales managers,⁸¹ while there were also meetings attended by the higher management level, including the presidents, organised [*confidentiality claim pending*] ("Presidents' meetings").⁸² In addition to the multilateral meetings, the cartel participants also engaged in *ad hoc* bi-/tri-lateral contacts to discuss customer-specific issues, typically when there was a request for

⁶⁸ For example, meeting of 21 May 2009, see recitals (517) and (519); meeting of 17 June 2010, see recital (610).

⁶⁹ For example, meeting of 25 May 2000, see recitals (132) and (133).

⁷⁰ For example, meeting of 21 April 2004, see recital (223); the meeting of 19 April 2011, see recital (643).

⁷¹ For example, meeting of 12 April 2006, see recital (298).

⁷² For example, meeting of 18 February 2010, see recital (576).

⁷³ For example, meeting of 18 September 2002, see recitals (174)-(176); meeting of 7 November 2003, see recitals (205)-(209); meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

⁷⁴ For example, meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

⁷⁵ For example, meeting of 16 January 2007, see recitals (339)-(343); meeting of 15 March 2007, see recitals (363) and (364); meeting of 17 May 2007, see recitals (376) and (377); meeting of 19 June 2007, see recitals (385)-(390); meeting of 24 August 2007, see recitals (396) and (397); meeting of 25 June 2008, see recital (449).

⁷⁶ For example, meeting of 22 November 2000, see recital (145).

⁷⁷ For example, meeting of March 2005, see recital (262).

⁷⁸ For example, meeting of 17 June 2004, see recitals (235) and (236).

⁷⁹ Not all the multilateral meetings held during the period of the cartel are included in the chronology of events (Section 0).

⁸⁰ For full chronology see Section 0 and Annex I.

⁸¹ [...].

⁸² See recital (69).

quotation (RFQ) or a request for a price reduction by a customer.⁸³ Therefore, the competitor contacts led to a transparency, allowing the parties to identify the sales price offered by competitors to a particular customer, which was subsequently used for setting its sales price to the same customer.

- (64) Throughout the cartel, the parties were frequently referred to by acronyms.⁸⁴ [confidentiality claim pending].⁸⁵ Moreover, the cartel participants attempted to conceal the existence of the cartel. For example, recipients of incriminating emails were reminded that the communication is confidential or were told to delete the emails after reading and not to forward or otherwise distribute them:

"(Discard after reading)";⁸⁶

"(Caution) Destroy this after reading";⁸⁷

"Please discard this e-mail";⁸⁸

"Please do not forward to other persons";⁸⁹

"Please do not distribute this e-mail unless it is absolutely necessary";⁹⁰

"Once you read this email, please delete it [...] Subject: RE: =Strictly Confidential= For [confidentiality claim pending] [...] After reading this email, please destroy it without stowing it away";⁹¹

"Subject: About Q3RFQ condition, market condition, the status of N company (Forwarding is strictly prohibited!)";⁹²

"Please discard this mail after reading";⁹³

"Since the gathering should not be disclosed to the public, please be careful when handling the contents of the present report".⁹⁴

- (65) There is also other evidence on file demonstrating that the parties were aware of the unlawful nature of their conduct:

" [confidentiality claim pending] stance is as follows:*

[1] The content of the current discussion contains a big-rigging [sic] content, possibly violating the fair-trade law. -> Dangerous";⁹⁵

"(Sanyo: [...])

⁸³ [...].

⁸⁴ These acronyms are explained in relevant corporate statements and replies to Commission RFI: for example, [...].

⁸⁵ [...].

⁸⁶ [...].

⁸⁷ [...].

⁸⁸ [...].

⁸⁹ [...].

⁹⁰ [...].

⁹¹ [...].

⁹² [...].

⁹³ [...].

⁹⁴ [...].

⁹⁵ [...].

** We know that there are certainly illegal portions in what we have talked in this meeting. It would be certain that if these are made public, our company tops may be arrested by the police. Consequently, we could understand the top policy not to participate in such illegal acts.*"⁹⁶

4.2. Origins of the cartel

(66) [*confidentiality claim pending*].⁹⁷ [*confidentiality claim pending*].

(67) By 1998 at the latest, the meeting participants started using multilateral meetings as a platform for anti-competitive discussions, abundantly covered in the full chronology of the relevant meetings (see Section 4.3.6 and Annex I for a chronology of events).

4.3. Dynamics and functioning of the cartel

(68) As described in recital (63), the cartel was organised through multilateral meetings held at senior sales manager and higher management level and through *ad hoc* bi-/tri-lateral contacts between the parties.

(69) The multilateral meetings took place [*confidentiality claim pending*],⁹⁸ [*confidentiality claim pending*], and the participating undertakings organised those meetings [*confidentiality claim pending*]. The multilateral meetings were initially held under the name "Electrolytic Capacitor(s) Circle"⁹⁹ or "Electrolytic Capacitor Conference"¹⁰⁰ ("ECC meetings") (1998-2003). Afterwards, they were held under the name "Aluminium Tantalum Conference"¹⁰¹ or "Aluminium Tantalum Capacitors group"¹⁰² ("ATC meetings") (2003-2005). Finally, they became "Market Study Group"¹⁰³ or "marketing group"¹⁰⁴ ("MK meetings") (2005-2012). In parallel with the MK meetings, and complementing the MK meetings, there were "Cost Up"¹⁰⁵ or "Condenser Up"¹⁰⁶ meetings ("CUP meetings") (2006-2008 [*confidentiality claim pending*]).¹⁰⁷ Furthermore, approximately once every six months, representatives of the higher level management of the undertakings attended ECC, ATC and MK meetings – often referred to as "Presidents' meetings".¹⁰⁸ The Presidents' meetings, which were considered to be "superior"¹⁰⁹ meetings, usually took place immediately after the "subordinate"¹¹⁰ meeting. The Presidents' meetings

⁹⁶ [...].

⁹⁷ [...].

⁹⁸ Not all the multilateral meetings held during the period of the cartel are included in the chronology of events (section 4.3.6).

⁹⁹ [...]. In [...] it is explained that ECC meetings were also referred to, at least towards the end of this period, as the "Electrolytic Gathering".

¹⁰⁰ [...].

¹⁰¹ [...]; [*confidentiality claim pending*].

¹⁰² [...].

¹⁰³ [...].

¹⁰⁴ [...].

¹⁰⁵ [...].

¹⁰⁶ [...].

¹⁰⁷ [...].

¹⁰⁸ [...]. These meetings were formally referred to as the "Minatsukikai" (meeting held each June), and the "Shimotsukikai" (meeting held each November) - [...].

¹⁰⁹ [...].

¹¹⁰ [...].

were discontinued around 2009, because of an increased awareness of the legal risks those meetings entailed.¹¹¹ At the Presidents' meetings the matters relating to both AECs and TECs were discussed.¹¹²

- (70) The eighty-eight multilateral meetings held over the period of the cartel and described in more detail in Section 4.3.1 to Section 4.3.4, had the following common characteristics.
- (71) First, the multilateral meetings¹¹³ were, at different times, attended by all nine undertakings addressed in this Decision: Elna, Hitachi AIC, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con, [*confidentiality claim pending*] and Sanyo.¹¹⁴
- (72) Second, throughout the duration of the cartel, the objective of the discussions in the multilateral meetings remained the same.¹¹⁵ Moreover, the multilateral meetings continued to be a platform where the undertakings engaged in typologically identical or similar collusive discussions where they exchanged: [*confidentiality claim pending*]¹¹⁶ and [*confidentiality claim pending*].¹¹⁷ In addition to that, in some of the ECC and CUP meetings, the undertakings concluded price agreements.¹¹⁸ The

¹¹¹ [...].

¹¹² [...]. In [...] it is clarified that the reference to "EC" in [...] is a clerical error and [*confidentiality claim pending*].

¹¹³ CUP meetings, organised in parallel with MK meetings were attended by Elna, Hitachi AIC, Nichicon, Nippon Chemi-Con and Rubycon.

¹¹⁴ See Annex I.

¹¹⁵ See recital (60).

¹¹⁶ For example, meeting of 26 June 1998, see recitals (109)-(111); meeting of 17 December 1999, see recitals (124)-(126); meeting of 25 May 2000, see recitals (132) and (133); meeting of 28 July 2000, see recitals (135) and (136); meeting of 19 September 2001, see recitals (149) and (150); meeting of 19 March 2002, see recitals (156) and (157); meeting of 29 August 2002, see recitals (167)-(171); meeting of 29 January 2003, see recitals (181) and (182); meeting of 28 or 29 August 2003, see recitals (197)-(203); meeting of 5 December 2003, see recital (211)-(213); meeting of 21 April 2004, see recital (223)-(226); meeting of 16 February 2005, see recital (256) and (257); meeting of 12 July 2006, see recitals (306), (308) and (309); meeting of 13 September 2006, see recitals (316)-(318); meeting of 18 October 2006, see recitals (320), (322)-(325); 19 June 2007, see recitals (385)-(390); meeting of 2 August 2007, see recitals (392)-(394); meeting of 4 June 2008, see recitals (444)-(447); meeting of 21 May 2009, see recitals (515), (517) and (519); meeting of 18 February 2010, see recitals (574)-(580); meeting of 17 June 2010, see recitals (607), (609)-(613).

¹¹⁷ For example, meeting of 19 March 2002, see recitals (156) and (158); meeting of 17 December 2003, see recital (217); meeting of 17 June 2004, see recitals (235), (238) and (239); meeting of March 2005, see recitals (261) and (270); meeting of 12 April 2006, see recitals (295) and (296); meeting of 12 July 2006, see recitals (306) and (307); meeting of 14 February 2007, see recitals (350) and (351); meeting of 13 February 2008, see recitals (413) and (414); meeting of 21 August 2009, see recitals (538) and (539); meeting of 18 February 2010, see recitals (574) and (575); meeting of 29 August 2011, see recitals (645) and (646).

¹¹⁸ For example, meeting of 18 September 2002, see recitals (174)-(176); meeting of 7 November 2003, see recitals (205)-(209); meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

participants in the CUP meetings established a strategy for price increases and a reporting system of the actions undertaken for monitoring purposes.¹¹⁹

- (73) Third, the discussions in the multilateral meetings covered both AECs and TECs.¹²⁰
- (74) In addition to the eighty-eight meetings described in Section 4.3.6 and Annex I, [*confidentiality claim pending*].
- (75) Apart from the multilateral meetings, the parties participated in bi-/tri-lateral contacts that constituted part of the cartel. They were not regularly scheduled and were taking place as and when necessary. During those contacts the parties discussed specific issues (such as future prices for particular customers or contracts) in more detail than had been covered in the multilateral meetings. Nevertheless, on the whole the participants, the nature and material scope of discussions as well as topics discussed overlapped across the various bi-/tri-lateral contacts and multilateral meetings.¹²¹
- (76) Furthermore, the employees representing the undertakings at the multilateral meetings or in bi-/tri-lateral contacts held managerial positions ([*confidentiality claim pending*]). Their positions were generally not restricted to [*confidentiality claim pending*] and some of them were [*confidentiality claim pending*]. In fact, the evidence on file shows that for each undertaking numerous participating individuals had global responsibilities.¹²² Moreover, in some instances, the same individuals were involved in both multilateral meetings and bi-/tri-lateral contacts.¹²³ Due to the long duration of the cartel, there have inevitably been changes in the representatives involved and/or the positions they held in their respective undertakings.

¹¹⁹ For example, meeting of 16 January 2007, see recitals (339)-(343); meeting of 15 March 2007, see recitals (363) and (364); meeting of 17 May 2007, see recitals (376) and (377); meeting of 19 June 2007, see recitals (385)-(390); meeting of 24 August 2007, see recitals (396) and (397); meeting of 25 June 2008, see recital (449).

¹²⁰ Evidence shows that ECC meetings held in the period 1998-2003 were primarily held to discuss AECs, although TECs were also discussed several times (see, for example, [...]). In CUP meetings, the participants primarily discussed AECs (see recital (95)).

¹²¹ See also Section 0.

¹²² For example, for Elna – at least seven individuals: [...] (MK), [...] (MK, CUP and bi-lateral contact), [...] (ECC and ATC), [...] (MK), [...] (ECC), [...] (ECC), [...] (ATC); for Hitachi AIC – at least nine individuals: [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]); for Holy Stone – at least one individual: [...]; for Matsuo – at least four individuals: [...] (ATC and MK), [...] (ATC), [...] (MK), [...] (MK); for NCC – at least eight individuals: [...] (ECC, ATC, MK, CUP and bi-lateral contacts), [...] (MK and CUP), [...] (ECC, ATC, MK and CUP), [...] (ACC, ATC, MK and bi-lateral contacts), [...] (ECC), [...] (ECC), [...] (MK), [...] (bi-lateral contacts); for NEC Tokin – at least four individuals: [...] (ECC, ATC, MK and bi-lateral contacts), [...] (MK and bi-lateral contacts), [...] (MK), [...] (ATC); [*confidentiality claim pending*]: [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]), [...] ([*confidentiality claim pending*]); for [*confidentiality claim pending*] – at least eight individuals, [...] (MK and CUP), [...] (ECC), [...] (ECC, ATC, CUP, and bi-lateral contacts), [...] (MK), [...] (ECC and ATC), [...] (bi-lateral contacts), [...] (ECC), [...] (bi-lateral contacts); for Sanyo – at least three individuals: [...] (MK and bi-/tri-lateral contacts), [...] (ATC, MK, bi-/tri-lateral contacts), [...] (ECC, ATC, and MK). See also Annex II.

¹²³ See footnote 122.

(77) For a better understanding of the multilateral meetings as well as of the bi-/tri-lateral contacts, a short overview is given below.

4.3.1. ECC meetings (1998-2003)

(78) The ECC meetings were held from [confidentiality claim pending] 1998 to 2003.¹²⁴ Evidence shows that although those meetings were primarily held to discuss AECs, TECs were also discussed several times.¹²⁵

(79) The following undertakings participated in the ECC meetings: Elna, Hitachi AIC, Nichicon, Nippon Chemi-Con, [confidentiality claim pending], and Sanyo In addition, Matsuo and NEC Tokin participated in ECC Presidents' meetings.¹²⁶

(80) Within the ECC meetings there were two sets of meetings (ECC Domestic meetings¹²⁷ and ECC Foreign Trade meetings).¹²⁸ [...] stated that in the ECC Domestic meetings the participants discussed supplies to customers [confidentiality claim pending],¹²⁹ and that in the ECC Foreign Trade meetings the participants discussed supplies to customers [confidentiality claim pending].¹³⁰ However, it follows from the evidence on file that in practice, there were Domestic meetings in which the participants discussed supplies to customers [confidentiality claim pending].¹³¹ There were also Foreign Trade meetings in which the participants discussed supplies to customers [confidentiality claim pending].¹³² Therefore, the fact that Domestic meetings may have been primarily destined to discuss supplies to customers [confidentiality claim pending] was of limited practical relevance. In any

¹²⁴ [...]. The full chronology of ECC meetings with the supporting evidence is set out in Section 0 and Annex I.

¹²⁵ For example, [...].

¹²⁶ [...]. In [...] it is clarified that the reference to "EC" in [...] is a clerical error and [confidentiality claim pending].

¹²⁷ For example, the meetings of 17 December 1999, 22 November 2000, 19 September 2001, 19 March 2002, 17 July 2002, 29 August 2002, 18 September 2002 and 19 February 2003 (see recitals (123), (143), (148), (155), (160), (166), (173) and (184)).

¹²⁸ For example, the meetings of 26 June 1998, 5 November 1998, 18 December 1998, 29 October 1999, 28 January 2000, 25 May 2000, 28 July 2000, 20 September 2000 and 7 November 2003 (see recitals (108), (112), (117), (120), (128), (131), (134), (138) and (204)).

¹²⁹ [...].

¹³⁰ [...].

¹³¹ [...]: "Negotiating price increase by several percent with overseas customers" (see also recital (126)); [...]: "In terms of sales quantity, the sales for the [confidentiality claim pending] market decreased to 85% and increased to 110% for the [confidentiality claim pending] market. The forecasted sales quantity for April is similar" (see also recital (158)); [...]: "The incoming orders are expected to fall in August to September. While the domestic market remains at the same level, the overseas market is sluggish", "[confidentiality claim pending]" (see also recital (165)); [...]: "Thus, for global customers, overseas business and communication will be dealt with in a unified way" (see also recital (169)); [...]: "given the increasingly fierce meaningless price competition worldwide, this meeting would be meaningless if it cannot encourage a real discussion in global terms" (see also recital (177)), "While the business is brisk in the overseas market, the domestic market is sluggish", "The sales in the third quarter are expected to drop both in the overseas and domestic markets due to the sluggish demand", "sales will drop more in the [confidentiality claim pending] market than in the [confidentiality claim pending] market", "In the overseas market, the sales of blocks dropped significantly due to the inventory adjustment for PC parts. Our inventory is increasing. (Overseas)" (see also recital (178)).

¹³² For example, [...]: "Budget was not achieved for the first half of 98, including domestic. Especially, domestic was down on the year"; [...]: "Exports fell in October which is the first month of the second half. Domestic is still slow".

event, the distinction between Domestic and Foreign Trade Meetings applied only to the location of the headquarters of the customer, but not to the location of the manufacturing plants or the destination of the capacitors. [*confidentiality claim pending*].¹³³

- (81) During the ECC meetings, the participants discussed market developments and trends, volume and value of monthly sales, and on a number of occasions they exchanged information on prices for specific customers¹³⁴ and on future prices in general.¹³⁵ Furthermore, during the ECC Foreign Trade meetings the participants shared regular reports on the status of their orders in terms of the products or world regions (including Europe).¹³⁶
- (82) The ECC meetings involved an exchange of information and discussions along the lines of "*we are suffering and need to protect profit, so let's not lower price*".¹³⁷ There were complaints related to those companies who were selling at lower prices and the "*betrayers*" were asked to be more cooperative.¹³⁸
- 4.3.2. *ATC meetings (2003-2005)*
- (83) At a meeting entitled "Joint ECC Meeting/[*confidentiality claim pending*] and Presidents' Meeting" on 15 May 2003,¹³⁹ the undertakings decided to merge discussions on AECs, previously addressed in ECC meetings, and TECs, [*confidentiality claim pending*]¹⁴⁰ within one forum, the ATC meetings.¹⁴¹
- (84) The ATC meetings were held from 2003 to 2005¹⁴² with the same participants as those attending the ECC meetings.¹⁴³
- (85) As for the ECC meetings, there were two sets of meeting (ATC Domestic meetings¹⁴⁴ and ATC Foreign Trade meetings).¹⁴⁵ [...] stated that in the Domestic meetings, the participants discussed supplies of AECs and TECs to customers

¹³³ [...]; See also Annex II.

¹³⁴ [...]; for example the meeting of 17 December 1999, see recital (125); the meeting of 19 February 2003, see recital (186); the meeting of 7 November 2003, see recitals (208) and (209).

¹³⁵ For example, the meeting on 28 January 2000, see recital (130); the meeting of 28 July 2000, see recital (136); the meeting of 18 September 2002, see recitals (174)-(177); the meeting of 29 January 2003, see recital (182).

¹³⁶ [...]. For example, the meetings of 26 June 1998 ([...]), 5 November 1998 ([...]), 18 December 1998 ([...]), 29 October 1999 ([...]), 28 January 2000 ([...]), 25 May 2000 ([...]), 28 July 2000 ([...]) and 20 September 2000 ([...]).

¹³⁷ [...].

¹³⁸ [...].

¹³⁹ [...]. In [...] it is clarified that the reference to "EC" in [...] is a clerical error and [*confidentiality claim pending*].

¹⁴⁰ [*confidentiality claim pending*].

¹⁴¹ [...].

¹⁴² The full chronology of ATC meetings with the supporting evidence is set out in Section 0 and Annex I.

¹⁴³ See recital (79).

¹⁴⁴ ATC Domestic meetings were often referred to as "ATC statistics meetings" ([...]), "Aluminium Tantalum Statistics Session" ([...]) or ATC Meetings for Domestic Transactions) ([...]). Examples of ATC Domestic meetings: 17 December 2003, 17 March 2004, 21 April 2004, 17 June 2004, 23 July 2004 and 16 February 2005 (see recitals (214), (220), (222), (234), (240) and (255)).

¹⁴⁵ ATC Foreign Trade meetings were often referred to as "ATC Meetings for Overseas Transactions" ([...]). Examples of ATC Foreign Trade meetings: 28 or 29 August 2003, 5 December 2003 and 3 December 2004 (see recitals (196), (210) and (253)).

[*confidentiality claim pending*]¹⁴⁶ and that in Foreign Trade meetings the participants discussed supplies to customers [*confidentiality claim pending*].¹⁴⁷ However, it follows from the evidence on file that in practice, there were Domestic meetings in which the participants discussed supplies to customers [*confidentiality claim pending*].¹⁴⁸ Therefore, the fact that the primary purpose of the Domestic meetings may have been to discuss customers [*confidentiality claim pending*] was of limited practical relevance. In any event, the distinction between Domestic and Foreign Trade meetings applied only to the location of the headquarters of the customer, but not to the location of the manufacturing plant or the destination of the capacitors. [*confidentiality claim pending*].¹⁴⁹

- (86) The ATC meetings also shared the same aim: They were a forum "*to exchange information by markets and by capacitor category so that each company will be able to enjoy profits and that healthy market prices will be maintained. In addition, in order to keep up with the rapidly changing markets, future directions of the industry are discussed and new products are introduced*".¹⁵⁰

4.3.3. MK meetings (2005-2012)

- (87) From around March 2005 onwards, multilateral meetings were held under the name "MK meetings".¹⁵¹ The MK meetings were held from 2005 to 2012.¹⁵²
- (88) The undertakings attending the MK meetings were the same as those who participated in the ATC meetings¹⁵³, save for the absence of Nichicon and the entry of the new cartel participant Holy Stone.
- (89) The MK meetings lasted for two to three hours and took place in the offices of one of the parties, at a rental conference room or at a hotel. There was a rotating meeting organiser, the role of whom was to handle logistics.¹⁵⁴ [*confidentiality claim pending*]¹⁵⁵ [*confidentiality claim pending*]. [*confidentiality claim pending*].¹⁵⁶
- (90) Upon arriving at the monthly meeting, each undertaking would distribute an information sheet [*confidentiality claim pending*].¹⁵⁷ [*confidentiality claim*

¹⁴⁶ [...].

¹⁴⁷ [...].

¹⁴⁸ [...]: "*orders of Hong Kong are received early. In the United States, the incoming order quantity is increasing from February. In Europe, it remains decreased*", "*We must standardize our way of thinking of the price again including [confidentiality claim pending]*" (see also recital (221)); [...]: "*We are not doing well overseas*", "*Overseas production is also up between 120 and 130% by volume*" (see also recital (227)); [...]: "*In March, the sales are forecast to reduce by 15% for [confidentiality claim pending] market and 10% for [confidentiality claim pending] markets compared with those in the same period of last year*". (see also recital (259)).

¹⁴⁹ [...]; see also Annex II.

¹⁵⁰ [...].

¹⁵¹ [...].

¹⁵² The full chronology of MK meetings with the supporting evidence is set out in Section 0 and Annex I.

¹⁵³ [...].

¹⁵⁴ [...].

¹⁵⁵ [*confidentiality claim pending*]. [...].

¹⁵⁶ [...].

¹⁵⁷ [...].

pending].¹⁵⁸ The other undertakings would then have an opportunity to ask questions or comment on the information.¹⁵⁹

- (91) The Commission is in possession of numerous information sheets.¹⁶⁰ The first column of the table contains two rows: aluminium and tantalum (referring to AECs and TECs, respectively). The second column contains main types of AECs (for example, [*confidentiality claim pending*]) and TECs (for example, [*confidentiality claim pending*]). The third column indicates the figures that will be provided with regard to "Quantity" (volume) and "Amount" (a reference to value). The fourth column normally concerns a reference period and is filled out by default with a "100 %". The remaining columns are to be filled in by the relevant undertaking for the relevant time periods.¹⁶¹
- (92) In addition to exchanges via information sheets, in some of the meetings parties exchanged information on future prices.¹⁶²
- (93) [*confidentiality claim pending*].¹⁶³
- (94) The content of the discussion at the meetings is also evidenced by information from an undertaking that participated in only a few MK meetings.¹⁶⁴ According to its representative, the pricing-related discussions at that MK meeting may have been inappropriate and he did not include the sensitive information revealed by other undertakings in his meeting report or to anyone in his undertaking. He did, however, describe the meeting in general terms to his supervisors for the purpose of explaining that they should not attend further meetings.¹⁶⁵

4.3.4. CUP meetings (2006-2008)

- (95) In parallel with MK meetings, from 2006 to 2008,¹⁶⁶ Elna, Hitachi AIC, Nichicon, Nippon Chemi-Con and [*confidentiality claim pending*]¹⁶⁷ participated directly in CUP meetings.¹⁶⁸ The participants in those meetings primarily discussed AECs. All the undertakings participating in the CUP meetings manufactured and/or sold AECs.¹⁶⁹

¹⁵⁸ [...].

¹⁵⁹ For example, [...].

¹⁶⁰ For example, information sheets are available concerning the MK meetings of 12 April 2006, 12 July 2006, 18 October 2006, 14 February 2007, 13 February 2008, 14 May 2008, 10 or 11 September 2008, 11 March 2009, 21 May 2009, 16 July 2009, 21 August 2009, 17 September 2009, November 2009, 21 December 2009, 18 February 2010, 21 April 2010, 21 May 2010, 17 June 2010, 16 July 2010, 16 September 2010, 15 or 16 November 2010, 20 December 2010, 19 April 2011, 29 August 2011, 23 April 2012; see, for example, recitals (296), (307), (321), (351), (414), (430), (466), (502), (516), (525), (539), (543), (551), (561), (575), (590), (596), (608), (617), (621), (628), (633), (642), (646) and (653)).

¹⁶¹ [...]; for example, [...].

¹⁶² For example, MK meetings of 12 April 2006 and 13 September 2006 (recitals (298) and (316)).

¹⁶³ [...].

¹⁶⁴ For example, 16 December 2005 and 17 June 2010 (see recitals (281) and (606)); see also [...].

¹⁶⁵ [...].

¹⁶⁶ The full chronology of CUP meetings with the supporting evidence is set out in Section 0 and Annex I.

¹⁶⁷ [...].

¹⁶⁸ In the beginning the CUP meetings were referred to as "Five companies meetings" and "Four companies meetings"; see, for example, [...].

¹⁶⁹ [...].

- (96) CUP meetings are described as *[confidentiality claim pending]*¹⁷⁰ among some of the undertakings participating in MK meetings¹⁷¹ and Nichicon.
- (97) CUP meetings were initiated by *[confidentiality claim pending]*¹⁷² and were held approximately once every one or two months.¹⁷³ The meetings were originally taking place in a meeting room at a business centre from 1 pm or 2 pm. *[confidentiality claim pending]*.¹⁷⁴ *[confidentiality claim pending]*.¹⁷⁵
- (98) As for the other multilateral meetings, the purpose of the CUP meetings as explained by [...],¹⁷⁶ was to provide a response to market developments, here in particular to Directive 2002/95/EC of the European Parliament and of the Council.¹⁷⁷ *[confidentiality claim pending]*.¹⁷⁸ In the CUP meetings, the participants tried to coordinate their response to these requirements.
- (99) Another trigger for the establishment of the meetings was the fact that the parties were *[confidentiality claim pending]*.¹⁷⁹ During the early CUP meetings in 2006, undertakings agreed on coordinated price increases to reflect the increasing cost of raw material (aluminium foil and chemicals) as well as the depreciation of JPY. During 2007, the undertakings exchanged information on price increases of raw material, reported on the status of the price negotiations with customers, as a follow up to the price increases agreed in 2006, and agreed on the strategy to be adopted for further price negotiations. In 2008, the undertakings agreed again to negotiate coordinated price increases with their customers, and followed up those agreements by reporting on the status of their respective price negotiations.¹⁸⁰
- (100) *[confidentiality claim pending]*, *[confidentiality claim pending]* suggested the working method for the meetings: (i) customers supplied by more than one undertaking participating in CUP meetings should be allocated amongst the undertakings; and (ii) each undertaking should take the lead in proposing a price increase to those customers allocated to it; (iii) the respective undertaking should report to the other undertakings in the CUP meetings on the result of these proposals; and (iv) following this, the other undertakings supplying the respective

¹⁷⁰ [...].

¹⁷¹ Namely Elna, Hitachi AIC, NCC and *[confidentiality claim pending]*.

¹⁷² [...].

¹⁷³ [...].

¹⁷⁴ [...].

¹⁷⁵ [...].

¹⁷⁶ [...].

¹⁷⁷ Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 37, 13.2.2003, p. 19). According to Article 4 of the Directive 2002/95/EC: "*Member States shall ensure that, from 1 July 2006, new electrical and electronic equipment put on the market does not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE)*".

¹⁷⁸ [...].

¹⁷⁹ [...].

¹⁸⁰ For example (examples are not exhaustive), [...].

customers should also propose price increases, thereby keeping pace in price increase negotiations.¹⁸¹

- (101) The participants would agree on the general plan for the price increases¹⁸² and in the subsequent meetings they would report on the status of price negotiations as part of monitoring the agreement.¹⁸³

4.3.5. *Bi-/tri-lateral contacts*

- (102) The participants in multilateral meetings also engaged in *ad hoc* bi-/tri-lateral contacts to discuss customer-specific issues. The evidence on file shows that the anti-competitive bi-/tri-lateral contacts started later than the multilateral meetings. The first such known contact occurred in April/May 2005.¹⁸⁴ The contacts usually took place via telephone conversations or through meetings, either at the offices of one of the participants, or in restaurants, hotels and pubs.¹⁸⁵
- (103) The contacts would be initiated, for example, when a customer issued a price reduction request or an RFQ.¹⁸⁶ Discussions typically related to minimum prices to be quoted to different individual customers,¹⁸⁷ responses to regular requests for discounts,¹⁸⁸ and price increase intentions.¹⁸⁹
- (104) The participants in bi-/tri-lateral contacts aimed at aligning their information exchanges, discussed strategies to motivate their price increases to customers, and coordinated future pricing. For illustration, the company with the largest share of business for a specific customer would initiate a discussion with the competitor which was bidding for the same business and they would agree on a minimum price.¹⁹⁰

¹⁸¹ [...]; see also, for example, CUP meetings of 13/12/2006, 16/04/2008, 21/05/2008 and 02/06/2008 [...].

¹⁸² For example the meeting of 13 December 2006, see recitals (327)-(333); the meeting of 22 December 2006, see recital (335); the meeting of 17 May 2007, see recitals (378) and (379); the meeting of 16 April 2008, see recital (425); the meeting of 21 May 2008, see recitals (433)-(437); the meeting of 2 June 2008, see recital (439); the meeting of 25 June 2008, see recital (449).

¹⁸³ For example the meeting of 16 January 2007, see recitals (339)-(343), the meeting of 15 February 2007, see recitals (355)-(361); the meeting of 15 March 2007, see recital (362); the meeting of 19 April 2007, see recitals (369)-(374); the meeting of 17 May 2007, see recitals (375)-(377); the meeting of 4 June 2007, see recitals (380)-(383); the meeting of 19 June 2007, see recitals (384)-(390); the meeting of 24 August 2007, see recitals (395)-(397); the meeting of 26 September 2007, see recitals (398)-(401); the meeting of 21 March 2008, see recitals (417)-(422); the meeting of 15 July 2008, see recitals (458), (459); the meeting of 8 September 2008, see recitals (460)-(463); the meeting of 7 October 2008, see recitals (480)-(483); the meeting of 10 November 2008, see recitals (491)-(497). See recitals (271) and (272).

¹⁸⁴ [...].

¹⁸⁵ [...].

¹⁸⁶ [...].

¹⁸⁷ See for example, tri-lateral meeting of 31 May 2010, recitals (599)-(604).

¹⁸⁸ See for example, bi-lateral contact of 9 and 11 December 2009, recitals (555)-(558); bi-lateral contact of 25 January 2010, recitals (571) and (572).

¹⁸⁹ For example, bi-lateral contact of September 2007, recitals (402)-(405); bi-lateral contact of September and October 2008, recitals (477)-(479); bi-lateral contact of 21 April 2009, recitals (504)-(508); bi-lateral meeting of 6 October 2010, recitals (623)-(625).

¹⁹⁰ [...].

- (105) The same participants as in multilateral meetings engaged in bi-/tri-lateral contacts: Elna, Hitachi AIC, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con, [confidentiality claim pending] and Sanyo.¹⁹¹

4.3.6. Chronology of events

- (106) The evidence on which the Commission bases its findings is partly originally in Japanese. Translations of the evidence have been provided by the addressees of this Decision or made by the Commission. The Commission notes that in the translations, certain terms such as "return of value",¹⁹² "price return",¹⁹³ "price rebound",¹⁹⁴ "price recovery",¹⁹⁵ "price restoration"¹⁹⁶ and "price rollback"¹⁹⁷ can be found recurrently. The Japanese equivalent of all these terms is "ne-modoshi", which among others can also be translated as "increase of price". Furthermore, throughout the English translation of the evidence there are references to "price hike",¹⁹⁸ an equivalent of Japanese term "ne-age", which also means "increase of price".
- (107) The chronology of the anti-competitive events is presented in this section.¹⁹⁹

26 June 1998

- (108) [confidentiality claim pending], Nichicon, NCC and [confidentiality claim pending], as well as another competitor, participated in an ECC meeting on 26 June 1998.²⁰⁰
- (109) At that meeting, the participants agreed on a future price for a European customer [confidentiality claim pending], and discussed sales prices in Italy and the United Kingdom.
- (110) As explained by [...], all participants agreed on a [confidentiality claim pending] reduction from the current prices as a response to the first RFQ of customer [confidentiality claim pending] (referred to as [confidentiality claim pending] in [confidentiality claim pending]'s internal meeting minutes), [confidentiality claim pending].²⁰¹ It follows from [confidentiality claim pending]'s internal meeting

¹⁹¹ See Annex I and footnote 764.

¹⁹² See, for example, [...] (see also recitals (129), (139), (205) and (211)).

¹⁹³ Also "price returns", "the price to be returned". See, for example, [...]; (see also recitals (297), (472), (576) (including footnote 1062), (578), (580) and (597)).

¹⁹⁴ Also "rebound in [...] prices". See, for example, [...] (see also recitals (136) and (474)).

¹⁹⁵ Also "recover prices", "recovered prices". See, for example, [...]; (see also recitals (477), (545) and (548)).

¹⁹⁶ Also "restore the price", "restore the [...] price", "restore prices", "price [...] will be restored", "restoring price", "restoring prices", "prices are being restored". See, for example, [...] (see also recitals (298), (320), (350), (354), (413), (449), (538), (545), and (610)).

¹⁹⁷ See, for example, [...] (see also recital (429)).

¹⁹⁸ See, for example, [...]; (see also recitals (316), (469), (474), footnote 934, recitals (552) and (553)).

¹⁹⁹ See also Annex I.

²⁰⁰ [...].

²⁰¹ [...]. Nichicon argues that [confidentiality claim pending] is not identified in the contemporaneous document, but rather only explained in the corporate statement and that there is no reasoning in the corporate statement as to why [confidentiality claim pending] was identified as [confidentiality claim pending] ([...]). However, Nichicon has not contested the overall credibility or reliability of the contemporaneous document or the relevant corporate statement in any of its submissions to the Commission.

minutes that, during the part of the meeting concerning "*Information Exchange*",²⁰² the following was mentioned: "*For the first quote for Japanese products, it was agreed to do [confidentiality claim pending] under current prices. Since R Company is the main company, R Company prices will probably be the negotiation base*".²⁰³ It also follows from the reference to [confidentiality claim pending]'s (referred to as "*R Company*" in [confidentiality claim pending]'s internal meeting minutes)²⁰⁴ prices as a "*negotiation base*" that the discussion related to future conduct.

- (111) Furthermore, it follows from [confidentiality claim pending]'s internal meeting minutes that Nichicon (referred to as "*N Company*" in [confidentiality claim pending]'s internal meeting minutes)²⁰⁵ complained about [confidentiality claim pending]'s (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes)²⁰⁶ prices in Italy: "*A Japan-related company in Italy ([confidentiality claim pending]) is ignoring dumping and selling at around 60% of the regular price. (complaint from N Company)*".²⁰⁷ The other competitor complained about Nichicon's prices of a specific type of electrolytic capacitors, namely chip capacitors, in the United Kingdom: "*N Company is selling chips in the UK quite cheaply*",²⁰⁸ and Nichicon replied that it "[w]ill investigate but don't think it is possible".²⁰⁹

5 November 1998

- (112) Elna, Nichicon, NCC and [confidentiality claim pending], as well as another competitor, participated in an ECC meeting on 5 November 1998.²¹⁰
- (113) At that meeting, NCC informed the other participants of its pricing intentions in Europe and Elna considered measures to halt a spread of low prices worldwide.
- (114) It follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning "*Status of companies*",²¹¹ NCC (referred to as "*Company C*" in [confidentiality claim pending]'s internal meeting minutes)²¹² disclosed to the other participants its intentions for the future price negotiations in Europe:

"b) *Europe*

²⁰² [...].

²⁰³ [...].

²⁰⁴ "R Company" means [confidentiality claim pending], as in [...] it is indicated that [...] was a participant at that meeting (as the meeting minutes were drafted by [confidentiality claim pending], no company acronym follows the reference to [...]) and in [...] it is explained that [...] is of [confidentiality claim pending].

²⁰⁵ "N Company" means Nichicon, as in [...] it is indicated that [...] was a participant at that meeting, while in [...] it is explained that [...] is [confidentiality claim pending].

²⁰⁶ [confidentiality claim pending], as in [...] it is indicated that [...] was a participant at that meeting, while in [...] it is explained that [...] is [confidentiality claim pending].

²⁰⁷ [...].

²⁰⁸ [...].

²⁰⁹ [...].

²¹⁰ [...].

²¹¹ [...].

²¹² "Company C" means NCC, as in [...] it is indicated that "[...] (C)" was a participant at that meeting, while in [...] it is explained that [...] is of NCC.

[...]

• *Seeing double digits in price negotiations for next year and falling demand is leading to falling prices*".²¹³

- (115) Furthermore, Elna (referred to as "Company E" in [confidentiality claim pending]'s internal meeting minutes)²¹⁴ indicated that some form of measures were needed to counter a worldwide spread of low prices denominated in USD: *"There is a fear that the reduced USD price will not be limited to the ASEAN region but spread worldwide, so it is necessary to take some form of early measures"*.²¹⁵
- (116) It also follows from [confidentiality claim pending]'s internal meeting minutes that it was announced that the *"Next meeting [...] Scheduled for 27 November. Will confirm by phone."*²¹⁶

18 December 1998

- (117) Elna, Nichicon, NCC and [confidentiality claim pending], as well as another competitor, participated in an ECC meeting on 18 December 1998.²¹⁷
- (118) It follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning the *"Situation at each company"*,²¹⁸ the other competitor gave information about the current and future development of supply and demand in Europe and announced that it would handle sales in Europe in the euro currency as of April 1999: *"Europe –A visible drop is beginning. With respect to the euro settlement, we will provide support from April of next year"*.²¹⁹
- (119) NIPPON CHEMI-CON CORPORATION claims that the meeting participant providing the information referred to in recital (118) is a competitor manufacturing solely TECs and that the evidence is therefore limited to TECs.²²⁰ That argument cannot be accepted, as it is based on a confusion on behalf of NIPPON CHEMI-CON CORPORATION with regard to the identity of the participant. It follows from the evidence that the competitor in question was a different one than NIPPON CHEMI-CON CORPORATION assumes.²²¹ It also follows from the evidence that the competitor who made the statement manufactured AECs.²²²

29 October 1999

- (120) Nichicon, NCC and [confidentiality claim pending], as well as another competitor, participated in an ECC meeting on 29 October 1999.²²³

²¹³ [...].

²¹⁴ [confidentiality claim pending], as in [...] it is indicated that "[...] (E)" was a participant at that meeting, while in [...] it is explained that [...] is [confidentiality claim pending].

²¹⁵ [...].

²¹⁶ [...].

²¹⁷ [...].

²¹⁸ [...].

²¹⁹ [...].

²²⁰ [...].

²²¹ [...].

²²² See, for example, references to specific types of AECs, namely "LB" capacitors and "aluminium electrolytic chip" capacitors, in [...].

²²³ [...].

- (121) At that meeting, the other competitor shared pricing information regarding TECs for European customers [*confidentiality claim pending*].
- (122) It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning "*Situation at each company*",²²⁴ the other competitor indicated that regarding a specific type of TECs, namely tantalum chip capacitors, a 40 % price increase for customers [*confidentiality claim pending*] would not be sufficient, unless there was a restriction in supply: "*Tantalum chip—There was a 40% price increase for [*confidentiality claim pending*], but it will not be sufficient unless the supply is restricted*".²²⁵

17 December 1999

- (123) Elna, Nichicon, NCC and [*confidentiality claim pending*], as well as other competitors, participated in an ECC meeting on 17 December 1999.²²⁶
- (124) At that meeting, the participants reported their pricing information, including for overseas customers, as well as pricing intentions.
- (125) It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning the "*Situations of attendees*",²²⁷ one of the other competitors shared pricing information regarding customer [*confidentiality claim pending*] (referred to as [*confidentiality claim pending*] in [*confidentiality claim pending*]'s internal meeting minutes),²²⁸ and pricing intentions regarding other customers: "*Prices: Did not decrease the price for [*confidentiality claim pending*]. Do not intend to decrease the prices for other manufacturers, either*".²²⁹
- (126) It also follows from [*confidentiality claim pending*]'s internal meeting minutes that Elna informed the other participants about its price increase negotiations with overseas customers: "*Negotiating price increase by several percent with overseas customers*".²³⁰
- (127) NIPPON CHEMI-CON CORPORATION asserts that the quote in recital (125) merely concerns the reporting of the situation and also claims that it cannot assess the geographic impact of [*confidentiality claim pending*] because its full identity remains unknown.²³¹ Those arguments must be rejected for the following reasons. First, the quote clearly manifests a future pricing intention for the other customers. Second, at that meeting NCC also reported about its own price negotiation with [*confidentiality claim pending*],²³² which confirms that [*confidentiality claim*

²²⁴ [...].

²²⁵ [...].

²²⁶ [...].

²²⁷ [...].

²²⁸ See footnote 233.

²²⁹ [...].

²³⁰ [...].

²³¹ [...].

²³² [...]: "*e) Nippon Chemi-Con [...] • Responded to the price request from [*confidentiality claim pending*] with no price reduction*".

pending] is NCC's customer. Third, according to the evidence on file [*confidentiality claim pending*] refers to customer [*confidentiality claim pending*].²³³

28 January 2000

- (128) Nichicon, NCC and [*confidentiality claim pending*], as well as another competitor, participated in an ECC meeting on 28 January 2000.²³⁴
- (129) At that meeting, the other competitor disclosed future pricing intentions concerning Europe.
- (130) As explained by [...], at that meeting the other competitor reported that due to the weak euro it was necessary to increase prices (referred to as "*return of value*" in the English translation of [*confidentiality claim pending*]'s internal meeting minutes)²³⁵ for the European market and invited the other participants to cooperate in that regard.²³⁶ It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning "*Situation at each company*",²³⁷ the other competitor mentioned: "*Europe –A return of value of about 15% is necessary from April due to the weak euro. [...] We would like to request coordination*".²³⁸

25 May 2000

- (131) Elna, Nichicon, NCC and [*confidentiality claim pending*], as well as another competitor, participated in an ECC meeting on 25 May 2000.²³⁹
- (132) At that meeting, the participants exchanged pricing information for European customers.
- (133) As explained by [...], the participants reported on their price negotiations with European customers.²⁴⁰ It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning "*The Situation of Each Company*",²⁴¹ the other competitor mentioned: "*For Europe, due to a substantial fall in the Euro they are conduction [sic] price increase negotiations of at least 30%*".²⁴² It further follows from these minutes that NCC (referred to as "*C Company*" in [*confidentiality claim pending*]'s internal meeting minutes)²⁴³ stated: "*In Europe they are raising prices quite a bit due to the fall in the Euro, and as usual there are favourable conditions for orders. [confidentiality claim pending]*",²⁴⁴

²³³ [...] contain a reference to: "③ *E Company* [...] • *They raised prices 10% - 15% in Europe. Especially, [confidentiality claim pending] raised LB at least 20% so orders are stopped*", whereas in [...] it is explained that Elna reported on a price increase for LB capacitors supplied to customer [*confidentiality claim pending*].

²³⁴ [...].

²³⁵ See recital (106).

²³⁶ [...].

²³⁷ [...].

²³⁸ [...].

²³⁹ [...].

²⁴⁰ [...].

²⁴¹ [...].

²⁴² [...].

²⁴³ "C Company" means NCC, as in [...] it is indicated that "[...] (C)" was a participant at that meeting, while in [...] it is explained that [...] is of NCC.

²⁴⁴ [...].

and [confidentiality claim pending] (referred to as "R Company" in [confidentiality claim pending]'s internal meeting minutes)²⁴⁵ reported: "They are negotiating for price increases due the [sic] falling European currency".²⁴⁶

28 July 2000

- (134) Elna, Nichicon, NCC and [confidentiality claim pending] participated in an ECC meeting on 28 July 2000.²⁴⁷
- (135) At that meeting, the participants discussed current and future price increases for AECs, including on a worldwide scale.
- (136) As explained by [...], at that meeting it was confirmed that the price increases for a specific type of AECs, namely [confidentiality claim pending] capacitors, for customers in [confidentiality claim pending] was largely completed and was considered a success; therefore, the participants agreed to proceed with the price increases in other markets to compensate for the rise of raw material costs.²⁴⁸ In particular, it follows from [confidentiality claim pending]'s internal meeting minutes that with regard to price increases (referred to as "Price Rebound" in [confidentiality claim pending]'s internal meeting minutes)²⁴⁹ the participants discussed price increases in [confidentiality claim pending] and Europe and indicated that the price increases would expand in the rest of the world: "Prices have risen mainly in [confidentiality claim pending] and Europe, but an additional level of price increases will expand in the rest of the world".²⁵⁰ It further follows from those meeting minutes that the participants considered that price increases should also be implemented in the overseas market:²⁵¹ "A price increase of [confidentiality claim pending] has been accepted in the domestic market, and active measures are being taken to rise [sic] prices in the overseas market as well".²⁵² Finally, it follows that the rationale presented to customers for the price increases would include the increase of the raw materials costs:²⁵³

"Reasons for price increase (brought up the rise in the price of parts, same as domestically)

[confidentiality claim pending]".²⁵⁴

- (137) It also follows from [confidentiality claim pending]'s internal meeting minutes that it was announced that "The next meeting will be on 25 August".²⁵⁵

²⁴⁵ "R Company" means [confidentiality claim pending], as in [...] it is indicated that [...] was a participant at that meeting (as the meeting minutes were drafted by [confidentiality claim pending], no company acronym follows the reference to [...]) and in [...] it is explained that [...] is of [confidentiality claim pending].

²⁴⁶ [...].

²⁴⁷ [...].

²⁴⁸ [...].

²⁴⁹ [...]. See also recital (106).

²⁵⁰ [...].

²⁵¹ [...].

²⁵² [...].

²⁵³ [...].

²⁵⁴ [...].

²⁵⁵ [...].

20 September 2000

- (138) Nichicon, NCC and [confidentiality claim pending], as well as another competitor, participated in an ECC meeting on 20 September 2000.²⁵⁶
- (139) At that meeting, the other competitor disclosed supply and demand information, including information in relation to future supply and demand. In addition, [confidentiality claim pending] shared with the other participants its pricing intentions in Europe.
- (140) It follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning the "*General situation at each company*",²⁵⁷ the other competitor indicated that it would globally reduce the monthly production of specific types of electrolytic capacitors, namely 11L below 6 ø and 7L capacitors, to 350 million pieces: "*11L below 6 ø [and] 7L will be reduced globally*"²⁵⁸ and "*The monthly production volume for the same size is currently 500 million pieces globally, but we will reduce this [amount] to 350 million pieces*".²⁵⁹ It further indicated that, regarding a specific type of electrolytic capacitors, namely electrolytic chips capacitors: "*The above-mentioned reduction portion will be passed on to the increased production of the electrolytic chip*"²⁶⁰ of which "*Current capacity 200 million pieces*".²⁶¹ Further, it indicated that with regard to a specific type of electrolytic capacitors, namely 8 ø or higher capacitors: "*In addition, with respect to 8 ø or higher as well, monthly production shall be increased to 50,000,000 pieces globally*".²⁶²
- (141) [confidentiality claim pending] disclosed to the other participants that the second phase of its price increase (referred to as "*return of value*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)²⁶³ initiative was underway in Europe.²⁶⁴ It follows from [confidentiality claim pending]'s internal meeting minutes that [confidentiality claim pending] (referred to as "*Company R*" in [confidentiality claim pending]'s internal meeting minutes)²⁶⁵ stated: "*Europe—The second round of the return of value is underway*".²⁶⁶
- (142) It also follows from [confidentiality claim pending]'s internal meeting minutes that the timing of the next meeting was announced: "*The next time will be 31 October*".²⁶⁷

22 November 2000

²⁵⁶ [...].

²⁵⁷ [...].

²⁵⁸ [...].

²⁵⁹ [...].

²⁶⁰ [...].

²⁶¹ [...].

²⁶² [...].

²⁶³ See recital (106).

²⁶⁴ [...].

²⁶⁵ "Company R" means [confidentiality claim pending], as in [...] it is indicated that [...] was a participant at that meeting (as the meeting minutes were drafted by [confidentiality claim pending], no company acronym follows the reference to [...]) and in [...] it is explained that [...] is of [confidentiality claim pending].

²⁶⁶ [...].

²⁶⁷ [...].

- (143) Elna, Hitachi AIC, Nichicon, NCC and [confidentiality claim pending], as well as another competitor, participated in an ECC meeting on 22 November 2000.²⁶⁸
- (144) At that meeting, the participants exchanged their future pricing intentions.
- (145) It follows from [confidentiality claim pending]'s internal meeting minutes that the participants agreed that regarding a possible price request from customer [confidentiality claim pending] (referred to as [confidentiality claim pending] in [confidentiality claim pending]'s internal meeting minutes)²⁶⁹ [confidentiality claim pending]:
- "1. Price response to [confidentiality claim pending]*
- No manufacturer has received a request about prices yet.*
- If received, it should be answered, [confidentiality claim pending]"*.²⁷⁰
- (146) Furthermore, it follows from [confidentiality claim pending]'s internal meeting minutes that, although at that meeting no consensus could be reached regarding the pricing of a specific type of electrolytic capacitors, namely [confidentiality claim pending]²⁷¹ (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes):²⁷² *"With the content not known yet, no consensus view can be given as it stands now"*,²⁷³ there was an indication that at the forthcoming meeting of 20 December the increased raw material costs, among other things, would be reported: *"Each company to analyze and report at the next meeting (Dec. 20) about the increased costs in materials and others"*²⁷⁴ and on that basis a unified view would be formed: *"Will make a consensus view based on the entire opinions"*.²⁷⁵
- (147) NIPPON CHEMI-CON CORPORATION and Nichicon argue that they cannot assess the geographic impact of [confidentiality claim pending] (referred to in recital (145)) because its full identity remains unknown.²⁷⁶ These arguments must be rejected because, on the basis of the arguments that are presented regarding the meeting of 17 December 1999,²⁷⁷ [confidentiality claim pending] refers to [confidentiality claim pending].

19 September 2001

- (148) Elna, Hitachi AIC, Nichicon, NCC, [confidentiality claim pending] and Sanyo participated in an ECC meeting on 19 September 2001.²⁷⁸
- (149) At that meeting, Nichicon shared pricing information with the other participants.

²⁶⁸ [...].

²⁶⁹ See recital (127).

²⁷⁰ [...].

²⁷¹ See footnote 1413.

²⁷² [...].

²⁷³ [...].

²⁷⁴ [...].

²⁷⁵ [...].

²⁷⁶ [...].

²⁷⁷ See recital (127).

²⁷⁸ [...].

- (150) It follows from [confidentiality claim pending]'s internal meeting minutes that Nichicon (referred to as "N" in [confidentiality claim pending]'s internal meeting minutes)²⁷⁹ disclosed to the other participants pricing information for specific types of electrolytic capacitors, namely 04 and 60 chip capacitors, including 11L capacitors:

"Both 04 and 60 chips have declined 30% (11L 25% down).

04 has declined 40% on an amount basis. Cannot expect in the Christmas business this year. Price reduction requests are getting intensified and drastically lowered prices are being presented (such as 30% down)".²⁸⁰

- (151) Nichicon argues that it is not clear to which geographic market the quote (referred to in recital (150)) relates, given the fact that that meeting was not a Foreign Trade meeting and there was only one generic reference to Europe (*"Declines in the US and Europe started in October"*²⁸¹).²⁸² That argument cannot be accepted. As explained in recital (80), the distinction between Foreign Trade and Domestic meetings is of limited practical relevance and a reference (albeit generic) in the meeting minutes to the European market (*"Declines in the US and Europe started in October"*)²⁸³ confirms this. Moreover, there is no indication of a specific region regarding the quote (referred to in recital (150)); therefore it cannot be implied that the quote is limited to [confidentiality claim pending] or other [confidentiality claim pending] markets.

14 November 2001

- (152) Elna, Hitachi AIC, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as other competitors, participated in an ECC Presidents' meeting on 14 November 2001.²⁸⁴
- (153) At that meeting, the participants set out the general scope of the discussions in the future meetings, in particular regarding the price exchanges in the future concerning AECs and TECs.
- (154) It follows from [confidentiality claim pending]'s internal meeting minutes that the participants confirmed that their intentions to exchange information, including regarding prices, were relevant in the context of influencing their overall commercial strategies. In that regard, it follows from these minutes that the participants emphasised the importance of the exchange of information: *"Collaboration lies in fair competition through informal information exchange based on the trust relationship that is built as a result of mutual contact in a human manner through this meeting"*.²⁸⁵ It further follows that Sanyo considered that: *"We need a forum for information exchange. The market will face difficulties not only in prices but also in*

²⁷⁹ In [...] it is explained that "N" means Nichicon.

²⁸⁰ [...].

²⁸¹ [...].

²⁸² [...].

²⁸³ [...].

²⁸⁴ [...].

²⁸⁵ [...].

technology and environment, and we need to discuss on those aspects",²⁸⁶ and NCC indicated that: "The market is changing with time. Discontinuation of the meeting is always proposed when the market is on the buyers' side. The meeting should be operated based on trust relationship rather than focusing on prices. We need to discuss what we can promise face to face".²⁸⁷ Finally, it follows from these minutes that the participants called for the establishment of a united front against overseas competitors. In particular, one of the other competitors said that: "Problems that should be solved by cooperation are not only prices but also include standardization and countermeasures against overseas manufacturers",²⁸⁸ and another one of the other competitors confirmed that "Our common enemy is overseas manufacturers. We need to compete modestly, discuss, and develop an environment that allows us to discuss problems after events".²⁸⁹

19 March 2002

- (155) Elna, Hitachi AIC, Nichicon, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an ECC meeting on 19 March 2002.²⁹⁰
- (156) At that meeting, the participants discussed the future purpose of the ECC meetings, in particular their willingness to discuss prices. The other competitor disclosed its intention to offer a uniform price for the group. Furthermore, Sanyo and Elna disclosed to the other participants their supply and demand information, including information in relation to future supply and demand.
- (157) It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning the "Status report by each company",²⁹¹ the other competitor indicated that "We are working in the direction of offering a uniform price for the group".²⁹² During the part of the meeting concerning "Discussions on the future purpose of the ECC meeting",²⁹³ the participants discussed that there was a "need to go back to the starting point; however, we cannot go back to the starting point because [competitor] rejects discussing on prices. Other views were also expressed but there was no conclusion".²⁹⁴
- (158) It further follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning the "Status report by each company",²⁹⁵ Sanyo disclosed its intentions to increase the production of a specific type of TECs, namely tantalum functional capacitors: "We are in need of increasing our production scale of tantalum functional capacitors from the present 40 million pcs to at least 47 million pcs".²⁹⁶ It further follows that Elna reported its current and

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forecast sales data, including for the overseas market: "[confidentiality claim pending]".²⁹⁷

- (159) It also follows from [confidentiality claim pending]'s internal meeting minutes that it was announced that the "*Presidents' meeting (general assembly) in May*"²⁹⁸ would be held on "*May 17 to 18*".²⁹⁹

17 July 2002

- (160) Elna, Hitachi AIC, Nichicon, NCC, [confidentiality claim pending] and Sanyo participated in an ECC meeting on 17 July 2002.³⁰⁰
- (161) At that meeting, [confidentiality claim pending] and NCC expressed their concerns about competition.
- (162) It follows from [confidentiality claim pending]'s internal meeting minutes that [confidentiality claim pending] expressed its concern about the low pricing of capacitors and invited the other participants to exercise caution when presenting prices: "*It is a problem that competitive products are being sold at an extremely low price under the pretext of products produced in overseas. Prices should be presented carefully*".³⁰¹
- (163) It further follows from [confidentiality claim pending]'s internal meeting minutes that NCC announced that competition should be avoided.³⁰² "*Once the group activities have been restarted, competition more than necessary should be avoided*".³⁰³
- (164) It also follows from [confidentiality claim pending]'s internal meeting minutes that it was announced that "*the next meeting, the [confidentiality claim pending]/ECC foreign trade joint meeting will be held on August 29 to 30 in Otsuki*".³⁰⁴
- (165) Nichicon claims that the reference to "*the pretext of products produced in overseas*" (referred to in recital (162)) clearly indicates that the discussion related to [confidentiality claim pending].³⁰⁵ However, the evidence in fact concerns manufacturing of capacitors overseas without any indication of the destination of the sales of the capacitors. Furthermore, it should be pointed out that it follows from [confidentiality claim pending]'s internal meeting minutes that several participants mentioned the situation in the overseas market. For example, Nichicon stated that "*The incoming orders are expected to fall in August to September. While the*

²⁹⁷ [...].

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²⁹⁹ [...].

³⁰⁰ [...].

³⁰¹ [...].

³⁰² Although there is a reference to "*Once the group activities have been restarted*" preceding the reference to "*competition more than necessary should be avoided*", this has no material impact on any potential allegation of interruption in anti-competitive conduct, as anti-competitive information was exchanged at past and future meeting, for example, the meeting on 19 March 2002 and 29 August 2002. (See recitals (155)-(159) and recitals (166)-(171).

³⁰³ [...].

³⁰⁴ [...].

³⁰⁵ [...].

domestic market remains at the same level, the overseas market is sluggish",³⁰⁶ and Elna stated that "[confidentiality claim pending]".³⁰⁷ It follows from this that the discussion at that meeting was not limited to [confidentiality claim pending].

29 August 2002

- (166) Elna, Hitachi AIC, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an ECC meeting on 29 August 2002.³⁰⁸
- (167) At that meeting, the participants discussed future price cooperation, in particular, the means to restrict price decreases, and called for a unified way to deal with global customers, overseas business and communication.
- (168) It follows from [confidentiality claim pending]'s internal meeting minutes that with regard to "*future price cooperation*"³⁰⁹ the participants considered a possibility of how to handle customers' price reduction requests: "*About the main manufacturers we do business with, a compilation of low-price measures would be prepared by the predetermined lead company in charge of manufacturers, but could that be done?*".³¹⁰ The other competitor further indicated that the participants could report on the state of the measures on how to deal with customers' price reduction requests, however, it would be difficult to determine arrangements and price policy: "*About the state of price measures by the main manufacturers in the business, a report can be made, but coming out with arrangements and a price policy would be difficult*".³¹¹
- (169) It further follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning a specific type of electrolytic capacitors, namely [confidentiality claim pending]³¹² (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes),³¹³ the participants considered price increases in order to compensate for the increase of costs of raw materials and processing expenses: "*Should the price of [confidentiality claim pending] be raised, because the expense of materials and of processing is greater?*".³¹⁴ In that regard "[v]arious companies have been able to confirm that the cost of materials and processing is going up".³¹⁵ It further follows from these minutes that "*Nichicon say [sic] it will supply to several companies without changing the price of [confidentiality claim pending] and the currently supplied products, and other companies in the industry are saying similar things*".³¹⁶ Another problem identified was that the "[c]ustomers keep track of [confidentiality claim pending] with the same part numbers, and it is impossible to price them differently".³¹⁷ It further follows from the minutes that the participants, "*especially*

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309 [...].

310 [...].

311 [...].

312 See footnote 1413.

313 [...].

314 [...].

315 [...].

316 [...].

317 [...].

for [confidentiality claim pending], in order to halt a price decrease as much as possible"³¹⁸ decided that "[f]or customers who have different part numbers for [confidentiality claim pending], price them differently. Also, have customers make up new part numbers for [confidentiality claim pending]"³¹⁹ and "[f]or those in charge of materials at [confidentiality claim pending] plants, in order to come up with a policy covering how to deal with [confidentiality claim pending] in [confidentiality claim pending] (including pricing), this cannot be escaped if nothing can be done [confidentiality claim pending]"³²⁰ and finally concluded that "[t]hus, for global customers, overseas business and communication will be dealt with in a unified way."³²¹

- (170) Furthermore, it follows from [confidentiality claim pending]'s internal meeting minutes that the participants considered that "[confidentiality claim pending],³²² [confidentiality claim pending]".³²³
- (171) Finally, it follows from [confidentiality claim pending]'s internal meeting minutes that the participants agreed that they would continue discussing pricing issues at the subsequent meeting on 18 September 2002:

"[confidentiality claim pending]".³²⁴
- (172) Nichicon asserts that it is not clear which companies participated in the discussion about [confidentiality claim pending].³²⁵ That argument must be rejected for the following reasons. The participants of the meeting are listed on the first page of the meeting minutes and there is no suggestion in the meeting minutes that the composition of the meeting participants has changed at any point during the meeting. As can be observed from the meeting minutes, [confidentiality claim pending] were the third item discussed at the meeting. In addition, Nichicon submits that Nichicon's stance is explicitly described as a "problem", as "*Nichicon say [sic] it will supply to several companies without changing the price of [confidentiality claim pending] and the currently supplied products, and other companies in the industry are saying similar things*".³²⁶ That argument is irrelevant, as Nichicon has undoubtedly participated in the anti-competitive discussion without distancing itself from the outcome.³²⁷ In fact, immediately after the statement of Nichicon's problem

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319 [...].

320 [...].

321 [...].

322 The reference to a "price increase" in the English translation is a translation mistake and it should be understood as "price decrease".

323 [...].

324 [...].

325 [...].

326 [...].

327 Judgment of the Court of First Instance of 14 May 1998, *Sarrió v Commission*, T-334/94, ECLI:EU:T:1998:97, paragraph 118; Judgment of the Court of First Instance of 6 April 1995, *Tréfileurope v Commission*, T-141/89, ECLI:EU:T:1995:62, paragraph 85; Judgment of the Court of First Instance of 17 December 1991, *Hercules Chemicals v Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 232; Judgment of the Court of First Instance of 15 March 2000, *Cimenteries CBR v Commission*, T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-

and after an indication of the problem related to the identical part numbers for [confidentiality claim pending], the participants discussed and agreed on the measures to halt a price decrease (referred to in recital (169)).

18 September 2002

- (173) Elna, Hitachi AIC, Nichicon, NCC, [confidentiality claim pending] and Sanyo participated in an ECC meeting on 18 September 2002.³²⁸
- (174) That meeting follows from an invitation expressed at the previous ECC meeting of 29 August 2002 (*"The items to be reported by the companies at the next meeting (planned for September 18) are as follows"*).³²⁹ At that meeting, the participants agreed on the future price increases and also discussed the necessity to address global matters at the ECC meetings in view of the *"meaningless price competition worldwide"*.³³⁰ Furthermore, the participants exchanged sales information also for the overseas market.
- (175) It follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning the pricing of a specific type of electrolytic capacitors, namely [confidentiality claim pending]³³¹ (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes: *"Preparation of proposed price structure of [confidentiality claim pending] [confidentiality claim pending]"*),³³² the participants agreed on the individual price increase rates in the range of [confidentiality claim pending] for specific types of eco-products, namely [confidentiality claim pending], more than [confidentiality claim pending] capacitors:
"[confidentiality claim pending]".³³³
- (176) It further follows from [confidentiality claim pending]'s internal meeting minutes that the participants also established a "[confidentiality claim pending]"³³⁴ for the implementation of those price increases. In particular, it follows that an announcement about price increase would be posted in newspapers: "[confidentiality claim pending]".³³⁵ [...] ³³⁶ [confidentiality claim pending]: "[confidentiality claim pending]"³³⁷ [confidentiality claim pending]".³³⁸ [confidentiality claim pending]:

64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, ECLI:EU:T:2000:77, paragraph 1389; Judgment of the Court of First Instance of 27 September 2006, *Archer Daniels Midland Co. v Commission*, T-329/01 ECLI:EU:T:2006:268, paragraph 247 and Judgment of the Court of First Instance of 5 December 2006, *Westfalen Gassen Nederland BV v Commission* T-303/02, ECLI:EU:T:2006:374, paragraphs 138-139.

328 [...].

329 See recital (171).

330 [...].

331 See footnote 1413.

332 [...].

333 [...].

334 [...].

335 [...].

336 [...].

337 [...].

338 [...].

"[confidentiality claim pending]".³³⁹ [confidentiality claim pending]:
 "[confidentiality claim pending]".³⁴⁰ [confidentiality claim pending]: "[confidentiality
 claim pending]".³⁴¹

- (177) Furthermore, it follows from [confidentiality claim pending]'s internal meeting minutes that [confidentiality claim pending] "brought forward a motion that given the increasingly fierce meaningless price competition worldwide, this meeting would be meaningless if it cannot encourage a real discussion in global terms"³⁴² and "Sanyo agreed to this opinion".³⁴³ Moreover, it follows that NCC "[w]ill convey the message to [...]".³⁴⁴ Finally, it follows that the participants agreed to propose this matter for discussion at the next Presidents' meeting: "This matter will be proposed by the managing company at the next presidents' meeting, too".³⁴⁵
- (178) It also follows from [confidentiality claim pending]'s internal meeting minutes that the participants presented the "Trends of each company".³⁴⁶ In this framework, several participants also mentioned sales' trends for the overseas market. Hitachi AIC stated that "While the business is brisk in the overseas market, the domestic market is sluggish"³⁴⁷ and Nichicon said that "The sales in the third quarter are expected to drop both in the overseas and [confidentiality claim pending] markets due to the sluggish demand".³⁴⁸ Elna predicted that "[confidentiality claim pending]"³⁴⁹ and NCC stated that "In the overseas market, [confidentiality claim pending]".³⁵⁰
- (179) It finally follows from [confidentiality claim pending]'s internal meeting minutes that the timing of the next Presidents' meeting was announced: "Presidents' meeting schedule" was "November 26 (Tue) to 27 (Wed), 2002".³⁵¹

29 January 2003

- (180) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as other competitors, participated in an ECC Presidents' meeting on 29 January 2003.³⁵²
- (181) At that meeting, the participants discussed their pricing intentions concerning AECs and TECs.
- (182) It follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning "Trend of each company",³⁵³ one of the

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 350 [...].
 351 [...].
 352 [...].
 353 [...].

other competitors, not an addressee of this Decision, considered that the price issue should be dealt with together: "*We wish to cope with the price issue with reference to other companies' intentions*".³⁵⁴ Further, it follows from these meeting minutes that [...] (*confidentiality claim pending*) said that: "*For price reduction, we have instructed the relevant personnel to limit the price reduction range to approximately 1% to 2%*"³⁵⁵ and "*Violation of the price agreement will leave a blot in the operation of the ECC meeting*".³⁵⁶ Furthermore, [...] (Elna) indicated that: "*[confidentiality claim pending]*".³⁵⁷ It further follows from these meeting minutes that [...] (NEC Tokin) said that "*Price agreement is impossible for manufacturers competing with [competitor, not an addressee of this Decision] and [another competitor, not an addressee of this Decision] in the overseas market*" and with regard to specific types of TECs, namely M case and functional capacitors, that two competitors, not addressees of this Decision, could not manufacture, he disclosed to the other participants that NEC Tokin "*will agree on prices for M case and functional capacitors, which [competitor, not an addressee of this Decision] and [another competitor, not an addressee of this Decision] cannot manufacture*".³⁵⁸ Furthermore, [...] (Matsuo) stated that: "*We should closely exchange information with this meeting as a nucleus. → Japanese companies should unite to co-exist and co-prosper*".³⁵⁹

- (183) NIPPON CHEMI-CON CORPORATION and Nichicon submit³⁶⁰ that the effect of any potential agreement among Japanese capacitor manufacturers is undermined by Matsuo's statement that "*The [confidentiality claim pending] capacitor industry is led by overseas manufacturers and thus the price cannot be decided by price agreement among the domestic manufacturers*"³⁶¹ and that "*overseas manufacturers including [competitor, not an addressee of this Decision] are too strong for us to agree on prices among members*".³⁶² These arguments cannot be accepted. First of all the issue of alleged inability to agree on prices concerns only TECs, as they were raised by TECs-only producer Matsuo, and thus would not concern AECs. Furthermore, at that meeting, NEC Tokin (also a TECs-only producer) indicated that it "*will agree on prices for M case and functional capacitors, which [competitor, not an addressee of this Decision] and [another competitor, not an addressee of this Decision] cannot manufacture*",³⁶³ which demonstrates that the agreement on prices was also possible with regard to specific types of TECs, namely M case and functional capacitors, that were not manufactured by overseas competitors.

19 February 2003

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362 [...]. In [...], NIPPON CHEMI-CON CORPORATION mistakenly attributes this quote to NEC Tokin, however, as it is clear from the evidence ([...]), the author of the quote is in fact Matsuo.

363 [...].

- (184) Elna, Hitachi AIC, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an ECC meeting on 19 February 2003.³⁶⁴
- (185) At that meeting, the participants exchanged information on future prices.
- (186) It follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning "*Measures against request for price cut*",³⁶⁵ NCC, Elna, Nichicon and Sanyo discussed how to react to requests of customers [confidentiality claim pending] to reduce prices of a specific type of electrolytic capacitors, namely [confidentiality claim pending]³⁶⁶ (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes). [...] (NCC) indicated that NCC would [confidentiality claim pending] and that NCC would [confidentiality claim pending] for customer [confidentiality claim pending], Nichicon reported that it would never implement any price reductions for customer [confidentiality claim pending], and Sanyo indicated that it would implement a [confidentiality claim pending] price reduction to [confidentiality claim pending]:
- "[1] [confidentiality claim pending] → *The price of [confidentiality claim pending] will be increased by [confidentiality claim pending] (Nippon Chemi-Con by [...])*
- [2] [confidentiality claim pending] → *To suppress to within [confidentiality claim pending] (Nippon Chemi-Con by [...])*.
- ☆ELNA → *In the last year's negotiation, in place of offering [confidentiality claim pending] (closed at [confidentiality claim pending] → closed at [confidentiality claim pending]). [confidentiality claim pending] in a year ([confidentiality claim pending] each top and bottom).*
- ☆Nippon Chemi-Con → *No more than [confidentiality claim pending]. The corporate situation is too bad.*
- ☆Nichicon → *Never implement any price cut. We do not mind that their orders go to other companies.*
- ☆Sanyo → *Want to implement 3% price cut with improvement in business terms set as conditions*
- [3] [confidentiality claim pending] → *Never implement any price cut. The price of [confidentiality claim pending] will be raised by [confidentiality claim pending] (Nippon Chemi-Con by [...])"*³⁶⁷
- (187) It finally follows from [confidentiality claim pending]'s internal meeting minutes that it was further announced that "*Meeting of presidents: May 15 to 16 - • The venue is not decided. Nippon Chemi-Con will search a good place*" and that the "*next ECC meeting : to be held on March 18*".³⁶⁸
- (188) NIPPON CHEMI-CON CORPORATION asserts that it is unclear whether the alleged [confidentiality claim pending] exchanges were only relevant for

³⁶⁴ [...].

³⁶⁵ [...].

³⁶⁶ See footnote 1413.

³⁶⁷ [...].

³⁶⁸ [...].

[*confidentiality claim pending*].³⁶⁹ That argument cannot be accepted, as it is based on a confusion on behalf of NIPPON CHEMI-CON CORPORATION with regard to the identity of the customer. First, there is a reference to "[*confidentiality claim pending*]" in the section concerning [*confidentiality claim pending*]. Second, given that both the immediately preceding exchanges concerning [*confidentiality claim pending*] and the immediately following exchanges concerning [*confidentiality claim pending*] related to "[*confidentiality claim pending*]", it can be concluded that the exchanges concerning [*confidentiality claim pending*] also related to "[*confidentiality claim pending*]".

15 May 2003

- (189) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [*confidentiality claim pending*] and Sanyo, as well as other competitors, participated in an ECC Presidents' meeting on 15 May 2003.³⁷⁰
- (190) At that meeting, the participants exchanged supply and demand information, including information in relation to future supply and demand (concerning AECs and TECs). Furthermore, at that meeting [*confidentiality claim pending*] invited the other participants to maintain prices and [*confidentiality claim pending*] and NCC discussed the scope of the discussions at the future ATC meetings, including consideration about the pricing exchanges.
- (191) It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning the "*Trend of each company*",³⁷¹ one of the other competitors indicated its sales amounts for May-July 2003 on the basis of year over year method (compared with the same period of the previous year) regarding AECs: "*The sales amount of aluminum electrolytic capacitors recovered to some extent as a result of the last-minute rise in demand due to SARS (inventory policy in the Chinese and Taiwanese markets), and the sales in May will amount to 97% YoY, the sales in June likely amount to 97% YoY, and the sales in July likely amount to approximately 90% YoY*"³⁷² and regarding TECs: "*Tantalum capacitors were out of scope of the special demand from SARS, and the sales are pretty dismal at 87% YoY in May, 85% YoY in June, and 80% YoY in July*".³⁷³
- (192) Furthermore, another one of the other competitors, not an addressee of this Decision, provided information on future overseas production and sales: "*We will step up production of tantalum capacitors in [*confidentiality claim pending*] and expand overseas production and overseas sales.*"³⁷⁴
- (193) It also follows from [*confidentiality claim pending*]'s internal meeting minutes that [...] ([*confidentiality claim pending*]) invited the other participants to maintain

³⁶⁹ [...].

³⁷⁰ [...]. In [...] it is clarified that the reference to "EC" in [...] is a clerical error and [*confidentiality claim pending*].

³⁷¹ [...].

³⁷² [...].

³⁷³ [...].

³⁷⁴ [...].

prices: *"For the price issue, we wish that all companies make efforts to maintain the prices"*.³⁷⁵

- (194) It further follows from [confidentiality claim pending]'s internal meeting minutes that, during the part of the meeting concerning the *"Exchange of opinions"*,³⁷⁶ [...] ([confidentiality claim pending]) said that: *"In establishing a joint meeting called "ATC meeting", the aim of the meeting is important"*³⁷⁷ and provided two options for the scope of discussions at the future ATC meetings: *"The problem is whether the meeting should be (1) a social gathering that aims only to exchange information or (2) a meeting that aims to deliberate on various issues represented by price issues and is operated based on cooperation. I think that the meeting desirably should aim to earnestly deliberate on cooperation"*.³⁷⁸ It further follows that [...] (NCC) said that: *"As the next managing company, Nichicon wishes to operate the meeting as an organization for promoting mutual friendship that takes industry statistics and exchanges information"*³⁷⁹ and also said that *"Partly because of the recent strict view of the public against collusion, I cannot agree on strict constraint"*³⁸⁰. [...] (NCC) echoed [...] 's view by expressing his position: *"If the meeting is operated with social gathering as a major purpose, I think the worst-case scenario can be avoided. Indeed, we cannot "collude." That is why a meeting, which provides setting for discussion, is important"*.³⁸¹
- (195) Contrary to NIPPON CHEMI-CON CORPORATION's argument that the sentence *"Indeed, we cannot "collude." "* in the meeting minutes (referred to in recital (194)) shows its legitimate intentions when joining the discussions about the ATC meetings,³⁸² it is important to consider the full context of NCC's statement that aims at disguising the true nature of the discussions: *"If the meeting is operated with social gathering as a major purpose, I think the worst-case scenario can be avoided. Indeed, we cannot "collude." That is why a meeting, which provides setting for discussion, is important"*.³⁸³ In particular, it appears that NCC considered that if the ATC meetings operated merely as a *"social gathering"*, then these meetings would not be considered as an outright collusion. However, simultaneously NCC stressed the importance of the discussions, which confirms that an important purpose of the ATC meetings was to exchange information under the cover of a social gathering. This is also confirmed by the evidence in relation to the subsequent ATC meetings, which shows that the participants exchanged commercially sensitive information.³⁸⁴ Indeed, as confirmed by Sanyo, the ATC meetings were a forum *"to exchange*

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377 [...].

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379 [...].

380 [...].

381 [...].

382 [...].

383 [...].

384 See, for example, the first ATC meeting, held on 28 or 29 August 2003 (recitals (196)-(203)), ATC meeting held on 13 May 2004 (recitals (228)-(233)) and ATC meeting held on 11 November 2004 (recitals (248)-(252)).

*information by markets and by capacitor category so that each company will be able to enjoy profits and that healthy market prices will be maintained".*³⁸⁵

28 or 29 August 2003

- (196) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an ATC meeting on 28 or 29 August 2003.³⁸⁶
- (197) At that meeting, Nichicon stressed that exchanges of information are necessary to maintain prices. Furthermore, [*confidentiality claim pending*] shared with the other participants information about global prices, including for customers in Europe, and Sanyo mentioned its future pricing changes.
- (198) It follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning the "*Trends in the various companies*",³⁸⁷ [...] ([*confidentiality claim pending*]) informed the other participants of the impact of the unified worldwide prices: "*Unified worldwide prices are spreading, resulting in a situation where it is hard to make a profit. We need to put this on top of transport expenses.*"³⁸⁸
- (199) This is confirmed by Elna's internal meeting minutes, from which it follows that [*confidentiality claim pending*] reported about the impact of the global prices, including for customers in Europe: "*Die [sic] to the spread of global price, there is no sense to continue business in Europe and U.S. (no room for shipping charge. Wants to get back as much as possible.)*".³⁸⁹
- (200) This is further confirmed by Sanyo's internal meeting minutes, from which it follows that [*confidentiality claim pending*] declared its intention to fight one price globally: "*Rubicon [sic] is to fight against the law of one price globally. → Transportation costs and distribution routes cannot be compared on the same basis between Europe and Asia*".³⁹⁰
- (201) It further follows from Sanyo's internal meeting minutes that while greeting the other participants to the meeting, [...] (Nichicon) set out the purpose of the ATC meetings, which was the exchanges of information to enable the participants to enjoy profits and maintain prices: "*The purpose of the meeting is to exchange information by market and by capacitor category so that each company will be able to enjoy profits and that healthy market prices will be maintained. In addition, in order to keep up with the rapidly changing markets, future directions of the industry are discussed and new products are introduced*".³⁹¹ This is confirmed by

³⁸⁵ [...]. See also recital (201).

³⁸⁶ [*confidentiality claim pending*]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

³⁸⁷ [...].

³⁸⁸ [...].

³⁸⁹ [...].

³⁹⁰ [...].

³⁹¹ [...].

[confidentiality claim pending]'s internal meeting minutes, from which it follows that Nichicon stated that: "Today we would like to mainly exchange information".³⁹²

- (202) It further follows from Sanyo's internal meeting minutes that Sanyo disclosed its intentions regarding the implementation of price changes as of 1 October 2003 to all customers: "If the accelerated implementation is not agreed on in the form of a formal contract, we should request all customers to follow the same rule and the price change should be implemented since October 1".³⁹³ It further follows that NCC (referred to as "Nichikemi" in the meeting minutes)³⁹⁴ reported that price negotiations for a specific type of AECs, namely [confidentiality claim pending] capacitors, for [confidentiality claim pending] would start as of [confidentiality claim pending] and that the price would be [confidentiality claim pending]: "As for [confidentiality claim pending] for [confidentiality claim pending], the price negotiation for Q4 starts from [confidentiality claim pending]. Agreement reached with Nichikemi that offers will be made at the price of [confidentiality claim pending]".³⁹⁵

- (203) It follows from Elna's internal meeting minutes that [...] (NEC Tokin) presented NEC Tokin's pricing strategy for customers [confidentiality claim pending], and in particular reported NEC Tokin's intention to curb price declines for specific types of TECs, namely small type capacitor sizes P and A:

"★ Price: change from \$3.5 to \$2.5 for Size P for [confidentiality claim pending]. The lowest price of Size A changed from \$2.55 to \$2.05.

The share of Size P for [confidentiality claim pending] was 50% with \$4.10 (2002) and went down to 0 with \$3.40 this time.

The share of Size A was 20% with \$2.70 and went down to 0 with \$2.40 this time.

[...]

★ Wants to curb price declines of small type product of Sizes P and A as well and auction related".³⁹⁶

7 November 2003

- (204) Elna, Nichicon, NCC and [confidentiality claim pending] participated in an ECC meeting on 7 November 2003.³⁹⁷
- (205) At that meeting, the participants first discussed price increases to be adopted in light of the appreciation of the JPY, with information exchanged regarding each company's [confidentiality claim pending].³⁹⁸ Given that all companies were basing their prices [confidentiality claim pending], the participants agreed (referred to as

³⁹² [...].

³⁹³ [...].

³⁹⁴ [...] [confidentiality claim pending] "Nichikemi" means NCC.

³⁹⁵ [...].

³⁹⁶ [...].

³⁹⁷ [...].

³⁹⁸ [...].

"Basic agreement" in [confidentiality claim pending]'s internal meeting minutes)³⁹⁹ to increase prices (referred to as "return of value" in the English translation of [confidentiality claim pending]'s internal meeting minutes)⁴⁰⁰ by [confidentiality claim pending] for their customers as of [confidentiality claim pending]:⁴⁰¹ *"The current price of each company is [confidentiality claim pending], which is [confidentiality claim pending]. Accordingly, we will propose a return of value of [confidentiality claim pending] to the customers"*.⁴⁰² The agreement was to be implemented with respect to all AECs and all customers to which the sales were denominated in [confidentiality claim pending]6*.⁴⁰³

- (206) The participants then discussed the detailed arrangements for the implementation of this agreement: *"The timing of the performance will differ depending on the circumstances of the customer, but we shall [confidentiality claim pending], reach a decision in December and perform it on [confidentiality claim pending]. (The impact will be small if it is the average rate from August ~ October.)"*.⁴⁰⁴
- (207) The participants then agreed to respond to specific customers, distinguishing between the ones who had contracts containing exchange fluctuation clauses and those who did not.⁴⁰⁵
- (208) For [confidentiality claim pending], who were customers who had contracts containing exchange rate fluctuation clauses, it was agreed that the price should include an adjustment to compensate for the appreciation of the [confidentiality claim pending]:⁴⁰⁶ "[confidentiality claim pending]".⁴⁰⁷ It was further agreed that, if the participants sold their products in [confidentiality claim pending] (in particular, Nichicon (referred to as "Company N" in [confidentiality claim pending]'s internal meeting minutes)⁴⁰⁸), they should resist price reduction requests: *"(Company N is yen denomination, and it is very likely that, on the contrary, a reduction of the price will be requested. Therefore, we will have Company N at least work hard to maintain the current price.)"*.⁴⁰⁹
- (209) For customers who had no exchange rate fluctuation agreement, the following was agreed:⁴¹⁰ (i) the customers for whom prices had already been finalised (for example, [confidentiality claim pending]) would be considered again at the point of their next request for quotation: *"With respect to [confidentiality claim pending], the price has*

³⁹⁹ [...]. At the meeting of 5 December 2003 the parties confirmed this agreement ("*confirmation of basic policy*"); see recital (211).

⁴⁰⁰ See recital (106).

⁴⁰¹ [...].

⁴⁰² [...].

⁴⁰³ [...], where it is explained that the efforts to increase prices associated with the strengthening of JPY that were addressed at the meetings of 7 November 2003 and 5 December 2003 also directly affected supplies of capacitors in the European Union.

⁴⁰⁴ [...].

⁴⁰⁵ [...].

⁴⁰⁶ [...].

⁴⁰⁷ [...].

⁴⁰⁸ "Company N" means Nichicon, as in [...] it is indicated that "[...] (N)" was a participant at that meeting and in [...] it is explained that [...] is of Nichicon.

⁴⁰⁹ [...].

⁴¹⁰ [...].

already been settled, and we will have another consultation at the time of the next RFQ";⁴¹¹ (ii) for "[confidentiality claim pending]",⁴¹² since these customers would "[confidentiality claim pending]",⁴¹³ the participants agreed [confidentiality claim pending].⁴¹⁴

5 December 2003

- (210) Elna, Nichicon, NCC, [confidentiality claim pending] and Sanyo participated in an ATC meeting on 5 December 2003.⁴¹⁵
- (211) At that meeting, the participants confirmed the agreement (referred to as "*Confirmation of basic policy*" in [confidentiality claim pending]'s internal meeting minutes)⁴¹⁶ reached at the previous meeting held on 7 November 2003⁴¹⁷ concerning AECs price increases for their customers due to the strong [confidentiality claim pending].⁴¹⁸ In particular, the participants estimated that in real terms, the prices had decreased by approximately [confidentiality claim pending] as a result of the appreciation of the [confidentiality claim pending].⁴¹⁹ Therefore, the participants confirmed that a price increase (referred to as "*return of value*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)⁴²⁰ of approximately [confidentiality claim pending] was required to compensate the fluctuations of the exchange rate ([confidentiality claim pending]):⁴²¹ "[confidentiality claim pending], and we will desperately defend a return [confidentiality claim pending]".⁴²²
- (212) The participants also agreed to coordinate the implementation of the price increase agreement:⁴²³ "*Therefore, we will, at the very least, cooperate for a return of value [confidentiality claim pending]*".⁴²⁴ Moreover, the participants concluded that the price increase policy would apply not only to products manufactured in [confidentiality claim pending], but also for those manufactured [confidentiality claim pending], however, the rate of price increases for products manufactured [confidentiality claim pending] was left for the respective companies to determine:⁴²⁵ "*Furthermore, the [confidentiality claim pending] materials rate is still high even for [confidentiality claim pending] production, and we will conduct a return of value as much as possible with respect to the [confidentiality claim pending] products. (With respect to the [confidentiality claim pending] products, the scope of the return of*

411 [...].
412 [...].
413 [...]. "EMS" means electronics manufacturing services.
414 [...].
415 [...].
416 [...].
417 See recitals (204)-(209).
418 [...].
419 [...].
420 See recital (106).
421 [...].
422 [...].
423 [...].
424 [...].
425 [...].

value shall be independently determined by each company based on the circumstances of each company.)".⁴²⁶

- (213) In addition, the participants agreed that a [confidentiality claim pending] price increase would be applied to prices in USD for [confidentiality claim pending]:⁴²⁷ *"With respect to the [confidentiality claim pending] as well, a minimum return of value of [confidentiality claim pending] will be conducted with respect to the prices denominated in [confidentiality claim pending]"*.⁴²⁸ The participants also agreed on a [confidentiality claim pending]⁴²⁹ price increase for [confidentiality claim pending]: *"We will aim for a return of value of [confidentiality claim pending] for the other [confidentiality claim pending]"*.⁴³⁰ Furthermore, it was agreed that price increases of at least [confidentiality claim pending] should be applied for [confidentiality claim pending]:⁴³¹ *"With respect to [confidentiality claim pending], a minimum return of value of [confidentiality claim pending] will be conducted"*,⁴³² and that a compulsory [confidentiality claim pending]⁴³³ price increase should be implemented by all participants for sales to [confidentiality claim pending]: *"With respect to the inventory sale for [confidentiality claim pending], each company has a compulsory return of value of [confidentiality claim pending]"*.⁴³⁴

17 December 2003

- (214) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an ATC meeting on 17 December 2003.⁴³⁵
- (215) According to [confidentiality claim pending]'s internal meeting minutes, during the part of the meeting concerning *"Trends At Each Company"*,⁴³⁶ [...] (Matsuo) indicated that Matsuo would abstain from price competition especially regarding a specific type of TECs, namely A case capacitors: *"Matsuo's percentage of capacitors for cell phones is low; we focus on industrial applications. Therefore, we do not engage in price competition. There apparently are some manufacturers that sell the A case for less than [sic] 4 yen, but we will not sell at the 3 yen level"*.⁴³⁷
- (216) Furthermore, [...] ⁴³⁸ (NCC) presented NCC's future pricing strategy regarding a specific type of electrolytic capacitors, namely [confidentiality claim pending] capacitors: *"* Orders for [confidentiality claim pending] continue to rise*

⁴²⁶ [...].

⁴²⁷ [...].

⁴²⁸ [...].

⁴²⁹ [...] it is explained that in real terms this constituted an [confidentiality claim pending] price increase.

⁴³⁰ [...].

⁴³¹ [...].

⁴³² [...]. "ODM" means original design manufacturer.

⁴³³ In [...] it is explained that in real terms this constituted an [confidentiality claim pending] price increase.

⁴³⁴ [...].

⁴³⁵ [...].

⁴³⁶ [...].

⁴³⁷ [...].

⁴³⁸ The reference to "[...]" in the English translation is a translation mistake and it should be understood as "[...]".

significantly. [confidentiality claim pending]. In the end, [confidentiality claim pending]".⁴³⁹

- (217) [...] (Hitachi AIC) also reported to the other participants on Hitachi AIC's future supply and demand information for the period January – March, including for a specific type of TECs, namely tantalum chip capacitors:

"* There are no signs of orders slowing down in 4th quarter (January through March), and should reach 110% compared to same period previous year. We are in the process of augmenting production capacity.

[...]

* Miniaturization of tantalum chip capacitors is picking up speed, and the number of orders for the 1608 type is between 126 and 130% of capacity. We are strengthening production at fever pitch and the 16% increase in capacity for this capacitor will continue during the 4th quarter".⁴⁴⁰

- (218) Furthermore, on the basis of the Presidents' meeting held in November, the participants confirmed that the aim of the ATC meetings was not merely to share statistics, but also to exchange other information:

"It was also decided to make the objectives of the meeting:

1) Statistics

2) Information exchange".⁴⁴¹

- (219) Contrary to NIPPON CHEMI-CON CORPORATION's claim that Matsuo's statement (referred to in recital (215)) is limited to capacitors for [confidentiality claim pending] produced in [confidentiality claim pending],⁴⁴² it does not flow from the evidence that Matsuo's statement is restricted to [confidentiality claim pending], as it also contains a reference to industrial applications. Moreover, there is no geographical restriction (namely, there is no reference to [confidentiality claim pending]) in Matsuo's statement.

17 March 2004

- (220) Elna, Hitachi AIC, NEC Tokin, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an ATC meeting on 17 March 2004.⁴⁴³

- (221) According to [confidentiality claim pending]'s internal meeting minutes, [...] ([confidentiality claim pending]) indicated that Sanyo wished to stop "useless" price competition and invited the other participants to cooperate in that regard: "As the market expands, we want to stop useless price competitions. We need your cooperation".⁴⁴⁴ [...] (NCC) shared with the other participants NCC's incoming

⁴³⁹ [...].

⁴⁴⁰ [...].

⁴⁴¹ [...].

⁴⁴² [...].

⁴⁴³ [...].

⁴⁴⁴ [...].

order status: "[confidentiality claim pending]".⁴⁴⁵ [...] also invited the other participants to align their pricing strategies regarding a specific type of electrolytic capacitors, namely [confidentiality claim pending],⁴⁴⁶ including for [confidentiality claim pending] customers, and indicated that the pricing issues would be followed-up at the next ATC meeting held in April (21 April 2004).⁴⁴⁷ *"We are receiving special demand for [confidentiality claim pending]. We must standardize our way of thinking of the price again including [confidentiality claim pending]. In the next meeting, we hope that all of you report your way of thinking of the price (this is set as the theme of April sectional meeting)".*⁴⁴⁸

21 April 2004

- (222) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [confidentiality claim pending] and Sanyo participated in an ATC meeting on 21 April 2004.⁴⁴⁹
- (223) That meeting follows from NCC's invitation expressed at the previous ATC meeting of 17 March 2004 (*"In the next meeting, we hope that all of you report your way of thinking of the price (this is set as the theme of April sectional meeting)"*).⁴⁵⁰ During that meeting NCC, Hitachi AIC, Elna and [confidentiality claim pending] shared their intentions to increase prices for a specific type of electrolytic capacitors, namely [confidentiality claim pending]⁴⁵¹ (referred to as "[confidentiality claim pending]" and "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes) due to the raw material price increases.
- (224) According to [confidentiality claim pending]'s internal meeting minutes, during the part of the meeting concerning *"Price Setting for [confidentiality claim pending]"*,⁴⁵² [...] ⁴⁵³ (NCC) noted that due to the increase of raw material prices the participants should discuss and align their pricing strategies:
- * *The prices of materials have suddenly skyrocketed.*
- * [confidentiality claim pending].
- * *We would like to hear the trends at each company, get in step with one another, and talk through how to sell at the highest possible prices".*⁴⁵⁴
- (225) [...] (Hitachi AIC) confirmed the impact of the increasing raw material prices: *"Material prices are rising. Costs have gone up several % due to price increases for terminal blocks in particular".*⁴⁵⁵ [...] (Elna) further confirmed this, in particular regarding a specific type of electrolytic capacitors, namely chip capacitors: *"We are engaging in public relations about the fact that material prices centering around*

⁴⁴⁵ [...].

⁴⁴⁶ See footnote 1413.

⁴⁴⁷ See recital (223).

⁴⁴⁸ [...].

⁴⁴⁹ [...].

⁴⁵⁰ See recital (221).

⁴⁵¹ See footnote 1413.

⁴⁵² [...].

⁴⁵³ The reference to "[...]" in the English translation is a translation mistake and it should be understood as "[...]".

⁴⁵⁴ [...].

⁴⁵⁵ [...].

*chip capacitors are getting higher. As you well know, rising prices for materials is affecting overall operations".*⁴⁵⁶

- (226) [...] ([*confidentiality claim pending*]) then explained [*confidentiality claim pending*]'s sales' strategy, including for eco-products: "At [*confidentiality claim pending*], we explain the increase in material costs when we explain raising our cost price due to the strong yen. Also, we are also teaching our sales people to discuss a 5% increase for lead-free products when we get a new inquiry".⁴⁵⁷
- (227) NIPPON CHEMI-CON CORPORATION submits that at that meeting, Hitachi AIC stated: "How about planning for a joint Kanto/Kansai Department-level Meeting? → To discuss mutual global problems".⁴⁵⁸ NIPPON CHEMI-CON CORPORATION argues that this suggests that meetings at most had a regional impact only.⁴⁵⁹ That argument cannot be accepted. The suggestion to discuss "mutual" global problems at a joint Kanto/Kansai Department-level Meeting does not mean that global problems are not being discussed at the ATC meetings. In fact, the evidence confirms that global problems are discussed at the ATC meetings. Furthermore, as regards the ATC meeting of 21 April 2004, it follows from [*confidentiality claim pending*]'s internal meeting minutes that the participants discussed the situation overseas. For example, [...] (NCC) stated that "We are not doing well overseas"⁴⁶⁰ and [...] ([*confidentiality claim pending*]) stated that "Overseas production is also up between 120 and 130% by volume".⁴⁶¹ This contradicts NIPPON CHEMI-CON CORPORATION's argument that the meetings had a regional impact only.

13 May 2004

- (228) Elna, Hitachi AIC, NEC Tokin, Nichicon, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an ATC Presidents' meeting on 13 May 2004.⁴⁶²
- (229) At that meeting, Nichicon, NCC, [*confidentiality claim pending*] and Hitachi AIC emphasised the importance of information exchanges at the ATC meetings and also revealed to the other participants their pricing strategies, mainly by confirming that they would not pursue price reductions in the future, in particular in light of increases in raw material prices.
- (230) According to [*confidentiality claim pending*]'s internal meeting minutes, while greeting the other participants to the meeting, [...] ([*confidentiality claim pending*]) said that "cooperation" and "collaboration" within the industry was important and the information exchanges at the ATC meetings should be expanded: "I believe what is important in business is the "cooperation" and "collaboration" within the industry. ☆ The digital age is "an age of collapse of the pricing system." I think it is important to run business promptly and in a down-to-earth manner by accelerating

⁴⁵⁶ [...].

⁴⁵⁷ [...].

⁴⁵⁸ [...].

⁴⁵⁹ [...].

⁴⁶⁰ [...].

⁴⁶¹ [...].

⁴⁶² [...] it is explained that although the title of the meeting minutes refers to "AT", is a clerical error and it should instead be read "ATC".

*the speed. To that end, I would like to deepen information exchange through the AT statistics meeting".*⁴⁶³

- (231) During the part of the meeting concerning "Information Exchange",⁴⁶⁴ [...] (NCC) outlined the reasons for avoiding price reductions and strongly insisted on avoiding "useless" price reductions through discussion:

" ☆ In the previous term, the prices declined by slightly more than [confidentiality claim pending] on average, and [confidentiality claim pending] of Nippon Chemi-Con.

☆ [confidentiality claim pending].

*☆ [confidentiality claim pending] by thoroughly discussing what we can discuss".*⁴⁶⁵

- (232) [...] ([confidentiality claim pending]) confirmed this and, in light of the raw material cost increases, insisted on the importance of "collaboration":

" ☆ Our problem is also the material cost increase and the cost increase for environmental protection measures.

☆ With the demand of customers changing, the Japanese companies will fall together unless making a united effort to exert our characteristics.

*☆ "Collaboration" and "information exchange" for price maintenance are important".*⁴⁶⁶

- (233) [...] (Hitachi AIC) confirmed the cooperative spirit among the participants and said that Hitachi AIC's "sales policy consistently emphasizes profits"⁴⁶⁷ and that Hitachi AIC "will not try to win sales quantities by reducing the prices".⁴⁶⁸

17 June 2004

- (234) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [confidentiality claim pending] and Sanyo participated in an ATC meeting on 17 June 2004.⁴⁶⁹

- (235) At that meeting, NEC Tokin and Sanyo disclosed to the other participants their current and future strategy to prevent selling at lower prices and to maintain prices by decreasing the production and encouraging the sense of product shortage. Nichicon and NEC Tokin revealed supply and demand information, including information in relation to future supply and demand.

- (236) According to [confidentiality claim pending]'s internal meeting minutes, during the part of the meeting concerning "Situation report",⁴⁷⁰ [...] (NEC Tokin) mentioned that regarding a specific type of TECs, namely neo capacitors, NEC Tokin was decreasing production in order to prevent price decrease: "In order to prevent Sales from selling products at a lower price, we decreased the production of neo

463 [...].

464 [...].

465 [...].

466 [...].

467 [...].

468 [...].

469 [...].

470 [...].

capacitors in May to June. → Encourage the sense of product shortage so that the products may not be sold at a lower price".⁴⁷¹ This was confirmed by [...] ([confidentiality claim pending]), who indicated that: "The sense of product shortage will be encouraged in September to October to maintain prices".⁴⁷²

- (237) [...] (Hitachi AIC) shared with the other participants Hitachi AIC's intentions to increase prices: "We intend to increase prices of unprofitable products. We have already increased prices by 10% for some manufacturers in [confidentiality claim pending]".⁴⁷³
- (238) [...] ([confidentiality claim pending]) reported Nichicon's monthly quantity data of specific types of AECs, namely LB, TW and chip capacitors (referred to as "aluminum" in [confidentiality claim pending]'s internal meeting minutes), and TECs (referred to as "tantalum" in [confidentiality claim pending]'s internal meeting minutes), including the forecast for July-September:
 "[confidentiality claim pending]"⁴⁷⁴
- (239) [...] (NEC Tokin) revealed that NEC Tokin would increase production of specific types of TECs, namely A case, B case, C case and D case capacitors, in the future:
 "★ Production increase information → The production of A case will be increased by 1.8 million pieces, B case by 10 million pieces, C case by 3 million pieces, D case by 2 million pieces, and 16.8 million pieces in total. However, incoming order production will not be increased until the products become in short supply".⁴⁷⁵

23 July 2004

- (240) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [confidentiality claim pending] and Sanyo, as well as other competitors, participated in an ATC meeting on 23 July 2004.⁴⁷⁶
- (241) At that meeting, NCC, Elna and Matsuo shared their intentions to maintain prices with the other participants.
- (242) According to [confidentiality claim pending]'s internal meeting minutes, during the part of the meeting concerning "Status report",⁴⁷⁷ [...] (NCC) reported about the impact of the raw material price increase, including for a specific type of electrolytic capacitors, namely [confidentiality claim pending]⁴⁷⁸ (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes): "The price of materials focused on aluminium is increasing. → Overall, it is taking hold at approximately [confidentiality claim pending]. In particular, [confidentiality

⁴⁷¹ [...].

⁴⁷² [...].

⁴⁷³ [...].

⁴⁷⁴ [...].

⁴⁷⁵ [...].

⁴⁷⁶ [...].

⁴⁷⁷ [...].

⁴⁷⁸ See footnote 1413.

claim pending] are increasing by [*confidentiality claim pending*]. Therefore, [*confidentiality claim pending*]"⁴⁷⁹

- (243) [...] (Elna) explained that, regarding TECs (referred to as "*tantalum*" in [*confidentiality claim pending*]'s internal meeting minutes) and a specific type of electrolytic capacitors, namely chip electrolytic capacitors, "*Tantalum is poor, but chip electrolytic is strong. The cause is that they are not providing support for the price of tantalum. We do not take poor quality items*".⁴⁸⁰ He also indicated that Elna "*would like to overcome [this situation] by not lowering prices overall*".⁴⁸¹
- (244) Finally, [...] (Matsuo) indicated, regarding TECs (referred to as "*tantalum*" in [*confidentiality claim pending*]'s internal meeting minutes), that: "*Tantalum → January ~ June is stabilized compared to the previous year. We will not pursue poor quality items. To a certain extent, we would like to specialize and sell out in the niche market in which the price can be maintained*".⁴⁸²
- (245) NIPPON CHEMI-CON CORPORATION expressed doubt whether NCC's statement at that meeting (referred to in recital (242)) concerned the price of capacitors or the price of the input materials.⁴⁸³ However, the evidence shows that the increase in prices of the raw materials ("*The price of materials focused on aluminium is increasing*"⁴⁸⁴) has a direct impact on the price of a specific type of electrolytic-capacitors, namely [*confidentiality claim pending*]⁴⁸⁵ (referred to as "[*confidentiality claim pending*]" in [*confidentiality claim pending*]'s internal meeting minutes) ("*Overall, it is taking hold at approximately [confidentiality claim pending]*". In particular, [*confidentiality claim pending*] are increasing by [*confidentiality claim pending*]"⁴⁸⁶).
- (246) NIPPON CHEMI-CON CORPORATION argues⁴⁸⁷ that NCC's statement at that meeting (referred to in recital (242)) might be related to NCC's other statement ("*If we speak to Japanese companies overseas, in particular [confidentiality claim pending], they often respond that they have not heard from Japan, and they are struggling with the support. In this regard, we would like to cooperate and receive the same story.*")⁴⁸⁸ which immediately follows NCC's statement referred to in recital (242). However, there is nothing in either of those two statements that links them. Moreover, NIPPON CHEMI-CON CORPORATION claims that there is a reference to overseas companies within "[*confidentiality claim pending*]" [sic], *not* [*confidentiality claim pending*]"⁴⁸⁹ however, it transpires from the relevant quote that the discussion concerned "*Japanese companies overseas, in [confidentiality*

479 [...].

480 [...].

481 [...].

482 [...].

483 [...].

484 [...].

485 See footnote 1413.

486 [...].

487 [...].

488 [...].

489 [...].

claim pending]",⁴⁹⁰ and not exclusively ASEAN. Hence there is no restriction to specific territories, but rather these territories are presented for illustrative purposes.

- (247) Contrary to NIPPON CHEMI-CON CORPORATION's argument that Elna's statement (referred to in recital (243)) "*would like to overcome [this situation] by not lowering prices overall*" likely relates to [*confidentiality claim pending*] capacitors which are outside of the Statement of Objections' product scope,⁴⁹¹ it can be concluded that this statement, given its autonomous position, refers to the previous two sections of Elna's statement ("*[confidentiality claim pending] is poor, but [confidentiality claim pending] is strong. The cause is that they are not providing support for the price of [confidentiality claim pending]. We do not take poor quality items*"⁴⁹² (referred to in recital (243)) and "*[confidentiality claim pending] → It is very strong. There are orders received at 200% capacity. It is not sufficient at all.*"⁴⁹³), and therefore concerns TECs and a specific type of electrolytic capacitors, namely [*confidentiality claim pending*] capacitors, on the one hand and [*confidentiality claim pending*] capacitors on the other hand. Furthermore, a reference to "*overall*" can be interpreted as concerning all capacitors manufactured by Elna.

11 November 2004

- (248) Elna, Hitachi AIC, Matsuo, NEC Tokin, [*confidentiality claim pending*], NCC, Rubycon and Sanyo, as well as other competitors, participated in an ATC Presidents' meeting on 11 November 2004.⁴⁹⁴
- (249) At that meeting, Hitachi AIC, NCC, NEC Tokin, Elna and Sanyo indicated their intentions to discontinue competition and to unite in their efforts to maintain high prices and prevent price reductions.
- (250) According to [*confidentiality claim pending*]'s internal meeting minutes, while greeting the other participants to the meeting, [...] (Hitachi AIC) indicated Hitachi AIC's intention to stop "*useless*" competition partly due to the raw material cost increase: "*Partly because of the material cost increase, extremely harsh business condition is anticipated in the second half. However, we wish to stop useless competition through this meeting*".⁴⁹⁵
- (251) With regard to "*Activity Report/Explanation about Statistical Data*",⁴⁹⁶ [...] (Hitachi AIC) requested to improve the accuracy of data reported at the ATC meetings: "*Explanation was made from [...] of Hitachi AIC and [...]. I was given a comment from [...] that, with the average unit price of tantalum capacitors included in the statistical data, this meeting became an attractive meeting for him. He also instructed us to further improve the accuracy of data*".⁴⁹⁷

490 [...].
491 [...].
492 [...].
493 [...].
494 [...].
495 [...].
496 [...].
497 [...].

- (252) During the part of the meeting concerning "*Information Exchange*",⁴⁹⁸ [...] (Hitachi AIC) disclosed to the other participants Hitachi AIC's aim to sell TECs at the high price: "*We will sell tantalum capacitors exclusively as a high added value product. → We will not accept orders at a low price. We aim to produce products that can be sold at a high price*".⁴⁹⁹ Similarly, [...] (NCC) indicated that NCC intended to prevent decrease in sales price: "*As mentioned above, Nippon Chemi-Con forecasts a very harsh business climate, and needs to take a measure to prevent the decline in sales price*".⁵⁰⁰ Furthermore, [...] (NEC Tokin) invited the other participants to maintain prices: "*With no novelty products planned by customers, the sales will not increase in the first half of the next year either. → We need to make a united effort to maintain the price*".⁵⁰¹ [...] 's invitation was echoed by [...] (Elna): "*We wish to make a united effort to maintain the price as much as possible*"⁵⁰² and [...] ([*confidentiality claim pending*]): "*SANYO Electric raises a policy of emphasizing profits → We would like to ask the presidents of other companies to instruct their employees to maintain prices*".⁵⁰³

3 December 2004

- (253) Elna, NEC Tokin, Nichicon, NCC, [*confidentiality claim pending*] and Sanyo participated in an ATC meeting on 3 December 2004.⁵⁰⁴
- (254) According to [*confidentiality claim pending*] 's internal meeting minutes, during the part of the meeting concerning "[*confidentiality claim pending*]",⁵⁰⁵ the participants exchanged price information in the context of monitoring of a pricing agreement⁵⁰⁶ concerning a specific type of electrolytic capacitors, namely [*confidentiality claim pending*]⁵⁰⁷ (referred to as "[*confidentiality claim pending*]" in [*confidentiality claim pending*] 's internal meeting minutes):
- "① *With respect to the agreement for the price increase of [*confidentiality claim pending*], there are almost no successful customers*".⁵⁰⁸

16 February 2005

- (255) Elna, Hitachi AIC, Matsuo, NEC Tokin, Nichicon, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an ATC meeting on 16 February 2005.⁵⁰⁹
- (256) At that meeting, Sanyo, NCC and [*confidentiality claim pending*] shared intentions about price increases of AECs, and Elna disclosed its sales forecast information,

498 [...].

499 [...].

500 [...].

501 [...].

502 [...].

503 [...].

504 [...].

505 [...].

506 See previous multilateral meetings of 29 August 2002 (recital (169)), 18 September 2002 (recital (175)), 19 February 2003 (recital (186)) and 21 April 2004 (recitals (223)-(226)).

507 See footnote 1413.

508 [...]. "PET" means polyethylene terephthalate.

509 [...].

- (257) According to Matsuo's internal meeting minutes, during the part of the meeting concerning "*Opinions about raising prices of [confidentiality claim pending] capacitors*",⁵¹⁰ Sanyo, NCC and Rubycon expressed their views on price increases:
- "- [*confidentiality claim pending*]; Rubycon cannot raise prices; [competitor, not an addressee of this Decision] *does not raise prices*
- Sanyo: *A profit of 40% should be aimed regarding specialty polymer electrolytic capacitors*".⁵¹¹
- (258) The participants considered the behaviour of [competitor, not an addressee of this Decision] as regards not raising prices as incomprehensible and contradictory to the overall attitude among the participants on price increases: "*The behavior [sic] of [competitor, not an addressee of this Decision] is incomprehensible. Why does the company miss the chance of gaining profits? This gives rise to disarray among the members*".⁵¹²
- (259) Furthermore, during the part of the meeting concerning the "*Status of each company*",⁵¹³ Elna shared with the other participants its sales forecast data: "*In March, the sales are forecast to reduce by 15% for [confidentiality claim pending] market and 10% for [confidentiality claim pending] markets compared with those in the same period of last year*".⁵¹⁴ This is confirmed by [*confidentiality claim pending*]'s internal meeting minutes: "*Year-on-year (Amount) [confidentiality claim pending]: 85% [confidentiality claim pending]: 90%*".⁵¹⁵

March 2005

- (260) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an MK meeting in March 2005.⁵¹⁶
- (261) At that meeting, the participants discussed current and future pricing issues, in particular regarding global prices, including prices in Europe. Furthermore, NEC Tokin and Sanyo revealed to the other participants their supply and demand information, including information in relation to future supply and demand.
- (262) According to [*confidentiality claim pending*], during the part of the meeting concerning "*Pricing issue*",⁵¹⁷ Elna indicated the target of [*confidentiality claim pending*] increase in its negotiations with customer [*confidentiality claim pending*]: "*ELNA has started a negotiation with [confidentiality claim pending] on price increase. [confidentiality claim pending]*".⁵¹⁸
- (263) The parties discussed reductions of prices by [*confidentiality claim pending*] outside Japan and specifically in Europe, including for specific types of TECs, namely M, P,

510 [...].

511 [...].

512 [...].

513 [...].

514 [...].

515 [...].

516 [...].

517 [...].

518 [...].

A and B size capacitors (referred to as "tantalum" in [confidentiality claim pending]):

"Regarding the allocation of [confidentiality claim pending], the decrease in price was minimized by [confidentiality claim pending] because the supply of ceramic was tight (it used to be normally [confidentiality claim pending] in the past).

NEC minimized by 2% to 3% in [confidentiality claim pending] but was not be able to stop it [confidentiality claim pending], especially in Europe. [...]

Size of tantalum	NEC	[confidentiality claim pending]	[competitor, not an addressee of this Decision]	MATSUO
M	-	[confidentiality claim pending]	-	Δ
P	x	[confidentiality claim pending]	o	o
A	x	[confidentiality claim pending]	o	-
B	o	[confidentiality claim pending]	Δ	-

MATSUO JPY 5.7 – JPY 5.8, [confidentiality claim pending]

NEC lost to MATSUO because it minimised by 2% - 3% in [confidentiality claim pending].

"519

- (264) Additionally, Rubycon expressed its view on the competition between Nichicon and NCC (referred to as "Nikkemi" in [confidentiality claim pending])⁵²⁰ in Europe and specifically in [confidentiality claim pending] and how that impacted the pricing overseas:

"The reason why it is cheap in Europe is because domestic competitors are locally competing, and the competition between (NICHICON) and (Nikkemi) is very keen even in [confidentiality claim pending]. It is pointless unless we repress [confidentiality claim pending] more than in [confidentiality claim pending] from now on. (RUBYCON told)".⁵²¹

- (265) Sanyo reported about the pricing of a specific type of AECs, namely watertype capacitors, for motherboards in Europe and described to the other participants the challenges of the capacitor sales culture within Sanyo:

"Since the responsibility to supply is provided in a contract regarding the watertype (Mizukei) of motherboard in Europe, we cannot adjust shipping to raise prices. → It becomes possible if you propose "an amendment of contract" 3 months earlier. (SANYO)

⁵¹⁹ [...].

⁵²⁰ [...]. See also footnote 666.

⁵²¹ [...].

The capacitor sales have culture which does not follow the instruction to raise prices. This is because of the bad business culture which cannot survive the trauma that orders decrease shortly after the price increase and then they come to be in trouble. It is truer in veteran sales people. We fire those who do not follow the top-down instruction. It is important to change the culture. (SANYO)".⁵²²

- (266) Furthermore, the participants shared their intentions to increase prices: *"Decide the price increase by internal rule and the company's attitude in cases where proposals to customers is rejected shall be clearly provided. We cannot get a good result unless we decide the company's stance on how to handle the worst case of the decrease in orders received"*.⁵²³
- (267) All the participants expressed their intention to raise prices: *"To requests for decrease in price, "we should raise prices rather than deterrence and defense." (each company)"*.⁵²⁴
- (268) The participants also exchanged intentions to increase prices during the part of the meeting concerning *"Each company's status"*.⁵²⁵ Sanyo reported about its intentions to increase prices [confidentiality claim pending]: *"We want to raise prices [confidentiality claim pending] because the decrease came to an end in [confidentiality claim pending]"*⁵²⁶ and NCC (referred to as "Nikkemi" in [confidentiality claim pending])⁵²⁷ indicated its intention to increase prices, including for a specific type of AECs, namely [confidentiality claim pending] capacitors, and a specific type of electrolytic capacitors, namely [confidentiality claim pending] capacitors: *"The capacity is full. We want to raise prices. [confidentiality claim pending]. We want to increase [confidentiality claim pending]"*.⁵²⁸
- (269) Sanyo warned the other participants to be cautious when increasing prices due to the increase in the price of raw materials in order to ensure that the customers do not suspect that the price increases are conducted in a coordinated manner: *As for price increase, we want prices of general aluminum is raised as the lead of which consumption amount is large. Chips will follow it. However, if we raise prices just because of the increase in material prices under the circumstances where the corporate performance is good and we have profits, it will be criticized as a me-too price raise, so we have to do so in a careful manner"*.⁵²⁹
- (270) Finally, NEC Tokin reported about its future increase in production of specific types of TECs, namely the conductive type of capacitors and B case capacitors: *"Conductive types will be 200 M units from 150 M units. SANYO will increase new production of 20 M units and NEC does the same with 10 M units. SANYO plans to increase production of B case?"*.⁵³⁰ In addition, Sanyo disclosed to the other

522 [...] .
 523 [...] .
 524 [...] .
 525 [...] .
 526 [...] .
 527 [...] . See also footnote 666.
 528 [...] .
 529 [...] .
 530 [...] .

participants its supply and demand information, including for the future months, regarding AECs (referred to as "aluminum" in [confidentiality claim pending]) and TECs (referred to as "tantalum" in [confidentiality claim pending]):

"Aluminum: no change. We do not deal with cheap ones.

Tantalum: full capacity. We have received complaints from customers because we were not able to supply. We have a shortage of 20M units per month. It will be increasing in May and June and will reach the peak in August or September. We are considering enhancing production capacity of 30M units".⁵³¹

April/May 2005

- (271) NEC Tokin and Nichicon engaged in a bi-lateral contact regarding customer [confidentiality claim pending] in April/May 2005.⁵³²
- (272) [confidentiality claim pending] [...], [...] (NEC Tokin) had a telephone conversation with an employee of Nichicon, possibly a subordinate of [...], to discuss prices of a specific type of TECs, namely manganese tantalum capacitors, to be submitted in response to a request for quotation from customer [confidentiality claim pending].⁵³³

4 August 2005

- (273) Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK meeting on 4 August 2005.⁵³⁴
- (274) At that meeting, Sanyo and NCC disclosed to the other participants their new pricing to customer [confidentiality claim pending].⁵³⁵ According to Sanyo's internal meeting minutes, Sanyo and NCC indicated their new proposed prices for specific types of electrolytic capacitors, namely [confidentiality claim pending] capacitors, used in [confidentiality claim pending] (referred to as "[confidentiality claim pending]" in Sanyo's internal meeting minutes), which were higher than the initial prices:
- "[confidentiality claim pending]".⁵³⁶*
- (275) NCC then reported about the modified timing of the implementation of the new prices ([confidentiality claim pending]) for [confidentiality claim pending]: *"After proposing new prices, NCC was pushed to implement them from [confidentiality claim pending]. However, they reply that they would implement from [confidentiality claim pending]".⁵³⁷*

10 November 2005

- (276) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK Presidents' meeting

⁵³¹ [...].
⁵³² [...].
⁵³³ [...].
⁵³⁴ [...].
⁵³⁵ [...].
⁵³⁶ [...].
⁵³⁷ [...].

(referred to as "*Shimotsuki-kai*" in Matsuo's internal meeting minutes)⁵³⁸ on 10 November 2005.⁵³⁹

- (277) At that meeting, the participants reported to the other participants about their intentions to maintain and increase the prices.
- (278) According to Matsuo's internal meeting minutes, during the part of the meeting concerning "*Status of each company*",⁵⁴⁰ [...] (Matsuo) reported that Matsuo was maintaining price reductions at around -5 %: "*Price reduction: maintaining around -5%*".⁵⁴¹ [...] ([*confidentiality claim pending*]) reported on Sanyo's success in restraining the price fall within a range of 1-2 %: "*Enhanced price management: succeeded in suppressing price fall within a range of 1 to 2%*".⁵⁴²
- (279) According to [*confidentiality claim pending*], during the part of the meeting concerning "*Competitor Information*",⁵⁴³ the other competitor, not an addressee of this Decision, disclosed the partial price increase for a specific type of AECs, namely conductive aluminium capacitors: "*Compared with previous year, the conductive aluminum is continuing 200%. Partially price increase*".⁵⁴⁴ Elna indicated its price increase for specific types of electrolytic capacitors, namely 04 and chip type capacitors: "*Increasing price for unprofitable product. Particularly for 04, chip*".⁵⁴⁵
- (280) During the part of the meeting concerning "[Hitachi] *AIC Perspective*",⁵⁴⁶ Hitachi AIC indicated that it was implementing a price increase for a specific type of AECs, namely [*confidentiality claim pending*] capacitors, along with NCC (referred to as "*Nikkemi*" in [*confidentiality claim pending*]),⁵⁴⁷ Elna, [*confidentiality claim pending*] and [competitor, not an addressee of this Decision]. Hitachi AIC also expressed its intention to at least maintain prices regarding specific types of electrolytic capacitors, namely screw and large type capacitors:

"- We are implementing "price increase" along with Nikkemi, ELNA, RUBYCON and [competitor, not an addressee of this Decision] against the backdrop of shortage in [confidentiality claim pending]. The degree of price increase is [confidentiality claim pending].

Although we deal with screw and large types, we want at least to maintain prices, whether we can succeed the price increase or not, by taking advantage of it".⁵⁴⁸

16 December 2005

⁵³⁸ [...]. See also footnote 108.

⁵³⁹ [*confidentiality claim pending*]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

⁵⁴⁰ [...].

⁵⁴¹ [...].

⁵⁴² [...].

⁵⁴³ [...].

⁵⁴⁴ [...].

⁵⁴⁵ [...].

⁵⁴⁶ [...].

⁵⁴⁷ [...]. See also footnote 666.

⁵⁴⁸ [...].

- (281) Elna, Hitachi AIC, Matsuo and Sanyo, as well as another competitor, participated in an MK meeting on 16 December 2005.⁵⁴⁹
- (282) At that meeting, the participants discussed their future pricing strategies, especially regarding price reduction requests from the customers (for example, [*confidentiality claim pending*]).
- (283) According to Matsuo's internal meeting minutes, during the part of the meeting concerning "*Presentation by each company*",⁵⁵⁰ Sanyo indicated to the other participants that customer [*confidentiality claim pending*]'s prices should be considered as a benchmark when determining selling prices and that regarding the capacitors for flat panel display (referred to as "*FPD*" in Matsuo's internal meeting minutes) Sanyo will be required to further reduce prices of capacitors by 30 % in 2006, and reported on the implementation of the new prices regarding [*confidentiality claim pending*]'s request to reduce prices from 6 January:
- " - [*confidentiality claim pending*] 's price will be surely presented in the market. Selling prices should be determined by taking this [*confidentiality claim pending*] 's price into consideration.
- [...]
- *FPD: price reduction by 37%; we will be required to further reduce prices by 30% in the next year*
- [...]
- [*confidentiality claim pending*] *first request to reduce prices from January 6; requesting commitment of supply quantity with new prices*".⁵⁵¹
- (284) Elna then reported on its sales strategy regarding AECs (referred to as "*Al capacitors*" in Matsuo's internal meeting minutes) and a specific type of electrolytic capacitors, namely chip capacitors:
- "- *Al capacitors: we are trying to stop selling to such consumers that brought no profits to us though it is difficult to reduce them; sales in January and February remained flat; those in March would increase*
- *Chip capacitors: no deal with such customers who require undue price reduction; we haven't made any price reduction since we last accepted [*confidentiality claim pending*]for [*confidentiality claim pending*]*".⁵⁵²
- (285) Finally, the other competitor, not an addressee of this Decision, indicated that no requests from customers to negotiate prices would be acceptable: "- *Because, our sales policy has been changed, we have directed not to make a price negotiation. Customer's request for price will not be accepted*".⁵⁵³

January 2006

549 [...].
 550 [...].
 551 [...].
 552 [...].
 553 [...].

- (286) NCC, Sanyo, and another competitor, not an addressee of this Decision, participated in a tri-lateral meeting regarding customers [*confidentiality claim pending*] in January 2006.⁵⁵⁴
- (287) At that meeting, the participants discussed current and future pricing and production information regarding a specific type of AECs, namely [*confidentiality claim pending*] capacitors, for [*confidentiality claim pending*].
- (288) It follows from the table attached to the email (with the subject line "OS-CON 3 company meeting")⁵⁵⁵ sent on 29 January 2006 by [...] ([*confidentiality claim pending*]) to his colleagues within Sanyo that NCC, Sanyo and the other competitor, not an addressee of this Decision, shared prices for [*confidentiality claim pending*] for the first and the second quarter and that NCC and the other competitor, not an addressee of this Decision, agreed to have the same price levels:

"

	<i>A</i>	<i>B</i>	<i>C</i>
19	[<i>confidentiality claim pending</i>]		
20			
21		<i>Q1</i>	<i>Q2</i>
22	<i>Sanyo</i>	<i>0.138</i>	<i>0.128</i>
23	<i>Nippon Chemi-Con</i>	[<i>confidentiality claim pending</i>]	[<i>confidentiality claim pending</i>]
24	[competitor, not an addressee of this Decision]	<i>0.128</i>	<i>0.120</i>
25	• <i>Nippon Chemi-con</i> and [competitor, not an addressee of this Decision] <i>will</i> [<i>confidentiality claim pending</i>].		
26	• [<i>confidentiality claim pending</i>].		
27	• [<i>confidentiality claim pending</i>].		

".⁵⁵⁶

- (289) Regarding [*confidentiality claim pending*], the participants exchanged market share and quantity information for a specific type of [*confidentiality claim pending*], namely [*confidentiality claim pending*] capacitors,⁵⁵⁷ as well as information about [*confidentiality claim pending*] capacitor price of the other competitor, not an addressee of this Decision, and NCC:

⁵⁵⁴ [...].

⁵⁵⁵ [...].

⁵⁵⁶ [...].

⁵⁵⁷ [...].

29	[confidentiality claim pending]		
30		E9	
31		Share	Quantity
32	Sanyo	80%	3,000
33	Nippon Chemi-Con	[confidentiality claim pending]	
34	[competitor, not an addressee of this Decision]	20%	750
35	• [competitor, not an addressee of this Decision] [confidentiality claim pending] price is 0.128.		
36	• [confidentiality claim pending].		

" 558

(290) Furthermore, the participants exchanged production capacity and out-put forecast for the period from January until March:

"

2	Forecast January – March					
3	Nippon Chemi-Con	[competitor, not an addressee of this Decision]			3 Companies Total	
4	Production capa	Out-put	Production Capa	Out-put	Production Capa	Out-put
5	[confidentiality claim pending]	[confidentiality claim pending]	30	28	[confidentiality claim pending]	[confidentiality claim pending]
6	[confidentiality claim pending]	[confidentiality claim pending]	0.2	0.2	[confidentiality claim pending]	[confidentiality claim pending]
7						
8	[confidentiality claim pending]	[confidentiality claim pending]	30.2	28.2	[confidentiality claim pending]	[confidentiality claim pending]

558

[...].

		<i>pending]</i>			<i>pending]</i>	<i>claim pending]</i>
--	--	-----------------	--	--	-----------------	---------------------------

".⁵⁵⁹

- (291) Finally, with regard to "*Industry movements*", the participants discussed the need to prevent further price decrease:

"

53	• [<i>confidentiality claim pending</i>]. → [<i>confidentiality claim pending</i>] <i>prices have fallen way too much.</i>		
----	--	--	--

".⁵⁶⁰

26 January 2006

- (292) Matsuo and NEC Tokin engaged in a bi-lateral contact regarding customer [*confidentiality claim pending*] on 26 January 2006.⁵⁶¹ During that contact the participants exchanged prices related to a specific type of TECs, namely manganese tantalum capacitors, for [*confidentiality claim pending*].

- (293) On 26 January 2006, [...] (Matsuo) sent an email to [...] (NEC Tokin) with prices for three types of manganese tantalum capacitors to be supplied to [*confidentiality claim pending*] ("*6.3 v/10μ @2.46 [...] 6.3 v/22μ @5.39 [...] 4.0 v/22 μ @3.56*"⁵⁶²) and the purpose of the email was to check the accuracy of prices that were communicated by the customer.⁵⁶³

12 April 2006

- (294) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an MK meeting on 12 April 2006.⁵⁶⁴

- (295) At that meeting the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, [*confidentiality claim pending*] and NCC indicated to the other participants their intentions to increase prices.

- (296) It follows from [*confidentiality claim pending*]'s internal meeting minutes that, at that meeting, the participants exchanged supply and demand information for specific types of AECs ([*confidentiality claim pending*]) and specific types of TECs

⁵⁵⁹ [...].

⁵⁶⁰ [...].

⁵⁶¹ [...].

⁵⁶² [...].

⁵⁶³ [...].

⁵⁶⁴ [*confidentiality claim pending*]. Reference to "*12 March*" in [...] was a clerical error, and should actually have been a reference to "*12 April*" on the basis of the following reasons: first, the title of the minutes is "*Marketing Minutes for the April Marketing Research Meeting*"; second, these minutes contain an indication that the meeting was held on Wednesday ("*12 March (Wedn)*"), whereas 12 March 2006 was in fact Sunday and 12 April 2006 was in fact Wednesday; and, third, in [...] it is indicated that the MK meeting was held on 12 April 2006. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting.[...].

([*confidentiality claim pending*]). The participants reported to each other whether sales had increased or decreased and whether they expected demand to increase or decrease in the coming months (providing each other with the order receipt situation and information about their sales forecasts).⁵⁶⁵ More specifically, the participants exchanged information regarding April, May and June 2006.⁵⁶⁶

- (297) [*confidentiality claim pending*] reported to the other participants about its price increase (referred to as "*price return*" in the English translation of [*confidentiality claim pending*]'s internal meeting minutes)⁵⁶⁷ and value analysis (referred to as "VA" in [*confidentiality claim pending*]'s internal meeting minutes) proposal, as a result of price increase of the aluminium raw foils (referred to as "*Al raw foils*" in [*confidentiality claim pending*]'s internal meeting minutes), a raw material: "*Due to the sharp increase of Al raw foils, the price return and VA proposal are being promoted*".⁵⁶⁸
- (298) NCC announced that as of [*confidentiality claim pending*] it would increase prices (referred to as "*price restoration*" in the English translation of the [*confidentiality claim pending*]'s internal meeting minutes)⁵⁶⁹ by [*confidentiality claim pending*] for a specific type of electrolytic capacitors, namely [*confidentiality claim pending*], and by [*confidentiality claim pending*] for a specific type of electrolytic capacitors, namely [*confidentiality claim pending*], (both types referred to as "[*confidentiality claim pending*]" in [*confidentiality claim pending*]'s internal meeting minutes)⁵⁷⁰ and that it would not reduce prices in any circumstances: "*The price restoration for [*confidentiality claim pending*] at [*confidentiality claim pending*] and for [*confidentiality claim pending*] at [*confidentiality claim pending*] will be implemented starting on [*confidentiality claim pending*]. We will proceed the principle of [*confidentiality claim pending*]*".⁵⁷¹ NCC's statement is confirmed by [*confidentiality claim pending*] according to which NCC (referred to as "*Nikkemi*" in [*confidentiality claim pending*])⁵⁷² declared that it would announce in newspapers about its price increase (referred to as "*restoring price*" in the English translation of [*confidentiality claim pending*])⁵⁷³ for [*confidentiality claim pending*] by [*confidentiality claim pending*] and [*confidentiality claim pending*] by [*confidentiality claim pending*]

"1. Pricing issue

*It will be published on newspapers. "Restoring price" of [*confidentiality claim pending*] by [*confidentiality claim pending*], [*confidentiality claim pending*] by [*confidentiality claim pending*]----Nikkemi".⁵⁷⁴*

4 July 2006

⁵⁶⁵ See also recitals (90) and (91).

⁵⁶⁶ [...].

⁵⁶⁷ See recital (106).

⁵⁶⁸ [...].

⁵⁶⁹ See recital (106).

⁵⁷⁰ Capacitors were previously known as "condensers".

⁵⁷¹ [...].

⁵⁷² [...]. See also footnote 666.

⁵⁷³ See recital (106).

⁵⁷⁴ [...].

- (299) Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 4 July 2006.⁵⁷⁵
- (300) As explained by [...], the participants mainly discussed the results of each company's reply to [*confidentiality claim pending*]'s letter regarding environment control substances (participants agreed previously how to reply to [*confidentiality claim pending*]'s letter) and the need to increase the prices for [*confidentiality claim pending*].⁵⁷⁶ According to [...], since then, the participants gradually discussed prices of AECs.⁵⁷⁷ The participants exchanged information on future pricing intentions. As explained by [...], [*confidentiality claim pending*].⁵⁷⁸
- (301) As explained by [...], [*confidentiality claim pending*]:⁵⁷⁹
 "[*confidentiality claim pending*]".⁵⁸⁰
- (302) According to [...], [*confidentiality claim pending*]:⁵⁸¹
 "[*confidentiality claim pending*] price increase".⁵⁸²
- (303) As explained by [...], [*confidentiality claim pending*]:⁵⁸³
 "[*confidentiality claim pending*]".⁵⁸⁴
- (304) Nichicon claims that that quote is related to the BRICS market referred in the previous paragraphs of the meeting notes.⁵⁸⁵ That argument cannot be accepted. Firstly, it is clear from the quote that it is not related to the BRICS market and that it is information on price increases affecting [*confidentiality claim pending*] markets. Secondly, the leniency applicant in its corporate statement presents it as a separate quote, without a link to the previous quotes related to [*confidentiality claim pending*].⁵⁸⁶

12 July 2006

- (305) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 12 July 2006.⁵⁸⁷
- (306) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, Hitachi AIC, [*confidentiality claim pending*] and Elna discussed prices, including those for [*confidentiality claim pending*] customers, and disclosed to the other participants their intentions to increase prices.

⁵⁷⁵ [...].

⁵⁷⁶ [...].

⁵⁷⁷ [...].

⁵⁷⁸ [...].

⁵⁷⁹ [...].

⁵⁸⁰ [...].

⁵⁸¹ [...].

⁵⁸² [...].

⁵⁸³ [...].

⁵⁸⁴ [...].

⁵⁸⁵ [...].

⁵⁸⁶ [...].

⁵⁸⁷ [*confidentiality claim pending*]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

- (307) It follows from [confidentiality claim pending]'s internal meeting minutes that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for July, August and September 2006.⁵⁸⁸
- (308) Elna revealed that it would increase prices for a specific type of TECs, namely tantalum manganese A size capacitors, by 2 ¢ and for a specific type of AEC, namely Al 04 type capacitors, of AECs by 5 %:
- "Tantalum (Manganese) There will be a 2¢ price increase for A Size
Al (04 Type) There will be a 5% price increase".⁵⁸⁹*
- (309) As [confidentiality claim pending] [...],⁵⁹⁰ and follows from [confidentiality claim pending], Rubycon announced that, following the completion of price increase for [confidentiality claim pending] customers, it would conduct price increase for [confidentiality claim pending] customers: *"The price increase has been completed price for [confidentiality claim pending] firms. The price increase for [confidentiality claim pending] firms will be conducted".⁵⁹¹* Elna declared that it was unclear whether it would increase prices for [confidentiality claim pending] customers:
- "The response to supply to [confidentiality claim pending] firms has been strengthened (cut).
It is unclear whether prices will be increased for [confidentiality claim pending] manufacturers".⁵⁹²*
- (310) NIPPON CHEMI-CON CORPORATION claims that Rubycon's statement *"The price increase has been completed price for [confidentiality claim pending] firms. The price increase for [confidentiality claim pending] firms will be conducted"*⁵⁹³ (referred to in recital (309)) concerns [confidentiality claim pending].⁵⁹⁴ That argument must be rejected for the following reasons.
- (311) First, Rubycon's statement during that meeting was summarised as follows in [confidentiality claim pending]:
- "RUBYCON: RUBYCON is not in the body of [confidentiality claim pending], but in adapters.*
- The price increase has been completed price for [confidentiality claim pending] firms. The
price increase for [confidentiality claim pending] firms will be
conducted.*
- | [confidentiality claim pending] Ratio | Shipment | Number of |
|---------------------------------------|----------|-----------|
| Customers | | |

⁵⁸⁸ [...]. See also recital (296).

⁵⁸⁹ [...].

⁵⁹⁰ [...].

⁵⁹¹ [...].

⁵⁹² [...].

⁵⁹³ [...].

⁵⁹⁴ [...]. [confidentiality claim pending].

[confidentiality claim pending]	30%	53%
[confidentiality claim pending]	70%	47%

Chips peaked in July".⁵⁹⁵

- (312) There is no indication that the sentence, i.e. "*RUBYCON is not in the body of [confidentiality claim pending], but in adapters*" and the sentences "*The price increase has been completed price for [confidentiality claim pending] firms. The price increase for [confidentiality claim pending] firms will be conducted*" are linked. On the contrary, the first sentence is presented in a separate paragraph of [confidentiality claim pending].
- (313) Second, [confidentiality claim pending], whereas the second sentence concerns "[confidentiality claim pending]firms" and "[confidentiality claim pending] firms" (note plural in "firms"), thus the scope is wider than a single customer [confidentiality claim pending].
- (314) NIPPON CHEMI-CON CORPORATION further argues that the alleged pricing discussions at that meeting may not have related to direct sales to the EEA, as capacitors' manufacturers have annual contracts with a "significant number" (and therefore not all) of European customers, and prices are only negotiated on an annual basis for these customers.⁵⁹⁶ That argument has to be rejected as NIPPON CHEMI-CON CORPORATION (i) has not substantiated its claim, (ii) has not identified which customers have annual contracts and (iii) has not provided the terms of such contracts.

13 September 2006

- (315) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK meeting on 13 September 2006.⁵⁹⁷
- (316) At that meeting, Elna revealed to the other participants its future pricing policy.⁵⁹⁸ It follows from [confidentiality claim pending], Elna indicated to the other participants that although its customers (for example, [confidentiality claim pending]) were requesting reduction in prices or provision of justification for price increase (also referred to as "*price hike*" in the English translation of [confidentiality claim pending]),⁵⁹⁹ it continued to increase prices and it would remain committed to the policy of increasing prices in the future:

"

- *ELNA couldn't adjust prices at all, and rejects low-price orders (tantalum).*
- *Prices for 04-type and chips remain high.*

⁵⁹⁵ [...].

⁵⁹⁶ [...].

⁵⁹⁷ [confidentiality claim pending]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

⁵⁹⁸ [...].

⁵⁹⁹ See recital (106).

- *Sales of high-pressure blocks are robust in China (for television).*
- *ELNA has been pressured by [confidentiality claim pending] manufacturers due to a price hike.*

(i) [confidentiality claim pending]: [confidentiality claim pending].

(ii) [confidentiality claim pending]: [confidentiality claim pending].

(iii) [confidentiality claim pending]: *ELNA rejected 100% other than orders for its [confidentiality claim pending]. ⇒ NEC has got orders from [confidentiality claim pending].*

[...]

- *ELNA will not “abandon our policy of increasing prices” in the future”.⁶⁰⁰*

(317) This is confirmed by Matsuo’s internal meeting minutes, from which it follows that Elna reported on the process of price increases:

"- We are raising prices and reducing sales (number of orders received) -> pressures are increasing

1) [confidentiality claim pending]: [confidentiality claim pending]

2) [confidentiality claim pending]: [confidentiality claim pending]

3) [confidentiality claim pending]: [confidentiality claim pending]

4) [confidentiality claim pending]: similar to [confidentiality claim pending]”.⁶⁰¹

(318) This is further confirmed by [confidentiality claim pending]'s meeting notes, from which it follows concerning the pricing strategy:⁶⁰²

"Price increase - secure order

Tantalum is declined

[confidentiality claim pending]

[confidentiality claim pending] same move

-> there are some customers who purchase as much as last year but the profit is increased

In August and September, strong pressure towards price decrease

[confidentiality claim pending]”.⁶⁰³

18 October 2006

⁶⁰⁰ [...].

⁶⁰¹ [...].

⁶⁰² In view of the similar content of [confidentiality claim pending], Matsuo's and Rubycon's meeting minutes (recitals (316)-(318)), NIPPON CHEMI-CON CORPORATION's claim that the content of the meeting notes are transcribed from handwritten notes which were often illegible, without any clarifications and difficult to interpret and therefore constitute unreliable evidence ([...]) must be rejected.

⁶⁰³ [...].

- (319) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK meeting on 18 October 2006.⁶⁰⁴
- (320) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, [confidentiality claim pending], Elna and Sanyo disclosed to the other participants their intentions to increase prices.
- (321) It follows from [confidentiality claim pending]'s internal meeting report that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for October, November and December 2006.⁶⁰⁵
- (322) With regard to "Future Forecast", [confidentiality claim pending] (referred to as "2" in [confidentiality claim pending]'s internal meeting report)⁶⁰⁶ reported to the other participants about its price increases (referred to as "price restoration" in the English translation of [confidentiality claim pending]'s internal meeting report)⁶⁰⁷ due to the continuous price increases of the aluminium foils (referred to as "Al foils" in [confidentiality claim pending]'s internal meeting report), a raw material, and condenser material, a raw material. [confidentiality claim pending] announced that as the non-reduction of sales prices has proven to be beneficial, it intended to maintain this position regarding the overall industry:
- "The price restoration for all non-profitable products was implemented, which had a certain effect, however, the Al foils and condenser material price surge has not been stopped yet.*
- The users and parts manufacturers are both also focusing on securing the items which produce added-value, pushing the [confidentiality claim pending] condenser manufactures into a difficult situation. Since the stance not to (unable to) reduce the sales price has been working for strengthening the parts market, we need to have it maintained this way as the overall industry".⁶⁰⁸*
- (323) It follows from Matsuo's internal meeting minutes that Elna reported to the other participants on the raising of prices for foreign customers. Elna indicated that [confidentiality claim pending] and that it would gradually raise prices if profits were not generated:
- "- Raised prices and terminated unprofitable deals; the operation for raising prices for foreign customers has been completed by July, 2006*
- [confidentiality claim pending]; profit-oriented [confidentiality claim pending] canceled [sic] purchase of [confidentiality claim pending]. from ELNA; [...]*

⁶⁰⁴ [...].

⁶⁰⁵ [...]. See also recital (296).

⁶⁰⁶ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending] was "2".

⁶⁰⁷ See recital (106).

⁶⁰⁸ [...].

- *If it doesn't generate profit in total, we will gradually raise prices*".⁶⁰⁹

- (324) [confidentiality claim pending] confirms this. Elna indicated to the other participants that it was increasing prices for all its customers except [confidentiality claim pending], that it could raise prices only in that year, and that [confidentiality claim pending].⁶¹⁰

"ELNA: ELNA has been increasing prices aggressively and has completed a price hike [confidentiality claim pending] in July. [confidentiality claim pending].

[confidentiality claim pending], but ELNA will again take the approach of rejecting low-priced orders.

ELNA can raise prices only in this year.

[confidentiality claim pending]".⁶¹¹

- (325) NCC (referred to as "Chemi-Con" in [confidentiality claim pending]) then announced to the other participants that [confidentiality claim pending].⁶¹² Sanyo revealed its pricing strategy regarding a specific type of TECs, namely conductive type tantalum capacitors, and a specific type of AECs, namely conductive aluminium capacitors:

"In 2006 capital investment in plants for conductive type tantalum was conducted, and will invest in plants for conductive aluminum in 2007 (both are strong, but aluminum is advantageous in light of the return on investments.)

The destination for investments is overseas. Both products will be "low-priced" in the future".⁶¹³

13 December 2006

- (326) Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 13 December 2006.⁶¹⁴
- (327) At that meeting, the participants concluded a unified strategy consisting of coordinated price increases, with a clear agenda, an elaborate plan for action and clear reasons to be put forward to customers as justification for the for price increases. This strategy applied to a wide range of aluminium electrolytic capacitors types.⁶¹⁵
- (328) According to [...], the four companies appointed one leader per customer who would be in charge of negotiating the price increase prior to other companies, and

⁶⁰⁹ [...].

⁶¹⁰ In view of the similar content of Matsuo's and [confidentiality claim pending]'s meeting minutes (recitals (323) and (324)), NIPPON CHEMI-CON CORPORATION's claim that the content of the meeting minutes varies greatly so they are unreliable evidence ([...]) must be rejected.

⁶¹¹ [...].

⁶¹² [...].

⁶¹³ [...]. NIPPON CHEMI-CON CORPORATION claims that it is unclear which are "both" products ([...]). However, "both" is used twice in Sanyo's statement ("both are strong" and "both products will be "low-priced") and the Commission therefore understands that the term "both" relates to "[confidentiality claim pending]".

⁶¹⁴ [...].

⁶¹⁵ For example, snap-in, screw, lead wire type, chip type, TW ([...]).

this is reflected in the table below.⁶¹⁶ As explained by [...], "N" means Nichicon, "C" means NCC, "H" means Hitachi AIC and "R" means [confidentiality claim pending]; further, [confidentiality claim pending] are types of aluminium electrolytic capacitors:⁶¹⁷

"

<i>H</i>			<i>C</i>		
1	[confidentiality claim pending]	CN H	1	[confidentiality claim pending]	CRN
	60	screw		[confidentiality claim pending]	[confidentiality claim pending]
2	[confidentiality claim pending]	CNH	2	[confidentiality claim pending]	CRN
	60	screw		[confidentiality claim pending]	
3	[confidentiality claim pending]	CNH	3	[confidentiality claim pending]	CHN
	60	screw		[confidentiality claim pending]	[confidentiality claim pending]
4	[confidentiality claim pending]	CH	4	[confidentiality claim pending]	CRN
	60			[confidentiality claim pending]	
			5	[confidentiality claim pending]	CRN
				[confidentiality claim pending]	[confidentiality claim pending]
			6	[confidentiality claim pending]	CRNH
				[confidentiality claim pending]	[confidentiality claim pending]

<i>R</i>			<i>N</i>		
1	[confidentiality claim pending]	CRN	1	[confidentiality claim pending]	CRN

⁶¹⁶ [...].

⁶¹⁷ [...].

	60	chip		04	chip
2	[confidentiality claim pending]	CRN	2	[confidentiality claim pending]	CRN
		chip		04	chip
3	[confidentiality claim pending]	CRN	3	[confidentiality claim pending]	CRN
	[confidentiality claim pending]			04	chip
4	[confidentiality claim pending]	CRN	4	[confidentiality claim pending]	CRNH
	[confidentiality claim pending]			60	
	[confidentiality claim pending]				

"618

- (329) As explained by [...], the participants were invited [confidentiality claim pending].⁶¹⁹

"Act in concert with them in general discussion

Due to raw material marker?

Foil raw material price will increase by [confidentiality claim pending]".⁶²⁰

- (330) As explained by [...], the participants agreed to start implementing the price increases discussed in the meeting as of January or February 2007. Further, [confidentiality claim pending].⁶²¹

"[confidentiality claim pending]".⁶²²

- (331) As explained by [...], the participants agreed to bring their communication to customers in the price negotiations in line and to use the following reasons for the price increase: (1) the increase of the price of aluminium foil and chemicals in the course of 2006; (2) the increase of the demand for AECs due to the increased demand for [confidentiality claim pending]; (3) the fluctuations of the exchange rate must be taken into account; and (4) the expansion of the market for AECs; the price increases were to be implemented to [confidentiality claim pending] customers.⁶²³ The four reasons for increasing prices are outlined in the quote below:

"Foreign exchange issue

⁶¹⁸ [...].

⁶¹⁹ [...].

⁶²⁰ [...].

⁶²¹ [...].

⁶²² [...].

⁶²³ [...]. "FPD" means flat panel display and that LCD (liquid crystal display) is a type of FPD

Logic

1. Material; AL chemicals 2006 / 1st and 2nd half

2. Demand expansion [confidentiality claim pending]

3. Consideration on foreign exchange rate

4. Expansion of market and needs to investment

domestic / offshore

Japanese / foreign capital".⁶²⁴

- (332) As explained by [...], the participants discussed the timetable for implementation of the planned price increases.⁶²⁵

"Schedule

December: Agreement and overall logic

January: advertising campaign

-> individually respond

February: negotiation

Start from April portion (functionality)".⁶²⁶

- (333) As explained by [...], the participants also discussed that the increase of high-pressure aluminium foil prices made it necessary to increase the selling price of AECs for [confidentiality claim pending] customers, including supplies to foreign markets.⁶²⁷

"-> unit price will increase

[confidentiality claim pending] markers unit price will increase including the prices for foreign market".⁶²⁸

22 December 2006

- (334) Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 22 December 2006⁶²⁹ which is a follow-up to the meeting held on 13 December 2006.

- (335) According to [...], at that meeting, the participants first exchanged information on price increases for raw materials, the shares of material cost in the selling price of products and other matters, based on the agreement in the meeting of 13 December 2006; ⁶³⁰ they exchanged views on the strategy how to request price increases and

⁶²⁴ [...].

⁶²⁵ [...].

⁶²⁶ [...].

⁶²⁷ [...].

⁶²⁸ [...].

⁶²⁹ [...].

⁶³⁰ [...].

how to respond to the customers' periodical requests for price decrease.⁶³¹ According to [...], [confidentiality claim pending].⁶³²

"1. On the Request for Cooperation in Reviewing Delivery Prices (NCC presented a basic document draft)

** Materials for high-voltage foil (420 V or higher) are in short supply (industry-wide shortage).*

** [confidentiality claim pending]" .⁶³³*

- (336) According to [...], the participants then agreed on the percentages for price increases for each type of AECs ([confidentiality claim pending]); the price increases were to be negotiated with [confidentiality claim pending] located in [confidentiality claim pending] in order to increase the price from 1 April 2007:⁶³⁴

2. On targets of price corrections and correction rates

Although rates vary depending on each company's sales activities, increase rates will be set for the industry as a whole.

Aluminum electrolytic capacitors

** [confidentiality claim pending] [confidentiality claim pending] increase on the current price*

** [confidentiality claim pending] [confidentiality claim pending] increase on the current price*

** [confidentiality claim pending] [confidentiality claim pending] increase on the current price*

** [confidentiality claim pending] [confidentiality claim pending] increase on the current price*

3. New price enforcement period From the [confidentiality claim pending] delivery

[...]

** Want to adopt a basic policy of refraining from periodic cost reductions to [confidentiality claim pending].*

Agreed?" .⁶³⁵

- (337) NIPPON CHEMI-CON CORPORATION claims that the future pricing intentions were limited to certain customers;⁶³⁶ however, the customers mentioned by NIPPON CHEMI-CON CORPORATION relate only to the customers for which [confidentiality claim pending] wanted to correct prices and for whom they reported certain concerns; this is done in a separate section (Section 4),⁶³⁷ different than previous sections (Sections 1,2,3) which contain the description of the overall plan to increase prices for the industry as a whole.⁶³⁸

- (338) Nichicon claims that the General Manager for [confidentiality claim pending] International Division was present at that meeting only in relation to [confidentiality

631 [...].

632 [...].

633 [...].

634 [...].

635 [...].

636 [...].

637 [...].

638 See also recitals (335) and (336).

claim pending] and claims that this was the only [*confidentiality claim pending*] topic discussed.⁶³⁹ That argument must be rejected. This is the interpretation given by Nichicon and not acknowledged by [*confidentiality claim pending*]. Further, [...] states clearly that the increase of prices discussed at that meeting apply to [*confidentiality claim pending*] customers.⁶⁴⁰ That the meeting also concerned non-Japanese customers is further confirmed by the fact that it was a follow-up to the strategy agreed upon in the meeting of 13 December 2006 which clearly concerned both [*confidentiality claim pending*] customers.

16 January 2007

- (339) Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 16 January 2007.⁶⁴¹ The participants exchanged information on the status of individual price negotiations with customers and on future prices.
- (340) As explained by [...], the participants reported on the on-going negotiations with customer [*confidentiality claim pending*] regarding certain types of AECs.⁶⁴² The meeting notes taken by [...] ([*confidentiality claim pending*]) state:

"iris
[*confidentiality claim pending*]
RFQ 2 February".⁶⁴³

- (341) As further stated by [...], the participants reported on the current prices and monthly volumes for [*confidentiality claim pending*]: (the first two columns of the table below indicate the type of capacitor and the last column contains the monthly sales volumes for all companies, which is followed by unit prices of Nichicon, NCC and [*confidentiality claim pending*]). [*confidentiality claim pending*].⁶⁴⁴

"[*confidentiality claim pending*]"⁶⁴⁵

- (342) Moreover, as also explained by [...], the participants reported on the prices offered to customer [*confidentiality claim pending*] (the table below is a compilation of the prices offered to [*confidentiality claim pending*] with respect to 3 types of AECs ([*confidentiality claim pending*])).⁶⁴⁶ Under the table below, [*confidentiality claim pending*].⁶⁴⁷ This is corroborated by the meeting minutes taken by [...] ([*confidentiality claim pending*]):

"

	<i>C.H</i>	<i>R</i>	<i>Company N</i>
<i>1</i>	[<i>confidentiality claim pending</i>]	[<i>confidentiality claim pending</i>]	

⁶³⁹ [...].

⁶⁴⁰ [...].

⁶⁴¹ [...].

⁶⁴² [...].

⁶⁴³ [...].

⁶⁴⁴ [...].

⁶⁴⁵ [...].

⁶⁴⁶ [...].

⁶⁴⁷ [...].

2	[confidentiality claim pending]	[confidentiality claim pending]	
3	[confidentiality claim pending]	[confidentiality claim pending]	

April, please back to [confidentiality claim pending]/pieces
Until September
[confidentiality claim pending] [illegible] not possible
[confidentiality claim pending]
[confidentiality claim pending]".⁶⁴⁸

- (343) The participants also reported on price increases for capacitors supplied to [confidentiality claim pending], as stated by [...] ⁶⁴⁹ and as corroborated by the meeting minutes taken by [...] ([confidentiality claim pending]):

"[confidentiality claim pending]	claim			[confidentiality claim pending]
[confidentiality claim pending])	claim	[confidentiality claim pending]	claim	Company N In-house
[confidentiality claim pending])	claim			[confidentiality claim pending]
				[confidentiality claim pending]
[confidentiality claim pending]	claim	[confidentiality claim pending]	claim	[confidentiality claim pending]
		C current unit price		[confidentiality claim pending]
[confidentiality claim pending]	claim	[confidentiality claim pending]	claim	[confidentiality claim pending]
[confidentiality claim pending]	claim	[confidentiality claim pending]"	claim	

9 February 2007

- (344) Elna and NCC engaged in a bi-lateral contact regarding customer [confidentiality claim pending] on and around 9 February 2007. ⁶⁵¹

⁶⁴⁸ [...].

⁶⁴⁹ [...].

⁶⁵⁰ [...].

⁶⁵¹ [confidentiality claim pending]. Given the chronological proximity of the contacts, the fact that the same parties were involved and a similar subject matter was discussed, the Commission considers these contacts together. [...].

(345) At that contact, Elna disclosed to NCC its current and future policy of not reducing prices for a specific type of AECs, namely [*confidentiality claim pending*] capacitors, for its customer [*confidentiality claim pending*].

(346) An email of 9 February 2007 sent by [...] (NIPPON CHEMI-CON CORPORATION) to [...] ([...]), with the subject title "[*confidentiality claim pending*] price correction countermeasures",⁶⁵² shows that [...] called Elna ([...]) and Elna confirmed it was not intending to reduce prices:

*"With regard to the matter below, upon calling [...], I was told that in [*confidentiality claim pending*], there are no moves to reduce prices, and they are linked.*

I'm now confirming this. ---I will contact you as soon as I receive information.

*Apparently the reason to be given is the return of overseas foreign exchange gains, but can it not somehow be prevented??"*⁶⁵³

(347) In reply to that email [...] ([...]) wrote: "[a]s expected Elna Europe's price reduction was a fact".⁶⁵⁴

(348) Another email of 9 February 2007 sent by [...] ([....]) to [...] (NIPPON CHEMI-CON CORPORATION),⁶⁵⁵ with the subject title "[*confidentiality claim pending*] price correction countermeasures",⁶⁵⁶ shows that, following [...] 's discussion with [...] (Elna), on 9 February 2007, [...] himself spoke to Elna on the same day and Elna confirmed that its head office was determining pricing policy and that Elna would submit a second price quotation to [*confidentiality claim pending*]:

" The policy of Elna head office was to not reduce the price, so they say they'll withdraw the price indication and talk to Elna Europe ([...]).*

The result of this will be received by (ISA) by 12th.

** Elna Europe will submit the second price quotation by 16 February".*⁶⁵⁷

14 February 2007

(349) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC and [*confidentiality claim pending*], as well as other competitors, participated in an MK meeting on 14 February 2007.⁶⁵⁸

(350) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, NCC and [*confidentiality claim pending*] disclosed to the other participants their future price increases.

⁶⁵² NOTE: The translation provided by the Commission.

⁶⁵³ NOTE: The translation provided by the Commission; [...].

⁶⁵⁴ NOTE: The translation provided by the Commission; [...].

⁶⁵⁵ [...] is also referred to as "ISA" in the email.

⁶⁵⁶ NOTE: The translation provided by the Commission.

⁶⁵⁷ NOTE: The translation provided by the Commission; [...].

⁶⁵⁸ [*confidentiality claim pending*]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

- (351) It follows from [*confidentiality claim pending*]'s internal meeting minutes that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for February, March and April 2007.⁶⁵⁹
- (352) [*confidentiality claim pending*]'s internal meeting minutes show that [...] ⁶⁶⁰ (NCC, also referred to as "3" in [*confidentiality claim pending*]'s internal meeting minutes) ⁶⁶¹ disclosed to the other participants that NCC would increase the price (referred to as "*restore the price*" in the English translation of [*confidentiality claim pending*]'s internal meeting minutes) ⁶⁶² by [*confidentiality claim pending*]: ⁶⁶³ "*Nippon Chemi-Con will restore the price nominally as a "Defective price."*" ⁶⁶⁴ and "*Defective Price* ([*confidentiality claim pending*] increase)". ⁶⁶⁵
- (353) This is confirmed by [*confidentiality claim pending*] according to which [*confidentiality claim pending*] ⁶⁶⁶ [*confidentiality claim pending*]: "[...]" ⁶⁶⁷.
- (354) Moreover, [*confidentiality claim pending*]'s internal meeting minutes show that with regard to "*Future Forecast*" ⁶⁶⁸ [...] ([*confidentiality claim pending*]) (also referred to as "2" in the meeting minutes) ⁶⁶⁹ reported that [*confidentiality claim pending*] would increase the price (referred to as "*price [...] will be restored*" and "*price restoration*" in the English translation of [*confidentiality claim pending*]'s internal meeting minutes) ⁶⁷⁰ of a specific type of AECs, namely snap-in capacitors, as of April 2007: "*The price of the [confidentiality claim pending] will be restored aiming at around April*" ⁶⁷¹ and "*Although there is a sense of expectation for sustaining the exchange rate 120 yen/USD, since the material price hike concern also continues, we are specifically advancing the product price restoration after April, 2007. ([confidentiality claim pending])*". ⁶⁷²

15 February 2007

⁶⁵⁹ [...]. See also recital (296).

⁶⁶⁰ The reference to "[...]" in the English translation is a translation mistake and it should be understood as "[...]".

⁶⁶¹ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and NCC was "3".

⁶⁶² See recital (106).

⁶⁶³ NIPPON CHEMI-CON CORPORATION asserts ([...]) that the annotation concerning "*Defective Price (20-30% increase)*" is not reliable evidence. The Commission does not agree with this interpretation. The quotes in recital (352) clearly show that NCC reported that it would increase prices. Moreover, [*confidentiality claim pending*] as quoted in recital (353) corroborated that NCC said that it would increase prices by 20-30 %.

⁶⁶⁴ [...].

⁶⁶⁵ [...].

⁶⁶⁶ [...].

⁶⁶⁷ [...].

⁶⁶⁸ [...].

⁶⁶⁹ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and Rubycon was "2".

⁶⁷⁰ See recital (106).

⁶⁷¹ [...].

⁶⁷² [...].

- (355) Elna, Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 15 February 2007.⁶⁷³
- (356) At that meeting, the participants exchanged information on the status of price negotiations and plans for future price negotiations with customers.
- (357) As explained by [...], one of the participants informed the other participants that [confidentiality claim pending] requested to decrease prices by one third because the product supplied to [confidentiality claim pending] did not meet [confidentiality claim pending]'s product specifications.⁶⁷⁴ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):
- "April Final specification has not be decided*
- 320k cut cost to 1/3".⁶⁷⁵*
- (358) As explained by [...], [confidentiality claim pending].⁶⁷⁶ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):
- "[confidentiality claim pending]".⁶⁷⁷*
- (359) [...] explained that the participants discussed the alignment of the prices charged to customers [confidentiality claim pending] in light of [confidentiality claim pending].⁶⁷⁸ Moreover, they considered that the prices charged to [confidentiality claim pending] should be brought up at the level of the prices charged to [confidentiality claim pending]; Elna informed that it intended to increase prices by 20% for specific types of AECs, namely 5L, 7L, 11L capacitors, supplied to [confidentiality claim pending].⁶⁷⁹ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):
- "Elena [sic]*
- 5L)*
- 7L) 20%u*
- 11L*
- [confidentiality claim pending]".⁶⁸⁰*
- (360) [...] stated that [confidentiality claim pending] and [confidentiality claim pending].⁶⁸¹ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):
- "[confidentiality claim pending]".⁶⁸²*

⁶⁷³ [...].

⁶⁷⁴ [...].

⁶⁷⁵ [...].

⁶⁷⁶ [...].

⁶⁷⁷ [...].

⁶⁷⁸ [...].

⁶⁷⁹ [...].

⁶⁸⁰ [...].

⁶⁸¹ [...].

⁶⁸² [...].

(361) As explained by [...], [confidentiality claim pending].⁶⁸³ This is corroborated by the meeting notes taken by [...]:

"[confidentiality claim pending]".⁶⁸⁴

15 March 2007

(362) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 15 March 2007.⁶⁸⁵

(363) At that meeting, the participants presented an overview of the status of the price negotiations for particular types of AECs with the customers of each of the participants.

(364) As explained by [...], the participants had created a table where symbols were used to represent price increases, requests, ongoing negotiations for particular types of aluminium electrolytic capacitors with the customers of each of the participants ("Con" means Nichicon, "Chemi" means Nippon Chemi-Con, "R" means [confidentiality claim pending], "H" means Hitachi AIC and [confidentiality claim pending]).⁶⁸⁶ The table recorded price increases in percentage figures that each capacitor manufacturer had agreed on or was in the process of negotiating.⁶⁸⁷ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):

"Page 2 page right

* *Submit documents*
A *Not yet*
* *in the process of negotiation* Δ
* *decision* \circ
* *broke down* $\Delta \rightarrow X$
* *request* $\quad \quad \quad / \circ$
* *decision* \circ / \circ

⁶⁸³ [...].

⁶⁸⁴ [...].

⁶⁸⁵ [...].

⁶⁸⁶ [...].

⁶⁸⁷ [...]; [...] explains how the table should be interpreted: for example, "[confidentiality claim pending] had asked [confidentiality claim pending] for a 3% price increase and this had been agreed upon (O/3). [confidentiality claim pending] had also asked [confidentiality claim pending] for a 27% price increase and that price increase was being negotiated at the time of the meeting (Δ /27").

<i>Maker name</i>	<i>Con</i>	<i>Chemi</i>	<i>R</i>	<i>H</i>	[confidentialit y claim pending]
[confidentialit y claim pending]	[confidentialit y claim pending]	[confidentialit y claim pending]			
[confidentialit y claim pending]	[confidentialit y claim pending]			$\Delta/20\%$	
[confidentialit y claim pending]				$\Delta/7\%$ ([illegible] 10%)	
[confidentialit y claim pending]				$\boxed{1\%}/7\%$	
[confidentialit y claim pending]	[confidentialit y claim pending]		[confidentialit y claim pending]		
[confidentialit y claim pending]	[confidentialit y claim pending]	[confidentialit y claim pending]	[confidentialit y claim pending]		

<i>Maker name</i>	<i>Con</i>	<i>Chemi</i>	<i>R</i>	<i>H</i>	[confidentiality claim pending]
[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]		
[confidentiality claim pending]	[confidentiality claim pending]				

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"Page 3 Left

<i>Maker name</i>	<i>Con</i>	<i>Chemi</i>	<i>R</i>	<i>H</i>	[confidentiality claim pending]
[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]		
[confidentiality claim pending]	[confidentiality claim pending]				[confidentiality claim pending]
[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]		
[confidentiality claim pending]					
[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]		
[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]			
[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]			[confidentiality claim pending]

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[...].

<i>claim pending</i>]	<i>claim pending</i>]	<i>claim pending</i>]			<i>claim pending</i>]
[<i>confidentiality claim pending</i>]	[<i>confidentiality claim pending</i>]				

".⁶⁹⁰

April 2007

(365) NCC, Sanyo and another competitor, not an addressee of this Decision, engaged in a tri-lateral meeting in April 2007.⁶⁹¹

(366) At that meeting, the participants discussed current and future pricing information regarding a specific type of AECs, [*confidentiality claim pending*] capacitors,⁶⁹² for customers [*confidentiality claim pending*].

(367) An email (with the subject line "*regarding the 2 companies*")⁶⁹³ of 9 April 2007 sent by [...] ([*confidentiality claim pending*]) to his colleagues in order to report about that meeting, shows in particular that the participants coordinated their conduct regarding pricing:

"Even if NCC would like to suppress the movement of [competitor, not an addressee of this Decision] who is leading the price, we were not able to say anything to [president of a competitor, not an addressee of this Decision] who is against such decisions.

As for NCC's stance, in terms of [competitor, not an addressee of this Decision]'s price, NCC would like to follow closely behind. The stance is the same as Sanyo.

Since I think that even if one person jumps out of the crowd, others will surely come together so I am thinking to coordinate with NCC to slowly move forward with the price decrease.

*During the period of time in which [*confidentiality claim pending*] prices were respected to some extent, the rate of price decreases has been low, but ever since the reverse phenomenon has taken place, the brakes are no longer working. I am concerned that one day compensation for damages will be requested by the two companies".⁶⁹⁴*

(368) On the same day, [...] ([*confidentiality claim pending*]) forwarded this email referred to several other colleagues within Sanyo saying that "*I do not want this to be left in the records so I only sent this to a few selected individuals*".⁶⁹⁵

19 April 2007

⁶⁹⁰ [...].

⁶⁹¹ [...].

⁶⁹² [...].

⁶⁹³ [...].

⁶⁹⁴ [...].

⁶⁹⁵ [...].

- (369) [*confidentiality claim pending*], Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 19 April 2007.⁶⁹⁶
- (370) At that meeting, the participants exchanged information on the status of the price negotiations, plans for future price negotiations with customers and made price agreements.
- (371) As explained by [...], the participants discussed supply of capacitors [*confidentiality claim pending*] to customer [*confidentiality claim pending*] and agreed to increase the price for capacitors [*confidentiality claim pending*] to [*confidentiality claim pending*] times the price of capacitors that were [*confidentiality claim pending*] in order to discourage purchases of capacitors containing lead.⁶⁹⁷ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*]):
- "[*confidentiality claim pending*]
[*confidentiality claim pending*])
[*confidentiality claim pending*]) less than [*confidentiality claim pending*]
[*confidentiality claim pending*])
- $Leaded = unleaded \times [*confidentiality claim pending*]$ ".⁶⁹⁸
- (372) [*confidentiality claim pending*] are all references to different types of AECs that were the subject of negotiations.⁶⁹⁹
- (373) [...] stated further that it informed the participants on the status of price negotiations with customer [*confidentiality claim pending*] in relation to 11L, 7L and 5L AECs and that it requested a 5% price increase.⁷⁰⁰ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*]):
- "Total [*confidentiality claim pending*] [*confidentiality claim pending*]- let them
go
11L)
7L) 5% reply to quotation
5L) item name will be changed
[*confidentiality claim pending*] for July □% implemented April 1st".⁷⁰¹
- (374) [...] further stated that [*confidentiality claim pending*].⁷⁰² This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*]).⁷⁰³

⁶⁹⁶ [...].

⁶⁹⁷ [...].

⁶⁹⁸ [...].

⁶⁹⁹ [...].

⁷⁰⁰ [...].

⁷⁰¹ [...].

⁷⁰² [...].

⁷⁰³ NIPPON CHEMI-CON CORPORATION claims that in its first corporate statement [...] describes that in the meeting, the participants exchanged information on their dealings with affiliates of [*confidentiality claim pending*], while in another corporate statement it shows that it was focused on specific plants in [*confidentiality claim pending*] (...). This argument must be rejected. Contrary to NIPPON CHEMI-CON CORPORATION's suggestion, [...] did not report in its corporate statement that the meeting was focused on specific plants in [*confidentiality claim pending*].

"[confidentiality claim pending] [sic] [confidentiality claim pending]".⁷⁰⁴

17 May 2007

(375) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 17 May 2007.⁷⁰⁵

(376) At that meeting, the participants exchanged information on the status of the price negotiations with customers, on future pricing policies and future price agreements.

(377) As explained by [...], [confidentiality claim pending] reported on their negotiations with customers: they had increased [confidentiality claim pending] the prices for [confidentiality claim pending] (a type of AECs) supplied to [confidentiality claim pending], and the negotiations with customer [confidentiality claim pending] were ongoing.⁷⁰⁶ This follows from the meeting notes taken by [...] ([confidentiality claim pending]):

"[confidentiality claim pending]".⁷⁰⁷

(378) [...] explained that [confidentiality claim pending].⁷⁰⁸ As explained by [...], [confidentiality claim pending].⁷⁰⁹ This also follows from the meeting notes taken by [...] ([confidentiality claim pending]):

"[confidentiality claim pending]".⁷¹⁰

(379) As explained by [confidentiality claim pending], the participants discussed the impact of the price increase for raw materials used in the production of capacitors.⁷¹¹ [confidentiality claim pending].⁷¹² This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):

"[confidentiality claim pending]".⁷¹³

4 June 2007

(380) Elna, Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 4 June 2007.⁷¹⁴

(381) The participants discussed the status of the negotiation processes with several customers.⁷¹⁵

(382) [...] explained that the participants discussed the necessity to increase prices of capacitors because of the price increase of aluminium foil, a key input material in the production of AECs which would, therefore, apply to the whole product range.⁷¹⁶

704 [...].

705 [...].

706 [...].

707 [...].

708 [...].

709 [...].

710 [...].

711 [...].

712 [...].

713 [...].

714 [...].

715 [...].

716 [...].

This is corroborated by the meeting notes taken by [...] (*confidentiality claim pending*):

"Aluminium — stay high
150 — 220 — process separately".⁷¹⁷

- (383) As explained by [...], the participants also reported on the status of price negotiations with [*confidentiality claim pending*] for the [*confidentiality claim pending*] of AECs.⁷¹⁸ This is corroborated by the meeting notes taken by [...] (*confidentiality claim pending*) which state (with "Company C" referring to Nippon Chemi-Con, "Company R" to [*confidentiality claim pending*], and "Company N" to Nichicon):⁷¹⁹

"[<i>confidentiality claim pending</i>]	[<i>confidentiality claim pending</i>]
[<i>confidentiality claim pending</i>]	
[<i>confidentiality claim pending</i>] Company C	Company R
Company N	
[<i>confidentiality claim pending</i>]	0.998
[<i>confidentiality claim pending</i>]	0.9683
[<i>confidentiality claim pending</i>]	
Barrister [illegible]	[<i>confidentiality claim</i>
<i>pending</i>]" ⁷²⁰	

19 June 2007

- (384) Elna, Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 19 June 2007.⁷²¹
- (385) At that meeting, the participants exchanged information on the status of the price negotiations with customers, on future pricing policies and future price agreements.
- (386) According to [...], the participants in the meeting exchanged information on negotiations with [*confidentiality claim pending*] and other customers including [*confidentiality claim pending*]. The participants also discussed the most appropriate timing for price increase negotiations.⁷²²
- (387) As explained by [...], the participants exchanged information in relation to the supplies of capacitors to [*confidentiality claim pending*] and that [*confidentiality*

⁷¹⁷ [...]; Nichicon claims that this quote is related to the discussion in the previous paragraph of the meeting notes and therefore relates to sales to Thailand (see [...]). This argument must be rejected. The previous paragraph of the meeting notes related to Thailand and referred to the information provided by one participant, NCC, in relation to the impact of the Thailand Baht rate fluctuation. This concerned only NCC as it was the only undertaking that accepted payment in Baht. However, the discussion relating to the price increase of the aluminium foil that is described in the next paragraph of the meeting minutes was a separate issue that the participants discussed during the meeting. This is confirmed by the fact that [...] presents it in a different paragraph of its corporate statement.

⁷¹⁸ [...].
⁷¹⁹ [...].
⁷²⁰ [...].
⁷²¹ [...].
⁷²² [...].

claim pending].⁷²³ This follows from the meeting notes taken by [...] ([*confidentiality claim pending*]):

"Regarding the business for [*confidentiality claim pending*],
[*confidentiality claim pending*]" .⁷²⁴

- (388) [*confidentiality claim pending*] explained that [*confidentiality claim pending*].⁷²⁵ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*]) which state:

"[*confidentiality claim pending*]" .⁷²⁶

- (389) According to [...], the participants discussed price negotiations with customers [*confidentiality claim pending*].⁷²⁷ [...] further explained that Elna informed that [*confidentiality claim pending*] refused requests for price increases ([...] explained that the word "trend" refers to forward looking price projections that capacitor manufacturers are required to provide to their main customers every six months).⁷²⁸ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*]):

"In the last half of 2007, discussion on trend will not be allowed
[*confidentiality claim pending*][*confidentiality claim pending*]
Trend is changed – (Elna)" .⁷²⁹

- (390) [...] further explained that in relation to negotiations with the customer [*confidentiality claim pending*], [*confidentiality claim pending*].⁷³⁰ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*):

"[*confidentiality claim pending*]" .⁷³¹

2 August 2007

- (391) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an MK meeting on 2 August 2007.⁷³²
- (392) At that meeting, the participants discussed prices on the basis of the currency exchange rate, including prices in Europe. They also discussed the setting of prices for the second half of 2007.
- (393) It follows from [*confidentiality claim pending*]'s meeting notes that with regard to "How to respond to cost down request based on the exchange rate"⁷³³ Elna, [*confidentiality claim pending*], Hitachi AIC (referred to as "Company E",

⁷²³ [...].

⁷²⁴ [...].

⁷²⁵ [...].

⁷²⁶ [...].

⁷²⁷ [...].

⁷²⁸ [...].

⁷²⁹ [...].

⁷³⁰ [...].

⁷³¹ [...].

⁷³² [...].

⁷³³ [...].

"Company R" and "Company H" respectively in [confidentiality claim pending]'s meeting notes)⁷³⁴ and another participant, referred to as "Company N", discussed how to deal with customers' price reduction requests based on the currency exchange rate. In particular, it follows from [confidentiality claim pending]'s meeting notes that Elna mentioned a 10 % price reduction request: "Annual RFQ 10% down request – reason of high [illegible] Sep – Oct"⁷³⁵ and Hitachi AIC reported that the raw material cost increase would be compensated by the currency exchange rate: "Compensate the raw material cost increase by the gain from exchange rate".⁷³⁶ Furthermore, [confidentiality claim pending] indicated that it managed to restrain lowering of prices by promising to reinstate a certain type of contract, namely [confidentiality claim pending]: "[confidentiality claim pending]".⁷³⁷ [confidentiality claim pending] specifically concerned customers in Europe, as a participant, referred to as "Company N", reported that for the customers with a [confidentiality claim pending] in Europe contract they modify prices by 13-14 %: "For the makers which has "[confidentiality claim pending]" [sic] in Europe, we change price [confidentiality claim pending] – this is the "[confidentiality claim pending]"".⁷³⁸ Finally, the participants agreed to communicate closely regarding customers' requests to lower prices: "Please closely communicate and address to customers requests".⁷³⁹

- (394) With regard to "Price setting for the 2nd half of 2007"⁷⁴⁰ the participants addressed a pricing issue for the second half of 2007, as they foresaw that in 2008 JPY would be stronger, and in particular considered that a [confidentiality claim pending] % profit rate was insufficient to guarantee investment, and while [confidentiality claim pending] % profit would be acceptable in order to guarantee sufficient supplies, ideally [confidentiality claim pending] % profit should be secured:

"2. `Price setting for the 2nd half of 2007

In 2008 Yen will be stronger

With [confidentiality claim pending] % of profit rate we cannot invest

Unless we secure [confidentiality claim pending] % of profit, it could cause supply deficiency issue.

Raw material manufacturers secure [confidentiality claim pending] digits profit and further increase the their [sic] prices

[...]

In order to keep healthy business, we need to secure [confidentiality claim pending] % of gross profit".⁷⁴¹

⁷³⁴ From [...] it can be inferred that "E" means Elna, "R" means [confidentiality claim pending], "H" means Hitachi AIC.

⁷³⁵ [...].

⁷³⁶ [...].

⁷³⁷ [...].

⁷³⁸ [...].

⁷³⁹ [...].

⁷⁴⁰ [...].

⁷⁴¹ [...].

24 August 2007

- (395) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 24 August 2007.⁷⁴²
- (396) At that meeting, the participants reported on the status of price negotiations with different customers such as [confidentiality claim pending].⁷⁴³
- (397) According to [...], [confidentiality claim pending].⁷⁴⁴ The participants further discussed future price increases to [confidentiality claim pending] (in October).⁷⁴⁵ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):

"[confidentiality claim pending] [sic] [confidentiality claim pending] at early October
[confidentiality claim pending] W/W Chip discount
[confidentiality claim pending]
[confidentiality claim pending] up
S.P NCC -> Nichicon
[confidentiality claim pending]) no longer left [confidentiality claim pending]
[confidentiality claim pending]) [confidentiality claim pending]
-> [confidentiality claim pending]
[confidentiality claim pending] Nichicon".⁷⁴⁶

26 September 2007

- (398) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 26 September 2007.⁷⁴⁷
- (399) At that meeting, the participants reported on the status of price negotiations with customers and discussed future pricing policies.
- (400) As explained by [...], [confidentiality claim pending].⁷⁴⁸ Further, as also explained by [...], [confidentiality claim pending].⁷⁴⁹ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):

"[confidentiality claim pending]
Zero answer [confidentiality claim pending] 10 years ago
[confidentiality claim pending]
Request for common price [confidentiality claim pending]
[confidentiality claim pending]".⁷⁵⁰

742 [...].
743 [...].
744 [...].
745 [...].
746 [...].
747 [...].
748 [...].
749 [...].
750 [...].

- (401) As explained by [...], the participants reported on the status of price negotiations with customer [confidentiality claim pending] and exchanged information on the prices charged for [confidentiality claim pending] capacitors (a type of AECs), including prices to be charged in the future, in 2008 (see the excerpt from the meeting minutes taken by [...]) ([confidentiality claim pending]) below).⁷⁵¹ This also follows from the meeting notes taken by [...] (as explained by [...], the table below referred to Nichicon as "Nichi", [confidentiality claim pending] as "R" and Hitachi AIC as "H").⁷⁵²

" [confidentiality claim pending] [confidentiality claim pending] *25 x 40 105

[confidentiality claim pending]

	2006	2007	2008
Nichi	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]
NCC	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]
R	1.54	1.17	1.50
H	0.93	1.13	1.13

".⁷⁵³

September 2007

- (402) NCC and [confidentiality claim pending] engaged in a bi-lateral contact regarding customer [confidentiality claim pending] in September 2007.⁷⁵⁴
- (403) During that contact, the participants discussed future price reductions regarding AECs⁷⁵⁵ for customer [confidentiality claim pending].
- (404) As explained by [...], [confidentiality claim pending].⁷⁵⁶ This is corroborated by an email (with the subject line "[confidentiality claim pending]")⁷⁵⁷ of 27 September 2007 sent by [...] to his colleague [...] ([confidentiality claim pending]): "I heard that there was a question from [...] of Company C⁷⁵⁸ "I heard from [...] that R has made substantial discount. Is R⁷⁵⁹ going to reduce price again in the negotiation in October?" ".⁷⁶⁰ It further reads: "To this, I replied "We have already completed negotiation on a global basis in September, and as far as October negotiation is concerned, we will bring nothing to the bargaining table or we will

⁷⁵¹ [...].

⁷⁵² [...].

⁷⁵³ [...].

⁷⁵⁴ [...].

⁷⁵⁵ [...].

⁷⁵⁶ [...].

⁷⁵⁷ [...].

⁷⁵⁸ Referring to NCC.

⁷⁵⁹ Referring to [confidentiality claim pending].

⁷⁶⁰ [...].

not participate.” I also added “At the time of the negotiation of September, small adjustments of about [confidentiality claim pending] were made for several items, but those are where Company C is most competitive and no shares will be given to us.””.⁷⁶¹

- (405) As explained by [...], [confidentiality claim pending].⁷⁶² This is corroborated by [confidentiality claim pending]'s email, which further states: *"If [...] inquired, please bear this in mind so as not to contradict my remarks"*.⁷⁶³

6 November 2007

- (406) Elna, Hitachi AIC,⁷⁶⁴ Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK Presidents' meeting on 6 November 2007.⁷⁶⁵
- (407) At that meeting, the participants exchanged their intentions to increase or at least to maintain prices.
- (408) According to [confidentiality claim pending] sent by [...] (Hitachi AIC) to his colleagues within Hitachi AIC containing [confidentiality claim pending], during the part of the meeting concerning the "Aluminum market",⁷⁶⁶ the participants expressed their determination to maintain prices for aluminium conductive type capacitors ((referred to as "AL conductive type" in [confidentiality claim pending])) a specific type of AECs): *"However, it is presumed that the transition of core AL conductive type from DiskTop [sic] PC to liquid crystal TV would start from 2008, and now is the time to carefully maintain prices in preparation for a short supply next year, and not the time to reduce prices, and each company shall pay close attention to the trends in the manufacture of liquid crystal TVs and take a cooperative attitude to maintain prices"*.⁷⁶⁷
- (409) [confidentiality claim pending] further states that, during the part of the meeting concerning "Report on market conditions from each company",⁷⁶⁸ [...] (NCC) disclosed to the other participants that NCC would not reduce prices: "[confidentiality claim pending]".⁷⁶⁹
- (410) Furthermore, [confidentiality claim pending] shows that [...] ([confidentiality claim pending]) indicated [confidentiality claim pending]'s wish to increase prices in order to compensate for the price increases of raw materials: *"The founder of [confidentiality claim pending] is age 90 and is still in good health and wishes to*

⁷⁶¹ [...].

⁷⁶² [...].

⁷⁶³ [...].

⁷⁶⁴ [confidentiality claim pending] ([...]).

⁷⁶⁵ [...]. NIPPON CHEMI-CON CORPORATION questions if the Commission correctly assessed the date of the meeting ([...]). In fact, [confidentiality claim pending], [...] (Hitachi AIC) sent his colleagues an [confidentiality claim pending] ([...]). That report contains a following reference: *"The following is a report on the presidents' meeting of November (Shimotsuki Meeting) 1, Date: November 6~7, 2007"*. This confirms that the meeting was held on 6 November 2007.

⁷⁶⁶ [...].

⁷⁶⁷ [...].

⁷⁶⁸ [...].

⁷⁶⁹ [...].

*continue to work towards the 60th anniversary next year. It achieved increased income and profit in his third year of presidency, and although there are some products for which plans were canceled [sic] but it wishes to embark on capital investments and deal with our customers. To do so, it wants to increase prices and absorb price increases in raw materials".*⁷⁷⁰

- (411) Finally, [confidentiality claim pending] shows that [...] ([confidentiality claim pending]) revealed Sanyo's strategy of price increases: *"Although there would be a shortage in liquid crystal next year, it forecasts good results because of the economic boom to be created by the Beijing Olympic and growth in the field of cheap game device, car-loading and liquid crystal, and it will pursue a strategy of raising the average unit price and raising 40% for new products, It raises the unit price in the direction towards reduced prescribed quantity (insuu)".*⁷⁷¹

13 February 2008

- (412) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC and [confidentiality claim pending] participated in an MK meeting on 13 February 2008.⁷⁷²
- (413) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, [confidentiality claim pending] indicated to the other participants its intention to increase prices.
- (414) [confidentiality claim pending]'s internal meeting report shows that the discussion during the meeting followed the same pattern as previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for February, March and April 2008.⁷⁷³
- (415) [confidentiality claim pending]'s internal meeting report shows that with regard to "Future Forecast"⁷⁷⁴ [confidentiality claim pending] (referred to as "2" in [confidentiality claim pending]'s internal meeting report)⁷⁷⁵ reported to the other participants that it would again increase prices (referred to as "price restoration" in the English translation of [confidentiality claim pending]'s internal meeting report)⁷⁷⁶ due to the strong JPY and high raw material prices in order to maintain profitability: *"Yen appreciation base and the material prices are staying high, so we will implement product price restoration again to secure the profitability".*⁷⁷⁷
- (416) Furthermore, [confidentiality claim pending]'s internal meeting report shows that Rubycon also indicated that it would implement a price increase per customer

⁷⁷⁰ [...].

⁷⁷¹ [...].

⁷⁷² [...].

⁷⁷³ [...]. See also recital (296).

⁷⁷⁴ [...].

⁷⁷⁵ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and Rubycon was "2".

⁷⁷⁶ See recital (106).

⁷⁷⁷ [...].

(referred to as "*price restoration*" in the English translation of [*confidentiality claim pending*]'s internal meeting report):⁷⁷⁸

"Overseas price restoration move

We are implementing by user.

([*confidentiality claim pending*] company) 7.5%".⁷⁷⁹

21 March 2008

(417) [*confidentiality claim pending*], Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 21 March 2008.⁷⁸⁰

(418) At that meeting, the participants reported on the status of price negotiations with customers and discussed future pricing policies.

(419) As explained by [...], [*confidentiality claim pending*].⁷⁸¹ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*):

"[*confidentiality claim pending*] NCC
[*confidentiality claim pending*] price increase".⁷⁸²

(420) As [...] further explained, [*confidentiality claim pending*].⁷⁸³ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*):

"[*confidentiality claim pending*]"⁷⁸⁴

(421) The meeting minutes taken by [...] ([*confidentiality claim pending*) also show that [*confidentiality claim pending*] informed [*confidentiality claim pending*):

"[*confidentiality claim pending*]"⁷⁸⁵

(422) As explained by [...], [*confidentiality claim pending*] told the other participants that even with an increased price, [*confidentiality claim pending*].⁷⁸⁶

(423) [...] further explained that [*confidentiality claim pending*].⁷⁸⁷ This is corroborated by the meeting notes taken by [...] ([*confidentiality claim pending*):

⁷⁷⁸ See recital (106).

⁷⁷⁹ [...]. NIPPON CHEMI-CON CORPORATION argues ([...]) reply (NIPPON CHEMI-CON CORPORATION)) that [*confidentiality claim pending*]'s quote from [*confidentiality claim pending*]'s internal meeting report (referred to in recital (416)) is limited to non-European markets, i.e. [*confidentiality claim pending*], and that it is unreliable evidence. However, this quote should be considered in the context of the entire [*confidentiality claim pending*]'s statement (quotes referred to in recitals (415) and (416)) which shows that [*confidentiality claim pending*] disclosed to the other meeting participants information about price increases, including for [*confidentiality claim pending*]. For general NIPPON CHEMI-CON CORPORATION's arguments in relation to jurisdiction and more specifically on the interpretation of the term "overseas", see section 0 and more specifically recital (671).

⁷⁸⁰ [...].

⁷⁸¹ [...].

⁷⁸² [...].

⁷⁸³ [...].

⁷⁸⁴ [...].

⁷⁸⁵ [...].

⁷⁸⁶ [...].

⁷⁸⁷ [...]; Halogen free AECs are AECs which do not contain halogen.

"[confidentiality claim pending] — several percent up
 [illegible] tape [confidentiality claim pending] [confidentiality
 claim pending]
 Ink [confidentiality claim pending]
 Sleeve [confidentiality claim pending]
 [illegible]".⁷⁸⁸

16 April 2008

- (424) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 16 April 2008.⁷⁸⁹
- (425) At that meeting, the participants agreed to pass on material price increases and losses incurred as a result of foreign exchange fluctuations which affected supplies of AECs to [confidentiality claim pending] customers.
- (426) An internal email sent by [...], an employee of [confidentiality claim pending], to other employees on 16 April 2008 with the subject "*Re: Price rectification (Please treat with care)*" reports on the CUP meeting which took place on the same day and shows that the competitors agreed on a plan to change prices to their customers in a concerted manner.⁷⁹⁰
- (427) The email reads as follows:

"RE : Price rectification (Please treat with care)

For every representative at foreign offices

Today, 5 companies beside [competitor] met and discussed the issue.

1) [confidentiality claim pending] companies (with annual contract)

From May we will simultaneously start negotiation for price increase, [confidentiality claim pending].

2) [confidentiality claim pending] companies

[confidentiality claim pending]. We will start negotiation at [confidentiality claim pending] and in [confidentiality claim pending], we will start the discussion on material cost increase.

Ultimately the discussion will be put on table in [confidentiality claim pending], but related parties shall communicate each other and move in harmony.

It is said that the industry wide move is same as above excluding [confidentiality claim pending].

As every company starts moving, please comply the policy we had announced earlier and reinforce our conduct".⁷⁹¹

14 May 2008

⁷⁸⁸

[...].

⁷⁸⁹

[...].

⁷⁹⁰

[...].

⁷⁹¹

[...]; [confidentiality claim pending].

- (428) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK meeting on 14 May 2008.⁷⁹²
- (429) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, [confidentiality claim pending] indicated to the other participants its intention to continue increasing prices.
- (430) [confidentiality claim pending]'s internal meeting report shows that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for May, June and July 2008.⁷⁹³
- (431) It further follows from [confidentiality claim pending]'s internal meeting report that with regard to "Outlook Going Forward"⁷⁹⁴ [confidentiality claim pending] (referred to as "2" in the meeting minutes)⁷⁹⁵ reported to the other participants that due to the strengthening of the JPY and increase in raw material prices it would continue to increase prices (referred to as "price rollback" in the English translation of [confidentiality claim pending]'s internal meeting report)⁷⁹⁶: "*Price rollback due to yen appreciation and the rapid rise in materials prices will continue to be implemented*".⁷⁹⁷
- (432) Furthermore, [confidentiality claim pending]'s internal meeting report shows that [confidentiality claim pending] also indicated that it would implement price increases due to a weak USD and high raw materials prices:
- "Rollout centering on overseas (Weak dollar/FX ●●●high materials prices)*
- Raw materials are more severe. Crude oil price increases (body blow)*
- *Pricing actions – increase*
- [confidentiality claim pending]: Price increases*
- Pricing: Creating the mood".*⁷⁹⁸

21 May 2008

⁷⁹² [...].

⁷⁹³ [...]. See also recital (296).

⁷⁹⁴ [...].

⁷⁹⁵ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and Rubycon was "2".

⁷⁹⁶ See recital (106).

⁷⁹⁷ [...].

⁷⁹⁸ [...]. NIPPON CHEMI-CON CORPORATION claims ([...]) that [confidentiality claim pending]'s quote from [confidentiality claim pending]'s internal meeting report (referred to in recital (432)) is unreliable evidence. However, this quote should be considered in the context of the entire [confidentiality claim pending]'s statement (quotes referred to in recitals (431) and (432)) which shows that [confidentiality claim pending] disclosed to the other meeting participants information about price increases, including for [confidentiality claim pending]. For general NIPPON CHEMI-CON CORPORATION's rebuttals on jurisdiction and more specifically on overseas, see section 0 and more specifically recital (671).

(433) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 21 May 2008.⁷⁹⁹

(434) At that meeting, the participants further developed on the plan to increase prices they agreed upon in the CUP meeting held on 16 April 2008 (see recitals (424)-(427)).

(435) An internal email sent by [...], an employee of [confidentiality claim pending], to other employees on 21 May 2008 with the subject "Price recovery" shows that the participants discussed price increases for [confidentiality claim pending] customers and set up a schedule for reaching an agreement with customers for price increases before July 2008.⁸⁰⁰ They also agreed on the reasons to be put forward to explain the price increases (namely, the increase of prices for raw materials and foreign exchange fluctuations) and on reporting on the status of the price increase negotiations in relation to each customer and each product.⁸⁰¹ The email reads as follows:

"To whom it may concern,

A price recovery meeting was held today with attendance of five member companies of the industry.

[Conclusions]

** The trend of price hikes of materials and foreign exchange fluctuations in the aluminum industry is so alarming that it cannot be overlooked any more, and we confirmed the necessity of conducting an aggressive counter campaign.*

** Guidelines for action to be taken both for [confidentiality claim pending] customers are: 1) [confidentiality claim pending] on the ground of materials price hikes, 2) [confidentiality claim pending] (on a [confidentiality claim pending] basis) on the ground of foreign exchange fluctuations.*

** Each member company prepares the following data by next meeting (June 2) and brings to the meeting, where the chief company is selected: 1) user names (by business location), 2) transaction currency, 3) correction rates required (price increase rate by large model, lead, and chip).*

** [confidentiality claim pending].*

** Aim at reaching agreements with users before July when they start planning a budget for the latter half of the fiscal year.*

** Each company issues a news release on their own describing difficult situations to set a sympathetic tone for the industry".⁸⁰²*

(436) Further, according to the same internal email sent by [...], an employee of [confidentiality claim pending], to other employees on 21 May 2008, the participants also reported on the current status of price negotiations (price revision) for each

⁷⁹⁹ [...].

⁸⁰⁰ [...].

⁸⁰¹ [...].

⁸⁰² [...].

customer under the heading "[Status of each company].⁸⁰³ For instance, [confidentiality claim pending] reported that it: "[a]lready notified sales agencies and distributors of 5% effective as of June 1. * Since the domestic market operates on the principle of "out-in," demand for price reductions is surfacing".⁸⁰⁴ Nichicon reported that it "[a]lready implemented compulsory price recovery to sales agencies".⁸⁰⁵ NCC reported that it "[confidentiality claim pending]".⁸⁰⁶ [confidentiality claim pending] reported that it "[h]as completed the first step of price recovery for unprofitable products on the ground of materials price hikes, and the second step is under way, including a negotiation on exchange rate fluctuations. * Already notified annually contracted customers of going halves on the fluctuations at the end of the first half of the fiscal year (aiming at reaching an agreement within June and enforcing it from July 1)".⁸⁰⁷

- (437) The participants thus agreed to aggressively conduct the price increase campaign: "Although some member manufactures have been slow-moving up to now, each member has agreed on aggressively conducting the campaign in today's meeting".⁸⁰⁸

2 June 2008

- (438) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting in 2 June 2008.⁸⁰⁹
- (439) The meeting of 2 June 2008 was a follow-up to the CUP meetings held on 16 April and 21 May 2008 where an overall agreement to increase prices was reached (see recitals (424)-(427) and recitals (433)-(437)). At that meeting the participants agreed on how to put the price agreement into practice and agreed on the details of the price negotiations with customers.
- (440) As explained by [confidentiality claim pending], at the meeting of 2 June 2008, the participants identified the customers and products for which they would start price negotiations.⁸¹⁰ Moreover, they agreed to coordinate price increases so as to reflect the increase of aluminium prices. They defined a target price increase for each type of product of each participant which they called a "correction rate". Furthermore, they established for each customer a "leader" who would start price negotiations. When there were multiple manufacturers supplying to the same customer, the leader would be the one with the largest share of supply to the customer. Moreover, the participants set out clear target price increases for each customer.⁸¹¹
- (441) The meeting minutes stated the following:
- "2. Correction rates (%)"

803 [...] On the basis of [...], Company C" means NCC, "Company N" means Nichicon, "Company H" means Hitachi AIC, "Company R" means Rubycon, "Company E" means Elna.

804 [...].

805 [...].

806 [...].

807 [...].

808 [...].

809 [...].

810 [...].

811 [...].

[confidentiality claim pending] [confidentiality claim pending]
[confidentiality claim pending] [confidentiality claim pending]
[confidentiality claim pending]

Exchange

Company C [confidentiality claim pending] [confidentiality claim
pending] [confidentiality claim pending] [confidentiality claim
pending] [confidentiality claim pending]

Company N 8 8 8 8 5-8

Company H . . . 10 7

Company R 5 5 5 10 5 10 7.5

Company E 5 8 5 8 8

3. Activities of each company and organizer

A) (Foreign manufacturers)

[confidentiality claim pending] Company C Company N (yen)
Company R (\$) Company H (\$)

[confidentiality claim pending] E Company R Upon price negotiation for the
second half of the year

(Jul 1 and on)

[confidentiality claim pending] Company H Company R for aqueous capacitors
...

Meeting in [confidentiality claim pending] ([confidentiality claim pending])

[confidentiality claim pending] Company R

For other Western manufacturers, local affiliates will negotiate

[confidentiality claim pending] (price adjustment in agencies) Company H
Company N."⁸¹²

- (442) According to the meeting minutes, the meeting participants discussed that the leading company would request price increases to [confidentiality claim pending] users from [confidentiality claim pending] and for users abroad on [confidentiality claim pending] or later, depending on each company's discretion:⁸¹³

"They will individually discuss

⁸¹² [...]. "Company N" means Nichicon, as in [...] it is indicated "Company N: [...]" and in [...] it is explained that [...] is of Nichicon. "Company C" means NCC, as in [...] it is indicated "Company C: [...]" and in [...] it is explained that [...] are of Nippon Chemi-Con. "H-AIC" means Hitachi AIC, as in [...] it is indicated "H-AIC: [...]" and in [...] it is explained that [...] are of Hitachi AIC. [confidentiality claim pending], as in [...] it is indicated "[confidentiality claim pending]: [...]" and in [...] it is explained that [...] is [confidentiality claim pending]. "Company R" means Rubycon, as in [...] it is indicated "Company R: [...]" and in [...] it is explained that [...] are of [confidentiality claim pending].

⁸¹³ [...].

The price raises should be presented to users based on the above, before they determine the budget for the second half of the year.

The organizing company will request the application to [confidentiality claim pending] users from [confidentiality claim pending].

For users abroad, we should present the prices on [confidentiality claim pending] or later though it depends on each company's discretion.

If there is anything unclear about a request on a specific product, we should inquire HQ".⁸¹⁴

4 June 2008

(443) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC and [confidentiality claim pending], as well as another competitor, participated in an MK Presidents' meeting on 4 June 2008.⁸¹⁵

(444) At that meeting, the participants shared their pricing strategies.

(445) An [confidentiality claim pending] sent by [...] (Hitachi AIC) to his colleagues within Hitachi AIC, containing [confidentiality claim pending], shows that during the part of the meeting concerning "*Each company's report on market conditions*"⁸¹⁶ [...] ([confidentiality claim pending]) indicated that although raw material prices were increasing [confidentiality claim pending] would not modify sales prices:⁸¹⁷

"- Export ratio 1/3 As it is denominated in \$, started actions to reduce cost, As for countermeasures against increasing material price, intends to not change sales wholesale price and absorb the increase in price by production effort.

- As for [confidentiality claim pending] sales, started moves to restore the price individually".⁸¹⁸

(446) Further, [confidentiality claim pending] shows that [...] (NCC) also reported on the fluctuation of currency exchange rate and raw material price increases:⁸¹⁹ "*In a difficult environment due to foreign exchange and increased price of original materials, [confidentiality claim pending]*".⁸²⁰

(447) It finally follows from [confidentiality claim pending] that the participants indicated that they were increasing prices of AECs to compensate for the raw material price increases: "*Each company started raising the price, and is working toward honestly passing on to customers the increase in price of materials*".⁸²¹

⁸¹⁴ [...].

⁸¹⁵ [...].

⁸¹⁶ [...].

⁸¹⁷ Sales denominated in USD are relevant for the sales in the EEA, as, for example, at the MK meeting of 20 December 2010 concerning "*Counter-measures for exchange rates in Euro regions*" Rubycon reported that it had "[n]o sales in euro. Either in US\$ or yen" ([...]).

⁸¹⁸ [...].

⁸¹⁹ Sales denominated in USD are relevant for the sales in the EEA, as, for example, at the MK meeting of 20 December 2010 concerning "[confidentiality claim pending]" ([...]).

⁸²⁰ [...].

⁸²¹ [...].

25 June 2008

- (448) [*confidentiality claim pending*], Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting in June 2008.⁸²²
- (449) As explained by [...], at that meeting, the participants reported on the actions taken as a follow-up to the CUP meetings of 16 April, 21 May 2008 and 2 June 2008⁸²³ and agreed on price increases.
- (450) The meeting minutes taken by [...] ⁸²⁴ ([*confidentiality claim pending*]) show that the participants acknowledged the difficulty of covering the price increases for materials and agreed to increase the prices for certain products. The participants agreed on a target price increase, which they referred to as "correction rate"⁸²⁵ for certain types of AECs ([*confidentiality claim pending*]).⁸²⁶ Each participant also reported on price increases (also referred to as "*restore the [...] price*" in the English translation of the meeting minutes)⁸²⁷ for the customers for whom they were leaders to start the price negotiations.⁸²⁸ They also agreed that the price increases should be presented to the customers before they determine the budget for the second half of the year.⁸²⁹ The meeting minutes recorded the following:

"[*confidentiality claim pending*].

2. Correction rates (%)

[*confidentiality claim pending*]

Exchange

Company C [*confidentiality claim pending*]

<i>Company N</i>	8	8	8	8	5-8
<i>Company H</i>	-	-	-	10	7
<i>Company R</i>	5	5	5	10 5 (FW) 10 (FO)	
	7.5				
<i>Company E</i>	5	8	5	8	8

3. Activities of each company and progress of the organizing company

A) (*Foreign manufacturers*) All the companies separately meet them for making arrangements.

⁸²² [...].

⁸²³ [...].

⁸²⁴ [...].

⁸²⁵ See recital (440).

⁸²⁶ [...].

⁸²⁷ See recital (106).

⁸²⁸ [...].

⁸²⁹ [...].

[confidentiality claim pending] Company C Company N (yen) Company R (\$) Company H (\$)

Presented [confidentiality claim pending] increase in writing and will not supply

[...]

[confidentiality claim pending] Company C Company N Individual meeting for new PFQ

Company C, Company N, Company R

Company C may be consulting and filing for an approval [competitor], as they like to restore the original price of [confidentiality claim pending] products for [confidentiality claim pending].

[confidentiality claim pending], Company N like to restore the original price of about [confidentiality claim pending]
[...]

[confidentiality claim pending].

Even though [confidentiality claim pending].

If there is anything unclear about a request on a specific product, we should inquire HQ".⁸³⁰

10 July 2008

(451) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting on 10 July 2008.⁸³¹

(452) At that meeting, NEC Tokin, NCC, Elna and [confidentiality claim pending] disclosed their specific pricing strategies and indicated their intentions to cooperate with each other when determining prices.

(453) An email of 11 July 2008 sent by [...] ([confidentiality claim pending]) to his colleagues within Sanyo shows that the participants reported on negotiations for price increases for specific types of TECs, namely [confidentiality claim pending] capacitors (referred to as "[confidentiality claim pending]" in Sanyo's email): "Each company is negotiating a price increase of [confidentiality claim pending]".⁸³² Moreover, the participants indicated that they would maintain prices of a specific type of electrolytic capacitors, namely [confidentiality claim pending] capacitors: "Preferably it is better that the price of [confidentiality claim pending] is not reduced, but [confidentiality claim pending], Hitachi, [competitor, not an addressee of this Decision] and [another competitor, not an addressee of this Decision] do not stay out of this. Each of the companies will take actions to maintain the price as far

⁸³⁰ [...]. "Company N" means Nichicon, as in [...] it is indicated "Company N: [...]" and in [...] it is explained that [...] is of Nichicon. "Company C" means NCC, as in [...] it is indicated "Company C: [...]" and in [...] it is explained that [...] are of Nippon Chemi-Con. "H-AIC" means Hitachi AIC, as in [...] it is indicated "H-AIC: [...]" and in [...] it is explained that [...] are of Hitachi AIC. [confidentiality claim pending], as in [...] it is indicated "[confidentiality claim pending]: [...]" and in [...] it is explained that [...] is [confidentiality claim pending]. "Company R" means [confidentiality claim pending], as in [...] it is indicated "Company R: [...]" and in [...] it is explained that [...] are of [confidentiality claim pending].

⁸³¹ [...].

⁸³² [...].

as possible".⁸³³ In addition, it follows that the participants requested cooperation regarding a price increase of [confidentiality claim pending] capacitors and a specific type of AECs, namely [confidentiality claim pending] capacitors: "A request for cooperation has been made in relation to price rise of, and the markup (differences between the [confidentiality claim pending] prices) of, [confidentiality claim pending]".⁸³⁴ Finally, the email shows that NCC indicated its intention to align its conduct with that of Sanyo: "NCC wants to go along with Sanyo. It is necessary to consider how we should get along with it".⁸³⁵

- (454) Sanyo's email further reveals that NEC Tokin indicated to the other participants that it informed its customer [confidentiality claim pending] about its intentions to increase prices due to the price increase of tantalum minerals, a raw material: "It has told [confidentiality claim pending] about its intention to increase prices as the price of tantalum minerals has increased".⁸³⁶ Moreover, the email shows that NEC Tokin indicated its intentions to negotiate price increases regarding specific types of TECs, namely C and D size capacitors: "Specially, NEC-T would like to negotiate price increases in relation to C/D sizes",⁸³⁷ and expressed its intentions to determine prices on the basis of the conduct of the competitors: "Depending on actions of competitors, it has to respond to them by altering its prices. NEC-T's strategy remains the same that it wants Sanyo to expand Sanyo's own sales and then it will seek to have a portion of the market share by offering its prices".⁸³⁸
- (455) Moreover, Sanyo's email shows that NCC indicated its intentions to cooperate with Sanyo regarding a specific type of electrolytic capacitors, namely [confidentiality claim pending]: "In relation to [confidentiality claim pending], NCC has dealt with Sanyo well until now. However, as the price has recently started falling, it wants to cooperate with Sanyo well, in order to avoid making the same mistake as it had regarding [confidentiality claim pending]".⁸³⁹ This was also confirmed by Elna, which concerning a specific type of AECs, namely aluminum-wound conductive capacitors, stated: "Regarding aluminum-wound conductive ones, it estimates its price as it checks the prices of other companies".⁸⁴⁰
- (456) Sanyo's email further shows that Rubycon stated its aim for a 10 % price increase although doubted the feasibility of achieving this target: "Regarding price increase, the target is a 10% rise but unlikely to come true".⁸⁴¹
- (457) Finally, Sanyo's email shows that Hitachi AIC apologised to the other participants for the past reduction of prices: "The company is sorry that it has reduced the price. It thinks that the reason that it cannot sell well despite its low price is that clients do not trust it".⁸⁴²

833 [...].
834 [...].
835 [...].
836 [...].
837 [...].
838 [...].
839 [...].
840 [...].
841 [...].
842 [...].

15 July 2008

(458) [confidentiality claim pending], Hitachi AIC, Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 15 July 2008.⁸⁴³

(459) As explained by [...], the participants reported on the status of the price negotiations with customers (for example, [confidentiality claim pending]) as a follow-up to the price agreement reached at the meeting of 2 June 2008.⁸⁴⁴ This is corroborated by the meeting minutes taken by [...] ([confidentiality claim pending]) which read as follows (with "Company N" referring to Nichicon⁸⁴⁵ and [...] referring to the [...]⁸⁴⁶ "[capacitor type]" and "[capacitor type]" are all references to different types of AECs that were the subject of negotiations):

"1. Company N [...]'s policy for simultaneous price increase. He collected sales managers and announced to increase all the prices in [confidentiality claim pending] markets from products to be delivered on Aug 1 and on.

[...]

Although [confidentiality claim pending] primarily refuse the price increase, the three companies will increase the prices of [confidentiality claim pending] products for [confidentiality claim pending], as well as other prices according to the Chairman's order. [confidentiality claim pending] have been requested.

[...]

[confidentiality claim pending] was asked. Presented a price lower than [confidentiality claim pending] for power supply for [confidentiality claim pending].

[...]

How should we determine the agenda of future Cup Meeting to reflect the actual price increases in the field after submitting the documents to clients?

In the current style, it can only stop the demand for price reduction on coming from Oct".⁸⁴⁷

8 September 2008

(460) [confidentiality claim pending], Nichicon, NCC and [confidentiality claim pending] participated in a CUP meeting on 8 September 2008.⁸⁴⁸

(461) As explained by [...], at that meeting, the participants reported on the status of the price negotiations with customers⁸⁴⁹ as a follow-up to the previous meetings of 16 April 2008, 21 May 2008, 2 June 2008 and 25 June 2008 (recitals (424) and (425), (433) and (434), (438) and (439), (448) and (449)) and as part of a monitoring process for the agreements made therein. They also discussed future pricing policies.

⁸⁴³ [...].

⁸⁴⁴ [...]; see also recitals (438)-(441).

⁸⁴⁵ "Company N" means Nichicon, as in [...] it is indicated "Company N: [...]" and in [...] it is explained that [...] is of Nichicon.

⁸⁴⁶ See Annex II, page 46.

⁸⁴⁷ [...].

⁸⁴⁸ [...].

⁸⁴⁹ [...].

- (462) [...] explained that [confidentiality claim pending].⁸⁵⁰ This follows from the meeting notes taken by [...] ([confidentiality claim pending]) ([confidentiality claim pending]) are types of AECs):

"Automobile First half price increase [confidentiality claim pending]

We won't raise the price but

Existing item will globally increased

The increase rate will not be bigger than those we did in last April

[confidentiality claim pending]

[confidentiality claim pending]

[confidentiality claim pending]".⁸⁵¹

- (463) [confidentiality claim pending] [...], [confidentiality claim pending].⁸⁵² [confidentiality claim pending].⁸⁵³ This is corroborated by the meeting notes taken by [...] ([confidentiality claim pending]):

"3M ([confidentiality claim pending] [confidentiality claim pending] / month

([confidentiality claim pending]

([confidentiality claim pending] [confidentiality claim pending]

claim pending] [confidentiality claim pending]

([illegible]

[confidentiality claim pending]) Please raise the base

([confidentiality claim pending]) Trading in Yen

[confidentiality claim pending] up".⁸⁵⁴

10 or 11 September 2008

- (464) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo, as well as another competitor, participated in an MK meeting on 10 or 11 September 2008.⁸⁵⁵
- (465) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, NEC Tokin and [confidentiality claim pending] revealed their pricing strategies to the other participants, including intentions to increase prices.
- (466) [confidentiality claim pending]'s internal meeting minutes show that the discussion during the meeting followed the same pattern as the previous MK meetings: the

⁸⁵⁰ [...].

⁸⁵¹ [...].

⁸⁵² [...].

⁸⁵³ [...].

⁸⁵⁴ [...].

⁸⁵⁵ [confidentiality claim pending]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

participants exchanged supply and demand information for AECs and TECs, including demand projection data for September, October and November 2008.⁸⁵⁶

- (467) Moreover, [*confidentiality claim pending*]'s internal meeting minutes show that NEC Tokin reported to the other participants about its 4-8 % price increase request for specific types of TECs, namely conductive tantalum capacitors and manganese tantalum capacitors (referred to as "*Inductive Ta*"⁸⁵⁷ and "*Manganese Ta*" in [*confidentiality claim pending*]'s internal meeting minutes):

"• *Inductive Ta* [...]

• *Manganese Ta* [...]

• *A request (4-8%) has been made for price increase on each of the above, and we would like to secure even 50% of the requested prices*".⁸⁵⁸

- (468) This is confirmed by Matsuo's meeting minutes, which show that NEC Tokin reported on its proposed 4 % price increase for a specific type of TECs, namely small cases of conductive polymer capacitors, and an 8 % price increase for another specific type of TECs, namely large cases of conductive polymer capacitors:

"(3) *Conductive polymer capacitor : price rise*

Proposed 4% price rise for small cases and 8% rise for large cases, though the actual rise is about half that proposed (making a compromise)".⁸⁵⁹

- (469) This is further confirmed by Sanyo's internal meeting memorandum, which shows that NEC Tokin reported on its price increase (referred to as "*price hike*" in the English translation of Sanyo's internal meeting memorandum)^{860,861}

"• *NEC price hike. 4% for small size and 8% for large size. Last month, cut in half.*

• *Competed [*confidentiality claim pending*]'s SPCAP, but will raise prices in future RFQ*".⁸⁶²

- (470) In addition, [*confidentiality claim pending*]'s internal meeting minutes show that NEC Tokin indicated its consideration to show its customers a document created by raw material producers in order to justify price increases of TECs due to raw materials price increases, namely tantalum powder and tantalum wire (referred to as "*Ta powder*" and "*Ta wire*" in [*confidentiality claim pending*]'s internal meeting minutes respectively): "*The Ta powder price went up by 20%, the Ta wire price went up by 40%, and they have 3 suppliers in [*confidentiality claim pending*]; we are*

⁸⁵⁶ [...]. See also recital (296).

⁸⁵⁷ The reference to "inductive" in the English translation is a translation mistake and it should be understood as "conductive".

⁸⁵⁸ [...].

⁸⁵⁹ [...].

⁸⁶⁰ See recital (106).

⁸⁶¹ In view of the similar content of Rubycon's, Matsuo's and Sanyo's meeting minutes (recitals (467)-(469)), NIPPON CHEMI-CON CORPORATION's claim that Sanyo's minutes are based on a transcription of the handwritten annotations which are unclear, and therefore constitute unreliable evidence ([...]) must be rejected.

⁸⁶² [...].

considering showing users the documents concerning the material price increase by the Kg. (NEC Tokin)".⁸⁶³

(471) This is again confirmed by Matsuo's meeting minutes, which state:

"(4) Tantalum powder capacitors: prise rise by 20 to 40 %

** For the price rise proposal to the customers, we are going to have the powder manufacturer create a document and show the customers such document which justifies the raising (describing the raise in price of the powder per kg) (subject to consultation with the trade to adjust the proposed price level as required)".⁸⁶⁴*

(472) Furthermore, [confidentiality claim pending]'s internal meeting minutes show that [confidentiality claim pending] (also referred to as "2" in the meeting minutes)⁸⁶⁵ revealed to the other participants that it would increase prices (referred to as "*the price to be returned*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)⁸⁶⁶ as of October due to the raw material price increases: "*As there will be still main causes for increase of material and electricity fees in the future, it will be necessary to request the price to be returned in the unit sales price for October and onward*".⁸⁶⁷

(473) This is confirmed by Matsuo's meeting minutes, which state: "*Selling prices of capacitors may have to be raised from October along with the raise of electricity charges, though the market situation is bad*".⁸⁶⁸

(474) This is further confirmed by Sanyo's internal meeting memorandum, which shows the following regarding Rubycon's price increase (referred to as "*price rebound*" and "*price hike*" in the English translation of Sanyo's internal meeting memorandum)^{869,870}

"If no price rebound occurs in and after October, we will be in trouble.

[...]

Price hike negotiation continues".⁸⁷¹

(475) Finally, [confidentiality claim pending]'s internal meeting minutes show that Hitachi AIC expressed its compliance concerns regarding the information exchanges at the MK meetings: "*Hitachi AIC will no longer participate in the CEO meetings, starting with the next meeting. However, they say they will participate only in the market*

⁸⁶³ [...].

⁸⁶⁴ [...].

⁸⁶⁵ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending] was "2".

⁸⁶⁶ See recital (106).

⁸⁶⁷ [...]. See also [...]: "*As there will be still factors for increasing the prices for materials and electricity fees, a request must be also made to go back to the original prices in the unit selling prices for October and onward*".

⁸⁶⁸ [...].

⁸⁶⁹ See recital (106).

⁸⁷⁰ In view of the similar content of Rubycon's, Matsuo's and Sanyo's meeting minutes (recitals (472)-(198)), NIPPON CHEMI-CON CORPORATION's claim that Sanyo minutes are based on a transcription of the handwritten annotations which are unclear, and therefore constitute unreliable evidence ([...]) must be rejected.

⁸⁷¹ [...].

study group meetings (They are internally having trouble with the compliance issue)".⁸⁷²

- (476) This is confirmed by Matsuo's meeting minutes, from which it follows: *"Hitachi AIC top management instructed to withdraw from the M Research meeting because this meeting has become an issue. [...] will continue to attend the meeting as an individual; he asked us to send him invitation notices directly (since attendant is not expected by the company) He will not attend the Presidents Meeting in November".⁸⁷³*

September and October 2008

- (477) NCC and [confidentiality claim pending] engaged in bi-lateral contacts in September and October 2008,⁸⁷⁴ during which they exchanged their price negotiation strategies regarding AECs⁸⁷⁵ for customer [confidentiality claim pending].

- (478) As explained by [...], [...] ([confidentiality claim pending]) informed [...] (NCC) regarding [confidentiality claim pending]'s price negotiations with [confidentiality claim pending] for 2009.⁸⁷⁶ In particular, [...] indicated that [confidentiality claim pending] increased prices (referred to "recovered prices" in the English translation of [confidentiality claim pending]'s email)⁸⁷⁷ for [confidentiality claim pending], [confidentiality claim pending].⁸⁷⁸ An internal email (with the subject line "[confidentiality claim pending] 2009 PRICE")⁸⁷⁹ of 17 September 2008 sent by [...] to his colleague [...] ([confidentiality claim pending]) states (with "Company C" referring to NCC):

"[confidentiality claim pending].

[model number 1] [confidentiality claim pending]

[model number 2] [confidentiality claim pending]

[model number 3] [confidentiality claim pending]

[model number 4] [confidentiality claim pending]

[model number 5] [confidentiality claim pending]

[model number 6] [confidentiality claim pending)".⁸⁸⁰

- (479) Thereafter, as explained by [...], [...] informed [...] that [confidentiality claim pending].⁸⁸¹ Another email (with the subject line "[confidentiality claim

⁸⁷² [...].

⁸⁷³ [...].

⁸⁷⁴ In SO Annex I it was indicated that there were two bi-lateral contacts held sometime in September 2008 and sometime in October 2008 respectively. Given the chronological proximity of the contacts, the fact that the same parties were involved and a similar subject matter was discussed, the Commission considers these contacts together. [...].

⁸⁷⁵ [...].

⁸⁷⁶ [...].

⁸⁷⁷ See recital (106).

⁸⁷⁸ [...].

⁸⁷⁹ [...].

⁸⁸⁰ [...].

⁸⁸¹ [...].

pending]"⁸⁸² of 14 October 2008 sent by [...] (*confidentiality claim pending*) to his colleagues states:

"Received information from Company C.

They say "[confidentiality claim pending]."

[confidentiality claim pending].

I gave an advice "We have not been given allocation but have already applied new prices.

Why doesn't Company C go ahead and apply new prices?"".⁸⁸³

7 October 2008

(480) Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 7 October 2008.⁸⁸⁴

(481) As explained by [...], at that meeting, the participants reported on the status of price negotiations⁸⁸⁵ as a follow-up to the previous CUP meetings of 16 April 2008, 21 May 2008, 2 June 2008 and 25 June 2008 (recitals (424) and (425), (433) and (434), (438) and (439), (448) and (449)) and as part of the monitoring process. Further, they exchanged information on future pricing.

(482) As explained by [...], [*confidentiality claim pending*].⁸⁸⁶ The meeting notes taken by [...] (*confidentiality claim pending*) read as follows:

*"[confidentiality claim pending]".*⁸⁸⁷

(483) [*confidentiality claim pending*] [...], [*confidentiality claim pending*].⁸⁸⁸ The meeting notes taken by [...] (*confidentiality claim pending*) read as follows:

*"[confidentiality claim pending] Hitachi AIC Yen
denominated*

*[confidentiality claim pending] 3% up Screw LB".*⁸⁸⁹

5 November 2008

(484) Elna, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 5 November 2008.⁸⁹⁰

(485) At that meeting, NEC Tokin, Matsuo and NCC disclosed to the other participants their ongoing price increase negotiations and future price increases and Sanyo, NCC and [*confidentiality claim pending*] coordinated their response to the fluctuations in currency exchange rate, including the euro currency.

⁸⁸² [...].

⁸⁸³ [...].

⁸⁸⁴ [...].

⁸⁸⁵ [...].

⁸⁸⁶ [...].

⁸⁸⁷ [...].

⁸⁸⁸ [...].

⁸⁸⁹ [...].

⁸⁹⁰ [...].

- (486) It follows from the internal meeting report sent on 9 November 2008 by [...] ([*confidentiality claim pending*]) to his colleagues within Sanyo that NEC Tokin reported to the other participants about its ongoing price increase negotiations regarding TECs (referred to as "*tantalum condensers*" in Sanyo's email): "*The company is continuing price increase negotiations over tantalum condensers*".⁸⁹¹
- (487) Further, Sanyo's email shows that Matsuo indicated its intention to increase prices due to an increase in raw material prices: "*Increased tantalum material expenses mean they will have to increase prices*".⁸⁹²
- (488) Finally, it follows from Sanyo's email that NCC disclosed information on its pricing negotiations with [*confidentiality claim pending*]:
- "• *There was talk to the headquarters of [confidentiality claim pending] that [confidentiality claim pending] prices are difficult under the impact of the cheap Euro, but [confidentiality claim pending] dodged the subject saying they are not involved.*
- Because the situation with regard to what the Euro will do is unstable, the company has not decided whether to apply officially.*
- *The company has already had success in aluminum product price increase negotiations [confidentiality claim pending]*".⁸⁹³
- (489) [*confidentiality claim pending*]'s internal meeting minutes show that [*confidentiality claim pending*] shared its pricing strategy with the other participants: "*The trend toward lower prices for set products will continue, so dealing with this will be a key point. (But the selling price of parts cannot be lowered.)*".⁸⁹⁴
- (490) It further follows from [*confidentiality claim pending*]'s internal meeting minutes that, during the part of the meeting concerning "*Dealing with fluctuations in the exchange rate*"⁸⁹⁵ Sanyo mentioned with regard to prices in Europe:
- *Sanyo Electric (Ltd.) ... About a European price increase, it is a state without many results*".⁸⁹⁶

10 November 2008

- (491) Elna, Hitachi AIC, Nichicon, NCC and [*confidentiality claim pending*] participated in a CUP meeting on 10 November 2008.⁸⁹⁷

⁸⁹¹ [...]: "*With Ta-CON, they continue to negotiate for a price increase*".

⁸⁹² [...]. See also [...]: "*The increase in the material cost of tantalum must be covered by a price increase*".

⁸⁹³ [...]. See also [...]: "• *They talked to the headquarters of [confidentiality claim pending] that the [confidentiality claim pending] prices are extremely stringent due to the depreciation of Euro but it was turned down on the ground that [confidentiality claim pending] would not be involved in the case. Since the depreciated Euro is not stable at this moment, it is not decided yet to formally make a request or not. • The price increase negotiations for aluminum have been successful, except for [confidentiality claim pending]*".

⁸⁹⁴ [...].

⁸⁹⁵ [...].

⁸⁹⁶ [...].

⁸⁹⁷ [...].

- (492) At that meeting, the participants reported on the status of price negotiations as a follow-up to the previous CUP meetings of 16 April 2008, 21 May 2008, 2 June 2008 and 25 June 2008 (recitals (424) and (425), (433) and (434), (438) and (439), (448) and (449)) and they exchanged information on future pricing.

- (493) As explained by [...], the participants discussed about the costs of producing [confidentiality claim pending] capacitors since the operational and management costs for producing both were high.⁸⁹⁸ [...] stated that [confidentiality claim pending]⁸⁹⁹ and Elna (referred to as "company E") informed the others that it would set the price for lead-free capacitors at USD 0.7 and would make the prices for lead capacitors two times higher than lead-free capacitors; this was aimed to encourage customers to switch to lead-free capacitors.⁹⁰⁰ The meeting notes taken by [...] ([confidentiality claim pending]) corroborate [...]’s corporate statement:

"Price increase due to increase of management man-day
Set the unit price by individual customer Company E 0.7- >1.4
10-20% increase — [illegible] management man-day
Not sure when we stop".⁹⁰¹

- (494) As explained by [...], [confidentiality claim pending].⁹⁰² The meeting notes taken by [...] ([confidentiality claim pending]) read as follows:

"[*confidentiality claim pending*]
[*confidentiality claim pending*]
pending]"⁹⁰³ up [*confidentiality claim*
pending]"

- (495) [...] further explained that [*confidentiality claim pending*].⁹⁰⁴ The meeting notes taken by [...] (*[confidentiality claim pending]*) corroborate this:

"[confidentiality claim pending] troubled No change in Product Number —

[confidentiality claim
pending][sic]

U.S makers are most advanced

[*confidentiality claim pending*]—increased
[*confidentiality claim pending*] item number

Suggested [confidentiality claim pending] up wire maker

Material, base board  *PC maker*

[confidentiality claim pending] started to address—Material up

[confidentiality claim pending] *Japanese Economy—Price for electricity*".⁹⁰⁵

898 [...]

899 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$ 900 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$

901 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$

902 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$ 903 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$ 904 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$

905 $\begin{bmatrix} \dots \end{bmatrix}.$
 $\begin{bmatrix} \dots \end{bmatrix}.$

- (496) [...] further stated that the participants requested to contact each other when customers made requests for price increases due to the raise of the costs of raw materials.⁹⁰⁶ This is corroborated by the meeting notes taken by [...] (*confidentiality claim pending*):

"When client requests it, we will talk each other".⁹⁰⁷

- (497) As further explained by [...], [*confidentiality claim pending*]⁹⁰⁸ [*confidentiality claim pending*].⁹⁰⁹ The meeting notes taken by [...] (*confidentiality claim pending*) read as follows:

"[*confidentiality claim pending*]" .⁹¹⁰

February 2009

- (498) NEC Tokin and [*confidentiality claim pending*] engaged in bi-lateral contact regarding customer [*confidentiality claim pending*] a few days before 6 February 2009 during which the participants exchanged future prices related to TECs.⁹¹¹
- (499) [*confidentiality claim pending*] [...], [...] (NEC Tokin) and [...] (NEC Tokin) met with [...] (*confidentiality claim pending*) in [*confidentiality claim pending*]'s office and exchanged prices for a specific type of TECs, namely manganese tantalum capacitors, to be offered to [*confidentiality claim pending*].⁹¹²

11 March 2009

- (500) Elna, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an MK meeting on 11 March 2009.⁹¹³
- (501) At that meeting, the participants considered the possibility for price increases.
- (502) An email of 12 March 2009 sent by [...] (*confidentiality claim pending*) to his colleagues within Sanyo, containing Sanyo's internal meeting report, shows that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for specific types of AECs and TECs respectively, namely [*confidentiality claim pending*] and [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" and "[*confidentiality claim pending*]" respectively in Sanyo's email), including demand projection data for March, April and May 2009.⁹¹⁴
- (503) It further follows from Sanyo's email that the participants considered a price increase for a specific type of electrolytic capacitors, namely [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" in Sanyo's email), on the basis of lead time of orders:

⁹⁰⁶ [...].

⁹⁰⁷ [...].

⁹⁰⁸ [...].

⁹⁰⁹ [...].

⁹¹⁰ [...].

⁹¹¹ [...].

⁹¹² [...].

⁹¹³ [...].

⁹¹⁴ [...]. See also recital (296).

"This is not collusion but please treat this information with utmost care since the meeting itself would better not be open.

[...]

During the meeting, there were voices to increase the price according to the lead time of the orders but price increase for [confidentiality claim pending] is not likely".⁹¹⁵

21 April 2009

(504) NEC Tokin and Sanyo engaged in a bi-lateral contact regarding customer [confidentiality claim pending] on 21 April 2009.⁹¹⁶

(505) During that contact, Sanyo disclosed to NEC Tokin its pricing regarding specific types of TECs, namely 2.5/330 9mOHM B-case (2R5TKE330M9R) and 6/150 B-case (6TKE150MAPB), for [confidentiality claim pending].

(506) As explained by [...], NEC Tokin wanted to enter the [confidentiality claim pending] business and asked Sanyo whether NEC Tokin's price range would be acceptable to [confidentiality claim pending].⁹¹⁷ Therefore, [...] ([confidentiality claim pending]) was considering to provide NEC Tokin (referred to as "Company N" in Sanyo's email) with Sanyo's price. However he intended to indicate a price that was higher than the actual price, as he was concerned that NEC Tokin would lower the price too much in order to gain entry into the market.⁹¹⁸ It follows from an email (with the subject line "RE:=Strictly Confidential= For [confidentiality claim pending]")⁹¹⁹ of 21 April 2009 sent by [...] ([confidentiality claim pending]) to his colleagues within Sanyo that he "will tell Company N with 10% increased price, around 0.215".⁹²⁰

(507) It further follows from another email (with the same subject line) of the same day sent by [...] ([confidentiality claim pending]) to [...] (and copied to several other colleagues within Sanyo):

"I confirmed it to make sure, and 330MA9R was 0.193.

Well, I think we don't have to worry about NEC any more.

Have you already made a phone call?

Well, NEC is also saying it higher".⁹²¹

(508) Finally, it follows from another email (with the same subject line) of 22 April 2009 sent by [...] ([confidentiality claim pending]) to his colleagues within Sanyo that, on 21 April 2009, [...] indicated the following prices to [...] (NEC Tokin (referred to as "Company N" in Sanyo's email)):

"Yesterday, I have offered the prices below to [...] of Company N.

⁹¹⁵ [...].

⁹¹⁶ [...].

⁹¹⁷ [...].

⁹¹⁸ [...].

⁹¹⁹ [...].

⁹²⁰ [...].

⁹²¹ [...].

2.5/330 9mOHM B-case (2R5TKE330M9R) \$0.215

6/150 B-case (6TKE150MAPB) \$0.165".⁹²²

1 and 7 May 2009

(509) NCC and Sanyo engaged in a bi-lateral contact on 1 and 7 May 2009.⁹²³

(510) During that contact the participants exchanged future prices related to a specific type of AECs, namely [*confidentiality claim pending*] capacitors.

(511) On 1 May 2009, [...] (NCC) sent an email to [...] ([*confidentiality claim pending*]) thanking him for his continuous support and seeking advice on the pricing by way of a table comparing the prices of [*confidentiality claim pending*] capacitors between NCC and Sanyo (the prices in the column "Our company" are NCC's prices and the prices in the column "Your company" are Sanyo's prices that have been added in handwriting). The first part of [...] 's email reads as follows:

"Regarding the subject above, as talked on the phone, for getting a fresh start again, I would like you to advise me about the following items:

*Parts No [*confidentiality claim pending*] Your company*
@

*[*confidentiality claim pending*]*

** As we are requested to provide for all items, I picked up the large volume items among them.*

** Our company would like to consider that [*confidentiality claim pending*] products are main lines as usual.*

** Regarding (5), the price offer is being requested.*

*• Mr. K said that the difference from your company will be more than [*confidentiality claim pending*]. Alike last year December, zero declaration has been made".⁹²⁴*

(512) At the end of his email of 1 May 2009, [...] also clearly expressed their common pricing preference: *"While the demand is going down, I think we both prefer to keep the price down to a minimum. Your return is appreciated."*⁹²⁵

(513) As confirmed by [...], [...] responded to [...] 's email on 7 May 2009,⁹²⁶ providing him with the requested pricing advice and informing him of Sanyo's new prices that had been aligned in the direction of NCC's prices. The email reads as follows:

"As to your inquiry, please refer as follows:

'09,

⁹²² [...].

⁹²³ [*confidentiality claim pending*]. Given the chronological proximity of the contacts, the fact that the same parties were involved and a similar subject matter was discussed, the Commission considers these contacts together. [...].

⁹²⁴ [...].

⁹²⁵ [...].

⁹²⁶ [...].

21 May 2009

(514) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting on 21 May 2009.⁹²⁸

(515) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, Hitachi AIC shared with the other participants its pricing information, including pricing intentions.

(516) On 22 May 2009, [...] ([confidentiality claim pending]) sent his colleagues an internal meeting report that shows that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for specific types of AECs and TECs, namely [confidentiality claim pending] (referred to as "[confidentiality claim pending]" and "[confidentiality claim pending]" respectively in Sanyo's internal meeting report), including demand projection data for May, June and July 2009.⁹²⁹ Furthermore, Hitachi AIC (referred to as "Company H" in Sanyo's internal meeting report),⁹³⁰ for instance reported that it had encountered supply problems in May, but that it expected sales to increase "from May onwards at 70%, [...]"⁹³¹

(517) [confidentiality claim pending]⁹³² [confidentiality claim pending].⁹³³ As follows from Sanyo's internal meeting report: "The company is negotiating for a price increase of 12% and intends to refine its received orders. It is aiming for about 75% of orders".⁹³⁴ This is confirmed by Elna's internal meeting minutes, from which it follows that Hitachi AIC was conducting negotiations with customers to increase price in order to compensate for price increases of tantalum materials (raw materials):

"Large shaped screws for wind turbines have made some movement since May. The aluminum related to equipment has been left untouched for now.

Price negotiations are still ongoing regarding the portion of the price increase for last year's materials, in connection with tantalum".⁹³⁵

(518) In light of the sensitive content of his report in relation to the meeting, [...] asks his colleagues: "Please take utmost care in handling this report."⁹³⁶

⁹²⁷ [...].

⁹²⁸ [confidentiality claim pending]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

⁹²⁹ [...]. See also recital (296).

⁹³⁰ [...] [confidentiality claim pending].

⁹³¹ [...]; see also [...]: "The company expects demand to be 70 % at best in and after May".

⁹³² [...] [confidentiality claim pending].

⁹³³ [...].

⁹³⁴ [...]. See also [...]: "The company is negotiating a 12% price hike. It expects to narrow down order receipts. It intends to receive order to cover 75% of production capacity" (see also recital (106)).

⁹³⁵ [...].

- (519) It follows from Matsuo's internal meeting minutes that, in the context of the "*Report from each company for sales*",⁹³⁷ Hitachi AIC also indicated to the other participants that it intended to increase prices for customer [confidentiality claim pending]: "*The production capacity has been reduced. Therefore, we have raised selling prices and select customers. We are planning to raise prices of the capacitors intended for [confidentiality claim pending]*"⁹³⁸ and NEC Tokin commented that it had offered the same customer such high prices that the deal did not come through: "*NEC commented that it offered [confidentiality claim pending] foreign made capacitors at high prices so that the deal didn't come through*".⁹³⁹

May 2009⁹⁴⁰

- (520) NEC Tokin and Sanyo engaged in a bi-lateral contact regarding customer [confidentiality claim pending] in May 2009⁹⁴¹ during which the participants exchanged future supply and demand information and future prices related to TECs for an [confidentiality claim pending] RFQ.
- (521) By email of 20 May 2009 with the subject heading "*Subject: About Q3RFQ condition, market condition, the status of N company (Forwarding is strictly prohibited!)*",⁹⁴² [...] ([confidentiality claim pending]) reported internally (including to [...]) that [...] and he (all Sanyo) "*have exchanged information with NEC TOKIN Corporation*".⁹⁴³
- (522) During the same bi-lateral contact in relation to an [confidentiality claim pending] RFQ, NEC Tokin informed Sanyo that its maximum price reduction was 1 %:⁹⁴⁴ "*In regards to RFQ, a maximum of 1 %CD seems to be dealt with*".⁹⁴⁵ As explained by [...], 1% CD means that the "cost down" (maximum price reduction) should be 1%.⁹⁴⁶ As confirmed by [...], NEC Tokin also indicated to Sanyo that it was experiencing supply issues with customer [confidentiality claim pending] and that it may need to talk to [confidentiality claim pending] about reducing its share of supply.⁹⁴⁷ The email reads as follows:
- "9mΩ(B2) for [confidentiality claim pending] seems to be a very dangerous situation. In some cases, we may need to talk to [confidentiality claim pending] about the reduction of our share. (Careful attention is required!)"*.⁹⁴⁸

16 July 2009

936 [...].

937 [...].

938 [...].

939 [...].

940 The evidence contains an email thread with emails dating 20 and 22 May 2009 and reporting on a previous bi-lateral contacts taking place on or before this date.

941 [...].

942 [...].

943 [...].

944 [...].

945 [...].

946 [...].

947 [...].

948 [...]; 9mΩ is a type of TECs.

- (523) Hitachi AIC, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 16 July 2009.⁹⁴⁹
- (524) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, [*confidentiality claim pending*] shared with the other participants its pricing intentions.
- (525) On 20 July 2009, [...] ([*confidentiality claim pending*]) sent his colleagues an internal meeting report that shows that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for specific types of AECs and TECs, namely [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" and "[*confidentiality claim pending*]" respectively in Sanyo's internal meeting report), including demand projection data for July, August and September 2009.⁹⁵⁰
- (526) It further follows from Sanyo's internal meeting report that [*confidentiality claim pending*] (referred to as "Company R" in Sanyo's report)⁹⁵¹ indicated to the other participants that "*Price correction is necessary because of the strong yen*".⁹⁵² This is confirmed by [*confidentiality claim pending*]'s internal meeting minutes, from which it follows that, in relation to the "*Order status for each company*",⁹⁵³ [*confidentiality claim pending*] stated:⁹⁵⁴ "*Due to the impact of the strong yen, there is a request for a revision of the sales price, and there is movement towards rejecting orders with low pricing*".⁹⁵⁵ [*confidentiality claim pending*] further considered options on how to deal with this situation, for example "*to increase the price by 20 %*".⁹⁵⁶
- (527) In light of the sensitive nature of the information, [...] ([*confidentiality claim pending*]) warns his colleagues: "*Please take utmost care in handling this report*".⁹⁵⁷
- (528) It was further announced in [*confidentiality claim pending*]'s internal meeting minutes that "*The next joint trade committee meeting will be held on August 21st (Friday) at NCC*".⁹⁵⁸

July 2009

- (529) NEC Tokin and [*confidentiality claim pending*] engaged in a bi-lateral contact regarding customer [*confidentiality claim pending*] a few days before 27 July 2009 during which the participants exchanged future prices related to TECs.⁹⁵⁹

⁹⁴⁹ [...].

⁹⁵⁰ [...]. See also recital (296).

⁹⁵¹ [...] [*confidentiality claim pending*] "Company R" means [*confidentiality claim pending*].

⁹⁵² [...].

⁹⁵³ [...].

⁹⁵⁴ In view of the similar content of Sanyo's and Rubycon's meeting minutes (recital (526)), NIPPON CHEMI-CON CORPORATION's claim that the content of the meeting minutes varies greatly so they are unreliable evidence ([...]) must be rejected.

⁹⁵⁵ [...].

⁹⁵⁶ [...].

⁹⁵⁷ [...].

⁹⁵⁸ [...].

⁹⁵⁹ [...].

- (530) [*confidentiality claim pending*] [...], [...] (NEC Tokin) met with [...] ([*confidentiality claim pending*]) in [*confidentiality claim pending*]'s office and exchanged information regarding prices for a specific type of TECs, namely manganese tantalum capacitors, to be submitted to [*confidentiality claim pending*].⁹⁶⁰

July 2009⁹⁶¹

- (531) NEC Tokin and Sanyo engaged in a bi-lateral contact regarding customer [*confidentiality claim pending*] in July 2009.⁹⁶² During that contact the participants exchanged future prices related to a specific type of TECs, namely tantalum polymer capacitors, RFQ for [*confidentiality claim pending*].
- (532) In Sanyo's internal email exchange dated 30 July 2009, [...] ([*confidentiality claim pending*]) informed his colleagues that he had exchanged information with [...] (NEC Tokin, referred to as "N" or "N-company" in the email,⁹⁶³ with regard to the tantalum polymer capacitors RFQ for [*confidentiality claim pending*] as explained by [...].⁹⁶⁴ During a telephone call, [...] and [...] informed each other about their undertakings' pricing intentions in relation to the [*confidentiality claim pending*] RFQ. [...] informed [...] that NEC Tokin was "going to offer \$0.165 in this RFQ in order to recover their share"⁹⁶⁵ and [...] revealed that Sanyo "would offer \$0.1611, 3% up from \$0.1564 and were not thinking about any discount this time".⁹⁶⁶ NEC Tokin "would recover the share at around \$0.16".⁹⁶⁷
- (533) In light of the sensitive nature of the information, [...] ([*confidentiality claim pending*]) warns his colleagues to "[p]lease discard this e-mail".⁹⁶⁸

July 2009⁹⁶⁹

- (534) Nichicon and NCC exchanged information regarding their negotiations with customer [*confidentiality claim pending*] in July 2009.⁹⁷⁰
- (535) [...] (NCC) reported to his colleagues on 31 July 2009 that he was currently in discussions with Nichicon (in the evidence also referred to as Co. N): "Regarding the [*confidentiality claim pending*] negotiations with [*confidentiality claim pending*], currently I'm in discussions with [...] of Co. N and pushing forward with a zero response".⁹⁷¹ He further reports that he would try to confirm with Nichicon its

⁹⁶⁰ [...].

⁹⁶¹ The date the email is sent is 30 July 2009 and it reports on a bi-lateral contact taking place on that date or before.

⁹⁶² [...].

⁹⁶³ According to [...], "N" means NEC Tokin.

⁹⁶⁴ [...].

⁹⁶⁵ [...].

⁹⁶⁶ [...].

⁹⁶⁷ [...].

⁹⁶⁸ [...].

⁹⁶⁹ An email of 31 July 2009 reports on a bi-lateral contact taking place on that date or before.

⁹⁷⁰ [...].

⁹⁷¹ NOTE: The translation provided by the Commission; [...].

worldwide price: "Going forward, I will try confirming with Co. N regarding the W/W price too".⁹⁷²

- (536) Nichicon argues that this document, which was obtained during inspection, does not indicate with certainty that an anti-competitive contact took place between NCC and Nichicon.⁹⁷³ Nichicon's argument should be rejected. The text of the email of 31 July 2009 does not leave any doubt that NCC and Nichicon exchanged information in relation to their [*confidentiality claim pending*] negotiations with [*confidentiality claim pending*]. NCC tried to push for a "zero response" in future negotiations with [*confidentiality claim pending*], meaning that NCC did not intend to accept any price reductions and the contact above indicates that NCC and Nichicon discussed to give "zero response" to [*confidentiality claim pending*], i.e. not to reduce the price. The expression "zero response" is similar to the expression "nil reply" that was used in the contact of January 2010,⁹⁷⁴ where NCC and Nichicon coordinated the price to be quoted in response to an RFQ.⁹⁷⁵ It is also clear from the email chain of which the email of 31 July 2009 is part that NCC and Nichicon more often shared pricing information with each other. It is thus not plausible that "zero reply" was a refusal to talk from the part of Nichicon.⁹⁷⁶ This is all the more so because the other undertaking involved in the contact, NCC, also does not contest that the anti-competitive contact took place, but only notes that it was limited to products for one particular customer.⁹⁷⁷

21 August 2009

- (537) Elna, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 21 August 2009.⁹⁷⁸
- (538) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, [*confidentiality claim pending*] shared with the other participants price increase information.
- (539) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for August, September and October 2009.⁹⁷⁹
- (540) [*confidentiality claim pending*] informed the other participants that, with regard to all AECs (referred to as "All Al Capacitors" in [*confidentiality claim pending*]'s internal meeting minutes),⁹⁸⁰ it was increasing prices (referred to as "restoring prices" in the English translation of [*confidentiality claim pending*]'s internal

⁹⁷² NOTE: The translation provided by the Commission; [...]. Given references to "Nichicon" in the relevant email chain, it can be inferred that "Co. N." means Nichicon. "W/W" means "world wide".

⁹⁷³ [...].

⁹⁷⁴ See recitals (569) and (570).

⁹⁷⁵ [...].

⁹⁷⁶ [...].

⁹⁷⁷ [...].

⁹⁷⁸ [...].

⁹⁷⁹ [...]; also see [...]. See also recital (296).

⁹⁸⁰ [...].

meeting minutes):⁹⁸¹ *"Profitability on a volume basis is poor, and as you already know, we are restoring prices to their original margins this period".*⁹⁸² [confidentiality claim pending] further indicated that it did not think that any of the other participants would want to lower the prices in order to secure orders and reprimanded NCC: *"I do not think any of you attending this meeting are thinking of lowering prices in order to secure orders, but as always, Nippon Chemi-Con is lowering prices out in the field to secure orders. (Of all the firms, only Nippon Chemi-Con has been reprimanded for not practicing price control. They have to learn to sell to make a profit.)"*⁹⁸³ [...] ([confidentiality claim pending]) equally complained about NCC's pricing behaviour: *"NC's dumping which is hard to understand is noticeable so caution shall be paid"*.⁹⁸⁴

17 September 2009

- (541) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting on 17 September 2009.⁹⁸⁵
- (542) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. In addition, Hitachi AIC informed the other participants of the status of its orders from [confidentiality claim pending]. Furthermore, [confidentiality claim pending] shared with the other participants its pricing intentions.
- (543) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for September, October and November 2009.⁹⁸⁶
- (544) Furthermore, [confidentiality claim pending]'s internal meeting minutes show that Hitachi AIC informed the other participants about the orders of a specific type of electrolytic capacitors, namely screw terminal capacitors: *"Orders for screw terminal capacitors for wind turbines will decline in an after October. (Orders from [confidentiality claim pending] have already slowed, and those from [confidentiality claim pending] will also decrease.) Orders for capacitors for industrial equipment are weak as always"*.⁹⁸⁷ This is confirmed by Sanyo's internal meeting report of 22 September 2009: *"Screw is increasing, but expected to drop from October. Wind power is the brake. [confidentiality claim pending] has already dropped. [confidentiality claim pending] is also declining"*.⁹⁸⁸
- (545) It follows from [confidentiality claim pending]'s internal meeting minutes that, in the context of the *"Order Status Reports by Respective Companies"*,⁹⁸⁹ [confidentiality claim pending] informed the other meeting participants that it intended to increase

⁹⁸¹ See recital (106).

⁹⁸² [...].

⁹⁸³ [...].

⁹⁸⁴ [...].

⁹⁸⁵ [...].

⁹⁸⁶ [...]. See also recital (296).

⁹⁸⁷ [...].

⁹⁸⁸ [...].

⁹⁸⁹ [...].

prices (referred to as "*restore prices*" in the English translation of [*confidentiality claim pending*]'s internal meeting minutes)⁹⁹⁰ and to set limits on orders:⁹⁹¹ "*With 90 yen to the USD expected, we will restore prices to original margins for [confidentiality claim pending] firms to eliminate unprofitable items. We will also set limits on orders for general-purpose items*".⁹⁹² This is confirmed by Sanyo's internal meeting report. In that report, [...] ([*confidentiality claim pending*]) informs his colleagues that Rubycon (referred to as "*Company R*" in Sanyo's report)⁹⁹³ would push for a price increase (referred to as "*price recovery*" in the English translation of Sanyo's report)⁹⁹⁴ in negotiations with the customers for whom sales were denominated in USD:⁹⁹⁵ "*Also, for US\$ basis customers, price recovery negotiations will be pushed even for [confidentiality claim pending] customers*".⁹⁹⁶

- (546) In light of the sensitive information that was exchanged, [...] warns his colleagues, as usual,⁹⁹⁷ that they should "*Please take utmost care in handling this report*".⁹⁹⁸

13 November 2009

- (547) NCC and [*confidentiality claim pending*] engaged in a bi-lateral contact regarding customer [*confidentiality claim pending*] (based in Europe) on 13 November 2009⁹⁹⁹ during which the participants exchanged future pricing intentions related to AECs.
- (548) By email of 13 November 2009 [...] ([*confidentiality claim pending*]) informed [...] (NCC) about the necessity of a substantial price increases (referred to as "*recover prices*" in the English translation of [*confidentiality claim pending*]'s email)¹⁰⁰⁰ for AECs¹⁰⁰¹ and disclosed [*confidentiality claim pending*]'s negotiation strategy and pricing intentions in relation to [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" in [*confidentiality claim pending*]'s email).¹⁰⁰² The email which includes a table of capacitors and target price increases for these capacitors¹⁰⁰³ reads as follows:

"Regarding [confidentiality claim pending], I have picked up large quantity models. To recover prices to the reasonable level for us, substantial price increases are

⁹⁹⁰ See recital (106).

⁹⁹¹ Sales denominated in USD are relevant for the sales in the EEA, as, for example, at the MK meeting of 20 December 2010 concerning "*Counter-measures for exchange rates in Euro regions*" Rubycon reported that it had "[n]o sales in euro. Either in US\$ or yen" ([...]).

⁹⁹² [...].

⁹⁹³ [...] [*confidentiality claim pending*] "Company R" means Rubycon.

⁹⁹⁴ See recital (106).

⁹⁹⁵ In view of the similar content of Rubycon's and Sanyo's meeting minutes (recital (545)), NIPPON CHEMI-CON CORPORATION's claim that the content of the meeting minutes varies greatly so they are unreliable evidence ([...]) must be rejected. Furthermore, sales denominated in USD are relevant for the sales in the EEA. For example, at the MK meeting of 20 December 2010 concerning "*Counter-measures for exchange rates in Euro regions*" Rubycon reported that it had "[n]o sales in euro. Either in US\$ or yen" ([...]).

⁹⁹⁶ [...].

⁹⁹⁷ See, for example, recitals (503), 120(518) and (527).

⁹⁹⁸ [...].

⁹⁹⁹ [...].

¹⁰⁰⁰ See recital (106).

¹⁰⁰¹ [...].

¹⁰⁰² [...].

¹⁰⁰³ [...].

*necessary as shown below. Anyway, we will submit this initially and will eventually obtain at least [confidentiality claim pending] increases".*¹⁰⁰⁴

November 2009¹⁰⁰⁵

- (549) Elna, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting in November 2009.¹⁰⁰⁶
- (550) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, the participants discussed their pricing intentions, including for [confidentiality claim pending] customers.
- (551) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for specific types of AECs and TECs, namely [confidentiality claim pending] (referred to as "[confidentiality claim pending]" and "[confidentiality claim pending]" respectively in Sanyo's internal meeting report), including demand projection data for November and December 2009 and January 2010.¹⁰⁰⁷
- (552) On 30 November 2009, [...] ([confidentiality claim pending]) sent his colleague [...] ([confidentiality claim pending]) an internal meeting report, which shows that the participants disclosed their intentions to increase prices (also referred to as "price hike" in the English translation of Sanyo's report)¹⁰⁰⁸ for a specific type of AECs, namely [confidentiality claim pending] capacitors:
- "Each company has been still receiving large volumes of orders, but not profiting accordingly because of foreign exchange. They are now thinking about price hike.*
- Price hike has been discussed about [confidentiality claim pending], but not about [confidentiality claim pending]".*¹⁰⁰⁹
- (553) At that meeting, NCC (referred to as "NC-company" in Sanyo's internal meeting report)¹⁰¹⁰ informed the other participants that it was negotiating a price increase (also referred to as "price hike" in the English translation of Sanyo's report)¹⁰¹¹ for [confidentiality claim pending] customers regarding [confidentiality claim pending], in particular the [confidentiality claim pending] capacitor type,¹⁰¹² a specific type of

¹⁰⁰⁴ [...].

¹⁰⁰⁵ Between 19 and 30 November 2009.

¹⁰⁰⁶ [...].

¹⁰⁰⁷ [...]. See also recital (296).

¹⁰⁰⁸ See recital (106).

¹⁰⁰⁹ [...]. Also see [...]: "Although all companies are in a good atmosphere in terms of order reception, profit hasn't been made due to the effects of exchange rates. Price increase has been on the topic. There is intention for increasing prices of aluminum polymer (rolled-up type), but no such talk on tantalum polymer".

¹⁰¹⁰ [...] [confidentiality claim pending] "NC Company" means NCC.

¹⁰¹¹ See recital (106).

¹⁰¹² [...].

AECs. As set out in Sanyo's internal meeting report: "*Price: They are negotiating a price hike with overseas clients*".¹⁰¹³

- (554) It also follows from Sanyo's internal meeting report that Elna (referred to as "*E-company*" in Sanyo's report)¹⁰¹⁴ indicated that it [*confidentiality claim pending*] for the sales denominated in USD as of January 2010:¹⁰¹⁵

"Price: Business planning rate for 2010 is ¥90/dollar.

*The dollar selling basis to the dealer will [*confidentiality claim pending*] since Jan. 2010. (Increase of unit price in dollar)".¹⁰¹⁶*

9 and 11 December 2009

- (555) NCC and [*confidentiality claim pending*] exchanged supply and demand information as well as pricing information in relation to AECs¹⁰¹⁷ for their customer [*confidentiality claim pending*] (based in Europe) on 9 and 11 December 2009.¹⁰¹⁸

- (556) On 9 December 2009 [...] ([*confidentiality claim pending*]) sent an email to his colleague [...] (copying [...] and several other colleagues) reporting on a discussion with [...] (NCC) (referred to respectively as "[...]" and as "*Company C*" in the email)¹⁰¹⁹ that had taken place that day¹⁰²⁰ in relation to their customer [*confidentiality claim pending*] ("*confidentiality claim pending*" in the email):¹⁰²¹

- (557) As confirmed by [...], [*confidentiality claim pending*].¹⁰²² [*confidentiality claim pending*].¹⁰²³ His email reads as follows:

*"Negotiation with [*confidentiality claim pending*], (Company C information)":*

*[*confidentiality claim pending*]*

*"[*confidentiality claim pending*].".¹⁰²⁴*

¹⁰¹³ [...]. See also [...]: "*Prices: Conducting negotiations for price increase mainly with overseas customers*" (NCC is referred to as "*Company NC*" in [...] [*confidentiality claim pending*] "*Company NC*" means NCC).

¹⁰¹⁴ [...] [*confidentiality claim pending*] "*E Company*" means Elna.

¹⁰¹⁵ Sales denominated in USD are relevant for the sales in the EEA, as, for example, at the MK meeting of 20 December 2010 concerning "*Counter-measures for exchange rates in Euro regions*" Elna reported that it had "[b]asically, no sales in euro. In yen for products made in Japan and in US\$ for those made overseas" ([...]).

¹⁰¹⁶ [...]. See also [...]: "*Prices: The business plan rate of 2010 is ¥90/\$. From January 2010 \$-based sales to agents will be adjusted for the exchange rate (increasing \$-based unit prices)*" (Elna is referred to as "*Company E*" in [...] [*confidentiality claim pending*] "*Company E*" means Elna).

¹⁰¹⁷ [...].

¹⁰¹⁸ In SO Annex I it was indicated that there were two bi-lateral contacts held on 9 December 2009 and 11 December 2009 respectively. Given the chronological proximity of the contacts, the fact that the same parties were involved and a similar subject matter was discussed, the Commission considers these contacts together. [...].

¹⁰¹⁹ According to [...], [...] and "*Company C*" means NCC.

¹⁰²⁰ [...] and [...] knew each other well, which is why [...] sometimes asked [...] to contact [...] ([...]).

¹⁰²¹ According to [...], [*confidentiality claim pending*].

¹⁰²² [...].

¹⁰²³ [...].

¹⁰²⁴ [...].

- (558) In another internal email exchange of 13 December 2009 within [confidentiality claim pending] with the subject heading "[Confidential] Negotiation with [confidentiality claim pending] (Information from Company C) Part 2",¹⁰²⁵ [confidentiality claim pending].¹⁰²⁶ The email reads as follows:

"On Friday, we received a report from Company C on the top management meeting with [confidentiality claim pending] The contents are as follows:

1. [confidentiality claim pending] accepted the price offered by Company C on the condition that the price is subject to review after 3 months. (It was confirmed that there has been no change in about [confidentiality claim pending] increase indicated previously.)

*It seems it has agreed to review cost reduction during those 3 months".*¹⁰²⁷

21 December 2009

- (559) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting on 21 December 2009.¹⁰²⁸
- (560) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, NEC Tokin, NCC and Elna disclosed to the other participants their pricing intentions.
- (561) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for December 2009, January and February 2010.¹⁰²⁹
- (562) As follows from [confidentiality claim pending]'s internal meeting minutes, in the context of a discussion on the "Order receipt situation",¹⁰³⁰ NEC Tokin informed the other meeting participants that it would increase prices of a specific type of TECs, namely manganese capacitors, by 10-20 % from January 2010, partly as a result of strong JPY:
- "The manganese price will increase from January 2010 (10-20%)*
- Causes: 1. The high yen, 2. Decrease in [competitor, not an addressee of this Decision] manganese => an increase in A and B2 case production capabilities (capital investment costs)".*¹⁰³¹
- (563) This is confirmed by Elna's internal meeting minutes according to which NEC Tokin reported to the other meeting participants that it would increase prices by 10-20 %

¹⁰²⁵ [...].

¹⁰²⁶ [...].

¹⁰²⁷ [...]. According to [...], [confidentiality claim pending] and "Company C" means NCC.

¹⁰²⁸ [...].

¹⁰²⁹ [...]. See also recital (296).

¹⁰³⁰ [...].

¹⁰³¹ [...]. See also [...]: "Significant price increase from January, 10 – 20% [...] Price increase is scheduled to compensate for the facility investment" ([confidentiality claim pending] in [...] and, as explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending]).

for the customers for which sales were denominated in USD: "*Progress to increase prices by 10-20% for USD customers*".¹⁰³²

- (564) It follows from [confidentiality claim pending]'s internal meeting minutes that, in the context of a discussion on the "*Order receipt situation*",¹⁰³³ NCC disclosed its pricing strategy and informed the other participants that [confidentiality claim pending].¹⁰³⁴ This is confirmed by Elna's meeting minutes according to which NCC mentioned a [confidentiality claim pending].¹⁰³⁵
- (565) Finally, [confidentiality claim pending] (also referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s internal meeting minutes)¹⁰³⁶ shared with the other participants its [confidentiality claim pending] JPY to USD exchange rate in 2010:¹⁰³⁷ "[confidentiality claim pending]"¹⁰³⁸ [confidentiality claim pending].¹⁰³⁹

December 2009¹⁰⁴⁰

- (566) NCC and Sanyo engaged in a bi-lateral contact on or before 25 December 2009 during which the parties exchanged supply and demand information as well as pricing information for a specific type of AECs, namely [confidentiality claim pending] capacitors.¹⁰⁴¹
- (567) It is clear from an internal email sent by [...] [confidentiality claim pending] to his colleagues with the subject "*Price Correction*" that NCC had informed [...] ([confidentiality claim pending]) that it was trying to increase prices for AECs [confidentiality claim pending]: "*Nippon Chemi-Con put a price increase on the table*".¹⁰⁴² Sanyo confirmed that it took this information into account as competitors had explicitly asked it to do ("*Our Competitors asked us repeatedly to follow their prices.*").¹⁰⁴³ On 25 December 2009, the email of [...] was forwarded by [...] to his colleagues and [...] instructed its sales team to increase prices too.¹⁰⁴⁴ As [...]

¹⁰³² [...].

¹⁰³³ [...].

¹⁰³⁴ [...]. See also [...]: "[confidentiality claim pending]" (NCC is referred to as "3" in [...] and, as explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and NCC was "3").

¹⁰³⁵ [...].

¹⁰³⁶ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending].

¹⁰³⁷ Sales denominated in USD are relevant for the sales in the EEA, as, for example, at the MK meeting of 20 December 2010 concerning "*Counter-measures for exchange rates in Euro regions*" Elna reported that it had "[b]asically, no sales in euro. In yen for products made in Japan and in US\$ for those made overseas" ([...]).

¹⁰³⁸ [...]: "*The exchange rate for the next period is planned to be 90 Yen. Price adjustment is planned for agencies in US dollar denominated*" ([confidentiality claim pending] in [...] and, as explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending]).

¹⁰³⁹ [...].

¹⁰⁴⁰ The evidence contains an email thread with emails dating 25 December 2009 and reporting on a previous bi-lateral contacts taking place on or before this date.

¹⁰⁴¹ [...].

¹⁰⁴² [...].

¹⁰⁴³ [...].

¹⁰⁴⁴ [...].

explained to his colleagues: *"we should avoid being manipulated by customers into a price war with our competitors"*.¹⁰⁴⁵

- (568) In light of the sensitive nature of the information, [...] ([*confidentiality claim pending*]) asked his colleagues to *"Please do not distribute this email unless it is absolutely necessary."*¹⁰⁴⁶

January 2010

- (569) NCC and Sanyo engaged in a bi-lateral contact regarding customer [*confidentiality claim pending*] in January 2010¹⁰⁴⁷ during which they exchanged future pricing intentions in relation to a specific type of AECs, namely [*confidentiality claim pending*] capacitors.
- (570) In an internal email of 27 January 2010, [...] ([*confidentiality claim pending*]) informed his colleagues about a telephone contact with [...] from NCC (referred to as "*N-company*" in Sanyo's email).¹⁰⁴⁸ As confirmed by [...],¹⁰⁴⁹ [...] indicated to [...] ([*confidentiality claim pending*]) his intention to give a "nil reply" regarding a price to be quoted in response to an RFQ by customer [*confidentiality claim pending*] for [*confidentiality claim pending*] capacitors: "*N-company wants to give a nil reply*".¹⁰⁵⁰ [...] replied that Sanyo intended to act in the same manner in view of the lack of capacity: "*In response to this, I have said, 'We have already given a nil reply, too. Having no capacity, it makes no sense to accept unnecessarily'.*"¹⁰⁵¹ [...] added in his internal report: "*We should not drag down each other in price competition any more. It is significant to mutually secure a market share in healthy competition without being manipulated by negotiations with the client. (Not a collusion). For this purpose, there is no other way but to develop trust relationship*" and asks how to respond to this matter.¹⁰⁵²

25 January 2010

- (571) Elna and NCC engaged in a bi-lateral contact regarding customer [*confidentiality claim pending*] on 25 January 2010¹⁰⁵³ during which they exchanged future pricing intentions related to some types of AECs, namely PVM and PV2 capacitors.
- (572) [*confidentiality claim pending*].¹⁰⁵⁴ NCC had indicated that it wanted to only make minor adjustments ("*to settle this at a fine tuning level*")¹⁰⁵⁵ and asked what Elna's position was. After internal discussion within Elna, [...] intended to answer: "- *We have received the request as well. - We do not intend to reduce our price, or just*

¹⁰⁴⁵ [...].

¹⁰⁴⁶ [...].

¹⁰⁴⁷ [...].

¹⁰⁴⁸ According to [...], "Company N" means NCC, given the fact that [...] represents NCC.

¹⁰⁴⁹ [...].

¹⁰⁵⁰ [...].

¹⁰⁵¹ [...].

¹⁰⁵² [...].

¹⁰⁵³ [...].

¹⁰⁵⁴ [...].

¹⁰⁵⁵ [...].

offer a fine tuning of around [confidentiality claim pending]"¹⁰⁵⁶ according to the instructions received from [...].¹⁰⁵⁷

18 February 2010

- (573) Elna, Hitachi AIC, Matsuo, NEC Tokin, NCC and [confidentiality claim pending] participated in an MK meeting on 18 February 2010.¹⁰⁵⁸
- (574) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, the participants also exchanged current and future pricing information, including regarding [confidentiality claim pending] sales.
- (575) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for February, March and April 2010.¹⁰⁵⁹
- (576) As follows from Matsuo internal meeting report, [confidentiality claim pending] reported to the other meeting participants that it had started to correct the prices due to the strengthening of JPY for overseas sales: *"We have started price corrections for yen appreciation for overseas sales. We have also been continuing price corrections for loss-making products for [confidentiality claim pending] sales"*.¹⁰⁶⁰ This is confirmed by [confidentiality claim pending]'s internal meeting minutes according to which [confidentiality claim pending] (referred to as "2" in [confidentiality claim pending]'s internal meeting minutes)¹⁰⁶¹ indicated its *"Prospects going forwards"*:
- "Since price return is almost complete for [confidentiality claim pending] companies, it will continue to be implemented for [confidentiality claim pending] companies. The price return rate will be set by client*
- However it is anticipated that strong Yen will continue therefore we believed that this opportunity should not be missed"*.¹⁰⁶²
- (577) This is further confirmed by Elna's internal meeting minutes according to which Rubycon raised prices for [confidentiality claim pending] customers and negotiations were ongoing for [confidentiality claim pending] customers: *"Prices have been duly raised for [confidentiality claim pending] customers, while negotiations are ongoing for [confidentiality claim pending] consumers"*.¹⁰⁶³
- (578) It follows from [confidentiality claim pending]'s internal meeting minutes that, in relation to its *"Order receipt situation"*,¹⁰⁶⁴ NEC Tokin informed the other

¹⁰⁵⁶ [...].

¹⁰⁵⁷ [...].

¹⁰⁵⁸ [...].

¹⁰⁵⁹ [...]. See also recital (296).

¹⁰⁶⁰ [...].

¹⁰⁶¹ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and Rubycon was "2".

¹⁰⁶² [...]. See also [...]: *"Overseas companies are [illegible]. Since it is anticipated that the strong Yen will continue while the price return rate is set by clients, we believe that we should not miss this opportunity"* (see also recital (106)).

¹⁰⁶³ [...].

¹⁰⁶⁴ [...].

participants about its ongoing price increases (referred to as "*price return*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)¹⁰⁶⁵ for customer [confidentiality claim pending]: "[confidentiality claim pending] started a 10% price return from January (however, US dollar denomination only for overseas)".¹⁰⁶⁶ This is confirmed by Matsuo's internal meeting report according to which NEC Tokin "*Increased price by 10% to [confidentiality claim pending] only for [confidentiality claim pending] sales. Price was kept the same for [confidentiality claim pending] sales*".¹⁰⁶⁷

- (579) In addition, it follows from Elna's internal meeting minutes that NCC informed the other meeting participants about its ongoing negotiations to increase prices for customer [confidentiality claim pending]: "*Negotiations are ongoing with [confidentiality claim pending] 'To raise prices and to establish a supply framework' (In the first half of the fiscal term, the supply responsibility for the current share can be achieved, but for the second half of the fiscal term, it will depend on the 'price increase and the framework.'*)".¹⁰⁶⁸ As follows from [confidentiality claim pending]'s internal meeting minutes, [...] (NCC), regarding sales to overseas customers, indicated that "*Although a letter requesting [confidentiality claim pending] increase was sent to [confidentiality claim pending], it was not accepted by them*".¹⁰⁶⁹
- (580) Moreover, as follows from [confidentiality claim pending]'s internal meeting minutes, [...] (NCC) shared with the other participants information about [confidentiality claim pending], in particular that while NCC and [confidentiality claim pending] were improving their profits by increasing prices (referred to as "*price returns*" in the English translation of [confidentiality claim pending]'s internal meeting minutes),¹⁰⁷⁰ [confidentiality claim pending] decided to announce its price increase (referred to as "*price return*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)¹⁰⁷¹ policy on 5 March: "*While Rubycon and Nihon chemical have been improving their profits by performing price returns [...]; therefore, [...] decided to announce the price return policy on March 5th*".¹⁰⁷²

23 February 2010

- (581) NCC and [confidentiality claim pending] engaged in a bi-lateral contact regarding customer [confidentiality claim pending] on 23 February 2010¹⁰⁷³ during which they exchanged future price information in relation to AECs.
- (582) On 23 February 2010, [...] ([confidentiality claim pending]) sent an email to [...] with instructions for an upcoming meeting with [confidentiality claim pending].¹⁰⁷⁴ In his email he also reported about the discussion that took place on the same day via

¹⁰⁶⁵ See recital (106).

¹⁰⁶⁶ [...].

¹⁰⁶⁷ [...].

¹⁰⁶⁸ [...].

¹⁰⁶⁹ [...].

¹⁰⁷⁰ See recital (106).

¹⁰⁷¹ See recital (106).

¹⁰⁷² [...].

¹⁰⁷³ [...].

¹⁰⁷⁴ [...].

telephone with [...] (NCC) (referred to respectively as "[...]" and as "Company C" in the email)¹⁰⁷⁵ regarding the future pricing for AECs¹⁰⁷⁶ for customer [confidentiality claim pending] (referred to as "[confidentiality claim pending]" in [confidentiality claim pending]'s email).¹⁰⁷⁷ As explained by [...], [confidentiality claim pending]:¹⁰⁷⁸ "The following is his explanation. 1. In today's meeting, notified price increase of [confidentiality claim pending] in an official letter".¹⁰⁷⁹ As confirmed by [...], [confidentiality claim pending]:¹⁰⁸⁰ "(3) Previous price increases were not enough in light of the exchange rate fluctuation".¹⁰⁸¹ Finally, [...] said that NCC would increase prices, but that [confidentiality claim pending] should be in line with that move: "Lastly, he said final adjustment of price increase might be made but we should also be in line with their move. In addition, any additional orders by [...] will be declined".¹⁰⁸²

9 March 2010

- (583) NEC Tokin, Nichicon and Sanyo were involved in an exchange of price information related to TECs on 9 March 2010: first, a bi-lateral contact took place between NEC Tokin and Nichicon; afterwards, NEC Tokin passed on the information to Sanyo.¹⁰⁸³
- (584) In an email exchange dated 10 March 2010 within Sanyo, with the subject "Information regarding competitors" and a note of caution "Please do not forward to other persons",¹⁰⁸⁴ [...] ([confidentiality claim pending]) reported to his colleagues (including to [...]) that [...]¹⁰⁸⁵ (NEC Tokin) had arrived in Taiwan and that "some information have been exchanged between the local persons in charge of Tokin and the local persons in charge of Nichicon."¹⁰⁸⁶ The email contains a detailed description of the discussion between NEC Tokin and Nichicon. In particular, Sanyo reported that, due to a shortage of general purpose tantalum, Nichicon would increase the price for general purpose TECs by 10 %:

"- NEC TOKIN

[...]

¹⁰⁷⁵ According to [...], [confidentiality claim pending] and "Company C" means NCC.

¹⁰⁷⁶ [...].

¹⁰⁷⁷ According to [...], [confidentiality claim pending].

¹⁰⁷⁸ [...].

¹⁰⁷⁹ [...].

¹⁰⁸⁰ [...].

¹⁰⁸¹ [...].

¹⁰⁸² [...].

¹⁰⁸³ [...].

¹⁰⁸⁴ [...].

¹⁰⁸⁵ [...] participated in over 20 multilateral meetings, described in Section 0 (see recitals (196), (214), (222), (228), (234), (240), (248), (253), (294), (349), (443), (464), (484), (514), (537), (541), (573), (594), (606), in the period from 28 or 29 August 2003 until 17 June 2010 (28 or 29 August 2003, 17 December 2003, 17 March 2004, 21 April 2004, 13 May 2004, 17 June 2004, 23 July 2004, 11 November 2004, 3 December 2004, 12 April 2006, 14 February 2007, 4 June 2008, 10 or 11 September 2008, 5 November 2008, 21 May 2009, 21 August 2009, 17 September 2009, 18 February 2010, 21 May 2010 and 17 June 2010). [...] was also engaged in the following bi-lateral contacts described in Section 0: 26 January 2006, February 2009, 21 April 2009, and two bi-lateral contacts in July 2009 (see recitals (292)-(293), (498), (499), (504)-(508), (529)-(533)).

¹⁰⁸⁶ [...].

There is still shortage of general purpose tantalum. (The price has been risen 10 to 15% by each company.)

- Nichicon ([competitor, not an addressee of this Decision])

[...]

They said that it is still profitable even if the ϕ 8 (E9) produced by [competitor, not an addressee of this Decision] is sold at a price of \$0.06.

The sales routes of both [competitor, not an addressee of this Decision] and Nichicon are still the same as before the acquisition, and their respective products are sold in separate routes.

They said that they will raise the price of general purpose tantalum for 10%".¹⁰⁸⁷

- (585) Nichicon has objected¹⁰⁸⁸ to Commission's reliance on that contact stating that the document does not identify the sources for any of the information provided. It has claimed that that contact is limited to [confidentiality claim pending]. These arguments should be rejected. As confirmed by [...], the email from [...] contains information obtained from [...] (NEC Tokin).¹⁰⁸⁹ Further, the email clearly states that that "some information have been exchanged between the local persons in charge of Tokin and the local persons in charge of Nichicon",¹⁰⁹⁰ and there is nothing in the contemporaneous evidence that would imply that that contact is limited to [confidentiality claim pending].

7 April 2010

- (586) NCC and [confidentiality claim pending] engaged in a bi-lateral contact regarding customer [confidentiality claim pending] on 7 April 2010¹⁰⁹¹ during which they exchanged future pricing intentions.

- (587) As confirmed by [...], [...] (NCC) called [...] ([confidentiality claim pending]) to inform him that NCC was planning a price increase request for capacitors [confidentiality claim pending]¹⁰⁹² (for example, [confidentiality claim pending])¹⁰⁹³ for [confidentiality claim pending] (referred to as [confidentiality claim pending])¹⁰⁹⁴ in the note).¹⁰⁹⁵ The meeting note reads as follows:

"220/300....Nippon Chemi-Con price [confidentiality claim pending]

This and [confidentiality claim pending] and [confidentiality claim pending] spec up and

They say [confidentiality claim pending] price increase request for this and

1087 [...].

1088 [...].

1089 [...].

1090 [...].

1091 [...].

1092 "PDP" means plasma display panels.

1093 [...].

1094 [...].

1095 [...]. In [...] it is explained that [confidentiality claim pending].

[confidentiality claim pending] is to be submitted to [confidentiality claim pending] on

[confidentiality claim pending]" .¹⁰⁹⁶

21 April 2010

(588) Elna, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting on 21 April 2010.¹⁰⁹⁷

(589) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, the participants disclosed pricing information to each other, including pricing intentions.

(590) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for April, May and June 2010.¹⁰⁹⁸

(591) In the context of a discussion on the "Order receipt situation",¹⁰⁹⁹ NCC complained to the other participants about low prices of a specific type of electrolytic capacitors, namely [confidentiality claim pending], for customer [confidentiality claim pending] and they confirmed that price reductions are not appropriate: "Nippon Chemi-Con complained over price discounts of [confidentiality claim pending] for [confidentiality claim pending]. -> Each company provided advice, saying that the situation is not one in which to reduce prices in order to secure orders".¹¹⁰⁰

(592) Matsuo's internal meeting report shows that NEC Tokin, with regard to a specific type of TECs, namely tantalum manganese¹¹⁰¹ capacitors, informed the other participants that it was correcting prices for the cheap capacitors and indicated its intentions to increase prices for customers [confidentiality claim pending]:

"- We are correcting the prices of cheap products.

[confidentiality claim pending] seems not to be issuing an RFQ for the second half, so we want to send estimates with increased prices.

- For [confidentiality claim pending], we could not increase prices in negotiations for the first half, but we will for the second half".¹¹⁰²

(593) [confidentiality claim pending] disclosed to the other meeting participants its efforts to correct prices of AECs (referred to as "aluminum electrolysis" in Matsuo's internal meeting report)¹¹⁰³ in order to compensate for the raw material price increase and indicted that regarding a specific type of AECs, namely aluminium chip capacitors, it was shifting production to large-sized capacitors:

¹⁰⁹⁶ [...]. According to [...], [confidentiality claim pending], which at the relevant time period was supplied by both Rubycon and Nippon Chemi-Con to [confidentiality claim pending].

¹⁰⁹⁷ [...]

¹⁰⁹⁸ [...]. See also recital (296).

¹⁰⁹⁹ [...].

¹¹⁰⁰ [...].

¹¹⁰¹ [...].

¹¹⁰² [...].

¹¹⁰³ [...].

"As prices for materials have increased since last year, we are positively trying to correct the prices of loss-making products.

- In aluminum chips, general-purpose items do not suit us price-wise, so we are squeezing orders for such items and shifting production to large-sized products of high added value".¹¹⁰⁴

21 May 2010

- (594) Elna, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 21 May 2010.¹¹⁰⁵
- (595) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, NEC Tokin and NCC shared with the other participants their pricing information, including pricing intentions.
- (596) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for May, June and July 2010.¹¹⁰⁶
- (597) As follows from [*confidentiality claim pending*]'s internal meeting minutes, in the context of the "State of orders received",¹¹⁰⁷ [...] (NEC Tokin) indicated to the other meeting participants that a price increase (referred to as "*price return*" in the English translation of [*confidentiality claim pending*]'s internal meeting minutes)¹¹⁰⁸ would be necessary in the future due to a price increase of tantalum material, a raw material: "*The price for tantalum material is shooting upward, so in the future there will have to be a price return*".¹¹⁰⁹
- (598) Moreover, [...] (NCC) informed the other meeting participants that, with regard to a specific type of electrolytic capacitors, namely [*confidentiality claim pending*], NCC would not increase its prices for [*confidentiality claim pending*]: "*Nippon Chemi-Con is not raising [*confidentiality claim pending*] prices on items for [*confidentiality claim pending*]*".¹¹¹⁰

31 May 2010

- (599) Nichicon, NCC and [*confidentiality claim pending*] participated in a tri-lateral meeting regarding customer [*confidentiality claim pending*] on 31 May 2010¹¹¹¹ during which they exchanged future price information related to AECs.
- (600) At that meeting, [...] ([*confidentiality claim pending*]), [*confidentiality claim pending*].¹¹¹²

1104 [...].

1105 [...].

1106 [...]. See also recital (296).

1107 [...].

1108 See recital (106).

1109 [...].

1110 [...].

1111 [...].

1112 [...].

(601) [...] explained that it disclosed to the other participants its current prices for certain AECs supplied to [confidentiality claim pending] and the prices that it intended to submit in response to an RFQ.¹¹¹³ In particular, [confidentiality claim pending] informed the other meeting participants that the current price for its 450V39F capacitor was Y55 (small capacitors) and the current price for its 450V47μ capacitors was Y57 (large capacitors).¹¹¹⁴ The price that [confidentiality claim pending] intended to quote in response to [confidentiality claim pending]'s RFQ was Y57.5 and Y59.4 respectively; the figures 0.64 and 0.66 were the prices to be quoted in US\$.¹¹¹⁵ This also follows from a contemporaneous note that [confidentiality claim pending] prepared:

"① 31 May, Terminal processing 90-
0.65
47 ¥ 57.0 x 1.05 / 93 0.66(59.4)
450 39 0.02 ¥ 55.0 0.6435 0.64(57.5)
39 discontinued 0.6209
40-".¹¹¹⁶

(602) [confidentiality claim pending] further disclosed to the other meeting participants its price calculation to be submitted in response to [confidentiality claim pending]'s RFQ. Rubycon explained that for every extra added production line, [confidentiality claim pending] would need to make an investment of JPY 200 million.¹¹¹⁷ Taking depreciation costs into account and the fact that 10 extra lines were planned, it was concluded that every capacitor sold should be charged with an additional JPY 7-8.¹¹¹⁸ This is confirmed by the contemporaneous note that [confidentiality claim pending] prepared:

"② 1 line 200 million 2 years 7-8 yen".¹¹¹⁹

(603) During the meeting [confidentiality claim pending].¹¹²⁰ [...] 's corporate statement is corroborated by a contemporaneous note:

"[confidentiality claim pending]".¹¹²¹

(604) The meeting participants also discussed that due to the weakening of the euro, the price for the supplies of capacitors to [confidentiality claim pending] for deliveries into [confidentiality claim pending] was to be increased by [confidentiality claim pending].¹¹²²

"③ Euro [illegible] [confidentiality claim pending]"

1113 [...].
1114 [...].
1115 [...].
1116 [...].
1117 [...].
1118 [...].
1119 [...].
1120 [...].
1121 [...].
1122 [...].

[*confidentiality claim pending*] up".¹¹²³

- (605) Nichicon contends¹¹²⁴ that according to its internal investigation, there were no discussions on prices at that meeting. Further, it states that the notes are incomprehensible and they do not contain any indication that the pricing information in question was actually disclosed in the tri-lateral meeting – and not, for example, discussed between [*confidentiality claim pending*] and NCC separately before or after the tri-lateral meeting, as the absence of any corresponding information on Nichicon would seem to indicate. Nichicon's arguments must be rejected. First of all, the meeting notes taken by [...] [*confidentiality claim pending*] are explained in the corporate statement on the basis of [...] 's own explanation of his notes. The evidence leaves no doubt that information on future prices was exchanged.¹¹²⁵ Further, Nichicon has indicated that it met with NCC and Rubycon in spring 2010 to discuss about [*confidentiality claim pending*] capacitors and has confirmed that that meeting was probably the tri-lateral meeting that took place on 31 May 2010.¹¹²⁶

17 June 2010

- (606) Elna, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo, as well as another competitor, participated in an MK meeting on 17 June 2010.¹¹²⁷
- (607) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further, the participants exchanged pricing information, including pricing intentions regarding Europe (for example in relation to European customers [*confidentiality claim pending*]).
- (608) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for June, July and August 2010.¹¹²⁸
- (609) As follows from Matsuo's internal meeting report, NEC Tokin disclosed to the other meeting participants its pricing strategy regarding a specific type of TECs, namely tantalum manganese¹¹²⁹ capacitors: "*As [*confidentiality claim pending*] is positively moving towards price increases, we are offering prices 1-2% higher than [*confidentiality claim pending*] 's to customers from whom we do not want orders*".¹¹³⁰ NEC Tokin specified its future price increase of specific types of TECs, namely A and B case tantalum manganese¹¹³¹ capacitors for all customers: "*NEC will request a price increase from all customers. A case: +10%, B case: +25%. We will calculate a percentage of increase to change for each customer considering the ratio of material on the basis of August 1 delivery*".¹¹³²

¹¹²³ [...].

¹¹²⁴ [...].

¹¹²⁵ [...].

¹¹²⁶ [...].

¹¹²⁷ [...].

¹¹²⁸ [...]. See also recital (296).

¹¹²⁹ [...].

¹¹³⁰ [...].

¹¹³¹ [...].

¹¹³² [...].

- (610) Regarding AECs (referred to as "*aluminum electrolysis*" in Matsuo's internal meeting report),¹¹³³ [confidentiality claim pending] disclosed pricing information for [confidentiality claim pending] customers in order to compensate for the raw material price increases: "*We are currently trying to increase prices (foreseeing material price increases) to [confidentiality claim pending] customers mainly for medium and high pressure products, for which deliveries are behind. We will start a third price correction (for mainly medium and high pressure products) for [confidentiality claim pending] customers as well through trading companies and agents*".¹¹³⁴ NCC commented that: "*We will make another price correction for material price increases*".¹¹³⁵ This is confirmed by [confidentiality claim pending]'s internal meeting minutes according to which [...] ([confidentiality claim pending]) explained that the prices were being increased (referred to as "*prices are being restored*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)¹¹³⁶ regarding [confidentiality claim pending] customers and would be increased (referred to as "*will be restored*" in the English translation of [confidentiality claim pending]'s internal meeting minutes)¹¹³⁷ for [confidentiality claim pending] customers to compensate for the increase in raw material costs and currency exchange rate fluctuations:¹¹³⁸ "*Prices are being restored to original margins with respect to [confidentiality claim pending] makers, and will be restored to original margins once again for [confidentiality claim pending] firms, to include trading companies and agents as a hedge against risks related to skyrocketing material costs and exchange fluctuations*".¹¹³⁹ [...] (NCC) further commented on the same subject: "[confidentiality claim pending]",¹¹⁴⁰ to which [...] replied that: "*Our company is doing the same*".¹¹⁴¹
- (611) As follows from Matsuo's internal meeting report, Elna reported about the negative influence that a weak euro had on sales denominated in JPY and USD, and indicated its intention to revise prices for customers [confidentiality claim pending]: "*The weak euro is beginning to have negative influences on sales in Japanese yen for Japanese products and in US dollars for products out of overseas plants. [...] We would like to propose price revisions to [confidentiality claim pending]*".¹¹⁴²
- (612) In the context of a discussion "*On dealing with weak European Euro*",¹¹⁴³ [...] (NEC Tokin), [...] (Elna), [...] (NCC) and [...] (NCC) discussed how to handle a weak EUR: "*Generally speaking, since Euro contracts will take effect beginning in January, the thinking is to carry out pricing studies between July and September, and to add the exchange rate clause in October. (NEC: [...]) → [confidentiality*

¹¹³³ [...].

¹¹³⁴ [...].

¹¹³⁵ [...].

¹¹³⁶ See recital (106).

¹¹³⁷ See recital (106).

¹¹³⁸ In view of the similar content of Matsuo's and Rubycon's meeting minutes (recital (610)), NIPPON CHEMI-CON CORPORATION's claim that the content of the meeting minutes varies greatly so they are unreliable evidence ([...]) must be rejected.

¹¹³⁹ [...].

¹¹⁴⁰ [...]. "EMS" means electronics manufacturing services.

¹¹⁴¹ [...].

¹¹⁴² [...].

¹¹⁴³ [...].

claim pending]. (Nippon Chemi-Con: [...]) → European contracts are annual contracts, and we are not in the habit of adding an exchange rate clause, and are not moving in that direction for [*confidentiality claim pending*] this time. (ELNA: [...]) → According to [...], [*confidentiality claim pending*] has already dealt with it. (Nippon Chemi-Con: [...])".¹¹⁴⁴

- (613) Finally, [*confidentiality claim pending*] discussed with [...] (Hitachi AIC) about a EUR 48 price of a specific type of electrolytic capacitors, namely screw-type capacitors, for customer [*confidentiality claim pending*]¹¹⁴⁵: "What to do about the 48 Euro price tag on screw-type capacitors slated for [*confidentiality claim pending*] was discussed separately with [...] of Hitachi AIC, and although that was okay up to now, this price is dangerous. Having said so, there does not seem to be any intention of restoring prices back to original margins. ([*confidentiality claim pending*] said that with all the [*confidentiality claim pending*] delivery issues, the door is open, but at 48 Euros, our company would go into the red.)".¹¹⁴⁶
- (614) NIPPON CHEMI-CON CORPORATION argues that there is a mark "*internal comments*" on a page which contains the report of discussion concerning [*confidentiality claim pending*] (referred to in recital (613)) and that it is unclear whether this evidence is relevant for the alleged discussions.¹¹⁴⁷ However, the mark "*internal comments*" was used by [*confidentiality claim pending*] in the non-confidential version of the meeting minutes to replace the actual internal comments. The mark therefore does not relate to the discussion concerning [*confidentiality claim pending*].

16 July 2010

- (615) Elna, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 16 July 2010.¹¹⁴⁸
- (616) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, NCC informed the other participants about its price increase negotiations.
- (617) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for July, August and September 2010.¹¹⁴⁹
- (618) On 20 July 2010, [...] ([*confidentiality claim pending*]) sent his colleagues an internal meeting report according to which NCC had informed the other meeting participants about its price increase negotiations concerning a specific type of AECs, namely [*confidentiality claim pending*] capacitors (referred to as "[*confidentiality claim pending*]" in Sanyo's report): "[*confidentiality claim pending*] was downward

¹¹⁴⁴ [...].

¹¹⁴⁵ [*confidentiality claim pending*].

¹¹⁴⁶ [...].

¹¹⁴⁷ [...].

¹¹⁴⁸ [...].

¹¹⁴⁹ [...]. See also recital (296).

*adjusted. Tight situation eased. Price increase is being negotiated to allow production increase".*¹¹⁵⁰

16 September 2010

(619) [*confidentiality claim pending*], Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 16 September 2010.¹¹⁵¹

(620) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, [*confidentiality claim pending*] disclosed to the other participants its pricing intentions, including regarding the European Union.

(621) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for September, October and November 2010.¹¹⁵²

(622) It further follows from [*confidentiality claim pending*]'s internal meeting report that [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" in [*confidentiality claim pending*]'s internal meeting report)¹¹⁵³ disclosed to the other participants its intentions to adjust the euro exchange rate and informed them about the price increase negotiations in the European Union and the United States after October:

"Despite the intervention, the exchange is in 85 yen level. Euro also needs an adjustment.

[...]

The price increase effect starting in July for 2nd Half.

*After October, a price increase through the EU and USA negotiation".*¹¹⁵⁴

6 October 2010

(623) [*confidentiality claim pending*] and NCC participated in a bi-lateral meeting regarding customers [*confidentiality claim pending*], on 6 October 2010¹¹⁵⁵ during which they exchanged future price information related to AECs.

(624) On 8 August 2010, [*confidentiality claim pending*].¹¹⁵⁶ The email reads as follows:

¹¹⁵⁰ [...].

¹¹⁵¹ [...].

¹¹⁵² [...]. See also recital (296).

¹¹⁵³ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [*confidentiality claim pending*].

¹¹⁵⁴ [...]. NIPPON CHEMI-CON CORPORATION argues ([...]) that [*confidentiality claim pending*]'s statement referred to in recital (622) contains a transcript of handwritten annotations ("*The price increase effect starting in July for 2nd half. After October, a price increase through the EU and USA negotiation*") which are unclear and therefore constitute unreliable evidence. This argument cannot be accepted. These handwritten annotations should be considered together with the printed statement preceding the handwritten annotation: "*Despite the intervention, the exchange is in 85 yen level. Euro also needs an adjustment*", which is not contested by NIPPON CHEMI-CON CORPORATION. The references to "*euro*" and "*the EU*" indicate that the price increase for the sales in the European Union was considered necessary due to the euro exchange rate.

¹¹⁵⁵ [...].

"3. [confidentiality claim pending] 2011 annual negotiation

[...]

We want to have a meeting with NCC Europe before the negotiation with [confidentiality claim pending]?".¹¹⁵⁷

- (625) On 4 October 2010, [...] (NIPPONCHEMI-CON CORPORATION) and [...] ([...]) coordinated the forthcoming meeting with [...].¹¹⁵⁸ Following the meeting with [...] on 6 October 2010, [...] prepared a note, which in particular reveals that in the forthcoming price negotiations with [confidentiality claim pending], [confidentiality claim pending]. It also shows that price negotiations with [confidentiality claim pending] (referred to as "[confidentiality claim pending]" in the note) are ongoing.¹¹⁵⁹ The note reads as follows:

"[confidentiality claim pending].

It is projected that the negotiation will be complicated and it will take until the end of the year.

While the price increase of about [confidentiality claim pending] was submitted to [confidentiality claim pending], there has been no response

The quote has been also submitted to [confidentiality claim pending], but no response has been received yet.

[confidentiality claim pending]".¹¹⁶⁰

15 or 16 November 2010

- (626) Elna, Holy Stone, Matsuo, NEC Tokin, NCC and [confidentiality claim pending] participated in an MK meeting on 15 or 16 November 2010.¹¹⁶¹
- (627) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, NEC Tokin and [confidentiality claim pending] informed the other participants about their future price increases, including with regard to [confidentiality claim pending] sales.
- (628) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for November, December 2010 and January 2011.¹¹⁶²
- (629) [confidentiality claim pending]'s internal meeting report shows that NEC Tokin (referred to as "1" in [confidentiality claim pending]'s internal meeting report)¹¹⁶³

¹¹⁵⁶ [...].

¹¹⁵⁷ [...].

¹¹⁵⁸ [...].

¹¹⁵⁹ [...].

¹¹⁶⁰ [...].

¹¹⁶¹ [confidentiality claim pending]. Given the fact that the multilateral meetings took place every one or two months (see also recitals (63) and (69)), the Commission considers that the evidence relates to a single meeting. [...].

¹¹⁶² [...]. See also recital (296).

¹¹⁶³ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending].

reported on the price increases overseas as of January: "[*confidentiality claim pending*] Price increase from January. As for [*confidentiality claim pending*], the price will increase from April, 2011. 20% price increase has been implemented since October, 2010".¹¹⁶⁴ This is confirmed by Matsuo's internal meeting report according to which NEC Tokin would increase prices overseas of a specific type of TECs, namely tantalum manganese capacitors, by 10 % as of 1 January:¹¹⁶⁵ "Instructions have been given to sales departments to increase tantalum manganese prices overseas again by 10% as of January 1".¹¹⁶⁶

- (630) In addition, it follows from Matsuo's internal meeting report that [*confidentiality claim pending*] disclosed to the other participants its pricing intentions regarding high pressure AECs (referred to as "*aluminum high pressure products*" in Matsuo's internal meeting report) as of January: "As for price corrections, we plan another price increase for aluminum high pressure products in January or later",¹¹⁶⁷ and NCC regarding [*confidentiality claim pending*] AECs commented: "[*confidentiality claim pending*]"¹¹⁶⁸

20 December 2010

- (631) Elna, Holy Stone, Matsuo, NEC Tokin, NCC, [*confidentiality claim pending*] and Sanyo participated in an MK meeting on 20 December 2010.¹¹⁶⁹
- (632) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, the participants shared their pricing information, including pricing intentions.
- (633) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for December 2010, January and February 2011.¹¹⁷⁰
- (634) Matsuo's internal meeting report shows that NEC Tokin mentioned to the other meeting participants that it was increasing prices of a specific type of TECs, namely tantalum manganese¹¹⁷¹ capacitors, for overseas customers for which prices were low and indicated that it may have to expand price increases to all its customers: "Although we are increasing prices for the second time for overseas customers where prices are low, we may have to expand price increases to all customers unless the situation changes".¹¹⁷² This is confirmed by [*confidentiality claim pending*]'s internal meeting report according to which NEC Tokin (referred to as "1" in

¹¹⁶⁴ [...].

¹¹⁶⁵ In view of the similar content of Rubycon's and Matsuo's meeting minutes (recital (629)), NIPPON CHEMI-CON CORPORATION's claim that NEC Tokin's statement presented in Rubycon's meeting minutes is based on unclear manuscript comments, and therefore constitutes unreliable evidence ([...]) must be rejected.

¹¹⁶⁶ [...].

¹¹⁶⁷ [...].

¹¹⁶⁸ [...].

¹¹⁶⁹ [...].

¹¹⁷⁰ [...]. See also recital (296).

¹¹⁷¹ [...].

¹¹⁷² [...].

[confidentiality claim pending]'s internal meeting report)¹¹⁷³ would increase capacitor prices in the future due to price increases of tantalum material, a raw material: "Due to the tantalum material price hike, the capacitor price will continue to increase in the future".¹¹⁷⁴

- (635) NEC Tokin also announced the possible additional price increase of 20 % for TECs in April, and a future price increase for a specific type of TECs, namely conductive tantalum capacitors, in order to compensate for the increase in prices of tantalum materials:

"- The price increase for tantalum materials is severe. [...] we may need to have another 20% increase in April unless the situation changes.

[...]

- In future, there may have to be a price increase for conductive tantalum. The material price increase is that serious".¹¹⁷⁵

- (636) In the context of the discussion on "Counter-measures for exchange rates in Euro regions?",¹¹⁷⁶ NCC, Elna and [confidentiality claim pending]:

"[confidentiality claim pending]

ELNA: [confidentiality claim pending]

[confidentiality claim pending]: No sales in euro. Either in US\$ or yen".¹¹⁷⁷

- (637) Sanyo informed the other participants that, due to the price increase for tantalum materials, its manufacturing division requested price increases for conductive tantalum capacitors: "As the prices for tantalum materials have been increased so much, our manufacturing division has requested a price increase for conductive tantalum. How to handle this has not been decided yet".¹¹⁷⁸

25 January 2011

- (638) NEC Tokin and Sanyo engaged in a bi-lateral contact regarding customer [confidentiality claim pending] on 25 January 2011.¹¹⁷⁹

- (639) A diary entry of [...] ([confidentiality claim pending]) reflects his discussion with [...] (NEC Tokin) regarding "Price increase for [confidentiality claim pending]".¹¹⁸⁰

19 April 2011

- (640) [confidentiality claim pending], Holy Stone, Matsuo, NEC Tokin, NCC, [confidentiality claim pending] and Sanyo participated in an MK meeting on 19 April 2011.¹¹⁸¹

¹¹⁷³ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending].

¹¹⁷⁴ [...].

¹¹⁷⁵ [...].

¹¹⁷⁶ [...].

¹¹⁷⁷ [...].

¹¹⁷⁸ [...].

¹¹⁷⁹ [...].

¹¹⁸⁰ [...].

- (641) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, Elna disclosed its pricing intentions to the other meeting participants.
- (642) It follows from [*confidentiality claim pending*]'s internal meeting report that the discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for April, May and June 2011.¹¹⁸²
- (643) [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" in [*confidentiality claim pending*]'s internal meeting report)¹¹⁸³ informed the other participants that a further price adjustment could be required to compensate for the raw material cost increases.¹¹⁸⁴ It follows from [*confidentiality claim pending*]'s internal meeting report that with regard to "*Future Forecast*"¹¹⁸⁵ [*confidentiality claim pending*]: "*In addition, there is a concern for the material cost hike, and further price adjustment is fully possible after the 2nd Half (July.)*".¹¹⁸⁶

29 August 2011

- (644) [*confidentiality claim pending*], Holy Stone, Matsuo, NEC Tokin, NCC and [*confidentiality claim pending*] participated in an MK meeting on 29 August 2011.¹¹⁸⁷
- (645) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Furthermore, Elna disclosed to the other participants its pricing intentions.
- (646) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for August, September and October 2011.¹¹⁸⁸
- (647) As explained by [...], [*confidentiality claim pending*] (referred to as "[*confidentiality claim pending*]" in Rubycon's internal meeting report)¹¹⁸⁹ [*confidentiality claim pending*].¹¹⁹⁰ It follows from [*confidentiality claim pending*]'s internal meeting report:

¹¹⁸¹ [...].

¹¹⁸² [...]. See also recital (296).

¹¹⁸³ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [*confidentiality claim pending*].

¹¹⁸⁴ [...].

¹¹⁸⁵ [...].

¹¹⁸⁶ [...].

¹¹⁸⁷ [...].

¹¹⁸⁸ [...]. See also recital (296).

¹¹⁸⁹ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [*confidentiality claim pending*].

¹¹⁹⁰ [...]. As the explanation of [*confidentiality claim pending*] in [...] is provided in [...], NIPPON CHEMI-CON CORPORATION's argument that [...] constitutes unreliable evidence because it is based on an unclear manuscript comment ([...]) must be rejected. Furthermore, sales denominated in USD are relevant for the sales in the EEA. [*confidentiality claim pending*] ([...]).

"[confidentiality claim pending]".¹¹⁹¹

24 October 2011

- (648) Elna, Holy Stone, Matsuo, NEC Tokin, NCC and [confidentiality claim pending] participated in an MK meeting on 24 October 2011.¹¹⁹²
- (649) At that meeting, NCC shared its pricing information, including pricing intentions, for overseas customers with the other meeting participants.
- (650) As follows from Matsuo's internal meeting report, NCC informed the other participants about its price increase negotiations with the overseas customers regarding AECs (referred to as "*aluminum electrolysis capacitor*" in Matsuo's internal meeting report):¹¹⁹³ "*Chemi-Con is now under negotiation with overseas customers for annual contracts. They will submit initial quotes with increased price. Under severe circumstances, they are not sure at all if negotiation would go as they intend or not*".¹¹⁹⁴

23 April 2012

- (651) Elna, Holy Stone, Matsuo, NEC Tokin, NCC and [confidentiality claim pending] participated in an MK meeting on 23 April 2012.¹¹⁹⁵
- (652) At that meeting, the participants exchanged detailed supply and demand information, including information in relation to future supply and demand. Further [confidentiality claim pending] disclosed its pricing strategy to the other meeting participants.
- (653) The discussion during the meeting followed the same pattern as the previous MK meetings: the participants exchanged supply and demand information for AECs and TECs, including demand projection data for April, May and June 2012.¹¹⁹⁶
- (654) [...] ([confidentiality claim pending]) (also referred to as "2" in [confidentiality claim pending]'s internal meeting minutes)¹¹⁹⁷ informed the other participants that the customers were requesting [confidentiality claim pending] to revise the prices (for example, by 5-7 %), and that [confidentiality claim pending] expected that the actual price reduction would be 2.5-3 % on average.¹¹⁹⁸ As described in [confidentiality claim pending]'s internal meeting minutes: "*The adamant cost reduction requests are coming from everywhere, stating that since the price increase portion from the year before last was agreed on to secure the supply, and if the supply problem is resolved, the price should be returned to the original level. We expect to settle at about 2.5-3% on average in response*"¹¹⁹⁹ and "*As for the price re-*

¹¹⁹¹ [...].

¹¹⁹² [...].

¹¹⁹³ [...].

¹¹⁹⁴ [...].

¹¹⁹⁵ [...].

¹¹⁹⁶ [...]. See also recital (296).

¹¹⁹⁷ As explained in recital (89) and footnote 155, in the context of MK meetings, each undertaking was allocated a number and [confidentiality claim pending] was "2".

¹¹⁹⁸ [...].

¹¹⁹⁹ [...].

*evaluation, most are 5-7% requests, and we expect to settle at about 2.5-3% on average".*¹²⁰⁰

5. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

5.1. Relationship between the Treaty and the EEA Agreement

- (655) Article 101(1) TFEU prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.
- (656) The EEA Agreement came into force on 1 January 1994. Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) TFEU) contains a similar prohibition. However the reference of Article 101(1) TFEU to trade "*between Member States*" is replaced by a reference to trade "*between contracting parties*" and the reference to competition "*within the internal market*" is replaced by a reference to competition "*within the territory covered by the ... [EEA] Agreement*".
- (657) Insofar as the cartel affected trade between Member States, Article 101 TFEU is applicable; as regards the operation of the cartel in Norway, Iceland and Liechtenstein and its effect upon trade between the Union and those EFTA countries which were or are part of the EEA (the "Contracting Parties"), this falls under Article 53 of the EEA Agreement. The effect on trade between Member States and Contracting Parties is described in Section 5.6.

5.2. Jurisdiction

5.2.1. Principles

- (658) As the Court of Justice set out in the *Wood Pulp* case, an infringement of Article 101 TFEU "*consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of the prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented*".¹²⁰¹ The Court of Justice has similarly held in *Intel* that the fact that an undertaking participated in an agreement in a third country does not prevent the application of that provision if that agreement is operative on the territory of the internal market.¹²⁰² Thus, the place of

¹²⁰⁰ [...].

¹²⁰¹ Judgment of the Court of Justice of 27 September 1988, *Ahlström and others v Commission* ("Wood Pulp"), C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85, C-126/85, C-127/85, C-128/85 and C-129/85, ECLI:EU:C:1988:447, paragraphs 16 and 17.

¹²⁰² Judgment of the Court of Justice of 6 September 2017, *Intel v Commission*, C-413/14, ECLI:EU:C:2017:632, paragraph 43.

formation of the anti-competitive conduct is irrelevant for the Commission's territorial jurisdiction and the focus is on the place of its implementation.

- (659) Furthermore, in *Gencor*, the General Court confirmed that "*According to Wood pulp, the criterion as to the implementation of an agreement is satisfied by mere sale within the Community, irrespective of the location of the sources of supply and the production plant*".¹²⁰³

5.2.2. Application in this case

- (660) In this case, the Commission is the competent authority to apply both Article 101 TFEU and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement, because the cartel conduct was implemented on a global scale, including in the EEA.¹²⁰⁴ The criterion as to the implementation of the cartel conduct is among others satisfied by the fact that the parties had direct sales of electrolytic capacitors in the EEA (see recitals (9), (13), (20), (22), (29), (31), (34), (39) and (44)). They all sold electrolytic capacitors at concerted prices to customers located in the EEA.

5.2.3. Arguments of the parties and assessment thereof by the Commission

- (661) NIPPON CHEMI-CON CORPORATION submits¹²⁰⁵ that the conduct was [*confidentiality claim pending*] and was neither implemented nor had an effect in Europe. Nichicon raises a similar argument.¹²⁰⁶
- (662) Furthermore, NIPPON CHEMI-CON CORPORATION contends¹²⁰⁷ that there is very limited evidence linking the information exchanges to Europe even though the participants sold electrolytic capacitors into the EEA. NIPPON CHEMI-CON CORPORATION attempts to substantiate its argument by reference to lack of or insignificant EEA sales made to customers explicitly mentioned in the evidence used by the Commission.
- (663) The Commission rejects these arguments.
- (664) As a preliminary observation, as set out in recitals (658)-(660), the Commission bases its jurisdiction to apply Article 101 TFEU primarily on the fact that the cartel was global and implemented in the EEA.¹²⁰⁸
- (665) The cartel conduct subject to this Decision, albeit formed in Asia, was global and therefore covered and was implemented in the EEA:
- (666) First, the evidence on file shows that the cartel conduct was global and encompassed the entire production output of the parties (for example, at a number of multilateral meetings, the parties discussed that "[price] increase rates will be set for the industry as a whole"¹²⁰⁹ or "[a]bout [*confidentiality claim pending*] [...] for global customers,

¹²⁰³ Judgment of the General Court of 25 March 1999, *Gencor v Commission*, T-102/96, ECLI:EU:T:1999:65, paragraph 87.

¹²⁰⁴ For example, [...].

[...].

¹²⁰⁵ [...].

¹²⁰⁶ [...].

¹²⁰⁷ [...].

¹²⁰⁸ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85, C-126/85, C-127/85, C-128/85 and C-129/85, *Ahlström and others v Commission*.

¹²⁰⁹ [...].

overseas business and communication will be dealt with in a unified way"¹²¹⁰ or "*prices will be increased by about [confidentiality claim pending] for [confidentiality claim pending] and [confidentiality claim pending] for [confidentiality claim pending]*"¹²¹¹ or entire customer base ("*we may have to expand price increases to all customers unless the situation changes*")¹²¹² irrespective of the geographical sales allocation. The competitors also discussed other commercial aspects that are applicable to the capacitors industry in general and without any geographical limitation, irrespective of their supply location. This applies to matters such as a coordinated response to raw material price increases.¹²¹³

- (667) The Commission adds that none of the six leniency applicants places any specific geographical limitation¹²¹⁴ on the conduct reported as a whole.¹²¹⁵
- (668) Moreover, each of the undertakings participating in the cartel was represented at the collusive meetings among others by individuals with global responsibilities (acting

¹²¹⁰ [...].

¹²¹¹ [...].

¹²¹² [...].

¹²¹³ For illustration, the following multilateral meeting minutes confirm that raw material price increases were discussed by the cartel participants: "[...] *active measures are being taken to rise prices in the overseas market as well. [...] Reasons for price increase [...] Aluminium Metal 100 [for April 1999] 114 [for April 2000]*" ([...]); "*The items to be reported by the companies at the next meeting [...] 2) Report on the state of demands for price increases for play foil*" ([...]); "*We have no room for lowering prices due to the following cost increase factors. (1) Rise in material cost (aluminum cost in particular) (2) Increase of the ratio of [confidentiality claim pending] [...] We absolutely need to avoid useless price reduction by thoroughly discussing what we can discuss.*" ([...]); "*Partly because of the material cost increase, extremely harsh business condition is anticipated in the second half. However, we wish to stop useless competition through this meeting.*" ([...]); "*Due to the sharp increase of Al raw foils, the price return and VA proposal are being promoted.*" ([...]); "[...] *since the material price hike concern also continues, we are specifically advancing the product price restoration [...]*" ([...]); "*The increase in the material cost of tantalum must be covered by a price increase.*" ([...]); "*The price increase for tantalum materials is severe. Although we had a 10% price increase (actually for overseas only) on January 1, 2011, we may need to have another 20% increase in April unless the situation changes.*" ([...]); "*In addition, there is a concern for the material cost hike, and further price adjustment is fully possible after the 2nd Half (July.)*" ([...]).

¹²¹⁴ For illustration, [...] and "[ECC/ATC Foreign Trade] meetings [...] were designed to discuss various matters relating to sales to customers outside of Japan, including those in Europe" that "[t]he scope of the CUP meetings was supplies of capacitors to [confidentiality claim pending] customers globally and thus included the EEA" and "[t]he scope of the MK meetings [...] was supplies of capacitors to [confidentiality claim pending] customers, that is, companies that were established in [confidentiality claim pending], globally and thus included the EEA" ([...]); "*The CUP meetings did not deal with prices or suppliers in a specific geographic region. They covered all sales, whether in [confidentiality claim pending], and whether to [confidentiality claim pending] customers.*" ([...]). [confidentiality claim pending] it should be recalled that the distinction between Domestic and Foreign Trade meetings was of limited practical relevance (see recitals (80) and (85)). Furthermore, it should be recalled that the distinction between Domestic and Foreign Trade Meetings applied only to the location of the headquarters of the customer, but not to the location of the manufacturing plants or the destination of the capacitors (see recitals (80) and (85)).

¹²¹⁵ Any such limitation concerns at most specific meeting.

as [confidentiality claim pending])¹²¹⁶ or specifically [confidentiality claim pending].¹²¹⁷

- (669) Second, as explained in recital (660), the implementation of the cartel in the EEA is manifested through the cartel participants' sales of AECs and TECs in the EEA during the infringement period. Since the cartel was not customer-specific, it is not relevant whether those sales occurred with specific customers referred to explicitly in the evidence. Moreover, [confidentiality claim pending] (for example, [confidentiality claim pending]).¹²¹⁸ In addition to that, [...] confirms that it had EEA sales with various customers referred to in the evidence (for example, [confidentiality claim pending]).¹²¹⁹ Further, Sanyo and NEC TOKIN Corporation indicate that multiple customers mentioned in the evidence had manufacturing plants in the EEA (for example, [confidentiality claim pending]).¹²²⁰
- (670) Third, multiple discussions in the meetings explicitly referred to the European region or to customers with headquarters or business operations in the EEA.¹²²¹ Contrary to

¹²¹⁶ See Annex II and recital (59).

¹²¹⁷ In relation to NCC, [...] were employed by [...] of NIPPON CHEMI-CON CORPORATION (...); furthermore, [...] was a [...] of NIPPON CHEMI-CON CORPORATION (...). Regarding Nichicon, based on the [...], no less than three Nichicon employees involved in the anti-competitive contacts (namely [...]) held various positions in international sales division of Nichicon in charge of, among others, Europe and America. Furthermore, based on the [...] (...), [...] was [...] both for domestic and overseas markets. With respect to Elna, for example, [...] has been employed by [...] during the part of the material cartel period (...). Regarding NEC Tokin, responsibilities of NEC Tokin's participants in the meetings related, as a rule, to the entirety of NEC Tokin's tantalum capacitor business and not to any specific geographic region (...). With respect to Hitachi AIC, for instance, [...], one of the participants at the MK meetings assumed a [...] (...). Regarding Sanyo, for instance, [...] were engaged by the overseas sales department (...). With respect to [confidentiality claim pending], for example, [...] were employed by the global sales department or international division (...).

¹²¹⁸ [...].

¹²¹⁹ [...].

¹²²⁰ [...].

¹²²¹ For example, "A Japan-related company in [confidentiality claim pending] (E Company) is ignoring dumping and selling at around 60% of the regular price. (complaint from N Company)". (...). "N Company" means Nichicon, as in [...] it is indicated that "[...] ([confidentiality claim pending])" was a participant at that meeting and in [...] it is explained that [...] [confidentiality claim pending]. "E Company" means Elna, as in [...] it is indicated that "[...]" was a participant at that meeting and in [...] it is explained that [...] is [confidentiality claim pending]; "Europe – [confidentiality claim pending] ballasts are favourable." (...); "Europe and USA [...] - The rebound in European prices is virtually set at 20-30%". (...); "NC: [...] Declines in the US and Europe started in October [...]". (...). In [...] it is explained that "NC" means NCC; "Tantalum functional capacitors are increasingly adopted in the field of GSM mobile phones ([confidentiality claim pending], etc.) and servers." (...); "Regarding the allocation of [confidentiality claim pending], the decrease in price was minimized by [confidentiality claim pending] because the supply of ceramic was tight (it used to be normally [confidentiality claim pending] in the past). NEC minimized by 2% to 3% in [confidentiality claim pending] but was not be able to stop it [confidentiality claim pending], especially in Europe. [...]" (...); "The European and the US markets led the way. *PNDs (Personal Navigation Devices) have spread rapidly in the EU and USA, and the domestic navigator manufacturers joined the competition." (...); "[confidentiality claim pending] [sic] 11% at early October [confidentiality claim pending] WW Chip discount [...] [confidentiality claim pending] 58% up" (...); "Europe TVs [...] TVs are being sold at low prices (The European shares are [confidentiality claim pending] in this order). In UK and Russia, the 32-inch TVs are selling well (Nippon Chemi-Con)." (...); "The production capacity for the [confidentiality claim pending] is full (80%), and the performance for Europe has been restored.".

what NIPPON CHEMI-CON CORPORATION and Nichicon appear to suggest, it is however not necessary that every piece of evidence includes a specific reference to Europe.¹²²² That view is inconsistent with the fact that the cartel operated on a global scale without any geographical limitation (see recitals (660) and (666)-(668)).

- (671) Fourth, the competitor contacts on various occasions and throughout the entire lifetime of the cartel referred to a number of regions, to "overseas", "overseas market", "overseas firms", "overseas customers", "overseas companies", "overseas clients", "foreign companies", "foreign-capital firms", "foreign-owned customers", "foreign customers", "foreign market", "foreign offices", "foreign manufacturers" or "international prices".¹²²³ The fact that references to overseas includes the EEA transpires from the evidence on file, for example, meeting minutes from the ATC meeting held on 28 or 29 August 2003, stating that "*Overseas: [confidentiality claim pending] manufacturers are doing very well (lack of goods). It started going up in the U.S. from September, but there is a slowdown in Europe*";¹²²⁴ meeting minutes from an MK meeting held in March 2005, stating that "*The reason why it is cheap in Europe is because domestic competitors are locally competing, and the competition between (NICHICON) and (Nikkemi) is very keen even in [confidentiality claim pending]. It is pointless unless we repress [confidentiality claim pending] more than in [confidentiality claim pending] from now on. [confidentiality claim pending] told*",¹²²⁵ and meeting minutes from MK meeting held on 14 February 2007, stating that "*The growth was not as much as expected in 2006, giving us a hard time due partially to LCD-TV price offence overseas ([confidentiality claim pending], EU)*".¹²²⁶
- (672) Fifth, the evidence shows that the cartel participants also coordinated their response to the fluctuations in currency exchange rate, including the euro currency,¹²²⁷ which equally establishes that the cartel conduct was implemented in the EEA.

(...); "(2) with problems in Greece, decrease of shipments to Europe" (...); "[confidentiality claim pending] capacitors [...] The German sphere is in very good form"; (...); "As a factor, the orders from the EU vehicle installation manufacturers are transitioning at a good pace, and for the [confidentiality claim pending], we have backorders. The [confidentiality claim pending] is sluggish, and not so good other than for automobiles. Although a slight yen appreciation is welcome now, the cost reduction requests are coming from each company, a . [confidentiality claim pending] percent reduction is under negotiation." (...).

¹²²² See, to that effect, Judgment of the General Court of 9 September 2015, *Samsung SDI and Others v Commission*, T-84/13, ECLI:EU:T:2015:611, paragraph 92.

¹²²³ Such references are included, for example, in the following contemporaneous evidence: [...].

¹²²⁴ [...].

¹²²⁵ [...].

¹²²⁶ [...].

¹²²⁷ For illustration, the following multilateral meeting minutes confirm that foreign exchange fluctuations were discussed by the competitors: "*With respect to the euro settlement, we will provide support from April of next year.*" (...); "*Europe— A return of value of about [confidentiality claim pending] is necessary from April due to the weak euro. [...] We would like to request coordination.*" (...); "*R Company [[confidentiality claim pending]] They are negotiating for price increases due the falling European currency.*" (...); "*Target customers We will observe the provisions of the agreement for the customers who have an exchange rate fluctuation agreement.*" (...); "*Regarding the return of value for the strong yen [...] we will desperately defend a return of value of approximately [confidentiality claim pending]*" (...); "*Foreign exchange rates should be compared with those of the latter half of 2005 [...]*" (...); "*How to respond to cost down request based on the exchange rate*" (...); "*Future*

- (673) [confidentiality claim pending]¹²²⁸ [confidentiality claim pending].
- (674) Nichicon puts forward a similar argument.¹²²⁹ In particular, Nichicon claims that EEA prices were and still are "for the most part" negotiated independently by Nichicon's European subsidiaries and that sales conditions for capacitors delivered to customers located in Europe or to the European operations of international customers were "generally" negotiated independently by Nichicon UK or Nichicon Austria. Furthermore, Nichicon contends that the share of Nichicon UK/Austria's sales which were centrally negotiated in [confidentiality claim pending] was very low.
- (675) In line with settled case law, in determining whether a cartel has been implemented in the EEA, it is immaterial whether or not the participants in the cartel had recourse to subsidiaries, agents, sub-agents, or branches within the EEA in order to make their contacts with purchasers established there.¹²³⁰ As a result, the issue of whether the prices in Europe were negotiated by the European subsidiaries of the parties or by their Japanese headquarters does not affect the conclusion that the parties, similarly to other cartel participants, did implement the cartel conduct in the EEA. It also should be observed that the notion of implementation is based in essence on the concept of an undertaking in competition law.¹²³¹ At any rate, as set out in recital (668), some of the employees of NIPPON CHEMI-CON CORPORATION and Nichicon involved in the cartel conduct had global sales responsibilities not limited to [confidentiality claim pending].
- (676) [confidentiality claim pending].
- (677) As regards Nichicon's arguments, it also has to be pointed out that, in any event, Nichicon only claims that EEA prices were "for the most part" negotiated independently by Nichicon's European subsidiaries.
- (678) Furthermore, according to NIPPON CHEMI-CON CORPORATION,¹²³² the Commission wrongly assumes that the terms [confidentiality claim pending] embrace Europe, while the file suggests that those terms relate to other

Forecast Yen appreciation base and the material prices are staying high, so we will implement product price restoration again to secure the profitability" ([...]); "A price recovery meeting was held today with attendance of five member companies of the industry. [...] The trend of price hikes of materials and foreign exchange fluctuations in the aluminum industry is so alarming that it cannot be overlooked any more, and we confirmed the necessity of conducting an aggressive counter campaign. [...] Guidelines for action to be taken both for [confidentiality claim pending] customers are: 1) [confidentiality claim pending] on the ground of materials price hikes, 2) [confidentiality claim pending] (on a US\$ basis) on the ground of foreign exchange fluctuations." ([...]); "Price correction is necessary because of the strong yen." ([...]); "Prices are being restored [...], to include trading companies and agents as a hedge against risks related to skyrocketing material costs and exchange fluctuations." ([...]); "Future Forecast This yen appreciation may continue until the end of the year. We need a currency exchange adjustment." ([...]).

¹²²⁸ [...].

¹²²⁹ [...].

¹²³⁰ Judgment of the General Court of 27 February 2014, *InnoLux v Commission*, T-91/11, ECLI:EU:T:2014:92, paragraph 59, upheld by the Judgment of the Court of the Justice of 9 July 2015, *InnoLux v Commission*, C-231/14 P, ECLI:EU:C:2015:451; Judgment of the General Court of 9 September 2015, *Toshiba v Commission*, T-104/13, ECLI:EU:T:2015:610, paragraph 158.

¹²³¹ Case T-91/11, *InnoLux v Commission*, paragraph 69.

¹²³² [...].

[*confidentiality claim pending*]. In support of such claim, NIPPON CHEMI-CON CORPORATION refers to a single piece of documentary evidence, meeting minutes¹²³³ stating: "[*confidentiality claim pending*], *multiple factories in [confidentiality claim pending]*".

- (679) The Commission's finding of jurisdiction in this case is primarily based on the fact that the cartel operated on a global scale and was implemented in the EEA, among others through direct sales in the EEA (see recitals (660) and (665)-(672)). Although the Commission has also referred to the fact that some of the evidence explicitly refers to Europe in the course of competitor discussions, there is no basis to assume that every single piece of evidence should include such an explicit reference. That view would be inconsistent with the fact that the cartel operated on a global scale without any geographical limitation. Moreover, the fact that a reference to "overseas" includes the EEA transpires explicitly from the evidence on file, for instance the meeting minutes from the ATC meeting held on 28 or 29 August 2003, stating that "Overseas: [*confidentiality claim pending*] *manufacturers are doing very well (lack of goods). It started going up in the U.S. from September, but there is a slowdown in Europe*".¹²³⁴ Furthermore, the quote referred to by NIPPON CHEMI-CON CORPORATION ("*[confidentiality claim pending], multiple factories in [confidentiality claim pending]*") does not in any way confirm that the conduct would be confined solely to [*confidentiality claim pending*] – it merely confirms that for the parties, [*confidentiality claim pending*] is considered to belong to overseas territory.
- (680) NIPPON CHEMI-CON CORPORATION submits¹²³⁵ that, although the meetings may sometimes have touched upon Europe, the participants only exchanged general information about the EU region and that such exchanges were of negligible antitrust relevance.
- (681) NIPPON CHEMI-CON CORPORATION's argument should be rejected. The Commission has established both the jurisdiction to deal with this case and the collusive nature of the conduct subject to this Decision. Although the cartel arrangements had been formed outside the EEA, the Commission has established that the cartel was global and implemented in the EEA. Furthermore, the evidence set out in Section 4.3.6 contains a considerable number of references to the EEA or Europe or to customers with headquarters or business operations in the EEA in connection with the collusive conduct of the parties.¹²³⁶

¹²³³ [...].

¹²³⁴ [...].

¹²³⁵ [...].

¹²³⁶ For example, "A Japan-related company in [*confidentiality claim pending*] (E Company) is ignoring dumping and selling at around 60% of the regular price. (complaint from N Company)". ([...]). "N Company" means Nichicon, as in [...] it is indicated that "[...] ([*confidentiality claim pending*])" was a participant at that meeting and in [...] it is explained that [...] [*confidentiality claim pending*]. "E Company" means Elna, as in [...] it is indicated that "[...] ([*confidentiality claim pending*])" was a participant at that meeting and in [...] it is explained that [...] is of Elna; "b) Europe [...] • Seeing double digits in price negotiations for next year and falling demand is leading to falling prices" ([...]); "Tantalum chip—There was a [*confidentiality claim pending*] price increase for [*confidentiality claim pending*], but it will not be sufficient unless the supply is restricted". ([...]); "Europe —A return of value of about [*confidentiality claim pending*] is necessary from April due to the weak euro. [...] We would

- (682) Nichicon submits the following arguments¹²³⁷ specifically concerning (i) the multilateral meetings from the initial stages of the cartel (ECC meetings) as well as (ii) the bi-lateral and multilateral meetings (CUP meetings) held towards the end of Nichicon's cartel participation. Nichicon argues that the ECC meetings have been limited to high-level discussions mostly with regard to Asia and that this is supported by [...]s corporate statements. Furthermore, Nichicon examines the evidence from the individual ECC meetings (until essentially the meeting of 15 May 2003 inclusive) and maintains that the evidence from those meetings contains either no references to Europe, generic references to Europe or that such evidence mainly concerns [*confidentiality claim pending*]. Nichicon also claims that [...], Nichicon's employee involved in the CUP meetings, had nothing to do with sales to Europe. It is therefore according to Nichicon implausible that its participation in the CUP meetings (and similarly also in a number of bi-lateral contacts held after the termination of the CUP meetings) would have influenced Nichicon's pricing in the EEA and thus given rise to EU jurisdiction. Finally, Nichicon claims, [...] ¹²³⁸ and [...] ¹²³⁹ that the bi-/tri-lateral meetings involving Nichicon, NEC Tokin or [*confidentiality claim pending*] respectively held after the discontinuation of the CUP meetings on 1 May 2009 concerned [*confidentiality claim pending*] and hence, there is no basis to conclude that Nichicon participated in any alleged infringement after 1 May 2009.
- (683) Nichicon's arguments should be rejected.
- (684) First, Nichicon examines the evidence from the ECC meetings in a selective manner, ignoring crucial parts of that evidence material for the Commission's assessment and described in detail in Section 4. For illustration, regarding the meeting of 5 November 1998, Nichicon claims¹²⁴⁰ that the evidence includes only very generic references to Europe. However, in fact one of the participants, NCC, clearly disclosed to the other participants its intentions for the future price negotiations in Europe: "b) Europe [...]• Seeing double digits in price negotiations for next year and falling demand is leading to falling prices"¹²⁴¹ (see also recital (114)). Also, regarding the meeting of 29 October 1999, Nichicon submits¹²⁴² that the evidence includes only very generic references to Europe, while the evidence explicitly refers to the European customers [*confidentiality claim pending*] (see recitals (121) and

*like to request coordination". ([...]); "For Europe, due to a substantial fall in the Euro they are conduction [sic] price increase negotiations of at least [*confidentiality claim pending*]" ([...]); "Europe—The second round of the return of value is underway" ([...]); "Regarding the allocation of [*confidentiality claim pending*], the decrease in price was minimized by [*confidentiality claim pending*] because the supply of ceramic was tight (it used to be normally [*confidentiality claim pending*] in the past). NEC minimized by 2% to 3% in [*confidentiality claim pending*] but was not be able to stop it [*confidentiality claim pending*], especially in Europe. [...]" ([...]); "[*confidentiality claim pending*] [sic] [*confidentiality claim pending*] at early October [*confidentiality claim pending*] W/W Chip discount [...] [*confidentiality claim pending*] up" ([...]).*

- 1237 [...].
 1238 [...].
 1239 [...].
 1240 [...].
 1241 [...].
 1242 [...].

(122)). Moreover, regarding the meeting of 14 November 2001, Nichicon argues¹²⁴³ that the discussion at that meeting was limited to trivial points, statements of the obvious that do not amount to anti-competitive information exchanges. This contrasts with the evidence on file, which shows that, at that meeting, the participants called for, among other things, creation of united front against overseas manufacturers and that they "*need to compete modestly, discuss, and develop an environment that allows us to discuss problems after events*"¹²⁴⁴ (see also recital (154)).

- (685) Second, [...]’s corporate statement used by Nichicon in support of its argumentation¹²⁴⁵ does not report exhaustively on all ECC meetings set out in this Decision. Furthermore, Nichicon disregards in its analysis documentary evidence on the ECC meetings provided by [*confidentiality claim pending*] (see recitals (108)-(195) and (204)-(209)). Therefore, Nichicon’s analysis is incomplete.
- (686) Moreover, Nichicon confines its analysis solely to the outright price agreements and the qualification of their geographical scope by [*confidentiality claim pending*],¹²⁴⁶ while overlooking that anti-competitive exchange of future price information concerning the EEA also took place throughout the ECC meetings, as confirmed by [...].¹²⁴⁷
- (687) Third, [...] was only one out of twelve Nichicon employees implicated in the cartel¹²⁴⁸ and hence his presumed lack of direct involvement in the EEA-related business affairs, even if it were considered relevant, would have no impact on the Commission’s finding of jurisdiction. Furthermore, [*confidentiality claim pending*]¹²⁴⁹ that the Tokyo Sales Office employing [...] had responsibilities for international sales during the cartel period, including managing a number of customers in Europe. The fact that, as Nichicon submits, none of these customers featured materially in any of the meetings attributed by the Commission to Nichicon¹²⁵⁰ is irrelevant given that the conduct subject to this Decision is not customer-specific. Lastly, the argument that [...] was not responsible for the EEA sales is irrelevant in view of the EEA-inclusive character of information which was exchanged at the meetings which he attended.¹²⁵¹

1243 [...].

1244 [...].

1245 [...].

1246 [...], referring to the [...].

1247 [...].

1248 Some of the other Nichicon employees participating in the cartel meetings had global responsibilities (see recital (76)).

1249 [...]. [*confidentiality claim pending*] ([...]).

1250 [...].

1251 For illustration: (i) Based on [*confidentiality claim pending*]’s internal email reporting on a multilateral CUP meeting held on 21 May 2008, price increase due to the material price hikes and foreign exchange fluctuations was proposed to be pursued by the attending parties "*both for [*confidentiality claim pending*] customers*" ([...]); see also recital (435)); (ii) [*confidentiality claim pending*]’s internal email reporting on a multilateral CUP meeting held on 22 December 2006 states, among others, "*On targets of price corrections and correction rates Although rates vary depending on each company’s sales activities, increase rates will be set for the industry as a whole.*" ([...]); see also recital (336)) and (iii) handwritten notes summarizing the outcome of a multilateral CUP meeting held on 13 December 2006 read, among others, that "*unit price will increase including the prices for [*confidentiality claim**

- (688) Fourth, in relation to the bi-/tri-lateral contacts involving Nichicon following the discontinuation of the CUP meetings, the Commission notes that they either concerned a customer with business operations and capacitor purchases in the EEA, (namely [*confidentiality claim pending*]¹²⁵² and [*confidentiality claim pending*])¹²⁵³ or related to issues of general relevance that were not specifically limited to any geographic region.¹²⁵⁴ As already explained in recital (670), proving that this global cartel was implemented in the EEA does not necessitate that each single piece of evidence shows the existence of a link to the EEA.¹²⁵⁵ Moreover, the tri-lateral meeting of 31 May 2010 involving Nichicon, NCC and [*confidentiality claim pending*] concerned the EEA, more specifically future price increases applicable to supplies of capacitors to [*confidentiality claim pending*]'s operations in [*confidentiality claim pending*] ("Euro [...] [*confidentiality claim pending*]¹²⁵⁶ [*confidentiality claim pending*] up").¹²⁵⁷
- (689) Holy Stone submits¹²⁵⁸ with reference to both *Woodpulp*¹²⁵⁹ and *Gencor*¹²⁶⁰ case law that EU jurisdiction over the legal entities Holy Stone Polytech or Holy Stone Enterprise cannot be established, neither under the implementation test nor under the qualified effects test because none of its sales in the EEA could have been directly or indirectly affected by the alleged practices. It substantiates its argument by claiming that Holy Stone Enterprise never took part in any of the alleged practices and its sales were never affected directly or indirectly by the alleged practices because it took its pricing decisions independently from Holy Stone Polytech. According to Holy Stone, participation of Holy Stone Polytech ([*confidentiality claim pending*])¹²⁶¹ in the infringement could not have influenced the commercial strategy and sale of capacitors made directly by Holy Stone Enterprise in the EEA. Holy Stone further contends that Holy Stone Enterprise was not aware of Holy Stone Polytech's involvement in the conduct.
- (690) As a preliminary remark, the Commission finds that demonstrating the implementation of the practices at issue in the EEA or demonstrating qualified effects are alternative and not cumulative approaches for the purposes of establishing

pending] market" ([...]); see also recital (333). See, to that effect, Judgment of the General Court of 29 June 2012, *E.ON Ruhrgas and E.ON v Commission*, T-360/09, ECLI:EU:T:2012:332, paragraph 212.

¹²⁵² Discussed during the bi-lateral contacts with NEC Tokin in July 2009 ([...]) and the tri-lateral meeting with NCC and [*confidentiality claim pending*] on 31/05/2010 ([...]).

¹²⁵³ Discussed during the bi-lateral contact with NCC in July 2009 ([...]).

¹²⁵⁴ Discussed during the contact involving three parties of 09/03/2010 ([...]); [...], [*confidentiality claim pending*].

¹²⁵⁵ See, to that effect, case T-84/13, *Samsung SDI and Others v Commission*, paragraph 92.

¹²⁵⁶ Reference to [*confidentiality claim pending*]'s procurement department ([...]).

¹²⁵⁷ [...].

¹²⁵⁸ [...].

¹²⁵⁹ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, *Ahlström and others v Commission*.

¹²⁶⁰ Case T-102/96, *Gencor v Commission*.

¹²⁶¹ Apart from some transitional sales to one customer from 1 April 2010 to 31 March 2011.

that the Commission's jurisdiction is justified under the rules of public international law.¹²⁶²

- (691) Furthermore, the Commission finds that in accordance with the case law¹²⁶³ the jurisdictional criterion is satisfied by the implementation of the overall cartel conduct in the EEA. Therefore, the Commission is not obliged to scrutinise the individual conduct of each party, including Holy Stone and its nexus to the EEA for the purposes of establishing jurisdiction. Irrespective of the above, as it transpires from Section 8.3 and Holy Stone's SO reply,¹²⁶⁴ the undertaking Holy Stone did demonstrably generate sales of the relevant products in the EEA during the period of its cartel involvement and therefore Holy Stone also contributed to the implementation of this cartel on an individual level.
- (692) Finally and in any event, the jurisdiction of the Commission can equally be found on the basis of the qualified effects test in this case. In accordance with settled case law, in order to find jurisdiction on the basis of the effects doctrine, the effects of the cartel have to be immediate, substantial and foreseeable.¹²⁶⁵
- (693) The Commission is not obliged to establish the existence of actual effects in order to justify its jurisdiction under public international law. The criteria of immediate, substantial and foreseeable effects do not mean that the effect must also be actual.¹²⁶⁶
- (694) Furthermore, in order to examine whether the effects are substantial, the various instances of conduct forming part of a single and continuous infringement must not be considered in isolation. It is on the contrary sufficient that the single and continuous infringement as a whole be capable of having substantial effects.¹²⁶⁷
- (695) In this respect, according to the case law on effect on trade between Member States, the Commission is not required to demonstrate that the participation of a particular undertaking in an agreement and a concerted practice had had an appreciable effect on trade between Member States. All that is required is that anti-competitive agreements and concerted practices should be capable of having an effect on trade

¹²⁶² Judgment of the General Court of 12 June 2014, *Intel v Commission*, T-286/09, ECLI:EU:T:2014:547, paragraphs 236 and 244, upheld on appeal on the point of jurisdiction in Case C-413/14 P, *Intel v Commission*.

¹²⁶³ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, *Ahlström and others v Commission*, paragraphs 16 and 17 and Case T-102/96, *Gencor v Commission*, paragraph 87.

¹²⁶⁴ [...].

¹²⁶⁵ See, to that effect Case T-102/96, *Gencor v Commission*, paragraph 90, Case T-286/09, *Intel v Commission*, paragraph 243, upheld on appeal on the point of jurisdiction in Case C-413/14 P, *Intel v Commission*.

¹²⁶⁶ Case T-286/09, *Intel v Commission*, paragraph 251, upheld on appeal on the point of jurisdiction in Case C-413/14 P, *Intel v Commission*.

¹²⁶⁷ Case T-286/09, *Intel v Commission*, paragraph 268, upheld on appeal on the point of jurisdiction in Case C-413/14 P, *Intel v Commission*.

between Member States.¹²⁶⁸ The same applies to the examination of jurisdiction under the qualified effects test.¹²⁶⁹

- (696) Therefore, the question of whether Holy Stone's individual contribution to the cartel had effects in the EEA is irrelevant for establishing jurisdiction on the basis of the qualified effects doctrine.
- (697) Moreover, it is not necessary that the European Union or the EEA be more affected than other regions of the world.¹²⁷⁰ In any event, based on the sales information provided by the parties, the sales of electrolytic capacitors by the parties into the EEA were approximately EUR 200 million annually (see recital (7)).
- (698) Furthermore, four of the parties (NCC, Nichicon, [*confidentiality claim pending*] and Panasonic) rank among the top five suppliers of aluminium electrolytic capacitors globally.¹²⁷¹ The cartel participants had a long-term strategy to influence the price-setting of the full electrolytic capacitor range. Therefore, in light of the seriousness of the infringement (price-fixing), its long duration and the role of the parties on the European market, the effect is deemed substantial.¹²⁷²
- (699) The parties' conduct was also intended to produce an immediate effect in the EEA and was capable of doing so. The parties coordinated their behaviour in the context of changing economic circumstances (such as rising raw material prices, currency fluctuation, pressure from non-Japanese competitors) with a view to achieving a very concrete and immediate effect, namely to artificially increase or maintain prices at which they would be supplying their customers globally, including in the EEA. Further to that it can be presumed, subject to proof to the contrary (which the parties fail to provide), that the parties did take account of the information exchanged with competitors in determining their own conduct on the market, especially given that this cartel occurred on a regular basis and over a long period.¹²⁷³
- (700) Finally, the parties could have foreseen that the potential effect of their coordination would be artificial inflation or maintenance of the prices to the detriment of the customers and effective competition in the market, including in the EEA.
- (701) It follows from the above that, in this case, the Commission has jurisdiction on the basis of the implementation test as well as on the basis of the qualified effects test.
- (702) Finally, NIPPON CHEMI-CON CORPORATION claims¹²⁷⁴ that specific types of AECs: [*confidentiality claim pending*],¹²⁷⁵ [*confidentiality claim pending*]¹²⁷⁶

¹²⁶⁸ Judgment of the Court of First Instance of 24 October 1991, *Petrofina v Commission*, T-2/89, ECLI:EU:T:1991:57, paragraph 226.

¹²⁶⁹ See, as regards the possibility of drawing an analogy between the case law on effect on trade between member states and the application of the qualified effects doctrine, Case T-286/09, *Intel v Commission*, paragraphs 269, 270 and 274, upheld on appeal on the point of jurisdiction in Case C-413/14 P *Intel v Commission*.

¹²⁷⁰ Case T-286/09, *Intel v Commission*, paragraph 261, upheld on appeal on the point of jurisdiction in Case C-413/14 P, *Intel v Commission*.

¹²⁷¹ [...] (<http://www.prnewswire.com/news-releases/global-and-china-aluminum-electrolytic-capacitor-market-report-2013-2016-300046469.html> date accessed: 26 October 2015).

¹²⁷² See, to that effect, Case T-104/13, *Toshiba v Commission*, paragraph 159.

¹²⁷³ Judgment of the Court of Justice of 8 July 1999, *Hüls v Commission*, C-199/92 P, ECLI:EU:C:1999:358, paragraph 162.

¹²⁷⁴ [...].

[confidentiality claim pending]¹²⁷⁷ are commonly used to [confidentiality claim pending]. Further to that, NIPPON CHEMI-CON CORPORATION submits that there is no [confidentiality claim pending] manufacturing business in Europe and almost no production of [confidentiality claim pending], and therefore argues that the sales of these types of capacitors are not relevant for Europe.

- (703) NIPPON CHEMI-CON CORPORATION's arguments should be rejected for the following reasons. First, [confidentiality claim pending]:¹²⁷⁸ especially the two latter ones are particularly relevant for the EEA. [confidentiality claim pending], there are also European customers for this type of capacitors.¹²⁷⁹ Second, [confidentiality claim pending] capacitors are used not only in the [confidentiality claim pending], but also in the [confidentiality claim pending].¹²⁸⁰ In any case, there is evidence on file that shows that [confidentiality claim pending] capacitors have relevance to the EEA. For example, according to the minutes of the meeting of 25 May 2000, Elna reported on its price increases of [confidentiality claim pending] for European customers, and that its price increase for [confidentiality claim pending] capacitors supplied to [confidentiality claim pending] were 20 % or more¹²⁸¹ ("They raised prices 10% - 15% in Europe. Especially, [confidentiality claim pending] raised [confidentiality claim pending] at least 20% so orders are stopped."¹²⁸²). Third, [confidentiality claim pending] confirms that in the period between 1999-2000 and [confidentiality claim pending] business years it had sales of [confidentiality claim pending] capacitors into the EEA.¹²⁸³ Fourth, [confidentiality claim pending] are also produced in the EEA: NIPPON CHEMI-CON CORPORATION confirms that there is [confidentiality claim pending] production in Europe,¹²⁸⁴ and according to the evidence on file (for example, minutes of the meeting of March 2005) [confidentiality claim pending] are produced in Europe: "Since the responsibility to supply is provided in a contract regarding the [confidentiality claim pending] in Europe, we cannot adjust shipping to raise prices. ➔ It becomes possible if you propose "an amendment of contract" 3 months earlier. (SANYO)".¹²⁸⁵ Fifth, [confidentiality claim pending] manufacturers are also established in Europe: European Power Supply Manufacturers Association (EPSMA) was established in 1995 to represent the specialised needs of the power supply industry in Europe.¹²⁸⁶ The following companies are listed among the members of EPSMA: [confidentiality claim pending].¹²⁸⁷ Finally, according to the minutes of the multilateral meeting of 16 July 2010, there is a [confidentiality claim pending] market in the EEA: "However, in the [confidentiality claim pending] market there is no sign of inventory

1275 [...].

1276 [...].

1277 [...].

1278 [...].

1279 [...].

1280 [...].

1281 [...].

1282 [...].

1283 [...].

1284 See recital (702) and footnote 1274.

1285 [...].

1286 [...].

1287 [...].

*surplus. It is not because European market is dull but the shipment to Europe is being controlled not to incur exchange loss (like [confidentiality claim pending])".*¹²⁸⁸

5.3. Agreements and concerted practices

5.3.1. Principles

- (704) Article 101(1) TFEU and Article 53(1) of the EEA Agreement prohibit anti-competitive agreements between undertakings, decisions of associations of undertakings and concerted practices.¹²⁸⁹
- (705) An 'agreement' may be considered to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The existence of an agreement may be express or implicit in the behaviour of the parties. In addition, it is not necessary, in order for there to be an infringement of Article 101 TFEU, for the participants to have agreed in advance upon a comprehensive common plan. The concept of 'agreement' within the meaning of Article 101(1) TFEU applies to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.
- (706) In the *PVC II* case, the Court of First Instance stated that: "*It is well established in the case-law that for there to be an agreement within the meaning of Article [101(1)] TFEU it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*".¹²⁹⁰
- (707) If, for instance, an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed. It is also established in the case law that "*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*".¹²⁹¹ Such distancing should take the form of an announcement by the company, for example,

¹²⁸⁸ [...].

¹²⁸⁹ The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 TFEU applies equally to Article 53 of the EEA Agreement. See recitals 4 and 15 as well as Article 6 of the EEA Agreement and Article 3(2) of the EEA Surveillance and Court Agreement. Accordingly, in this Decision reference is only made to Article 101 TFEU on the understanding that the same considerations apply to Article 53 of the EEA Agreement.

¹²⁹⁰ Judgment of the Court of First Instance of 20 April 1999, *LVM v Commission*, T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, EU:T:1999:80, paragraph 715 and the case law referred to therein.

¹²⁹¹ Case T-334/94, *Sarrió v Commission*, paragraph 118; Case T-141/89, *Tréfileurope v Commission*, paragraph 85; Case T-7/89, *Hercules Chemicals v Commission*, paragraph 232; and Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, *Cimenteries CBR v Commission*, paragraph 1389.

that it would take no further part in the meetings (and therefore did not wish to be invited to them).

- (708) An agreement for the purposes of Article 101(1) TFEU does not require the same certainty as would be necessary for the enforcement of a commercial contract under civil law. In addition, in the case of a complex cartel of long duration, the term "*agreement*" may properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has held, it follows from the express terms of Article 101(1) TFEU that an agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.¹²⁹²
- (709) Although Article 101(1) TFEU and Article 53(1) of the EEA Agreement draw a distinction between the concept of "*concerted practices*" and "*agreements between undertakings*", the object is to bring within the prohibition of these Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.¹²⁹³
- (710) The criteria of co-ordination and co-operation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in light of the concept inherent in the provisions of the TFEU relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the market. This requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors. However, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.¹²⁹⁴
- (711) Thus, conduct may fall under Article 101(1) TFEU as concerted practice even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour. Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice. The existence of a concerted practice can also be demonstrated by evidence that contacts took place between a number of

¹²⁹² Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, ECLI:EU:C:1999:356, paragraph 81.

¹²⁹³ Judgment of the Court of Justice of 14 July 1972, *ICI v Commission*, 48/69, ECLI:EU:C:1972:70, paragraph 64.

¹²⁹⁴ Judgment of the Court of Justice of 16 December 1975, *Suiker Unie and Others v Commission*, 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, ECLI:EU:C:1975:174, paragraph 174.

undertakings and that they in fact pursued the aim of removing in advance any uncertainty as to the conduct expected from them on the market.¹²⁹⁵

- (712) Although the concept of a concerted practice requires not only a concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 101(1) TFEU even in the absence of anti-competitive effects on the market.¹²⁹⁶
- (713) In the case of a *complex infringement* of long duration, it is not necessary for the Commission to characterise the conduct exclusively as agreement or concerted practice. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would, however, be artificial to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 101 TFEU lays down no specific category for a complex infringement of this type.¹²⁹⁷
- (714) In *PVC II*,¹²⁹⁸ the General Court stated that "[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] TFEU". This approach has been confirmed by the Court of Justice.¹²⁹⁹

5.3.2. Application in this case

- (715) As described in Section 4, the undertakings were involved in agreements and/or concerted practices with the aim of avoiding price competition and of coordinating the future conduct with regard to the sale of electrolytic capacitors, thereby reducing uncertainty on the market. This anti-competitive aim was pursued through multilateral meetings and bi-/tri-lateral contacts. The undertakings' conduct included:

¹²⁹⁵ See Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, *Suiker Unie and Others v Commission*, paragraphs 175 and 179, and Judgment of the General Court of 12 July 2011, *Fuji Electric v Commission*, T-132/07, ECLI:EU:T:2011:344, paragraph 88.

¹²⁹⁶ Case C-199/92 P, *Hüls v Commission*, paragraphs 158-166.

¹²⁹⁷ Case T-7/89, *Hercules Chemicals v Commission*, paragraph 264.

¹²⁹⁸ Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *LVM v Commission*, paragraph 696.

¹²⁹⁹ For example, see Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraphs 132-133.

- (a) the exchange of price information, including information in relation to future pricing;¹³⁰⁰
- (b) the exchange of supply and demand information, including information in relation to future supply and demand (such as production volume, increase or decrease of shipments);¹³⁰¹
- (c) the conclusion of agreements on pricing or price-related issues,¹³⁰² accompanied by the monitoring mechanism to ensure implementation of such agreements.¹³⁰³ More specifically, such agreements involved the coordination of price increases;¹³⁰⁴ the nomination of a leader per customer in charge of price increase negotiation who would initiate the price increases;¹³⁰⁵ the setting of a clear timeline for the price increases;¹³⁰⁶ the setting of specific percentages and targets for price increases; common justifications for price increases and/or announcement of price increases justifications; the reporting on the

¹³⁰⁰ For example, meeting of 26 June 1998, see recitals (109)-(111); meeting of 17 December 1999, see recitals (124)-(126); meeting of 25 May 2000, see recitals (132) and (133); meeting of 28 July 2000, see recitals (135) and (136); meeting of 19 September 2001, see recitals (149) and (150); meeting of 19 March 2002, see recitals (156) and (157); meeting of 29 August 2002, see recitals (167)-(171); meeting of 29 January 2003, see recitals (181) and (182); meeting of 28 or 29 August 2003, see recitals (197)-(203); meeting of 5 December 2003, see recital (211)-(213); meeting of 21 April 2004, see recital (223)-(226); meeting of 16 February 2005, see recital (256) and (257); meeting of 12 July 2006, see recitals (306), (308) and (309); meeting of 13 September 2006, see recitals (316)-(318); meeting of 18 October 2006, see recitals (320), (322)-(325); 19 June 2007, see recitals (385)-(390); meeting of 2 August 2007, see recitals (392)-(394); bi-lateral contact of September 2007, recitals (402)-(405); meeting of 4 June 2008, see recitals (444)-(447); meeting of 21 May 2009, see recitals (515), (517) and (519); bi-lateral contact of 9 and 11 December 2009, recitals (555)-(558); meeting of 18 February 2010, see recitals (574)-(580); tri-lateral meeting of 31 May 2010, recitals (599)-(604); meeting of 17 June 2010, see recitals (607), (609)-(613).

¹³⁰¹ For example, meeting of 19 March 2002, see recitals (156) and (158); meeting of 17 December 2003, see recital (217); meeting of 17 June 2004, see recitals (235), (238) and (239); meeting of March 2005, see recitals (261) and (270); meeting of 12 April 2006, see recitals (295) and (296); meeting of 12 July 2006, see recitals (306) and (307); meeting of 14 February 2007, see recitals (350) and (351); meeting of 13 February 2008, see recitals (413) and (414); bi-lateral contact of May 2009, see recitals (520)-(522); meeting of 21 August 2009, see recitals (538) and (539); meeting of 18 February 2010, see recitals (574) and (575); meeting of 29 August 2011, see recitals (645) and (646).

¹³⁰² For example, meeting of 18 September 2002, see recitals (174)-(176); meeting of 7 November 2003, see recitals (205)-(209); meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

¹³⁰³ For example, meeting of 16 January 2007, see recitals (339)-(343); meeting of 15 March 2007, see recitals (363) and (364); meeting of 17 May 2007, see recitals (376) and (377); meeting of 19 June 2007, see recitals (385)-(390); meeting of 24 August 2007, see recitals (396) and (397); meeting of 25 June 2008, see recital (449).

¹³⁰⁴ For example, [...].

¹³⁰⁵ For example, meeting of 13 December 2006, see recital (328); meeting of 21 May 2008, see recital (435); meeting of 2 June 2008, see recital (440).

¹³⁰⁶ For example, meeting of 13 December 2006, see recitals (327) and (332); meeting of 16 April 2008, see recitals (426) and (427); meeting of 21 May 2008, see recital (436); meeting of 25 June 2008, see recital (450).

status of progress in achieving price increases as part of the monitoring of the agreement.¹³⁰⁷

The ultimate aim of this conduct was the coordination of pricing behaviour.

- (716) Beyond the monitoring of the pricing agreements, there are also indications that at multilateral meetings undertakings monitored each other's behaviour in a more general manner. This was part of the strategy of checking whether there were sales of capacitors at prices that others considered too low and of requesting that "betrayers" be more cooperative.¹³⁰⁸ For example:

"The behavior [sic] of [competitor, not an addressee of this Decision] is incomprehensible. Why does the company miss the chance of gaining profits? This gives rise to disarray among the members";¹³⁰⁹

"I do not think any of you attending this meeting are thinking of lowering prices in order to secure orders, but as always, Nippon Chemi-Con is lowering prices out in the field to secure orders. (Of all the firms, only Nippon Chemi-Con has been reprimanded for not practicing price control. They have to learn to sell to make a profit.)".¹³¹⁰

- (717) The conduct of the undertakings thus amounts to agreements and/or concerted practices, whereby competitors knowingly substituted practical co-operation between them for the risks of competition. Such conduct increased transparency and stability on the market and limited the strategic uncertainty among competitors.¹³¹¹ In addition, the undertakings participating in such practices may be considered to have used the information exchanged with competitors in determining their own conduct on the market, all the more so because the practices occurred regularly and frequently over a long period of time.¹³¹²

5.3.3. Arguments of the parties and assessment thereof by the Commission

Limited evidence about pricing agreements

- (718) NIPPON CHEMI-CON CORPORATION claims¹³¹³ that the Commission's file includes only limited evidence about alleged pricing agreements, and certainly none that is relevant for the entire period of the cartel and which covers all electrolytic capacitors globally.
- (719) The Commission notes that the infringement found in this Decision does not only consist of outright agreements, but also of concerted practices. As described in recitals (713) and (714), in the case of a *complex infringement* of long duration such as the conduct identified in this case, it is not necessary for the Commission to characterise the conduct as exclusively one or another of those forms of illegal

¹³⁰⁷ For example, [...].

¹³⁰⁸ [...].

¹³⁰⁹ [...].

¹³¹⁰ [...]. NCC, the party reprimanded was also in attendance of the meeting.

¹³¹¹ Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, (OJ C 11, 14.1.2011, p. 1) ("Horizontal Guidelines"), paragraph 81.

¹³¹² Case C-49/92 P, *Commission v Anic Participazioni*, paragraph 121.

¹³¹³ [...].

behaviour. The concepts of agreement and concerted practice are fluid and may overlap and both forms of conduct are equally liable to be in contravention of Article 101 TFEU by object. Therefore, NIPPON CHEMI-CON CORPORATION's argument should be dismissed.

5.4. Single and continuous infringement

5.4.1. Principles

- (720) A complex cartel may properly be viewed as a *single and continuous infringement* for the time frame in which it existed. The concept of "single agreement" or "single infringement" presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.¹³¹⁴ The agreement may be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of that assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 101 TFEU.¹³¹⁵
- (721) Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may occur, but this will not, however, prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 101 TFEU where there is a single common and continuing objective.
- (722) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive object.¹³¹⁶ An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same 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

¹³¹⁴ Judgment of the Court of First Instance of 15 March 2000, *Cimenteries CBR and Others v Commission*, T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, ECLI:EU:T:2000:77, paragraph 3699.

¹³¹⁵ Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 81.

¹³¹⁶ As the Court of Justice held in Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 79, the agreements and concerted practices referred to in Article 101(1) TFEU necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged.

objectives or that it could reasonably have foreseen it and was prepared to take the risk.¹³¹⁷

- (723) An undertaking may have thus 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, the 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 cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole.¹³¹⁸
- (724) On the other hand, 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 to reasonably foresee it and prepared to take the risk.¹³¹⁹
- (725) The fact that individual parties are not familiar with the details of some collusive contacts in which they did not participate or the fact that they were unaware of the existence of some of such contacts cannot detract from the Commission's finding

¹³¹⁷ Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 83; Judgment of the Court of Justice of 24 June 2015, *Fresh Del Monte Produce Inc. v Commission*, C-293/13 P and C-294/13 P ECLI:EU:C:2015:416, paragraph 157 and Judgment of the Court of Justice of 6 December 2012, *European Commission v Verhuizingen Coppens NV*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 42.

¹³¹⁸ Case C-441/11 P, *Commission v Verhuizingen Coppens*, paragraph 43; Joined Cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce*, paragraph 158; Judgment of the Court of Justice of 7 January 2004, *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, ECLI:EU:C:2004:6, paragraph 83 and the case law referred to therein; Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 87; Judgment of the General Court of 30 November 2011, *Quinn Barlo and Others v Commission*, T-208/06, ECLI:EU:T:2011:701, paragraph 128.

¹³¹⁹ Case C-441/11 P, *Commission v Verhuizingen Coppens*, paragraph 44; Joined Cases C-293/13 P and C-294/13 P, *Fresh Del Monte*, paragraph 159.

that they participated in the cartel as a whole.¹³²⁰ It is sufficient that an undertaking is aware of the general scope and essential characteristics of the cartel as a whole.¹³²¹

5.4.2. *Application in this case*

- (726) In this case, the collusive practices followed an overall plan pursuing a single anti-competitive aim. The parties' conduct shared the same common objective of avoiding price competition and of coordinating their future conduct with regard to the sale of electrolytic capacitors, thereby reducing uncertainty on the market. Moreover, there are several circumstances that support the conclusion that the various anti-competitive contacts set out in Section 4.3.6 were complementary, in particular the same products were discussed during the contacts, the contacts showed a consistent pattern, they had a global character and largely the same individuals were involved (or their successors as the case may be). In terms of undertakings involved, the cartel involved the same members for a substantial period (see recital (735)).
- (727) On that basis, the Commission considers that the contacts set out in Section 4.3.6 are part of one single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement (see recitals (730)-(743) for more details).
- (728) Furthermore, as explained in recitals (744)-(746), the parties intended to contribute to the common objective, and, with a few exceptions (explained in recitals (754), (759), (761) and (764)), participated directly in all aspects of anti-competitive conduct comprising the single and continuous infringement and were aware of all the other offending conduct planned or put into effect by those other participants in pursuit of the same objectives, or they could reasonably have foreseen all that conduct and were prepared to take the risk (see recitals (753), (755), (756), (757), (758), (760), (762), (763) and (765)).
- (729) Anti-competitive contacts took place frequently and consistently amongst the parties throughout the whole period of the infringement. Furthermore, the infringement continued uninterrupted despite of changing economic reality, changes in the corporate structure of some undertakings involved¹³²² and changes in the personnel implicated in the conduct.
- (a) *The existence of an overall plan with a single aim*
- (730) There was a regular and clearly distinguishable network of multilateral meetings, supplemented by bi-/tri-lateral contacts involving the cartel members acting in various constellations. Those contacts formed a continuous conduct in pursuit of a single economic aim.
- (731) The aim pursued by the parties and transpiring from the contacts documented in this Decision was to avoid price competition and to coordinate future conduct with

¹³²⁰ See, to that effect Judgment of the General Court of 14 December 2006, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, T-259/02 to T-264/02 and T-271/02, ECLI:EU:T:2006:396, paragraph 193.

¹³²¹ Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, paragraph 193.

¹³²² See Section 0 for more details.

regard to the sale of electrolytic capacitors, thereby reducing uncertainty on the market.

- (732) This single anti-competitive aim was pursued through the exchange of price information, including information in relation to future pricing;¹³²³ exchange of supply and demand information, including information in relation to future supply and demand (such as production volume, increase or decrease of shipments)¹³²⁴ and in some instances, the conclusion,¹³²⁵ the implementation and the monitoring of pricing agreements.¹³²⁶ Although the cartel developed over time and the multilateral meetings were held under different names (ECC meetings (1998-2003), ATC meetings (2003-2005), MK meetings (2005-2012) and CUP meetings (2006-2008)), their aim was maintained.
- (733) The aim was clearly and unambiguously articulated by the parties, at numerous multilateral meetings described in Section 4.3.6, for example:

"The purpose of the meeting is to exchange information by market and by capacitor category so that each company will be able to enjoy profits and that healthy market prices will be maintained";¹³²⁷

"We absolutely need to avoid useless price reduction by thoroughly discussing what we can discuss";¹³²⁸

¹³²³ For example, meeting of 26 June 1998, see recitals (109)-(111); meeting of 17 December 1999, see recitals (124)-(126); meeting of 25 May 2000, see recitals (132) and (133); meeting of 28 July 2000, see recitals (135) and (136); meeting of 19 September 2001, see recitals (149) and (150); meeting of 19 March 2002, see recitals (156) and (157); meeting of 29 August 2002, see recitals (167)-(171); meeting of 29 January 2003, see recitals (181) and (182); meeting of 28 or 29 August 2003, see recitals (197)-(203); meeting of 5 December 2003, see recital (211)-(213); meeting of 21 April 2004, see recital (223)-(226); meeting of 16 February 2005, see recital (256) and (257); meeting of 12 July 2006, see recitals (306), (308) and (309); meeting of 13 September 2006, see recitals (316)-(318); meeting of 18 October 2006, see recitals (320), (322)-(325); 19 June 2007, see recitals (385)-(390); meeting of 2 August 2007, see recitals (392)-(394); bi-lateral contact of September 2007, recitals (402)-(405); meeting of 4 June 2008, see recitals (444)-(447); meeting of 21 May 2009, see recitals (515), (517) and (519); bi-lateral contact of 9 and 11 December 2009, recitals (555)-(558); meeting of 18 February 2010, see recitals (574)-(580); tri-lateral meeting of 31 May 2010, recitals (599)-(604); meeting of 17 June 2010, see recitals (607), (609)-(613).

¹³²⁴ For example, meeting of 19 March 2002, see recitals (156) and (158); meeting of 17 December 2003, see recital (217); meeting of 17 June 2004, see recitals (235), (238) and (239); meeting of March 2005, see recitals (261) and (270); meeting of 12 April 2006, see recitals (295) and (296); meeting of 12 July 2006, see recitals (306) and (307); meeting of 14 February 2007, see recitals (350) and (351); meeting of 13 February 2008, see recitals (413) and (414); bi-lateral contact of May 2009, see recitals (520)-(522); meeting of 21 August 2009, see recitals (538) and (539); meeting of 18 February 2010, see recitals (574) and (575); meeting of 29 August 2011, see recitals (645) and (646).

¹³²⁵ For example, meeting of 18 September 2002, see recitals (174)-(176); meeting of 7 November 2003, see recitals (205)-(209); meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

¹³²⁶ For example, meeting of 16 January 2007, see recitals (339)-(343); meeting of 15 March 2007, see recitals (363) and (364); meeting of 17 May 2007, see recitals (376) and (377); meeting of 19 June 2007, see recitals (385)-(390); meeting of 24 August 2007, see recitals (396) and (397); meeting of 25 June 2008, see recital (449).

¹³²⁷ [...].

¹³²⁸ [...].

"“Collaboration” and “information exchange” for price maintenance are important”;¹³²⁹

"We need to make a united effort to maintain the price".¹³³⁰

- (734) Moreover, there are several circumstances that support the conclusion that the various contacts set out in Section 4.3.6 were complementary.
- (735) First, despite the fact that the start and end dates of the undertakings' cartel involvement differ, the cartel participants remained largely the same throughout the entire period of the cartel, which indicates the internal stability of the cartel:

Undertaking	Multilateral meetings / Bi-/tri-lateral contacts				
	ECC	ATC	MK	CUP	Bi-/Tri-
Elna	X	X	X	X	X
Hitachi AIC	X	X	X	X	X
Holy Stone			X		X
Matsuo	X	X	X		X
NEC Tokin	X	X	X		X
Nichicon	X	X		X	X
Nippon Chemi-Con	X	X	X	X	X
Rubycon	X	X	X	X	X
Sanyo	X	X	X		X

- (736) Second, the cartel participants' exchanges all concerned AECs or TECs or both AECs and TECs (see also recitals (3) and (73)) supplied by the parties to their customers (see Section 2.2 for more details). More concretely, the discussions in ATC and MK meetings extending over the period 2003-2012 covered both AECs and TECs. With respect to the ECC meetings held at the early stage of the cartel (period 1998-2003), the evidence shows that they were primarily held to discuss AECs, although TECs were also discussed on a number of occasions (see recital (78). In the CUP meetings, held in parallel to the MK meetings in the period 2006-2008, the participants primarily discussed AECs (see recital (95)).
- (737) Third, the undertakings participating in the cartel developed a common pattern of behaviour throughout the entire period of the cartel as demonstrated by (i) the organisation and timing of the multilateral meetings and bi-/tri-lateral contacts; (ii)

¹³²⁹ [...].

¹³³⁰ [...].

the overlap in the topics discussed; and (iii) the representatives involved in the multilateral meetings and the bi-/tri-lateral contacts.

(i) The organisation and timing of the multilateral meetings and bi-/tri-lateral contacts

(738) The anti-competitive multilateral meetings and bi-/tri-lateral contacts were organised in essentially the same manner throughout the entire period of the cartel. Multilateral meetings were held regularly (on average every one or two months¹³³¹) (see Section 4.3.6. for more details).¹³³² The participants were sales managers, many of whom had world-wide commercial responsibilities.¹³³³ Furthermore, every six months representatives of the higher level management of the undertakings met in Presidents' meetings.¹³³⁴

(739) Every undertaking participated in multiple multilateral meetings and one or more bi-/tri-lateral contacts.¹³³⁵ During the bi-/tri-lateral contacts, which supplemented the multilateral meetings, the cartel participants often discussed specific issues relating to the sales of electrolytic capacitors, such as particular customers and contracts. For example, NEC Tokin and Sanyo discussed the TECs RFQ for [*confidentiality claim pending*] in July 2009 (recitals (531)-(532)); in July 2009 Nichicon and NCC discussed their negotiations with customer [*confidentiality claim pending*] (recitals (534)-(535)); and NCC and [*confidentiality claim pending*] exchanged future pricing information in relation to their customer [*confidentiality claim pending*] on 13 November 2009 (recitals (547)-(548)).

(ii) The overlap in the topics discussed

(740) The meetings were established to exchange commercially sensitive information and to find a coordinated response to the issues the parties were confronted with (such as rising raw material prices,¹³³⁶ fluctuation of currencies¹³³⁷ or pressure from other competitors¹³³⁸). Together, the undertakings, all headquartered in Japan, formed a united front against other competitors and customers. Numerous quotes from the case file attest to this, for example:

(a) [*confidentiality claim pending*] minutes from the ECC Presidents' meeting held on 14 November 2001 state, among others that "[p]roblems that should be solved by cooperation are not only prices but also include standardization and

¹³³¹ Not all the multilateral meetings held during the period of the cartel are included in the chronology of events (Section 0).

¹³³² See Annex I and recitals (63) and (69).

¹³³³ See recital (76).

¹³³⁴ These Presidents' Meetings were discontinued around 2009 ([...]). See also recitals (63) and (69). However, the other multilateral meetings continued beyond that point in time and with the same frequency (every one or two months), as it follows from Section 0.

¹³³⁵ See recitals (71) and (105).

¹³³⁶ See, for example, recitals: (136), (146), (169), (170), (223)-(226), (232), (242), (250), (269), (297), (322), (325), (329), (335), (354), (378), (379), (393), (410), (415), (431), (432), (435), (445)-(447), (454), (470), (472), (487), (496), (517), (593), (597), (610), (634), (635) and (643).

¹³³⁷ See, for example, recitals: (130), (133), (205)-(209), (211), (226), (331), (335), (354), (393), (394), (415), (427), (431), (432), (435), (436), (446), (450), (490), (526), (554) (557), (562), (565), (576), (582), (604), (610)-(612), (622), (625), (636) and (647).

¹³³⁸ See, for example, recital (154).

countermeasures against overseas manufacturers"¹³³⁹ or "[o]ur common enemy is overseas manufacturers" and "[w]e should continue discussions and cooperation";¹³⁴⁰

- (b) [*confidentiality claim pending*] minutes from the ECC Presidents' meeting held on 29 January 2003 state, among others that "[w]e should closely exchange information [...] Japanese companies should unite to co-exist and co-prosper";¹³⁴¹
 - (c) [*confidentiality claim pending*] minutes from the ATC Presidents' meeting held on 13 May 2004 report that "[w]ith the demand of customers changing, the Japanese companies will fall together unless making a united effort" and that "[c]ollaboration" and "information exchange" for price maintenance are important".¹³⁴²
- (741) The subject matter of the discussions during the multilateral meetings and bi-/tri-lateral contacts remained the same or largely similar throughout the entire period of the cartel.¹³⁴³ Namely, throughout the entire infringement period, the discussions were of a global character and typically covered customer pricing requests or tenders and responses thereto, current and target selling prices, price increases intended or achieved at specific customers or across the industry, status of the price negotiations with customers, production capacity/status and sales forecast (see recital (62) for more details).
- (iii) The representatives involved in multilateral meetings and bi-/tri-lateral contacts
- (742) The same individuals (or their successors, as the case may be), representing the same undertakings, were involved in numerous multilateral meetings or bi-/tri-lateral contacts.¹³⁴⁴ In addition, some of the individuals were involved in both multilateral

¹³³⁹ [...].

¹³⁴⁰ [...].

¹³⁴¹ [...].

¹³⁴² [...].

¹³⁴³ See recital (72).

¹³⁴⁴ For example, the following individuals representing the same undertaking were involved in numerous multilateral meetings or bi-/tri-lateral contacts (the list is not exhaustive): for Elna – [...] (for example attending meetings of 17/07/2002, 15/05/2003, 21/04/2004, 10/11/2005 or 12/07/2006), [...] (for example attending meetings of 28 or 29/08/2003, 05/12/2003 or 03/12/2004), [...] (for example attending meetings of 16/02/2005, 14/02/2007, 02/06/2008 or 11/03/2009), [...] (for example attending meetings of 06/11/2007, 10/07/2008, 21/12/2009, 21/05/2010 or 23/04/2012); for Hitachi AIC – [...] (for example attending meetings of 19/03/2002, 19/02/2003, 21/04/2004, 16/02/2005 or 14/02/2007), [...] (for example attending meetings of 17/07/2002, 28 or 28/08/2003, 21/04/2004 or 23/07/2004), [...] (for example attending meetings of 19/02/2003, 02/06/2008 or 15/07/2008), [...] (for example attending meetings of 21/04/2004 or 14/02/2007), [...] (for example attending meetings of 06/11/2007, 25/06/2008, 16/07/2009 or 18/02/2010); for Matsuo – [...] (for example attending meetings of 05/11/2008, 17/09/2009, 16/07/2010 or 23/04/2012); for NEC Tokin – [...] (for example attending meetings of 15/05/2003, 17/03/2004, 16/02/2005, 12/04/2006, 02/08/2007, 05/11/2008, 21/08/2009 or 16/07/2010) [...] (for example attending meetings of 06/11/2007, 05/11/2008, 21/05/2009 or 21/04/2010); for Nichicon – [...] (for example attending meetings of 17/12/1999, 28 or 29/08/2003 or 03/12/2004), [...] (for example attending meetings of 19/02/2003, 15/05/2003, 21/04/2004 or 16/02/2005), [...] (for example attending meetings of 02/06/2008, 25/06/2008 or 15/07/2008); for NCC – [...] (for example attending meetings of 17/12/1999, 22/11/2000, 14/11/2001, 17/07/2002,

meetings and bi-/tri-lateral contacts.¹³⁴⁵ Due to the long duration of the cartel, there have inevitably been changes in the representatives involved and/or the positions they held in their respective undertakings (see Annex II for details).

- (743) In light of the above, the Commission concludes that all multilateral meetings and bi-/tri-lateral contacts outlined in Section 4 formed part of an overall plan pursuing a single anti-competitive aim.

(b) *All parties intended to contribute in their own way to that single aim*

- (744) Each of the undertakings intended to contribute, through its own conduct, to the common objective of avoiding price competition and of coordinating their future conduct with regard to the sale of electrolytic capacitors by their involvement in numerous anti-competitive contacts with that objective during the period of their participation in the infringement:¹³⁴⁶

Elna: during the period from 26 June 1998 to 23 April 2012 participated in 78 multilateral meetings and was involved in three bi-lateral contacts;

NCC: during the period from 26 June 1998 to 23 April 2012 participated in 87 multilateral meetings and was involved in 16 bi-/tri-lateral contacts;

[*confidentiality claim pending*]: during the period from 26 June 1998 to 23 April 2012 participated in 87 multilateral meetings and was involved in seven bi-/tri-lateral contacts;

Nichicon: during the period from 26 June 1998 to 31 May 2010 participated in 52 multilateral meetings and was involved in six bi-/tri-lateral contacts;

Hitachi AIC: during the period from 22 November 2000 to 18 February 2010 participated in 59 multilateral meetings and was involved in bi-lateral contacts;¹³⁴⁷

Sanyo: during the period from 19 September 2001 to 19 April 2011 participated in 48 multilateral meetings and was involved in 10 bi-/tri-lateral contacts;

Matsuo: during the period from 29 January 2003 to 23 April 2012 participated in 44 multilateral meetings and was involved in at least one bi-lateral contact (see recitals (292)-(293));

28 or 29/08/2003, 04/08/2005, 06/11/2007, 16/07/2009 or 18/02/2010), [...] (for example attending meetings of 05/11/1998, 28/01/2000, 28 or 29/08/2003, 04/08/2005, 15/07/2008 or 16/07/2010), [...] (for example attending meetings of 17/07/2002, 15/05/2003, 16/02/2005, 02/08/2007 or 04/06/2008), [...] (for example attending meetings of 02/06/2008, 10 or 11/09/2008, 21/12/2009 or 16/07/2010); for [*confidentiality claim pending*] – [...] (for example attending meetings of 26/06/1998, 29/10/1999, 28 or 29/08/2003, 04/08/2005 or 02/06/2008) [...] (for example attending meetings of 18/09/2002, 15/05/2003, 21/04/2004 or 04/08/2005), [...] (for example attending meetings of 17/12/1999, 22/11/2000 or 18/09/2002), [...] (for example attending meetings of 04/08/2005, 12/07/2006, 02/08/2007, 10 or 11/09/2008, 21/12/2009 or 16/07/2010), [...] (for example attending meetings of 12/04/2006, 12/07/2006 or 14/02/2007), [...] (for example attending meetings of 16/02/2005, 25/06/2008, 21/08/2009, 18/02/2010 or 23/04/2012); for Sanyo – [...] (for example attending meetings of 14/11/2001, 18/09/2002, 28 or 29/08/2003 or 13/05/2004), [...] (for example attending meetings of 05/12/2003, 03/12/2004, 04/08/2005 or 21/08/2009), [...] (for example attending meetings of 10 or 11/09/2008, 16/07/2009, 21/12/2009 or 17/06/2010).

¹³⁴⁵ See recital (76).

¹³⁴⁶ See also Annex I.

¹³⁴⁷ [*confidentiality claim pending*] ([...]).

NEC Tokin: during the period from 29 January 2003 to 23 April 2012 participated in 47 multilateral meetings and was involved in nine bi-lateral contacts;

Holy Stone: during the period from 16 November 2010 to 23 April 2012 participated in six multilateral meetings and was involved in bi-lateral contacts.¹³⁴⁸

(745) Each undertaking's contribution was influenced by the evolution of the cartel over time, the characteristics of the market concerned, the position of each undertaking on that market¹³⁴⁹ (such as its size and product output) and changing economic circumstances.

(746) Notwithstanding the varying intensity and frequency of cartel contacts per undertaking, through its involvement in multilateral meetings and bi-/tri-lateral contacts, each undertaking knew of the existence of collusion involving other cartel participants and given the very high degree of complementarity between the conduct of each of the parties (see also under (a) *The existence of an overall plan with a single aim*), it follows that each of the undertakings intended to contribute to the common objectives pursued by the cartel participants.¹³⁵⁰

(c) *Awareness of the conduct*

(747) In this case, the multilateral meetings constituted a cartel platform for the parties throughout the duration of the cartel.

(748) In parallel with the multilateral ECC, ATC and MK meetings in which each of the cartel participants participated during their infringement period,¹³⁵¹ the CUP meetings were held in the period 2006-2008 to discuss principally issues specific to AECs. All cartel participants that manufactured and/or sold AECs, except Sanyo, participated in CUP meetings.

(749) Due to their participation in the multilateral meetings, the parties knew which other undertakings were involved in the cartel and therefore, which undertakings they could contact if they, for instance, wished to discuss matters in relation to a specific customer.¹³⁵² Each of the parties took part in bi-/tri-lateral contacts.¹³⁵³ All parties therefore directly participated in the bi-/tri-lateral aspect of the cartel conduct and knew that the scope of the cartel went beyond the multilateral meetings and comprised bi-/tri-lateral contacts. It also occurred that cartel participants exchanged among themselves information received from another cartel participant through a bi-/tri-lateral contact.¹³⁵⁴

(750) Even if the cartel participants may, due to the bi-/tri-lateral nature of the contacts, not have been aware of all the precise details of the contacts between other cartel

¹³⁴⁸ [confidentiality claim pending] ([...]).

¹³⁴⁹ Compare Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 79; Judgment of the General Court of 12 July 2011, *Hitachi and Others v Commission*, T-112/07, ECLI:EU:T:2011:342, paragraph 287.

¹³⁵⁰ Compare Judgment of the General Court of 10 November 2017, *Icap pls v Commission*, T-180/15, ECLI:EU:T:2017:795, paragraph 180.

¹³⁵¹ Except for Nichicon, which did not participate in the MK meetings. Furthermore, ECC and ATC meetings were held outside of Holy Stone's infringement period.

¹³⁵² See for example recital (496) in relation to the 10 November 2008 CUP meeting.

¹³⁵³ See recital (105).

¹³⁵⁴ [...].

participants, they were aware or should at the very least have foreseen that the other cartel participants had contacts of a similar nature to those they themselves engaged in. In this respect, it should be recalled that the fact that individual parties are not familiar with the details of some collusive contacts in which they did not participate or the fact that they were unaware of the existence of some of such contacts, cannot detract from the Commission's finding that they participated in the cartel as a whole.¹³⁵⁵

- (751) In view of the above, the Commission concludes that the cartel participants were aware of the conduct planned or put into effect through bi-/tri-lateral contacts or that they could reasonably have foreseen that conduct and were prepared to take the risk.
- (752) In recitals (753)-(765), the Commission will examine the awareness of each undertaking and whether each undertaking is held liable for the entire single and continuous infringement or for parts of it, applying the principles set out above.

Sanyo

- (753) The evidence set out in Section 4.3.6 and Annex I shows that Sanyo directly participated in multilateral ECC, ATC and MK meetings (relating to both AECs and TECs¹³⁵⁶) with Hitachi AIC, Elna, [*confidentiality claim pending*], NEC Tokin, Nichicon, NCC, Matsuo and Holy Stone and in bi-/tri-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC and MK meetings and the bi-/tri-lateral contacts, Sanyo was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk.
- (754) However, Sanyo's participation in the CUP meetings has not been established and there is no proof that Sanyo was or should have been aware of those contacts. Consequently, for the duration of Sanyo's participation in the infringement, the Commission holds Sanyo liable for the entire single and continuous infringement except for the CUP meetings.

Hitachi AIC

- (755) The evidence set out in Section 4.3.6 and Annex I shows that Hitachi AIC directly participated in multilateral ECC, ATC, MK and CUP meetings (relating to both AECs and TECs¹³⁵⁷) with Sanyo, Elna, [*confidentiality claim pending*], NEC Tokin, Nichicon, NCC, Matsuo and in bi-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC, MK and CUP meetings and the bi-/tri-lateral contacts, Hitachi AIC was aware of the offending conduct planned or put into effect by the other participants¹³⁵⁸ in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct

¹³⁵⁵ See, to that effect Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, paragraph 193.

¹³⁵⁶ See recital (73).

¹³⁵⁷ See recital (73).

¹³⁵⁸ While Hitachi AIC was not aware of Holy Stone's participation in the infringement, this is attributable to the fact that Holy Stone adhered to the cartel only after Hitachi AIC ceased its cartel involvement. On this point, the Commission notes that it is not obliged to prove Hitachi AIC's awareness for conduct outside its infringement period.

and was prepared to take the risk. Consequently, for the duration of Hitachi AIC's participation in the infringement, the Commission holds Hitachi AIC liable for the entire single and continuous infringement.

Elna

- (756) The evidence set out in Section 4.3.6 and Annex I shows that Elna directly participated in multilateral ECC, ATC, MK and CUP meetings (relating to both AECs and TECs¹³⁵⁹) with Sanyo, Hitachi AIC, [confidentiality claim pending], NEC Tokin, Nichicon, NCC, Matsuo and Holy Stone and in bi-/tri-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC, MK and CUP meetings and the bi-/tri-lateral contacts, Elna was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk. Consequently, for the duration of Elna's participation in the infringement, the Commission holds Elna liable for the entire single and continuous infringement.

[confidentiality claim pending]

- (757) The evidence set out in Section 4.3.6 and Annex I shows that [confidentiality claim pending] directly participated in multilateral ECC, ATC, MK and CUP meetings (relating to both AECs and TECs¹³⁶⁰) with Sanyo, Hitachi AIC, Elna, NEC Tokin, Nichicon, NCC, Matsuo and Holy Stone and in bi-/tri-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC, MK and CUP meetings and the bi-/tri-lateral contacts, [confidentiality claim pending] was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk. Consequently, for the duration of [confidentiality claim pending]'s participation in the infringement, the Commission holds [confidentiality claim pending] liable for the entire single and continuous infringement.

NEC Tokin

- (758) The evidence set out in Section 4.3.6 and Annex I shows that NEC Tokin directly participated in multilateral ECC, ATC and MK meetings (relating to both AECs and TECs¹³⁶¹) with Sanyo, Hitachi AIC, Elna, [confidentiality claim pending], Nichicon, NCC, Matsuo and Holy Stone and in bi-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC and MK meetings and the bi-/tri-lateral contacts, NEC Tokin was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk.
- (759) However, NEC Tokin's participation in the CUP meetings has not been established and there is no proof that NEC Tokin was or should have been aware of those contacts. Consequently, for the duration of NEC Tokin's participation in the

¹³⁵⁹ See recital (73).

¹³⁶⁰ See recital (73).

¹³⁶¹ See recital (73).

infringement, the Commission holds NEC Tokin liable for the entire single and continuous infringement except for the CUP meetings.

Nichicon

- (760) The evidence set out in Section 4.3.6 and Annex I shows that Nichicon directly participated in multilateral ECC, ATC and CUP meetings (relating to both AECs and TECs¹³⁶²) with Sanyo, Hitachi AIC, Elna, [*confidentiality claim pending*], NEC Tokin, NCC and Matsuo and in bi-/tri-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC and CUP meetings and the bi-/tri-lateral contacts, Nichicon was aware of the offending conduct planned or put into effect by the other participants¹³⁶³ in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk.
- (761) However, Nichicon's participation in the MK meetings has not been established and there is no proof that Nichicon was or should have been aware of those contacts. Consequently, for the duration of Nichicon's participation in the infringement, the Commission holds Nichicon liable for the entire single and continuous infringement except for the MK meetings.

NCC

- (762) The evidence set out in Section 4.3.6 and Annex I shows that NCC directly participated in multilateral ECC, ATC, MK and CUP meetings (relating to both AECs and TECs¹³⁶⁴) with Sanyo, Hitachi AIC, Elna, NEC Tokin, Nichicon, [*confidentiality claim pending*], Matsuo and Holy Stone and in bi-/tri-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC, MK and CUP meetings and the bi-/tri-lateral contacts, NCC was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk. Consequently, for the duration of NCC's participation in the infringement, the Commission holds NCC liable for the entire single and continuous infringement.

Matsuo

- (763) The evidence set out in Section 4.3.6 and Annex I shows that Matsuo directly participated in multilateral ECC, ATC and MK meetings (relating to both AECs and TECs¹³⁶⁵) with Sanyo, Hitachi AIC, Elna, [*confidentiality claim pending*], NEC Tokin, NCC, Nichicon and Holy Stone and in at least one bi-lateral contact (see also recital (744)). The Commission therefore considers that, in relation to the ECC, ATC and MK meetings and the bi-/tri-lateral contacts, Matsuo was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same

¹³⁶² See recital (73).

¹³⁶³ While Nichicon was not aware of Holy Stone's participation in the infringement, this is attributable to the fact that Holy Stone adhered to the cartel only after Nichicon ceased its cartel involvement. On this point, the Commission notes that it is not obliged to prove Nichicon's awareness for conduct outside its infringement period.

¹³⁶⁴ See recital (73).

¹³⁶⁵ See recital (73).

objectives or that it could, at the very least, reasonably have foreseen that conduct and was prepared to take the risk.

- (764) However, Matsuo's participation in the CUP meetings has not been established and there is no proof that Matsuo was or should have been aware of those contacts. Consequently, for the duration of Matsuo's participation in the infringement, the Commission holds Matsuo liable for the entire single and continuous infringement except for the CUP meetings.

Holy Stone

- (765) The evidence set out in Section 4.3.6 and Annex I shows that Holy Stone directly participated in multilateral MK meetings (relating to both AECs and TECs¹³⁶⁶) with Sanyo, Elna, [*confidentiality claim pending*], NEC Tokin, NCC and Matsuo and in bi-lateral contacts (see also recital (744)). The Commission therefore considers that, in relation to the MK meetings and the bi-/tri-lateral contacts, Holy Stone was aware of the offending conduct planned or put into effect by the other participants¹³⁶⁷ in pursuit of the same objectives or that it could, at the very least, reasonably have foreseen that conduct¹³⁶⁸ and was prepared to take the risk. Consequently, for the duration of Holy Stone's participation in the infringement, the Commission holds Holy Stone liable for the entire single and continuous infringement.

5.4.3. Arguments of the parties and assessment thereof by the Commission

Overall plan pursuing a common objective

- (766) Nichicon claims¹³⁶⁹ that the Commission's description of the overall plan and alleged objectives underlying the single infringement is overly vague, inherent to any horizontal restriction of competition and thus insufficient to demonstrate the existence of a single infringement. Nichicon submits that the alleged objective of the conduct was described in paragraph 241 of the SO as merely to "*reduce uncertainty as to the future conduct*" and to "*coordinate [...] future conduct*".
- (767) The Commission disagrees with Nichicon's arguments. In accordance with settled case law,¹³⁷⁰ the concept of a single objective has not been determined by a general reference to the distortion of competition on the market. On the contrary, the Commission has described the overall plan and the common objective in detail.

¹³⁶⁶ See recital (73).

¹³⁶⁷ While Holy Stone was not aware of Nichicon's and Hitachi AIC's participation in the infringement, this is attributable to the fact that Holy Stone adhered to the cartel only after Nichicon and Hitachi AIC respectively ceased their cartel involvement.

¹³⁶⁸ Although Holy Stone did not participate, nor was aware of the multilateral ECC/ATC meetings, this is due to the fact that Holy Stone joined the cartel only following the transformation of the ECC/ATC meetings into MK meetings. Similarly, while Holy Stone did not participate, nor was aware of the multilateral CUP meetings, it has not adhered to the cartel yet by the time the CUP meetings were taking place. On this point, the Commission notes that it is not obliged to prove Holy Stone's awareness for conduct outside its infringement period.

¹³⁶⁹ [...].

¹³⁷⁰ Judgment of the Court of First Instance of 12 December 2007, *BASF and UCB v Commission*, [T-101/05](#) and T-111/05, ECLI:EU:T:2007:380, paragraph 180; Judgment of the Court of Justice of 19 December 2013, *Siemens v Commission*, C-[239/11](#) P, C-489/11 P and C-498/11 P, ECLI:EU:C:2013:866, paragraph 245.

- (768) First, paragraph 241 of the SO contained a specific reference to coordination of conduct "*with regard to the sale of electrolytic capacitors*".
- (769) Second, paragraphs 242–247 of the SO described in a detailed manner features of the common plan united by the single collusive aim.
- (770) Third, the Commission referred to concrete evidence demonstrating that the cartel participants pursued a single anti-competitive aim. In particular, paragraphs 113, 132, 211 and 212 of the SO further elaborate on the description of the single anti-competitive objective by directly referring to quotes from evidence on the Commission's file showing that the cartel participants sought to avoid price competition in the electrolytic capacitors industry to be able to maintain profits or to avoid their erosion (for instance "*The purpose of the meeting is to exchange information by market and by capacitor category so that each company will be able to enjoy profits and that healthy market prices will be maintained.*"¹³⁷¹).
- (771) Moreover, the single anti-competitive aim and the common characteristics of the common plan pursuing that aim are clearly described in this Decision (see recitals (726) and (730)-(743) for more details).
- (772) NIPPON CHEMI-CON CORPORATION contests¹³⁷² that there was one single continuum of contacts throughout the cartel pursuing the same common objective and alleges that the nature, structure and focus of contacts differed and that their objectives were changing. NIPPON CHEMI-CON CORPORATION further submits that the Commission ignores statements made by leniency applicants that would undermine the conclusion that there was one single continuum of contacts throughout the cartel. Finally, NIPPON CHEMI-CON CORPORATION argues¹³⁷³ that the Commission associates all bi-/tri-lateral contacts with the multilateral meetings despite the fact that these contacts would have existed outside the framework of the multilateral meetings and followed a different pattern. The Commission would also not have shown that the individuals participating at multilateral meetings reported back to employees who were said to be participating in bi-lateral exchanges. Sanyo argues¹³⁷⁴ that the different sets of multilateral meetings and bi-/tri-lateral contacts constitute separate infringements rather than a single and continuous infringement.
- (773) The Commission disagrees with NIPPON CHEMI-CON CORPORATION's and Sanyo's arguments for the following reasons.
- (774) First, for the reasons set out in recitals (726)-(743), the Commission has established that there is an objective link between the various manifestations of conduct, including the bi-/tri-lateral contacts, and that the conduct shared the same common objective. Even though the cartel evolved over time, the aim of the exchanges remained the same and their nature largely unchanged throughout the entire period of the cartel (see recital (732)). The regular multilateral meetings and bi-/tri-lateral contacts concerned the same products, involved the same Japanese producers and their representatives, had the same objective and the same or similar issues were

1371 [...]..

1372 [...]..

1373 [...]..

1374 [...]..

discussed throughout these collusive contacts, in particular pricing issues and supply and demand outlook (see recitals (726)-(743)). The fact that the cartel developed over time and that the cartel meetings were held under different names or in a slightly different format by no means implies changing anti-competitive objectives. It is the set of anti-competitive effects sought by cartel parties which constitutes the overall plan and not the consistency in format or structure of the contacts.¹³⁷⁵

- (775) Second, the Commission has relied on a large body of consistent evidence in order to make its finding that the various instances of contact were part of an overall plan pursuing a common objective of avoiding price competition and of coordinating future conduct with regard to the sale of electrolytic capacitors.¹³⁷⁶
- (776) Third, even if the corporate statements expressly referred to by NCC¹³⁷⁷ did not support the Commission's view in all aspects, this is irrelevant because the Commission cannot be criticised for giving more credence and basing its finding of a single and continuous infringement largely on the items of evidence in the case file which were not compiled *in tempore suspect*, such as meeting minutes, internal emails or notes from meetings.¹³⁷⁸
- (777) Fourth, as set out in recitals (730)-(743), the mere fact that discussions during bi-/tri-lateral contacts were often specific to a certain customer or a certain type of capacitor by no means suggests that that conduct pursued a different objective. On the contrary, bi-/tri-lateral contacts were also aimed at avoiding price competition and of coordinating future conduct with regard to the sale of electrolytic capacitors. The Commission adds that a number of individual customers that were discussed during bi-/tri-lateral contacts were also discussed at multilateral meetings (for example, [confidentiality claim pending] (see recitals (186), (346), (348), (397), (535), (611) and (612)), [confidentiality claim pending] (see recitals (390), (397), (612), (624) and (625)), [confidentiality claim pending] (see recitals (209), (289), (367) and (495)), [confidentiality claim pending] (recitals (209), (274), (275), (288), (291), (367) and (422)), [confidentiality claim pending] (recitals (404), (440), (441), (478), (479), (548), (556)-(558) and (582)) and [confidentiality claim pending] (see recitals (125), (145), (176), (262), (263), (283), (293), (300)-(302), (316)-(318), (328), (336), (357), (364), (377), (383), (387) (388), (396), (420), (450), (454), (459), (482), (488), (495), (499), (530), (578), (579), (592), (598) and (601)-(604)).
- (778) Fifth, whether the individuals involved in the separate contacts reported internally on the outcome of those contacts is irrelevant for the purposes of assessing whether a single overall plan has been put in place. It is the mere involvement of those individuals and their lack of dissociation which has led the other cartel participants to believe that the entities and undertakings employing the participating individuals subscribed to the common plan and would comply with it.¹³⁷⁹

¹³⁷⁵ See, to that effect, Judgment of the General Court of 16 September 2013, *Keramag Keramische Werke and Others v Commission*, T-379/10 and T-381/10, ECLI:EU:T:2013:457, paragraph 77.

¹³⁷⁶ See, to that effect, Case T-360/09, *E.ON v Commission*, paragraph 214 and Case T-84/13, *Samsung SDI and Others v Commission*, paragraph 75.

¹³⁷⁷ [...].

¹³⁷⁸ See, to that effect, Case T-360/09, *E.ON v Commission*, paragraph 201.

¹³⁷⁹ Joined Cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and Others v Commission*, paragraph 82.

- (779) Sixth and lastly, it should be emphasised that the validity of the Commission's assessment that the conduct constitutes a single and continuous infringement is not affected by the fact that one or more elements of a series of actions or of a continuous course of conduct would individually and in themselves also constitute a violation of Article 101 TFEU.¹³⁸⁰
- (780) Sanyo submits¹³⁸¹ that the Commission should not hold Sanyo companies liable for any conduct if business divisions or related entities of Sanyo companies were actual or intended victims of such conduct. Sanyo further suggests that such conduct was not undertaken in pursuit of the same objective(s) as the contacts in which Sanyo participated. Moreover, Sanyo claims¹³⁸² that the Sanyo companies were a likely target of contacts which took place without the involvement of Sanyo and during which [*confidentiality claim pending*] customers in general were discussed.
- (781) The Commission disagrees with Sanyo's arguments for the reasons set out in recitals (782)-(785).
- (782) First, the fact that Sanyo is a vertically integrated undertaking and could, while being a cartel perpetrator, at the same time have been a victim of the cartel conduct does not exonerate or limit its liability for the infringement in which it participated and from which it never publicly distanced itself.
- (783) Second, the contacts disputed by Sanyo mainly concern contacts (i) that are outside the scope of the cartel (and are therefore not described in Section 4.3.6);¹³⁸³ (ii) for which Sanyo is not liable because the conduct took place outside the period of Sanyo's cartel involvement;¹³⁸⁴ (iii) that concern CUP-related conduct (see recital (754)); or (iv) that concern entities which, at the time of the disputed contacts, were not considered part of Sanyo undertaking for the purposes of this Decision.¹³⁸⁵ Sanyo's argument is therefore to a large extent ineffective.
- (784) Third, in the limited number of instances where the evidence referred to by Sanyo contains references to Sanyo as a customer of the cartel at the same time as Sanyo participated in the cartel,¹³⁸⁶ those references are only passing references to Sanyo from which no specific conclusions as to the anti-competitive nature or objective of the conduct are drawn. On the contrary, those passing references are made in a wider context of collusion that is not materially different from the collusive contacts involving Sanyo as a direct participant, in terms of contents and objective pursued. The contacts in relation to which Sanyo was the actual or intended victim pursue the same, common anti-competitive objective as other collusive contacts referred to in this Decision and constitute an integral part of the single and continuous infringement in this case (see also recitals (726)-(743)).

¹³⁸⁰ Case C-441/11 P, *Commission v Verhuizingen Coppens*, paragraph 41; Joined Cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce*, paragraph 156.

¹³⁸¹ [...].

¹³⁸² See [...].

¹³⁸³ See [...].

¹³⁸⁴ See [...].

¹³⁸⁵ See [...].

¹³⁸⁶ See [...].

- (785) Fourth, Sanyo's claim that the Sanyo entities were a likely target of contacts which took place without the involvement of Sanyo and during which [*confidentiality claim pending*] customers in general were discussed is purely speculative and contradicted by the evidence on the Commission's file. Numerous other meetings which Sanyo attended covered discussions on customers in general (for example, multilateral meetings held on 12 July 2006,¹³⁸⁷ 17 September 2009¹³⁸⁸ or 17 June 2010).¹³⁸⁹ Furthermore, Sanyo attended a multilateral meeting held on 19 April 2011,¹³⁹⁰ described in Section 4.3.6, at which one of its group entities was explicitly discussed. More specifically, NEC Tokin stated during the said meeting: "As for 7343 large size (V case) tantalum conductive property, [*confidentiality claim pending*] [*confidentiality claim pending*]¹³⁹¹ cap shift is accelerating due to 30% price increase".¹³⁹² Sanyo must therefore have known or at the very least reasonably have foreseen that the cartel conduct also applied to its entities active on the market as the customers of the capacitors suppliers. There is thus no reason to limit Sanyo's liability for the single and continuous infringement (see also recitals (744)-(746) and (753)).

Overall plan extending to CUP

- (786) Nichicon contests¹³⁹³ that there is an overall plan covering both ATC and CUP meetings because the ATC and the CUP meetings would not have had the same features. Nichicon claims that, while ATC meetings were official meetings aiming mainly at an exchange of statistical data, CUP meetings were unofficial meetings of individuals of some undertakings, where the persons did not participate on behalf of companies and there was no involvement by the top hierarchies of the companies. In terms of objectives, Nichicon submits that the ATC meetings were established to exchange statistical data on a voluntary basis, while the CUP meetings were aimed at an information exchange with regard to specific customers. In terms of functions of the individuals attending, Nichicon observes that while in ATC meetings responsible persons of the Sales Headquarters or Head Offices took part, the individuals in the CUP meetings did not necessarily hold corresponding functions. Nichicon further refers to alleged differences in terms of undertakings/individuals attending, products discussed and geographical scope. More specifically, Nichicon argues that (i) two of the participants in the CUP meetings were represented by persons who had not attended any ECC or ATC meetings, (ii) four out of nine participating companies in the ATC meetings did not participate in the CUP meetings at all, (iii) while ATC meetings dealt with both AECs and TECs, the CUP meetings were limited to discussions on AECs and (iv) whereas ATC meetings included [*confidentiality claim pending*] transactions, CUP meetings basically dealt with [*confidentiality claim pending*] transactions and [*confidentiality claim pending*] and European customers were hardly discussed at the latter meetings.

¹³⁸⁷ [...].

¹³⁸⁸ [...].

¹³⁸⁹ [...].

¹³⁹⁰ See also recitals (640)-(643).

¹³⁹¹ See [...].

¹³⁹² [...].

¹³⁹³ [...].

- (787) The Commission disagrees with Nichicon's arguments for the reasons set out in recitals (788)-(792).
- (788) First, the CUP meetings that were held in the period 2006-2008 served as a forum that was not materially different from the other multilateral meetings, including the ATC meetings. The collusive discussions in both series of meetings aimed at avoiding price competition and the parties coordinated, for example, on price increases as a result of currency fluctuations, on strategies to be adopted regarding the customers or on price increases to reflect the increasing cost of raw material (see for example recitals (99), (202)-(203), (211)-(213) and (224)-(225)).
- (789) Second, the discussions during the CUP meetings covered the same products that had been discussed from the start of the infringement (primarily AECs),¹³⁹⁴ including at the ATC meetings. The Commission adds that the discussions at the cartel meetings did not all have to cover both AECs and TECs to be part of the same overall plan.¹³⁹⁵
- (790) Third, there was an important overlap in the undertakings that participated in the ATC and the CUP meetings (and the other series of multilateral meetings). Five out of eight cartel participants¹³⁹⁶ attended both the ATC and the CUP meetings (see recitals (84) and (95)). All of the undertakings involved in the CUP meetings participated in the other series of multilateral meetings¹³⁹⁷ constituting an overall cartel platform (see recitals (79), (84), (88), and (95)). The absence of some undertakings from the CUP meetings can be explained by the fact that those undertakings were not producing AECs, while CUP meetings were dedicated primarily to AEC-related issues.¹³⁹⁸ In this respect, it should be borne in mind that each undertaking takes part in an infringement in ways particular to it and in a manner appropriate to its own circumstances.¹³⁹⁹
- (791) Fourth, there was an overlap in the individuals that attended the anti-competitive meetings throughout the infringement period.¹⁴⁰⁰ More specifically in relation to the ATC and the CUP meetings, at least three undertakings were represented by the same individuals at both series of meetings.¹⁴⁰¹ Even if other individuals participating in the cartel on behalf of the undertakings or their functions may have varied from time to time, their mere involvement, lack of dissociation and their presumed ability to communicate internally the outcome of the coordination have led the other cartel participants to believe that the entities and undertakings

¹³⁹⁴ See recital (95).

¹³⁹⁵ Judgment of the General Court of 16 September 2013, *Masco and Others v Commission*, T-378/10, ECLI:EU:T:2013:469, paragraph 67.

¹³⁹⁶ Holy Stone, the ninth cartel member only joined the cartel after termination of both ATC and CUP meetings.

¹³⁹⁷ Except for Nichicon, which did not participate in the MK meetings.

¹³⁹⁸ In case of Holy Stone, this party only joined the cartel following the end of the CUP meetings.

¹³⁹⁹ Case T-84/13, *Samsung SDI and Others v Commission*, paragraph 80.

¹⁴⁰⁰ For illustration, [...] in the period from 2002 to 2007 was attending ECC, ATC, MK as well as CUP meetings for Hitachi AIC, [...] in the period from 2000 to 2010 was attending ECC, ATC, MK and CUP meetings for NCC, [...] in the period from 2003 to 2012 was attending ECC, ATC, MK and CUP meetings for NCC, [...] in the period from 1998 to 2009 was attending ECC, ATC, CUP meetings as well as bi-lateral contacts for [confidentiality claim pending] and [...] [confidentiality claim pending].

¹⁴⁰¹ For illustration, [...] of Hitachi AIC, [...] of NCC and [...] of [confidentiality claim pending].

employing the participating individuals subscribed to the common plan and would comply with it.¹⁴⁰²

- (792) Finally, in response to Nichicon's arguments that the CUP meetings (i) were attended by individuals participating on their own initiative rather than on behalf of their employing companies and that (ii) there was no involvement by the top hierarchies of the companies, the Commission notes that, for Article 101 TFEU (and Article 53 of the EEA Agreement) to apply, it is not necessary for there to have been action by, or even knowledge on the part of, the partners or principal managers of the undertaking concerned; action by a person who is authorised to act on behalf of the undertaking suffices.¹⁴⁰³ The fact that some participants of the CUP meetings may have acted contrary to the company policy is also not capable of exempting their employing undertaking from liability for the cartel.¹⁴⁰⁴ It is rarely the case that the individuals directly participating in the cartel attend meetings with a mandate to commit an infringement.¹⁴⁰⁵ Undertakings are implicated on the basis of the acts of their employees.¹⁴⁰⁶ An employee performs his duties for and under the direction of the undertaking for which he works and, thus, is considered to be incorporated into the economic unit comprised by that undertaking.¹⁴⁰⁷

Product and customer scope of the overall plan

- (793) Nichicon submits¹⁴⁰⁸ that the Commission does not duly recognise the differences of the products concerned and that although it lists two different types of electrolytic capacitors (AECs and TECs), the Commission does not give any further reasons for treating the two different types as if they were essentially the same products. The single and continuous infringement can in its view not extend to contacts that are not sufficiently related. Along similar lines, NIPPON CHEMI-CON CORPORATION claims¹⁴⁰⁹ that AECs and TECs are heterogeneous products with a number of product classes covering a wide variety of product types used for different purposes, priced differently and offered to different customers by different manufacturers. According to NIPPON CHEMI-CON CORPORATION, the heterogeneous nature of the industry is a principal reason why the alleged information exchanges cannot have been connected by a single objective aimed at all electrolytic capacitors and that this heterogeneity would make it impossible to facilitate an all-encompassing and universal coordination by (i) exchanging general trend information or (ii)

¹⁴⁰² Joined Cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and Others v Commission*, paragraph 82.

¹⁴⁰³ Judgment of the Court of Justice of 7 February 2013, *Slovenská sporiteľňa*, C-68/12, ECLI:EU:C:2013:71, paragraph 25 and the case law referred to therein.

¹⁴⁰⁴ Judgment of the Court of First Instance of 8 July 2008, *BPB v Commission*, T-53/03, ECLI:EU:T:2008:254, paragraph 360.

¹⁴⁰⁵ Case C-68/12, *Slovenská sporiteľňa*, paragraphs 26 and 28.

¹⁴⁰⁶ Judgment of the Court of Justice of 7 June 1983, *Musique Diffusion française and Others v Commission*, 100/80 to 103/80, ECLI:EU:C:1983:158, paragraphs 97-98 and Case C-68/12, *Slovenská sporiteľňa*, paragraph 28.

¹⁴⁰⁷ See, to that effect, Judgment of the Court of Justice of 16 September 1999, *Becu and Others*, C-22/98, ECLI:EU:C:1999:419, paragraph 26.

¹⁴⁰⁸ [...].

¹⁴⁰⁹ [...].

information that is generally limited to a particular customer and/or a specific product type.

- (794) The arguments of Nichicon and NIPPON CHEMI-CON CORPORATION should be rejected for the following reasons.
- (795) First, the parties concurrently discussed both AECs and TECs in multilateral meetings. With respect to the establishment of one single and continuous infringement covering both AECs and TECs, as is clear from settled case law,¹⁴¹⁰ a single infringement can comprise anti-competitive conduct relating to distinct goods, services or territories if it forms part of an overall plan in pursuit of a single anti-competitive objective. It is immaterial whether the collusive actions concern various markets, products or product sub-groups. A single infringement does not necessarily have to relate to one product or to substitutable products¹⁴¹¹ and can encompass a number of products which might not all be substitutable.¹⁴¹²
- (796) Second, the cartel conduct in this case was neither customer specific nor specific to certain types of AECs and TECs. On the contrary, it extended to AECs and TECs in general and customers of the parties throughout the cartel period. In this context, it is not incumbent on the Commission to find evidence of collusion in relation to each type of AEC or TEC throughout the period of the cartel. This is all the more so in view of the fact that some of the meetings related to the entire product range and customers in general. For example, the meeting minutes referred to in recital (169) included a reference to "[confidentiality claim pending] [...] for global customers, overseas business and communication will be dealt with in a unified way".¹⁴¹³ In addition, recital (336) refers to a multilateral meeting, where the parties discussed that price "increase rates will be set for the industry as a whole".¹⁴¹⁴ Furthermore, recital (450) contains a reference to: "prices will be increased by about [confidentiality claim pending] for [confidentiality claim pending] and [confidentiality claim pending] for [confidentiality claim pending]"¹⁴¹⁵ and the meeting minutes quoted in recital (634) refer to the entire customer base: "we may have to expand price increases to all customers unless the situation changes".¹⁴¹⁶ Other contacts were connected to specific events, such as depreciation or

¹⁴¹⁰ Case T-378/10, *Masco and Others v Commission*, paragraph 22 and the case law referred to therein.

¹⁴¹¹ Case T-91/11, *InnoLux v Commission*, paragraph 128.

¹⁴¹² Judgment of the General Court of 12 December 2012, *Almamet v Commission*, T-410/09, ECLI:EU:T:2012:676, paragraph 173 and the case law referred to therein.

¹⁴¹³ [...]. Regarding eco-products, although the terminology used in various meeting minutes varies (for example: 22 November 2000 – "[confidentiality claim pending]", 29 August 2002 – "[confidentiality claim pending]", 18 September 2002 – "[confidentiality claim pending]", 19 February 2003 – "[confidentiality claim pending]", 17 March 2004 – "[confidentiality claim pending]", 21 April 2004 – "[confidentiality claim pending]", 23 July 2004 – "[confidentiality claim pending]", 3 December 2004 – "[confidentiality claim pending]"), the Commission considers that all these terms refer to eco-products, which include at least lead-free capacitors. This is further confirmed by the understanding of Professor J. A. Ordovery in his report submitted by NIPPON CHEMI-CON CORPORATION in support of NIPPON CHEMI-CON CORPORATION's SO and LoF reply: "[confidentiality claim pending]." ([...]).

¹⁴¹⁴ [...].

¹⁴¹⁵ [...].

¹⁴¹⁶ [...].

appreciation of currencies and the foreign exchange risk associated with that¹⁴¹⁷ or the increase in raw material costs.¹⁴¹⁸ The wide-ranging product and customer scope of the conduct is further demonstrated by the information sheets exchanged by the parties at the multilateral collusive meetings throughout the whole of the period 2005-2012 (see recitals (90) and (91) for more details).

- (797) [*confidentiality claim pending*].¹⁴¹⁹ [*confidentiality claim pending*].
- (798) Third, Annex II shows that the majority of the individuals involved in the cartel on behalf of undertakings that manufactured and/or sold both AECs and TECs were in charge of sales or the capacitor business in general rather than just responsible for specific product lines. This further confirms the scope of the collusion going beyond specific types of electrolytic capacitors or product classes.
- (799) NIPPON CHEMI-CON CORPORATION argues¹⁴²⁰ that there was a lack of a broad norm or pattern which made it impossible to collude across all products and globally.
- (800) NIPPON CHEMI-CON CORPORATION's argument has to be rejected. There is no requirement for the common collusive plan to be formally spelled out and to establish the existence of a single, broad norm of conduct. It is the set of anti-competitive effects sought by cartel parties which constitutes the overall plan.¹⁴²¹
- (801) Nichicon submits¹⁴²² that while the Taiwanese Fair Trade Commission clearly distinguishes behaviour concerning AECs and TECs, the Commission failed to do so. In the same vein, NIPPON CHEMI-CON CORPORATION submits¹⁴²³ that the findings of the Commission are in sharp contrast with the considerably more limited findings of the Japan Fair Trade Commission and that this means that NIPPON CHEMI-CON CORPORATION and the other parties are being prosecuted excessively and unfairly by the Commission.
- (802) The Commission disagrees with the parties' arguments. The facts of the case, the legality of the findings made or the appropriateness of the fines imposed by the Commission must be assessed on the basis of the Union competition law, and cannot

¹⁴¹⁷ See, for example, recitals: (130), (133), (205)-(209), (211), (226), (331), (335), (354), (393), (394), (415), (427), (431), (432), (435), (436), (446), (450), (490), (526), (554) (557), (562), (565), (576), (582), (604), (610)-(612), (622), (625), (636) and (647).

¹⁴¹⁸ See, for example, recitals: (136), (146), (169), (170), (223)-(226), (232), (242), (250), (269), (297), (322), (325), (329), (335), (354), (378), (379), (393), (410), (415), (431), (432), (435), (445)-(447), (454), (470), (472), (487), (496), (517), (593), (597), (610), (634), (635) and (643).

¹⁴¹⁹ Moreover, NCC's statement reported in the minutes of the meeting of 16 July 2009 demonstrates the interrelation between various capacitor sizes/types (namely, [*confidentiality claim pending*] (in [...]) it is explained that "[*confidentiality claim pending*]" is a type of [*confidentiality claim pending*]), [*confidentiality claim pending*] (in [...]) it is explained that [*confidentiality claim pending*] are [*confidentiality claim pending*] AECs)): "[*confidentiality claim pending*]." ([...]). In [...] it is explained that "Company NC" means NCC.)

¹⁴²⁰ [...].

¹⁴²¹ See, to that effect, Joined Cases T-379/10 and T-381/10, *Keramag Keramische Werke and Others v Commission*, paragraph 77.

¹⁴²² [...].

¹⁴²³ [...].

depend on the law of a non-member State or on the approach taken by the competition authorities of non-member States.¹⁴²⁴

Intention to contribute to the overall plan

- (803) Nichicon argues¹⁴²⁵ that the Commission failed to establish Nichicon's intentional contribution to the overall anti-competitive plan. More specifically, Nichicon submits that it deliberately quit the ATC meetings for the very reason that it did not support the overall plan and that its concerns with regard to compliance were obvious to the other cartel participants. Furthermore, according to Nichicon, in relation to the CUP meetings, Nichicon's intentional contribution (if any) was limited to the narrow purpose of the CUP meetings. Moreover, Nichicon claims that the Commission's definition of the cartel's common aim does not at all correspond to Nichicon's market conduct at the time.
- (804) Nichicon's arguments should be rejected for the reasons set out in recitals (805)-(808).
- (805) First, as set out in recital (744), during the period from 26 June 1998 to 31 May 2010 Nichicon participated in 52 multilateral meetings and was involved in six bi-/tri-lateral contacts. In such circumstances, Nichicon cannot credibly argue that it did not intend to contribute to the common plan.
- (806) Second, each of the undertakings, including Nichicon, contributed to the realisation of the common objective in the manner appropriate to their own specific circumstances (see recitals (745) and (746)). Even if Nichicon at some point may have had compliance concerns and therefore, for a limited period (between the last ATC meeting held on 16 February 2005 and the first CUP meeting held on 4 July 2006), did not participate in multilateral meetings, it continued its participation and its contribution to the overall plan and the common objective by means of a bi-lateral contact.¹⁴²⁶ Moreover, it resumed participation in the multilateral meetings in 2006 without having publicly distanced itself from the cartel.
- (807) Third, as regards Nichicon's involvement in the CUP meetings, they did not have a distinct or more limited purpose compared with the other multilateral meetings or bi-/tri-lateral contacts. On the contrary, the CUP meetings shared the same collusive objective of avoiding price competition and of coordination of the future conduct with regard to the sale of electrolytic capacitors and formed part of the same overall plan (see recitals (95)-(101) for more details).
- (808) Fourth, as regards Nichicon's market conduct, it should be noted that an undertaking which, despite colluding with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit.¹⁴²⁷ Therefore, Nichicon's alleged competitive conduct on the market does not exclude that it intended to contribute to the common plan. Any failure of putting

¹⁴²⁴ Judgment of the General Court of 29 February 2016, *Panalpina World Transport (Holding) and Others v Commission*, T-270/12, ECLI:EU:T:2016:109, paragraph 189.

¹⁴²⁵ [...].

¹⁴²⁶ See recitals (271) and (272).

¹⁴²⁷ Judgment of the General Court of 13 September 2013, *Total Raffinage Marketing v Commission*, T-566/08, ECLI:EU:T:2013:423, paragraph 243; see also recitals (863)-(865).

the collusive arrangements fully into effect does not suffice to refute subscription to a common plan.¹⁴²⁸

- (809) Furthermore, NEC TOKIN Corporation argues¹⁴²⁹ in relation to the ECC element of the cartel, that there is no evidence that it intended, through its own conduct, to contribute to the common objectives pursued by all the ECC meeting participants. [*confidentiality claim pending*].
- (810) NEC TOKIN Corporation's arguments should be rejected for the reasons set out in recitals (745) and (746) (see also recitals (813)-(815)). It can be inferred from its participation in two anti-competitive meetings discussing AECs and TECs that NEC Tokin intended to contribute to the common objective, namely that of avoiding price competition and of coordination of the future conduct in relation to the supply of AECs and TECs.

Direct participation and awareness

- (811) NEC TOKIN Corporation argues¹⁴³⁰ that it should not be held liable for the ECC meetings. According to NEC TOKIN Corporation, the Commission bases NEC Tokin's liability on the proposition that NEC Tokin attended two out of 59 ECC meetings (more precisely the meetings held on 29 January 2003 and 15 May 2003), which would in its view be insufficient to show NEC Tokin's participation in the ECC meetings and its awareness of the general scope and essential characteristics of the ECC part of the infringement. NEC TOKIN Corporation further claims¹⁴³¹ that the Commission is procedurally precluded from using those two meetings in demonstrating participation in the ECC meetings. [*confidentiality claim pending*]. Finally, NEC TOKIN Corporation argues that the discussions at the two Presidents' meetings amounted to nothing more than the expression of high-level views and opinions and did not disclose to NEC Tokin the general scope and characteristics of the cartel.
- (812) The Commission does not accept NEC TOKIN Corporation's arguments for the reasons set out in recitals (813)-(815).
- (813) First, NEC TOKIN Corporation's argument is based on the incorrect premise that the Commission needs to prove awareness for the anti-competitive conduct that preceded the starting date of its participation in the infringement, but that is not the case. NEC Tokin acceded to the cartel set out in this Decision with its participation in the ECC Presidents' meeting held on 29 January 2003 (see recitals (180)-(182)). Afterwards, only three additional ECC meetings were held, namely on 19 February 2003 (recitals (184)-(187)), 15 May 2003 (a Presidents' meeting that NEC Tokin also attended, see recitals (189)-(195)) and 7 November 2003 (see recitals (204)-(209)). Hence, during the period of its infringement, NEC Tokin participated in two out of four ECC meetings held in that period and through that participation and its participation in the ATC and MK meetings as well as bi-/tri-lateral contacts, was aware of or could reasonably have foreseen the conduct planned or put into effect by the cartel participants.

¹⁴²⁸ Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 95.

¹⁴²⁹ [...].

¹⁴³⁰ [...].

¹⁴³¹ [...].

- (814) Second, NEC TOKIN Corporation's procedural argument is based on a misreading of the SO. [*confidentiality claim pending*]. The Commission had already made clear in the SO (see paragraphs 107 and 245(i) and Annex I of the SO) that it intended to rely on the evidence from the Presidents' meetings of 29 January 2003 and 15 May 2003 against NEC Tokin and the other cartel participants. Hence, there is no procedural obstacle preventing the Commission from relying on that evidence for the purpose of this Decision.
- (815) Third, NEC TOKIN Corporation's argument that only high-level views were exchanged during the Presidents' meetings that it attended is contradicted by the evidence. It clearly transpires from the minutes of the Presidents' meetings of 29 January 2003 and 15 May 2003 that a collusive arrangement was in place ("*Violation of the price agreement will leave a blot in the operation of the ECC meeting*"),¹⁴³² that the parties intended to continue their unlawful coordination ("*For the price issue, we wish that all companies make efforts to maintain the prices*")¹⁴³³ and that the conduct was not limited to high-level exchanges (the NEC Tokin employee attending the 29 January 2003 meeting stated himself that: "*We will agree on prices for M case [a specific type of TECs] and functional capacitors [a specific type of TECs], which [competitor, not an addressee of this Decision] and [another competitor, not an addressee of this Decision] cannot manufacture*").¹⁴³⁴ This evidence is part of the body of evidence that convincingly demonstrates NEC Tokin's participation in the infringement.
- (816) Nichicon submits¹⁴³⁵ that it should not be held liable for bi-/tri-lateral contacts involving other undertakings after it withdrew from the cartel following the ATC meetings. Nichicon's argumentation is based on the assumption that attribution of liability for bi-/tri-lateral contacts hinges on the interplay between multilateral (other than the CUP meetings) and the bi-/tri-lateral contacts. In the same vein, NEC TOKIN Corporation claims¹⁴³⁶ that the various bi-/tri-lateral contacts form part of a single and continuous infringement with the multilateral meetings because they were a continuation of those multilateral meetings. In accordance with that theory and because NEC Tokin did not participate in the multilateral CUP meetings, NEC TOKIN Corporation submits that NEC Tokin cannot be held liable for certain bi-/tri-lateral contacts that were demonstrably linked to CUP meetings or if they involved Nichicon (who attended the CUP meetings but did not participate in the concurrent multilateral MK meetings). Moreover, [*confidentiality claim pending*] submits¹⁴³⁷ that no direct evidence has been provided as to why [*confidentiality claim pending*] was aware or should have been aware of every bi-lateral contact which took place between the other cartel members, but which excluded [*confidentiality claim pending*]. Accordingly, [*confidentiality claim pending*] suggests that it should only be held liable for the bi-/tri-lateral contacts which it was involved in.

1432 [...].
 1433 [...].
 1434 [...].
 1435 [...].
 1436 [...].
 1437 [...].

- (817) The arguments of Nichicon, NEC TOKIN Corporation and [*confidentiality claim pending*] should be rejected for the following reasons.
- (818) First, although there have been examples of demonstrable links between multilateral meetings and bi-/tri-lateral contacts (see recitals (738)-(742), the imputation of liability for bi-/tri-lateral contacts to the parties is not derived from or otherwise dependent on participation in a particular multilateral meeting. It is therefore irrelevant whether the bi-/tri-lateral contacts were a follow-up to topics discussed during the multilateral meetings or not.
- (819) Second, the fact that in this case the individual parties were not familiar with the details of some collusive contacts in which they did not participate or were unaware of the existence of some of such contacts, cannot detract from the Commission's finding that Nichicon, NEC Tokin and [*confidentiality claim pending*] participated in the cartel as a whole.¹⁴³⁸ As set out in recitals (105) and (744), each of the parties took part in bi-/tri-lateral contacts with another party. As they also participated in multilateral meetings with the other cartel participants, they were aware or should at the very least have foreseen that the scope of the cartel conduct went beyond the multilateral meetings and comprised bi-/tri-lateral contacts of a similar nature as the ones they themselves participated in. This is also demonstrated by the fact that it has occurred that undertakings exchanged among themselves information received from other undertakings through bi-/tri-lateral contacts (see recitals (583)-(584)).

Continuous discussion and coordination

- (820) NIPPON CHEMI-CON CORPORATION claims¹⁴³⁹ that identifiable break points and distinctions undermine the finding of a continuous single infringement in this case. More specifically, NIPPON CHEMI-CON CORPORATION submits that the financial failure in 2008-2009 and the 2011 Japanese earthquake caused a significant change in the market and in the character of the industry discussions.
- (821) NIPPON CHEMI-CON CORPORATION's argument should be rejected. Even if a cartel might have undergone a period of evolution or lesser intensity due to external factors that does not mean that it has come to an end.¹⁴⁴⁰ Even if the anti-competitive behaviour in this case may have varied from time to time to take account of the market developments, challenges posed by the market conditions, the position of individual cartel members on the market or the aims they individually pursued by their cartel affiliation, that did not affect the continuation of the cartel because the anti-competitive conduct continued during those periods (see recitals (412)-(567) and (638)-(650)) and the objective of the anti-competitive exchanges remained the same, namely to avoid price competition and to coordinate the future conduct with regard to the sale of electrolytic capacitors, thereby reducing uncertainty on the market.

¹⁴³⁸ Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, paragraph 193.

¹⁴³⁹ [...].

¹⁴⁴⁰ Judgment of the General Court of 24 March 2011, *IBP and International Building Products France v Commission*, T-384/06, ECLI:EU:T:2011:113, paragraph 76 and Judgment of the General Court of 24 March 2011, *Aalberts Industries and Others v Commission*, T-385/06, ECLI:EU:T:2011:114, paragraph 105.

- (822) Nichicon and NIPPON CHEMI-CON CORPORATION argue¹⁴⁴¹ that certain meeting minutes do not contain any record of any continuous discussion or any coordination between participants. They claim, in particular, that the meeting minutes consist of a request, call, (individual) opinion or general observation about coordination/cooperation without evidence about any decision taken in that respect or any actual further discussion. NIPPON CHEMI-CON CORPORATION also argues¹⁴⁴² that in a number of instances there is no evidence or suggestion that the exchanges related to any other earlier alleged meetings or earlier common discussion.
- (823) The Commission does not agree with these arguments for the following reasons. First, according to settled case law, even a single exchange of information of the nature described in Section 4.3.6 is enough to establish a concerted practice,¹⁴⁴³ and therefore any further discussion is not necessary, let alone an explicit reference to further discussion. Second, it is not necessary that all participants of a meeting disclose their market behaviour, as the disclosure by a single undertaking reduces the strategic uncertainty on the market.¹⁴⁴⁴ It is also presumed that the recipient of the information will actually take it into account when determining its own commercial policy.¹⁴⁴⁵ Third, there is evidence on the file (for example, referred to in recitals (130), (154), (224), (267), (408) and (453)) that the parties explicitly invited other participants to coordinate their conduct and cooperate regarding prices:
- "[confidentiality claim pending]";¹⁴⁴⁶
- "[confidentiality claim pending]";¹⁴⁴⁷

¹⁴⁴¹ For example, concerning multilateral meetings of 28 January 2000, 14 November 2001, 17 March 2004, 21 April 2004, March 2005, 6 November 2007, 10 July 2008, 21 May 2010, 15 or 16 November 2010; [...]; multilateral meeting of 4 July 2006, [...].

¹⁴⁴² For example, concerning multilateral meetings of 19 September 2001, 14 November 2001, 19 March 2002, 29 August 2002, 18 September 2002, 15 May 2003, 28 or 29 August 2003, 7 November 2003, 5 December 2003, 17 March 2004, 13 May 2004, 17 June 2004, 23 July 2004, 11 November 2004, 3 December 2004, 16 February 2005, March 2005, 4 August 2005, July 2006, 12 July 2006, September 2006, 13 September 2006, 18 October 2006, 13 December 2006, 14 February 2007, 2 August 2007, 6 November 2007, 13 February 2008, 14 May 2008, 21 May 2008, 4 June 2008, 10 July 2008, 10 or 11 September 2008, 11 March 2009, May 2009, 21 May 2009, 16 July 2009, 21 August 2009, 17 September 2009, November 2009, 21 December 2009, 18 February 2010, 21 April 2010, 21 May 2010, 17 June 2010, 16 July 2010, 16 September 2010, 29 August 2011, 24 October 2011; [...].

¹⁴⁴³ Judgment of the Court of Justice of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, ECLI:EU:C:2009:343, paragraph 59 and Horizontal Guidelines, paragraph 62, footnote 7.

¹⁴⁴⁴ Judgment of 12 July 2001, *Tate & Lyle and Others v Commission*, T-202/98, T-204/98 and T-207/98, ECLI:EU:T:2001:185, paragraph 54; [T-25/95](#), T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, *Cimenteries CBR and Others v Commission*, paragraph 1849 and Horizontal Guidelines, paragraph 62.

¹⁴⁴⁵ Case C-199/92 P, *Hüls v Commission*, paragraph 162; Case C-8/08, *T-Mobile Netherlands and Others*, paragraph 51; Judgment of the Court of Justice of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 127 and Horizontal Guidelines, paragraph 62.

¹⁴⁴⁶ [...].

"[confidentiality claim pending]";¹⁴⁴⁸

"[confidentiality claim pending]";¹⁴⁴⁹

"[confidentiality claim pending]";¹⁴⁵⁰

"[confidentiality claim pending]";¹⁴⁵¹

"[confidentiality claim pending]".¹⁴⁵²

- (824) Finally, the minutes of some of the meetings that NIPPON CHEMI-CON CORPORATION relies on to support its argument contain references to a concrete earlier or future meeting: for example, the multilateral meetings held on 29 August 2002 and 18 September 2002;¹⁴⁵³ the multilateral meetings held on 7 November 2003 and 5 December 2003;¹⁴⁵⁴ the multilateral meetings held on 17 March 2004 and 21 April 2004¹⁴⁵⁵ and the multilateral meetings held on 21 May 2008 and 2 June 2008.¹⁴⁵⁶

Uninterrupted cartel involvement of Nichicon

- (825) Nichicon assesses the content of various individual competitor meetings separately and essentially claims¹⁴⁵⁷ that the Commission failed to establish the anti-competitive nature of those meetings or that the alleged conduct continued without interruption.
- (826) Nichicon singles out and analyses the legality of individual elements of the cartel conduct in isolation, while disregarding the entire body of evidence used by the Commission for the establishment of the infringement as a whole.¹⁴⁵⁸ In case of an infringement extending over a number of years such as this infringement, the Commission cannot be expected to uncover incriminating evidence of the same quality and probative value consistently throughout the entire cartel period. The Commission may assume that an infringement has not been interrupted even if, in relation to a specific period, it has no evidence of the participation of the undertaking concerned in that infringement, provided that that undertaking participated in the infringement prior to and after that period and provided that there is no proof or indication that the infringement was interrupted so far as concerns that undertaking.¹⁴⁵⁹

Period of infringement until December 2002

1447 [...].

1448 [...].

1449 [...].

1450 [...].

1451 [...].

1452 [...].

1453 See recitals (171) and (174).

1454 See recitals (205) and (211).

1455 See recitals (221) and (223).

1456 See recitals (435) and (439).

1457 [...].

1458 See Judgment of the Court of First Instance of 14 May 1998, *Enso-Gutzeit OY v Commission*, T-337/94, ECLI:EU:T:2000:76, paragraph 151 and the case law referred to therein.

1459 See Case T-180/15, *Icap pls v Commission*, paragraph 218.

- (827) More specifically, Nichicon claims¹⁴⁶⁰ that there is no indication of any discussions covering the EEA which would warrant a by object qualification before 25 May 2000. Moreover, according to Nichicon the discussion of 25 May 2000 remained isolated and even if one considered that there were by object discussions in late (December) 2002, the time period between mid-2000 and December 2002 is too long to presume that any infringement continued uninterruptedly.
- (828) With respect to the starting date of Nichicon's cartel involvement, as set out in recitals (108)-(111), the Commission established to the requisite legal standard, that Nichicon acceded to the cartel on 26 June 1998.¹⁴⁶¹ Section 4.3.6 further shows that Nichicon's involvement in the cartel continued uninterruptedly until 31 May 2010. Overall, Nichicon continuously participated in the cartel meetings over an extended period of time. There is no indication that Nichicon distanced itself from the cartel in the manner required by the case law¹⁴⁶² and there are no indicia that Nichicon withdrew from the cartel or interrupted its participation in the infringement at any time during the infringement period.
- (829) Regarding the alleged interruption in Nichicon's involvement and lack of cartel participation on Nichicon's part in the period 25 May 2000 – December 2002, the Commission notes the following.
- (830) Contrary to what is suggested by Nichicon and as set out in detail in Section 4.3.6, the evidence demonstrates that throughout the period 25 May 2000 – December 2002 Nichicon attended at least nine anti-competitive multilateral meetings (28 July 2000, 20 September 2000, 22 November 2000, 19 September 2001, 14 November 2001, 19 March 2002, 17 July 2002, 29 August 2002 and 18 September 2002 – see recitals (134)-(179) for more details).
- (831) In that regard, the Commission also recalls that although the period separating two manifestations of infringing conduct is a relevant criterion in order to establish the continuous nature of an infringement, the question as to whether or not that period is long enough to constitute an interruption of the infringement cannot be examined in the abstract. On the contrary, it needs to be assessed in the context of the functioning of the cartel in question.¹⁴⁶³
- (832) In this case, the period of at most ten months separating individual cartel contacts involving Nichicon does not call into question the continuous nature of its involvement. The cartel and Nichicon's participation in it extended over almost 12 years and, accordingly, a period of at most several months between the various manifestations of that cartel, during which Nichicon did not distance itself from it, is immaterial.¹⁴⁶⁴

Period of infringement between February 2005 and December 2006

¹⁴⁶⁰ [...].

¹⁴⁶¹ See also Annex I.

¹⁴⁶² See recitals (707) and (908).

¹⁴⁶³ See Judgment of the General Court of 2 February 2012, *Denki Kagaku Kogyo and Denka Chemicals v Commission*, T-83/08, ECLI:EU:T:2012:48, paragraph 223 and the case law referred to therein.

¹⁴⁶⁴ See, Case T-83/08, *Denki Kagaku Kogyo v Commission*, paragraph 224.

- (833) Moreover, according to Nichicon,¹⁴⁶⁵ the interim period between ATC and the CUP meetings was too long to support a finding that Nichicon continued its alleged cartel involvement during that time period. Nichicon submits that if it were to be held liable for the CUP meetings, its liability should not start before the CUP meeting of 13 December 2006 at the earliest.
- (834) Nichicon's arguments should be rejected because Nichicon continued its participation in the cartel between February 2005 and December 2006. Following Nichicon's participation in the last ATC meeting on 16 February 2005, Nichicon participated in a bi-lateral contact in April/May 2005 (see recitals (271) and (272)) and in the multilateral CUP meeting of 4 July 2006 (see recitals (299)-(303)) without publicly distancing itself from the meeting or its outcome.
- (835) As described in recitals (326)-(333) [*confidentiality claim pending*], Nichicon subsequently participated in the CUP meeting held on 13 December 2006, where the participants concluded a pricing agreement and discussed future price information. In particular, the parties elaborated on a plan to increase prices for various customers, to provide identical reasons for the price increase requests (the rise of prices for raw materials) and discussed a timetable for the implementation of the planned price increases.
- (836) The evidence thus demonstrates the continued participation in the cartel on the part of Nichicon during the period 16 February 2005 until 13 December 2006.

5.5. Restriction of competition

5.5.1. Principles

- (837) The prohibition contained in Article 101(1) TFEU covers agreements and concerted practices that have as their object or effect the prevention, restriction or distortion of competition in the internal market. Article 101(1) TFEU and Article 53(1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which:¹⁴⁶⁶
- (a) directly or indirectly fix selling prices or any other trading conditions;
 - (b) limit or control production, markets or technical development;
 - (c) share markets or sources of supply.
- (838) The anti-competitive object and effect of an infringement are not cumulative but alternative conditions for assessing whether such agreement comes within the scope of prohibition laid down in Article 101(1).¹⁴⁶⁷ It is established in the case law that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU to prove that they have actual or potential effects on the market.¹⁴⁶⁸ That case law arises from the fact that certain

¹⁴⁶⁵ [...].

¹⁴⁶⁶ The list is not exhaustive.

¹⁴⁶⁷ Case C-8/08, *T-Mobile Netherlands and Others*, paragraph 55.

¹⁴⁶⁸ Judgment of the Court of Justice of 11 September 2014, *CB v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraph 51 and Case C-286/13 P *Dole Food v Commission*, paragraph 115.

types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of the normal competition.¹⁴⁶⁹

- (839) In particular, an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anti-competitive object.¹⁴⁷⁰
- (840) Exchanges of information about the future intentions of competitors in relation to their market conduct are likely to enable competitors to reach a common understanding on the coordination of competitive conduct among themselves (as they remove strategic uncertainty) and consequently facilitate collusion.¹⁴⁷¹ Therefore exchanges of information about such future intentions are, by their very nature, harmful to the proper functioning of normal competition. Exchange of forward-looking information and price information is particularly likely to lead to a collusive outcome on the market. Exchanges of past and present information,¹⁴⁷² when carried out as part of an overall anti-competitive scheme with the single anti-competitive aim of coordinating the competitors' future market conduct, in particular by enabling monitoring any deviation of collusive outcome,¹⁴⁷³ may equally contribute to removing future strategic uncertainty between competitors and therefore pursue the same anti-competitive aim as the linked exchanges of information about future pricing intentions. Even the exchange of information in the public domain or relating to historical and purely statistical prices can infringe Article 101(1) TFEU where it underpins another anti-competitive arrangement since the circulation of price information limited to the members of a cartel has the effect of increasing transparency on a market where competition is already reduced and of facilitating control of compliance with the cartel by its members.¹⁴⁷⁴

5.5.2. *Application in this case*

- (841) As it transpires from the description of the facts,¹⁴⁷⁵ the parties met with a view to coordinate their future prices or other pricing-related aspects of their market behaviour and to exchange information on supply and demand.
- (842) As set out in recitals (63) and (69) and Annex I, the collusive multilateral meetings were held regularly throughout the period of the infringement and bi-/tri-lateral anti-competitive contacts took place typically when there was an RFQ or request for price reduction by a customer.¹⁴⁷⁶ The regularity and frequency of the contacts

¹⁴⁶⁹ Case C-67/13 P, *CB v Commission*, paragraph 50 and Case C-286/13 P *Dole Food v Commission*, paragraph 114.

¹⁴⁷⁰ Case C-8/08, *T-Mobile Netherlands and Others*, paragraph 41 and Case C-286/13 P *Dole Food v Commission*, paragraph 122.

¹⁴⁷¹ Horizontal Guidelines, paragraphs 66, 73 and 74.

¹⁴⁷² Commission Decision 92/157/EEC in No Case IV/31.370, *UK Agricultural Tractor Registration Exchange*, OJ L 68, 13.3.1992, p. 19, paragraph 50; Commission Decision No 98/4/ECSC in Case IV/36.069, *Wirtschaftsvereinigung Stahl*, OJ L 1, 3.1.1998, p. 10, paragraph 17 and Horizontal Guidelines, paragraph 90, footnote 2.

¹⁴⁷³ Horizontal Guidelines, paragraph 67.

¹⁴⁷⁴ Joined Cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and Others v Commission*, paragraph 281.

¹⁴⁷⁵ See Section 0.

¹⁴⁷⁶ [...].

guaranteed a continuous information exchange, allowing undertakings to get an understanding of competitors' intended actions. The information exchanged, such as pricing information and supply and demand information, was strategically useful and removed the uncertainty on the market as to the future behaviour of the parties. In fact, the exchanges made it possible to create a climate of mutual certainty as to the future conduct of the parties.

(843) More specifically, the evidence on file shows that there were:

- exchanges of information in relation to future supply and demand (such as production volume, increase or decrease of shipments);¹⁴⁷⁷
- exchanges of information related to price maintenance / a refusal to decrease prices;¹⁴⁷⁸
- exchanges of information on future price reduction and the ranges for the price reduction;¹⁴⁷⁹
- exchanges of information on future prices / pricing intentions: exchanges of information on intentions to raise prices;¹⁴⁸⁰ exchanges of information on indicative percentages to be applied for future price increase negotiations;¹⁴⁸¹ exchanges of information on intentions to raise prices due to the increase in prices of raw materials;¹⁴⁸² exchanges of information on future price increases with a clear timeline;¹⁴⁸³ exchanges of information on intentions to increase prices so as to cover currency fluctuations;¹⁴⁸⁴
- agreements to increase prices¹⁴⁸⁵ with a common strategy for implementation of price increases;¹⁴⁸⁶ reporting on the status of the price negotiations as part of the monitoring of the price agreements;¹⁴⁸⁷

¹⁴⁷⁷ For example, meeting of 19 March 2002, see recitals (156) and (158); meeting of 17 December 2003, see recital (217); meeting of 17 June 2004, see recitals (238) and (239); meeting of March 2005, see recital (270); meeting of 12 April 2006, see recital (296); meeting of 12 July 2006, see recital (307); meeting of 14 February 2007, see recital (351); meeting of 13 February 2008, see recital (414); bilateral contact of May 2009, see recital (520); meeting of 21 August 2009, see recital (539); meeting of 18 February 2010, see recital (575); meeting of 29 August 2011, see recital (646).

¹⁴⁷⁸ For example, meeting of 17 December 1999, see recital (125); meeting of 15 May 2003, see recital (193); meeting of 11 November 2004, see recital (249); meeting of 13 May 2004, see recital (229); the meeting of 19 February 2003, see recital (186).

¹⁴⁷⁹ For example, meeting of 29 January 2003, see recital (182).

¹⁴⁸⁰ For example, meeting of 21 May 2009, see recitals (517) and (519); meeting of 17 June 2010, see recital (610).

¹⁴⁸¹ For example, meeting of 25 May 2000, see recitals (132) and (133).

¹⁴⁸² For example, meeting of 21 April 2004, see recital (223); meeting of 19 April 2011, see recital (643).

¹⁴⁸³ For example, meeting of 12 April 2006, see recital (298).

¹⁴⁸⁴ For example, meeting of 18 February 2010, see recitals (576).

¹⁴⁸⁵ For example, meeting of 18 September 2002, see recitals (174)-(176); meeting of 7 November 2003, see recitals (205)-(209); meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

¹⁴⁸⁶ For example, meeting of 13 December 2006, see recitals (327)-(333); meeting of 22 December 2006, see recitals (335) and (336); see recitals (205)-(209); meeting of 16 April 2008, see recitals (425)-

- coordination on answers to be given to specific customers in case of a quotation request;¹⁴⁸⁸ exchanges of information on target prices for negotiations with specific customers;¹⁴⁸⁹
 - discussions on encouraging production shortage so as to maintain prices.¹⁴⁹⁰
- (844) The parties have thus been, amongst others, exchanging individualised data regarding intended future prices or quantities, which was on the account of its very object, capable of influencing the competitors' conduct on the market. Furthermore, in some instances, the parties concluded, implemented and monitored pricing agreements.¹⁴⁹¹
- (845) In light of the above, the Commission concludes that the addressees of this Decision engaged in a conduct that constituted a restriction of competition by object.¹⁴⁹²

5.5.3. *Arguments of the parties and assessment thereof by the Commission*

Exchanges on future pricing

- (846) NIPPON CHEMI-CON CORPORATION claims¹⁴⁹³ that the exchanges mostly concerned past prices, and that the instances of alleged future-related pricing exchanges often concerned irreversible arrangements made with customers and to be implemented by the companies, rather than future intentions.
- (847) NIPPON CHEMI-CON CORPORATION's arguments should be rejected. The evidence described in Section 4.3.6 clearly shows that the parties, including NCC have disclosed to each other regularly and over an extended period of time their future pricing intentions, rather than information on irreversible decisions taken regarding their customers. In fact, NCC participated in all but one multilateral meeting described in this Decision where future pricing was discussed and it even initiated the series of CUP meetings (see recital (97)). Furthermore, NCC was not only a recipient of future pricing information from other participants, but also disclosed its own future pricing intentions to the other participants (see for illustration recitals (113), (114), (175), (186), (216), (252), (257), (298), (330), (335) or (358)).

Alleged lack of competitive significance of the information exchanged

(427); meeting of 21 May 2008, see recitals (434)-(437); meeting of 2 June 2008, see recitals (439)-(442); meeting of 25 June 2008, see recitals (449) and (450).

¹⁴⁸⁷ For example, meeting of 16 January 2007, see recitals (339)-(343); meeting of 15 March 2007, see recitals (363) and (364); meeting of 17 May 2007, see recitals (376) and (377); meeting of 19 June 2007, see recitals (385)-(390); meeting of 24 August 2007, see recitals (396) and (397); meeting of 25 June 2008, see recital (449).

¹⁴⁸⁸ For example, meeting of 22 November 2000, see recital (145).

¹⁴⁸⁹ For example, meeting of March 2005, see recital (262).

¹⁴⁹⁰ For example, meeting of 17 June 2004, see recitals (235) and (236).

¹⁴⁹¹ See footnotes 1485, 1486 and 1487.

¹⁴⁹² See Judgment of the General Court of 15 December 2016, *Philips and Philips France v Commission*, T-762/14, ECLI:EU:T:2016:738, paragraphs 104 and 150. See also Horizontal Guidelines, paragraph 74.

¹⁴⁹³ [...].

- (848) According to NIPPON CHEMI-CON CORPORATION,¹⁴⁹⁴ neither the general information nor the specific pricing information allegedly exchanged had much value for the overall pricing in the electrolytic capacitors industry.
- (849) NIPPON CHEMI-CON CORPORATION wrongly characterises the information exchanged as lacking competitive significance. First, the evidence implicating NCC in the cartel and set out in Section 4.3.6 shows that the parties exchanged clear, individualised pricing intentions that were liable to influence the conduct of the competitors on the market (see recital (847)). In addition to that, as the evidence shows, even an information exchange in relation to a single product type would have a potential to influence the competitive structure of the entire industry.¹⁴⁹⁵ Second, in any event, not only an exchange of individualised data regarding intended future prices, but also the exchange of more general information can violate Article 101(1) TFEU by object if it is capable of removing uncertainty as to the foreseeable conduct of competitors.¹⁴⁹⁶ Even if pricing or price-related information were of a more general nature, in so far as it, for instance, did not specify the amount, but only the direction of the price movement,¹⁴⁹⁷ such information would constitute confidential information that is relevant for competitors in the context of elaborating their pricing strategy¹⁴⁹⁸ and the exchange of such information would at the very least corroborate the finding that the parties participated in unlawful information exchanges on prices.¹⁴⁹⁹ Therefore, NIPPON CHEMI-CON CORPORATION's argument has to be dismissed.

Finding of anti-competitive object despite competition on the market

- (850) NIPPON CHEMI-CON CORPORATION submits¹⁵⁰⁰ that the evidence of competition among capacitor manufacturers available on file is in contrast to the Commission's finding of anti-competitive behaviour, which is an indication that the characterisation of the infringement as an infringement by object is wrong. This argument should be rejected for the following reasons.
- (851) First, the parties cannot legitimise their cartel involvement by claiming the presence of competition in the market. This issue concerns effects of the behaviour on the market, which the Commission is not required to demonstrate if, as in this case, the parties have engaged in a restriction of competition by object.¹⁵⁰¹ Second, the

¹⁴⁹⁴ [...].

¹⁴⁹⁵ For example: "*excessive price competition on C45 will not only adversely affect conductive Ta but also incite SPCAP, leading to the destruction of the entire industry*" ([...]; see also footnote 1419).

¹⁴⁹⁶ Case C-286/13 P *Dole Food v Commission*, paragraph 134.

¹⁴⁹⁷ For illustration an information such as "*We will not accept orders at low price. We aim to produce products that can be sold at a high price.*" ([...]) or "*ELNA has been increasing prices aggressively*" ([...]).

¹⁴⁹⁸ Judgment of the General Court of 15 December 2016, *Infineon Technologies v Commission*, T-758/14, ECLI:EU:T:2016:737, paragraph 189.

¹⁴⁹⁹ See, to that effect, Case T-762/14, *Philips and Philips France v Commission*, paragraphs 129-130.

¹⁵⁰⁰ [...].

¹⁵⁰¹ See, in particular, Judgment of the Court of First Instance of 6 July 2000, *Volkswagen v Commission*, T-62/98, ECLI:EU:T:2000:180, paragraph 178 and the case law referred to therein and Judgment of the Court of First Instance of 25 October 2005, *Groupe Danone v Commission*, T-38/02, ECLI:EU:T:2005:367, paragraph 150. See also Judgment of the Court of First Instance of 20 March 2002, *HFB and Others v Commission*, T-9/99, ECLI:EU:T:2002:70, paragraph 217.

evidence referred to by NIPPON CHEMI-CON CORPORATION (more specifically, references such as, "*fierce competition overseas*",¹⁵⁰² "*price competition is severe*")¹⁵⁰³ points rather to the overall competition in the market covering not only the parties addressed in this Decision, but also other capacitor manufacturers. Complaints from the parties about intense competition on the market and intended creation of a united front against other manufacturers were in fact reasons for setting up this cartel.¹⁵⁰⁴

Restriction of competition in a given legal and economic context

- (852) NIPPON CHEMI-CON CORPORATION submits¹⁵⁰⁵ that all conduct, whether characterised as an object or effect based infringement, must be considered against the backdrop of its relevant economic and legal context and circumstances. NIPPON CHEMI-CON CORPORATION argues that the capacitors industry with highly fragmented structure and highly heterogeneous products makes anti-competitive coordination very difficult. Furthermore, according to NIPPON CHEMI-CON CORPORATION the information related to sales forecasts of highly aggregated product categories likely did not facilitate broad price coordination. Moreover, NIPPON CHEMI-CON CORPORATION claims that the instances where customer specific information was allegedly exchanged were too limited in scope and too sporadic to have any universal relevance and they were highly unlikely to have produced price effects across all or nearly all AECs and TECs sold in Europe during the alleged relevant period.
- (853) NIPPON CHEMI-CON CORPORATION's arguments should be rejected for the following reasons.
- (854) As set out in recital (838), it is apparent from the case law that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects.¹⁵⁰⁶ That case law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition, such as coordination leading to horizontal price-fixing.¹⁵⁰⁷
- (855) First, having regard to fact that the coordination of pricing behaviour can be regarded, by its very nature, as being harmful to the proper functioning of normal competition, the Commission's contextual analysis may be limited to what is strictly

¹⁵⁰² [...]; see also [...].

¹⁵⁰³ [...]; see also [...].

¹⁵⁰⁴ See recitals (154), (182), (232) and (740).

¹⁵⁰⁵ [...].

¹⁵⁰⁶ Case C-67/13 P, *CB v Commission*, paragraph 49; Case C-286/13 P *Dole Food v Commission*, paragraph 113.

¹⁵⁰⁷ Case C-67/13 P, *CB v Commission*, paragraphs 50-51; Judgment of 13 July 1966, *Consten and Grundig v Commission*, 56/64 and 58/64 ECLI:EU:C:1966:41; Judgment of the Court of Justice of 15 October 2002, *Limburgse Vinyl Maatschappij and Others v Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, ECLI:EU:C:2002:582, paragraph 508; Judgment of the Court of Justice of 8 December 2011, *KME Germany and Others v Commission*, C-389/10 P, ECLI:EU:C:2011:816, paragraph 75; Case C-286/13 P *Dole Food v Commission*, paragraph 114.

necessary in order to establish the existence of a restriction of competition by object.¹⁵⁰⁸

(856) Second, in this case, the Commission has had regard to the relevant economic and legal context.¹⁵⁰⁹ The main Japanese producers of electrolytic capacitors and hence not a fragmented group, but a compact group with considerable market power, colluded over a long period of time, to create a united front against other competitors and customers (see recital (740) for more details). The capacitors industry has not been subject to any regulatory obligations that would have encouraged or obliged the parties to behave in a way conducive to violation of Article 101(1) TFEU. Furthermore, the conduct investigated was not (exclusively) aimed at specific customers or products and many of the issues discussed applied across the industry (see also recitals (666) and (672) for details). Consequently, the alleged heterogeneity had no bearing on the viability of the conduct. The customer-specific exchanges represented only one of the conduct manifestations and the evidence in relation to a great variety of customers, customer groups, products and product ranges confirms the breadth and outreach of the cartel. Given the context in which the parties coordinated their pricing behaviour, the Commission therefore rightly concluded in recital (845) above that the parties engaged in a restriction of competition by object.

(857) Third, as the behaviour subject to this Decision has an object restrictive of competition (see recitals (841)-(844)), the Commission is not required to demonstrate that the behaviour also produced anti-competitive effects on the market.
1510

Legitimate purpose and focus of the meetings

(858) NIPPON CHEMI-CON CORPORATION claims¹⁵¹¹ that the multilateral meetings described in this Decision were essentially established as platforms for legitimate information exchanges on market statistics, trends, conditions and outlook. NIPPON CHEMI-CON CORPORATION's argument should be rejected for the following reasons.

(859) Even if some of the competitor meetings described as anti-competitive in this Decision might initially have been set up with a legitimate purpose and some of the discussions may have been compatible with the Union competition rules, the considerable amount of inculpatory evidence set out in Section 4.3.6 clearly demonstrates that the parties used the meetings to engage in anti-competitive exchanges on prices and price-related issues as well as on supply and demand. Such exchanges occurred over a long period of time, frequently and regularly, contrary to what has been argued by NIPPON CHEMI-CON CORPORATION. The Commission also recalls that meetings may be regarded as having a restrictive object even if they do not have the restriction of competition as their sole aim but also

¹⁵⁰⁸ See Judgment of the Court of Justice of 20 January 2016, *Toshiba Corporation v Commission*, C-373/14 P, ECLI:EU:C:2016:26, paragraph 28 and the case law referred to therein.

¹⁵⁰⁹ See, for instance, Sections 0-0, describing the origins, dynamics and functioning of the cartel.

¹⁵¹⁰ See, in particular, Case T-62/98, *Volkswagen v Commission*, paragraph 178 and the case law referred to therein and Case T-38/02, *Groupe Danone v Commission*, paragraph 150. See also Case T-9/99, *HFB and Others v Commission*, paragraph 217.

¹⁵¹¹ [...].

pursue other legitimate objectives.¹⁵¹² For the reasons set out above, NIPPON CHEMI-CON CORPORATION's argument cannot be accepted.

Anti-competitive use of the MK information sheets

- (860) Elna argues¹⁵¹³ that the periodic information exchanged during MK meetings by way of information sheets does not and cannot reveal individual positions of participants, nor can it be used as a monitoring tool. According to Elna, the information exchanged does not include actual sales figures, in either volumes or revenues, but only a percentage deviation vis-à-vis a reference period and while such percentage deviation information was useful to participants to forecast trends for planning purposes, the categories were too broad to allow for any anti-competitive use.
- (861) Elna's arguments should be rejected for the following reasons.
- (862) First, contrary to Elna's claim, even if information submitted in the information sheets did not include specific figures, such information constitutes confidential information relevant for competitors in the context of elaborating their business strategy.¹⁵¹⁴ Information sheets included a systematic analysis of the supply and demand situation, including demand projection data, at each undertaking for the main types of AECs and TECs. Such information was exchanged regularly and over a long period of time, hence creating artificial transparency for the undertakings. Second, as it transpires from Section 4.3.6, the Commission did not base its findings as to the anti-competitive nature of MK meetings exclusively on the information sheets submitted by the parties for distribution at these meetings, but also on the anti-competitive exchanges at the MK meetings and recorded in various internal minutes, memos and reports of such meetings.

Competitive behaviour on the market

- (863) NIPPON CHEMI-CON CORPORATION submits¹⁵¹⁵ that it continued to compete on the merits with its competitors, it was viewed as unreliable by others and its participation in the alleged meetings did not affect this perception. In support of this argument, NIPPON CHEMI-CON CORPORATION quotes from the evidence used in the SO, where other cartel participants complain about NIPPON CHEMI-CON CORPORATION's behaviour.¹⁵¹⁶ Furthermore, Nichicon argues¹⁵¹⁷ that the Commission's definition of the cartel's common objectives does not correspond to Nichicon's market conduct at the time and that various competitors described Nichicon's behaviour at the time as contradictory to these objectives.
- (864) However, it is settled case law that the liability of a particular undertaking in the infringement is properly established where it participated in cartel meetings with the knowledge of their object, even if it did not proceed to implement any of the

¹⁵¹² See, to that effect, Case T-360/09, *E.ON v Commission*, paragraph 143 and the case law referred to therein.

¹⁵¹³ [...].

¹⁵¹⁴ Judgment of the General Court of 15 December 2016, *Infineon Technologies v Commission*, T-758/14, ECLI:EU:T:2016:737, paragraph 189.

¹⁵¹⁵ [...].

¹⁵¹⁶ See, for example [...].

¹⁵¹⁷ [...].

measures agreed at those meetings.¹⁵¹⁸ An undertaking which despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit.¹⁵¹⁹ In such circumstances, the alleged competitive conduct on the market does not relieve the parties of full responsibility for cartel participation, unless they would publicly distance themselves from the agreed measures.¹⁵²⁰ Furthermore, it may be presumed that undertakings taking part in unlawful contacts and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market.¹⁵²¹

- (865) In this case, the undertakings (including NCC and Nichicon) have coordinated their market behaviour in concert with competitors¹⁵²² and in pursuit of the single anti-competitive objective set out in recitals (731)-(733). The fact that they may have had subjective intentions not disclosed to their competitors does not exempt them from liability for the cartel behaviour. They may simply have been trying to exploit the cartel for their own benefit. Furthermore, in this case, none of the parties put forward express proof of dissociation from the anti-competitive discussions. Lastly, the existence of complaints by cartel members against the actual market behaviour of NCC or other fellow cartelists merely shows that cartel arrangements were in place and that their implementation was monitored.¹⁵²³ Therefore, the arguments raised by NIPPON CHEMI-CON CORPORATION and Nichicon have to be dismissed.

5.6. Effect upon trade between Member States and EEA Contracting Parties

5.6.1. Principles

- (866) Article 101(1) TFEU aims at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the common market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.
- (867) The Union Courts have consistently held that: "*In order that an agreement between undertakings may affect trade between Member States it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States*".¹⁵²⁴ Whilst Article 101 TFEU "*does not*

¹⁵¹⁸ Case T-53/03, *BPB v Commission*, paragraph 90 and the case law referred to therein.

¹⁵¹⁹ Case T-566/08, *Total Raffinage Marketing v Commission*, paragraph 243 and the case law referred to therein.

¹⁵²⁰ Joined Cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and Others v Commission*, paragraphs 81 to 85.

¹⁵²¹ Case C-286/13 P, *Dole Food v Commission*, paragraph 127; Case C-8/08 *T-Mobile Netherlands*, paragraph 51.

¹⁵²² For illustration, the parties exchanged information with a view not to lower the prices and whenever a company was selling at low prices, the "betrayers" were asked to be more cooperative ([...]).

¹⁵²³ See, to that effect, Case T-360/09, *E.ON v Commission*, paragraph 208 and Judgment of the General Court of 29 June 2012, *GDF Suez v Commission*, T-370/09, ECLI:EU:T:2012:333, paragraph 226.

¹⁵²⁴ Judgment of the Court of Justice of 30 June 1966, *Société Technique Minière v Maschinenbau Ulm*, 56/65, ECLI:EU:C:1966:38, paragraph 7; Judgment of the Court of Justice of 11 July 1985, *Remia v Commission*, 42/84, ECLI:EU:C:1985:327, paragraph 22 and Joined Cases [T-25/95](#), T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95,

*require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect".*¹⁵²⁵

- (868) Agreements and practices covering or implemented in several Member States are in almost all cases by their very nature capable of affecting trade between Member States.¹⁵²⁶ Cartel agreements such as those involving price fixing and market sharing covering several Member States are, by their very nature, capable of affecting trade between Member States.¹⁵²⁷ Import into one Member State may be sufficient to affect cross-border economic activity inside the Union. Imports can affect the conditions of competition in the importing Member State, which in turn can have an impact on exports and imports of competing products to and from other Member States.¹⁵²⁸
- (869) The application of Article 101 of the TFEU and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the sales that actually involves the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.¹⁵²⁹

5.6.2. *Application in this case*

- (870) As explained in Section 5.2, the conduct subject to this Decision covered the EEA territory, was implemented in the EEA and had qualified effects in the EEA. There is sufficient evidence that discussions with regard to sales across the whole world, including into the EEA, were held and that the undertakings participating in the cartel had direct sales into the EEA.
- (871) The level of the direct sales of AECs and TECs by the cartel participants in the EEA, namely approximately EUR 200 million per year,¹⁵³⁰ exceeds the amount established in paragraph 53 of the Notice on the effect on trade, namely EUR 40 million, and consequently shows that there is a strong presence of the parties on the EEA market. Therefore there is a rebuttable positive presumption that the effects on trade between Member States were appreciable.¹⁵³¹

T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, *Cimenteries CBR and Others v Commission*, paragraph 1986.

¹⁵²⁵ Judgment of the Court of Justice of 21 January 1999, *Bagnasco and Others*, C-215/96 and C-216/96, ECLI:EU:C:1999:12, paragraph 48; see also Judgment of the Court of First Instance of 15 September 1998, *European Night Services and Others v Commission*, T-374/94, T-375/94, T-384/94 and T-388/94, ECLI:EU:T:1998:198, paragraph 136.

¹⁵²⁶ Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, (OJ C 101, 27.04.2004, p. 81) (the "Notice on the effect on trade"), paragraph 61.

¹⁵²⁷ Notice on the effect on trade, paragraph 64; Judgment of the Court of First Instance of 6 April 1995, *Boël v Commission*, T-142/89, ECLI:EU:T:1995:63, paragraph 102.

¹⁵²⁸ Notice on the effect on trade, paragraph 101.

¹⁵²⁹ See Judgment of the Court of First Instance of 10 March 1992, *ICI v Commission*, T-13/89, ECLI:EU:T:1992:35, paragraph 304.

¹⁵³⁰ See also recital (7).

¹⁵³¹ Notice on the effect on trade, paragraph 53.

- (872) It follows from the above that the anti-competitive conduct which is the subject of this Decision should be regarded as capable of having an appreciable effect on trade between Member States and the Contracting Parties of the EEA Agreement.

5.6.3. *Arguments of the parties and assessment thereof by the Commission*

- (873) Nichicon submits¹⁵³² that trade between Member States was not appreciably affected by the alleged collusive conduct and that the appreciability threshold is not met with regard to Nichicon. Nichicon suggests that the alleged conduct was essentially intended to apply in a territory outside the EEA, in which case the Commission cannot rely on a rebuttable positive presumption of appreciability of trade set out in paragraph 53 of the Notice on the effect on trade. Furthermore, according to Nichicon the assessment of appreciability is to be based solely on those imports, which were specifically subject of and affected by alleged price fixing. Finally, Nichicon maintains that the effect on trade must be shown throughout the entire period of the alleged infringement.
- (874) First, the Commission notes that the effect on trade criterion is assessed against the conduct in its entirety and not against the contribution of the individual parties to such conduct. It is immaterial whether or not the participation of a particular undertaking in the cartel has an appreciable effect on trade between Member States and an undertaking cannot escape Union law jurisdiction merely because of the fact that its own contribution to a collusive conduct is claimed to be insignificant.¹⁵³³
- (875) Furthermore, the Commission relies on the presumption set out in paragraph 53 of the Notice on the effect on trade in showing that in this case there is an appreciable effect on trade. According to the said paragraph, "*where an agreement by its very nature is capable of affecting trade between Member States, for example, because it concerns imports and exports or covers several Member States, there is a rebuttable positive presumption that such effects on trade are appreciable when the turnover of the parties in the products covered by the agreement calculated as indicated in paragraphs 52 and 54 exceeds 40 million euro. In the case of agreements that by their very nature are capable of affecting trade between Member States it can also often be presumed that such effects are appreciable when the market share of the parties exceeds the 5 % threshold set out in the previous paragraph*". The conduct in this case covers the entire EEA and hence by definition multiple Member States and, as it follows from recital (871), the turnover of the parties in the products covered by far exceeds EUR 40 million. In determining the relevant turnover for the purposes of assessing the existence of effect on trade, the Commission is not bound to consider solely those sales that have been expressly affected by the cartel arrangements. In fact, in line with paragraph 53 of the Notice on the effect on trade the Commission takes into account the aggregate turnover of the parties in the product covered by the cartel conduct, that is, AECs and TECs. On that basis alone and without being required to investigate the market shares of the parties, an appreciable effect on trade between Member States has been established in this case.
- (876) Finally, the effect on trade criterion is a jurisdictional criterion, which defines the scope of application of the Union competition law. Provided that the collusive

¹⁵³²

[...].

¹⁵³³

Notice on the effect on trade, paragraph 14-15.

conduct as a whole is capable of affecting trade between Member States (condition met in this case) Union law jurisdiction is validly established, irrespective of whether the individual parts of that conduct have such capability.¹⁵³⁴ Consequently, the finding of the effect on trade in this case cannot be made conditional on showing that the conduct of one cartel participant has the ability to affect appreciably trade between Member States at any given time throughout its duration. Imposing such obligation would essentially imply the requirement to examine independently each individual part of the conduct. For the reasons set out above, the argument put forward by Nichicon has to be dismissed.

5.7. Provisions of competition rules applicable to the 2004 and 2007 enlargements of the EU

- (877) After the accession of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia on 1 May 2004 and of Bulgaria and Romania on 1 January 2007, Article 101(1) TFEU became applicable to the cartel insofar as it affected those markets.

5.8. Application of Article 101(3) TFEU and Article 53(3) of the EEA Agreement

5.8.1. Principles

- (878) The provisions of Article 101(1) TFEU and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) TFEU and Article 53(3) of the EEA Agreement in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

5.8.2. Application in this case

- (879) On the basis of the facts before the Commission, there are no indications suggesting that the electrolytic capacitors cartel entailed any efficiency benefits or otherwise promoted technical or economic progress. The conditions for exemption provided for in Article 101(3) TFEU and Article 53(3) of the EEA Agreement are therefore not fulfilled in this case.

5.8.3. Arguments of the parties and assessment thereof by the Commission

- (880) NIPPON CHEMI-CON CORPORATION suggests¹⁵³⁵ that even if the Commission were to find an infringement of Article 101(1) TFEU, such conduct is capable of falling under the exemption set out in Article 101(3) TFEU in light of the pro-competitive nature of the information exchanges at the multilateral meetings. In support of its argument, NIPPON CHEMI-CON CORPORATION refers to the efficiency-enhancing character of the supply and demand exchanges between the competitors for their investment decisions.

¹⁵³⁴ See Notice on the effect on trade, paragraphs 12, 14-15.

¹⁵³⁵ [...].

- (881) NIPPON CHEMI-CON CORPORATION's arguments should be rejected for the following reasons.
- (882) The application of the exception rule of Article 101(3) TFEU is subject to four cumulative conditions, two positive and two negative: (a) The agreement must contribute to improving the production or distribution of goods or contribute to promoting technical or economic progress, (b) Consumers must receive a fair share of the resulting benefits, (c) The restrictions must be indispensable to the attainment of these objectives, and finally (d) The agreement must not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question.¹⁵³⁶ Given that those four conditions are cumulative it is unnecessary to examine any remaining conditions once it is found that one of the conditions of Article 101(3) TFEU is not fulfilled.¹⁵³⁷
- (883) The conduct subject to this Decision involving private exchanges between competitors of their individualised intentions regarding prices or price-related matters and supply and demand information is qualified as a restriction of competition by object (see recitals (841)-(845)) and in principle would be very unlikely to fulfil the conditions of Article 101(3) TFEU.¹⁵³⁸
- (884) Furthermore, in accordance with Article 2 of Regulation (EC) No 1/2003, the burden of proof under Article 101(3) TFEU rests on the undertaking invoking the benefit of that provision. Therefore, the factual arguments and the evidence provided by the undertaking must enable the Commission to arrive at the conviction that the agreement in question is sufficiently likely to give rise to pro-competitive effects or that it is not.¹⁵³⁹
- (885) In this case, NIPPON CHEMI-CON CORPORATION merely analyses the competitive assessment of exchanges of supply and demand information while disregarding the fact that future pricing and price-related exchanges constitute an integral part of this infringement. NIPPON CHEMI-CON CORPORATION fails to demonstrate that the future pricing exchanges are compatible with the exception laid down in Article 101(3) TFEU and does not point to pro-competitive effects of the conduct in its entirety. Therefore, NIPPON CHEMI-CON CORPORATION does not meet the evidentiary burden imposed on the undertaking in this respect.
- (886) The conduct covered by this Decision in any event does not satisfy the two first conditions of Article 101(3) TFEU. The pricing exchanges between competitors in this case neither create objective economic benefits nor do they benefit consumers. On the contrary, the exchanges only benefit the cartel participants, to the exclusion of their customers.¹⁵⁴⁰

¹⁵³⁶ Communication from the Commission — Notice — Guidelines on the application of Article 81(3) of the Treaty (OJ C 101, 27.4.2004, p. 97), paragraph 34.

¹⁵³⁷ Communication from the Commission — Notice — Guidelines on the application of Article 81(3) of the Treaty (OJ C 101, 27.4.2004, p. 97), paragraph 38.

¹⁵³⁸ Horizontal Guidelines, paragraph 74.

¹⁵³⁹ Horizontal Guidelines, paragraph 48.

¹⁵⁴⁰ See, to that effect Communication from the Commission — Notice — Guidelines on the application of Article 81(3) of the Treaty (OJ C 101, 27.4.2004, p. 97), paragraph 46.

5.9. Other arguments of the parties and assessment thereof by the Commission

Probative value of evidence

- (887) NIPPON CHEMI-CON CORPORATION argues¹⁵⁴¹ that the Commission failed to present reliable, sufficiently precise and consistent evidence and hence did not prove its allegations to the requisite legal standard. According to NIPPON CHEMI-CON CORPORATION, the oral statements contain inconsistent accounts, contentious or minimally evidenced assertions or assertions not evidenced at all. Accordingly, NIPPON CHEMI-CON CORPORATION claims that the evidential value of individual corporate statements must be considered low. In the same vein, NIPPON CHEMI-CON CORPORATION argues that for at least a number of multilateral meetings, the content of the minutes varies greatly between the different sources.
- (888) NIPPON CHEMI-CON CORPORATION's arguments should be rejected for the following reasons.
- (889) In line with established case law, the evidence of participation in a cartel must be assessed in its entirety, taking into account all relevant circumstances of fact.¹⁵⁴² The Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the infringement took place, but it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement.¹⁵⁴³
- (890) The Court of Justice also acknowledges that it is normal that for activities related to anti-competitive practices and agreements to take place in a clandestine fashion, for meetings to be held in secret, and for the associated documentation to be reduced to a minimum. It follows that evidence explicitly showing unlawful contact between cartelists may often be only fragmentary and sparse, so it is often necessary to reconstitute certain details by deduction.¹⁵⁴⁴ The fragmentary and sporadic items of evidence which may be available to the Commission should, in any event, be capable of being supplemented by inferences which allow the relevant circumstances to be reconstituted. The existence of an anti-competitive practice or agreement may therefore be inferred from a number of coincidences and indicia which, taken

¹⁵⁴¹ [...].

¹⁵⁴² See Judgment of the Court of First Instance of 26 April 2007, *Bolloré and others v Commission*, T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, ECLI:EU:T:2007:115, paragraph 155.

¹⁵⁴³ See Judgment of the General Court of 9 September 2015, *Panasonic Corp. and MT Picture Display Co. Ltd v European Commission*, T-82/13, ECLI:EU:T:2015:612, paragraph 78 and the case law referred to therein.

¹⁵⁴⁴ Joined Cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and Others v Commission*, paragraphs 55-57; Judgment of the Court of Justice of 21 September 2006, *FEG v Commission*, Case C-105/04 P, ECLI:EU:C:2006:592, paragraph 135; Judgment of the Court of Justice of 25 January 2007, *Sumitomo Metal Industries v Commission*, C-403/04 P and C-405/04 P, ECLI:EU:C:2007:52, paragraph 51; Judgment of the Court of First Instance of 8 July 2008, *Lafarge v Commission*, T-54/03, ECLI:EU:T:2008:255 paragraph 452; Joined Cases T-379/10 and T-381/10, *Keramag Keramische Werke and Others v Commission*, paragraphs 94-108.

together, can, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.¹⁵⁴⁵

- (891) The principle which prevails in Union law is that of the unfettered evaluation of evidence and the only relevant criterion for the purpose of assessing the evidence lawfully adduced relates to its credibility.¹⁵⁴⁶
- (892) According to the generally applicable rules on evidence, the credibility and, therefore, the probative value of a document depends on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and the soundness and reliable nature of its contents.¹⁵⁴⁷ Statements from a direct and privileged witness of the facts which he disclosed have particular importance.¹⁵⁴⁸
- (893) Furthermore, with regard to the probative value of leniency statements, the General Court found that "high probative value may be attached to statements which (i) are reliable, (ii) are made on behalf of an undertaking, (iii) are made by a person under a professional obligation to act in the interests of that undertaking, (iv) go against the interests of the person making the statement, (v) are made by a direct witness of the circumstances to which they relate, and (vi) were provided in writing deliberately and after mature reflection".¹⁵⁴⁹ Where a person admits the existence of facts going beyond those whose existence could be directly inferred from the documentary evidence, this implies, a priori, in the absence of special circumstances indicating otherwise, that that person had resolved to tell the truth. Thus, statements which run counter to the interests of the declarant must in principle be regarded as particularly reliable evidence.¹⁵⁵⁰ Even if statements' credibility were reduced, such documents would still form part of the body of evidence and would still retain probative value as one of a number of coherent indicia which corroborate certain of the essential assertions in other evidence.¹⁵⁵¹
- (894) In light of those principles, the Commission first notes that it relies on a particularly large body of consistent evidence comprising corporate statements from several undertakings¹⁵⁵² as well as contemporaneous documentary evidence drawn up in close connection to the facts.¹⁵⁵³ The documentary evidence relied upon in this case

¹⁵⁴⁵ Joined Cases C-[239/11](#) P, C-489/11 P and C-498/11 P, *Siemens v Commission*, C-239/11 P, paragraph 133.

¹⁵⁴⁶ See Joined Cases C-[239/11](#) P, C-489/11 P and C-498/11 P, *Siemens v Commission*, C-239/11 P, paragraph 128; see also Judgment of the Court of Justice of 25 January 2007, *Dalmine SpA v Commission*, C-407/04 P, ECLI:EU:C:2007:53, paragraphs 62-63; See Judgment of the Court of Justice of 25 January 2007, *Salzgitter Mannesmann v Commission*, C-411/04 P, ECLI:EU:C:2007:54, paragraph 45.

¹⁵⁴⁷ See Judgment of the General Court of 27 June 2012, *Coats Holdings Ltd v Commission*, T-439/07, ECLI:EU:T:2012:320, paragraph 45.

¹⁵⁴⁸ See Joined Cases C-[239/11](#) P, C-489/11 P and C-498/11 P, *Siemens v Commission*, C-239/11 P, paragraph 169.

¹⁵⁴⁹ See Judgment of the General Court of 21 May 2014, *Toshiba Corp. v Commission*, T-519/09, ECLI:EU:T:2014:263, paragraph 49 and the case law referred to therein.

¹⁵⁵⁰ See Case T-566/08, *Total Raffinage Marketing v Commission*, paragraph 68 and the case law referred to therein.

¹⁵⁵¹ See Case C-411/04 P, *Salzgitter Mannesmann v Commission*, paragraphs 46-48.

¹⁵⁵² The Commission did not rely on a corporate statement by a single participant, but on statements made independently by five undertakings.

¹⁵⁵³ See also section 0.

and the corporate statements corroborate each other. Moreover, the collusion in this case took place in the context of regular and frequent anti-competitive meetings extending over a period of well over a decade. Accordingly, the evidence relating to those meetings cannot be assessed in isolation, but should be viewed as part of a wider body of evidence used by the Commission to prove the existence of the infringement.¹⁵⁵⁴ As set out in Section 5.4, those meetings had common characteristics, were attended by the same people, took place under similar external conditions and indisputably had the same purpose, namely to avoid price competition and coordinate future conduct with regard to the sale of electrolytic capacitors.

- (895) Second, NIPPON CHEMI-CON CORPORATION's suggestion that the corporate statements contain inconsistent accounts must be rejected. NIPPON CHEMI-CON CORPORATION confines itself to generic assertions or references to a number of oral statements which do not reveal any manifest contradictions. On the contrary those corporate statements show consistency in describing the issues of material importance for this case.¹⁵⁵⁵ Moreover, an examination of the file has not revealed any inconsistencies in the content of the meeting minutes referred to by NIPPON CHEMI-CON CORPORATION. Rather, the meeting minutes of the various undertakings are largely consistent in terms of topics discussed and views expressed at the meeting.¹⁵⁵⁶ Moreover, it has to be borne in mind that each of the individual parties had different profiles as regards size of product output and therefore participated in the cartel in ways particular to it. Accordingly, not each of the topics discussed in the meetings was documented to the same level of detail or described at all by each attending party.
- (896) Third, contrary to NIPPON CHEMI-CON CORPORATION's suggestion, the individual pieces of evidence do not inevitably have to be linked or to present similar characteristics in order to be considered reliable. What matters is that, as in this case, the evidence relied on by the Commission is sufficiently precise and coherent to form the basis of a firm conviction that the alleged infringement exists.¹⁵⁵⁷ An occasional discrepancy in the case file is incapable of calling into

¹⁵⁵⁴ See Case T-337/94, *Enso-Gutzeit OY v Commission*, paragraph 151 and the case law referred to therein.

¹⁵⁵⁵ Each of the corporate statements referred to by NIPPON CHEMI-CON CORPORATION in relation to ECC/MK meetings consistently confirms that prices or price-related issues were discussed. [confidentiality claim pending], according to [...]. Furthermore, according to [...]. Equally, in relation to MK meetings, according to [...], according to [...], according to [...], according to [...].

¹⁵⁵⁶ NIPPON CHEMI-CON CORPORATION submits that the content of the meeting minutes relating to, for example, the meetings of 13 September 2006, 18 October 2006, 16 July 2009, 17 September 2009 and 17 June 2010, described in Section 0, varies greatly between the different sources. This assertion is unfounded. By way of example, in relation to the multilateral meeting held on 16 July 2009, for which Sanyo as well as [confidentiality claim pending] minutes are available on file, in the part of the minutes relevant for this case and concerning [confidentiality claim pending], Sanyo states that "Price correction is necessary because of the strong yen" ([...]), while [confidentiality claim pending] makes a similar observation in its minutes by stating that "Due to the impact of the strong yen, there is a request for a revision of the sales price, and there is movement towards rejecting orders with low pricing" ([...]).

¹⁵⁵⁷ See Case T-370/09, *GDF Suez v Commission*, paragraph 228.

question the characterisation of the facts found by the Commission in this Decision on the basis of the vast and consistent body of evidence.¹⁵⁵⁸

- (897) Fourth, in line with the principles set out in recital (893) the corporate statements relied upon in this case are particularly credible since they were submitted on behalf of the cooperating undertakings and represent the outcome of an internal investigation carried out by those undertakings. Such statements are clear, detailed and based on the testimonies of individuals who have participated in the cartel and were at the material period employees of the cooperating undertakings. In addition, the respective statements have been provided to the Commission clearly upon mature reflection and run counter to the interests of the leniency applicants. Moreover, the statements are agreed on the broad outlines of the description of the infringement, which further increases their reliability.¹⁵⁵⁹
- (898) NIPPON CHEMI-CON CORPORATION also maintains¹⁵⁶⁰ that the majority of individual multilateral meetings are only supported by contemporaneous materials from one source and that the evidence is minimal. Similarly, Nichicon contends¹⁵⁶¹ that the evidence relating to the ECC multilateral meetings virtually comes from one source only.
- (899) NIPPON CHEMI-CON CORPORATION's and Nichicon's arguments are unfounded for several reasons. First, as NIPPON CHEMI-CON CORPORATION itself acknowledges, the Commission does not base its findings solely on evidence derived from a single source. Second, there is no provision or principle of Union law that precludes the Commission from relying on evidence originating from a single source, as long as it definitely attests to the existence of an infringement in question.¹⁵⁶² The fact that the contemporaneous evidence relied upon was drawn up at the time of the events and clearly without any thought for the fact that it might fall into the hands of third parties renders the evidence particularly credible.¹⁵⁶³
- (900) NIPPON CHEMI-CON CORPORATION further argues¹⁵⁶⁴ that, in relation to the CUP meetings, the contemporaneous evidence is even more limited than for other multilateral meetings. NIPPON CHEMI-CON CORPORATION states that the CUP-related evidence is solely based on the "best recollection" by one of the [*confidentiality claim pending*]'s employees ([...]) of the facts taking place six to eight years earlier. According to NIPPON CHEMI-CON CORPORATION, even taking the evidence at face value, it is evident that these meetings were not only strictly limited in time, but also by customer/product scope and even geography, certainly between 2006-2007. NIPPON CHEMI-CON CORPORATION also submits that Rubycon's MK meeting materials often lack clarity.

¹⁵⁵⁸ See Case T-84/13, *Samsung SDI and Others v Commission*, paragraph 75.

¹⁵⁵⁹ See Case T-566/08, *Total Raffinage Marketing v Commission*, paragraph 69; Case C-411/04 P, *Salzgitter Mannesmann v Commission*, paragraphs 46-48.

¹⁵⁶⁰ [...].

¹⁵⁶¹ [...].

¹⁵⁶² See, to that effect, Case T-762/14, *Philips and Philips France v Commission*, paragraph 108 and the case law referred to therein.

¹⁵⁶³ See, for instance, Judgment of the General Court of 27 September 2012, *Shell Petroleum and Others v Commission*, T-343/06, ECLI:EU:T:2012:478, paragraph 207.

¹⁵⁶⁴ [...].

- (901) NIPPON CHEMI-CON CORPORATION's arguments should be rejected for the following reasons.
- (902) As regards the credibility of CUP-related evidence, the Commission does not rely exclusively on the recollections of events by the individuals participating in the cartel, but also on inculpatory evidence from the time of the facts drawn up by the direct witnesses of those facts (not only [...], but also [...]¹⁵⁶⁵ of [*confidentiality claim pending*]) and hence with a very high probative value.¹⁵⁶⁶ The fact that the handwritten notes produced by [...] might be badly written does not deprive them of their probative value, especially where their origin, probable date and content can be determined with sufficient certainty,¹⁵⁶⁷ either based on the notes themselves or based on further clarifications and explanations provided by the author of the documents himself by means of corporate statements. These statements are particularly credible because they explain, in a clear, detailed and plausible manner the meaning of the pre-existing notes and these explanations are in line with the description and essential characteristics of the infringement.¹⁵⁶⁸ Moreover, the Commission does not rely solely on the abovementioned handwritten notes and explanatory oral statements, but also on internal emails¹⁵⁶⁹ and well-structured and self-explanatory minutes from three of the meetings¹⁵⁷⁰ clearly attesting to the purpose and nature of the CUP meetings and the dates of the CUP meetings and lists of participants were confirmed by [*confidentiality claim pending*] and [*confidentiality claim pending*].¹⁵⁷¹ Overall, there is extensive evidence as to what was discussed at CUP meetings.¹⁵⁷²
- (903) Furthermore, the Commission observes that NIPPON CHEMI-CON CORPORATION analyses the evidence in relation to the CUP meetings in isolation, while disregarding the body of evidence as a whole used by the Commission to prove the existence of the infringement¹⁵⁷³ (see also recitals (889) and (894) in this respect). In this context, NIPPON CHEMI-CON CORPORATION ignores the fact that the collusive discussions in the CUP meetings had the same nature and characteristics as the contacts at other multilateral meetings held prior to or in parallel with the CUP meetings (see also Section 5.4.2).
- (904) As regards the reliability of the notes from the MK meetings produced by [*confidentiality claim pending*] employees, the Commission notes that they have a very high probative value given that their authors directly participated in the multilateral meetings which they then described in the meeting notes. Moreover,

¹⁵⁶⁵ [...].

¹⁵⁶⁶ See Case T-566/08, *Total Raffinage Marketing v Commission*, paragraphs 80-82 and the case law referred to therein. See also Case T-758/14, *Infineon Technologies v Commission*, paragraph 155.

¹⁵⁶⁷ See Case T-566/08, *Total Raffinage Marketing v Commission*, paragraphs 80-81 and the case law referred to therein.

¹⁵⁶⁸ See Case T-566/08, *Total Raffinage Marketing v Commission*, paragraph 69.

¹⁵⁶⁹ Internal Rubycon emails reporting on the content of the CUP meetings respectively held on 22 December 2006, 16 April 2008 and 21 May 2008 ([...]).

¹⁵⁷⁰ [...].

¹⁵⁷¹ [...].

¹⁵⁷² A full chronology of the meetings, the evidence, and the content of the discussions is found in Section 0 and Annex I.

¹⁵⁷³ See Case T-337/94, *Enso-Gutzeit OY v Commission*, paragraph 151 and the case law referred to therein.

these notes constitute only a part of the evidence relied upon to show the restrictive nature of the MK meetings, which comprises also other notes and minutes (see also Section 4.3.6.).

- (905) NIPPON CHEMI-CON CORPORATION also submits¹⁵⁷⁴ that in places oral statements on the Commission file explicitly negate any relevance to Europe or present conflicting interpretations of the facts, but that the Commission chooses not to notice this and cherry-picks the evidence.
- (906) NIPPON CHEMI-CON CORPORATION's argument should be rejected. First, NIPPON CHEMI-CON CORPORATION refers merely to extracts from corporate statements describing certain competitor exchanges or certain specific aspects of the case, while ignoring the cartel conduct in its entirety and the overall evidentiary body supporting the finding of such conduct. Second, even if there were differences between the corporate statements available on the Commission's file, they are not such to call into question that the Commission has proven the infringement to the requisite legal standard because they have no effect on the characterisation of the facts found by the Commission in the contested decision. For example, NIPPON CHEMI-CON CORPORATION claims¹⁵⁷⁵ with reference to [...]s corporate statements that information exchanges at ECC meetings related to [*confidentiality claim pending*] and [*confidentiality claim pending*] capacitors which were not sold to Europe. However, there is evidence on file that shows that [*confidentiality claim pending*] capacitors have relevance to the EEA. For example, according to the minutes of the meeting of 25 May 2000, Elna reported on its price increases of 10-15 % for European customers, and that its price increase for LB capacitors supplied to [*confidentiality claim pending*] were 20 % or more¹⁵⁷⁶ ("*They raised prices 10% - 15% in Europe. Especially, [*confidentiality claim pending*] raised LB at least 20% so orders are stopped*"¹⁵⁷⁷). Furthermore, [*confidentiality claim pending*] confirmed that in the period between 1999-2000 and [*confidentiality claim pending*] business years it had sales of [*confidentiality claim pending*] capacitors into the EEA.¹⁵⁷⁸

Public distancing

- (907) Nichicon submits¹⁵⁷⁹ that its participation (if any) in the alleged infringement ceased on 16 February 2005 due to its public distancing from the ATC meetings, when it withdrew from those meetings. Nichicon argues that it clearly indicated to the participants in the ATC meetings its withdrawal due to antitrust concerns and that this was clearly understood by the other participants. In support of its argument, Nichicon further claims that (i) it has undertaken significant efforts in the period prior to the 16 February 2005 meeting to ensure that the ECC/ATC meetings fully complied with antitrust law, (ii) Nichicon's withdrawal became the very reason to stop the ATC meetings and replace them by the MK meetings, (iii) the parties considered Nichicon as competing aggressively with the MK participants, and (iv) the participants even took steps to hide the MK meetings from Nichicon and to give

¹⁵⁷⁴ [...]. Reference is also made to [...]

¹⁵⁷⁵ [...].

¹⁵⁷⁶ [...].

¹⁵⁷⁷ [...].

¹⁵⁷⁸ [...].

¹⁵⁷⁹ [...].

Nichicon the impression that the ATC meetings were dissolved, the participants changed the name into MK meetings. Moreover, Nichicon submits that in March 2009, the participants of the MK meetings invited [...] from Nichicon to join their meeting, which indicates that they did not regard Nichicon as forming part of their arrangements. Furthermore, according to Nichicon, there can be no doubt that the other participants clearly understood that Nichicon was distancing itself from the ATC meetings and did not form part of the MK meetings. Nichicon's arguments should be rejected for the following reasons.

- (908) According to settled case law, the notion of public distancing as a means of excluding liability must be interpreted narrowly. In order to disassociate itself effectively from anti-competitive discussions, it is for the undertaking concerned to indicate to its competitors that it does not in any way wish to be regarded as a member of the cartel and to participate in anti-competitive meetings.¹⁵⁸⁰
- (909) Ceasing to attend certain anti-competitive meetings, but continuing to be involved in other anti-competitive contacts pursuing the same aim (both bi-/tri-lateral contacts and multilateral (CUP) meetings) with the same parties (see also Sections 4.3.6 and 5.4.2) however does not amount to dissociation required by case law and to termination of the cartel conduct. In these circumstances, the fact that Nichicon may have stopped attending certain meetings due to antitrust concerns is indicative of fear of detection rather than of a manifestation of public distancing on part of Nichicon.
- (910) Moreover, Nichicon failed to report the existence of the meetings from which it alleges to have withdrawn to administrative authorities, thereby effectively encouraging the continuation of the infringement and compromising its discovery.¹⁵⁸¹ The fact that Nichicon ceased to attend certain meetings is therefore not tantamount to an expression of firm and unambiguous disapproval of the content of the meetings attended, but rather amounts to a tacit approval thereof.
- (911) The fact that Nichicon has put in place a compliance programme is an aspect internal to the undertaking that does not alter the fact that it has participated in anti-competitive contacts and it is equally irrelevant for the purposes of assessing whether Nichicon publicly distanced itself from the cartel.¹⁵⁸²
- (912) Aggressive market conduct of Nichicon equally does not constitute a relevant argument. Actual market behaviour of an undertaking concerns the implementation of collusive conduct and cannot serve as an indication to other cartel members that that undertakings was participating in the anti-competitive contacts in a different spirit.¹⁵⁸³
- (913) Furthermore, the fact that MK meeting participants invited Nichicon in March 2009 to join the MK meetings is in direct contrast to Nichicon's suggestion¹⁵⁸⁴ that

¹⁵⁸⁰ Case T-83/08, *Denki Kagaku Kogyo v Commission*, paragraph 53 and the case law referred to therein.

¹⁵⁸¹ Case T-83/08, *Denki Kagaku Kogyo v Commission*, paragraph 53 and the case law referred to therein.

¹⁵⁸² Case T-384/06, *IBP v Commission*, paragraph 83.

¹⁵⁸³ Judgment of the General Court of 16 June 2011, *FMC Foret v Commission*, T-191/06, ECLI:EU:T:2011:277, paragraph 253; Judgment of the General Court of 16 September 2013, *Galp Energia España and Others v Commission*, T-462/07, ECLI:EU:T:2013:459, paragraphs 474-475.

¹⁵⁸⁴ [...].

Nichicon was effectively ousted from the cartel under the pretext that the cartel had come to an end.

- (914) Finally, the fact that Nichicon continued its cartel involvement in a manner appropriate to its own situation and that it did not attend the MK meetings (while it attended multilateral CUP meetings as well as bi-/tri-lateral contacts pursuing the same common objective) is not liable to affect the finding that Nichicon continued its participation in the single and continuous infringement.

Scope of investigation

- (915) NIPPON CHEMI-CON CORPORATION claims¹⁵⁸⁵ that the Commission has taken an erratic and unprincipled approach in that it decided not to open formal investigations into [...] nor [...] although these are part of the Commission's file and [confidentiality claim pending].
- (916) Regarding the scope of the present investigation and this Decision, pursuant to Regulation (EC) No 1/2003 it is for the Commission to prove the infringement. It is therefore justified that the Commission limits the scope of its cartel investigation in light of its ability to prove the case against the undertakings addressed. The fact that the Commission decided to define its case along the lines set out in this Decision cannot in any event constitute a ground for setting aside the finding of an infringement by the parties subject to this Decision as that infringement is properly established.¹⁵⁸⁶ The parties can also not escape a penalty on the ground that no fine was imposed on other economic operators.¹⁵⁸⁷
- (917) For the reasons set out above, the argument put forward by NIPPON CHEMI-CON CORPORATION should be rejected.

TECs-related anti-competitive conduct

- (918) Elna argues¹⁵⁸⁸ that the conclusion of price agreements by the parties was impossible for TECs. In support of this argument, Elna quotes Matsuo's statement made during the ECC meeting of 29 January 2003 that "[t]he tantalum capacitor industry is led by overseas manufacturers and thus the price cannot be decided by price agreement among the domestic manufacturers".¹⁵⁸⁹ According to Elna, at the very least the Commission should consider that Elna's infinitesimal position in tantalum did not enable it to participate in any anti-competitive collusion as regards tantalum. Elna's arguments should be rejected for the following reasons.
- (919) First, the Commission relies on a particularly large body of consistent evidence in order to find the infringement relating to both AECs and TECs. Therefore, Matsuo's

¹⁵⁸⁵ [...].

¹⁵⁸⁶ See Judgment of the Court of First Instance of 16 November 2006, *Peróxidos Orgánicos, SA v Commission*, T-120/04, ECLI:EU:T:2006:350, paragraph 77; and Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, paragraph 139.

¹⁵⁸⁷ See, to that effect, Judgment of the Court of First Instance of 15 June 2005, *Tokai Carbon v Commission*, T-71/03, T-74/03, T-87/03 and T-91/03, ECLI:EU:T:2005:220, paragraph 397 and the case law referred to therein.

¹⁵⁸⁸ [...].

¹⁵⁸⁹ [...].

statement would have no effect on the characterisation of the facts found by the Commission in the contested decision.¹⁵⁹⁰

- (920) Second, as explained in recitals (704)-(714), price *agreements* are not the only possible manifestations of anti-competitive conduct that violate Article 101(1) TFEU.
- (921) Third, the size of Elna's TEC business is not relevant, as this factor did not affect in any way Elna's participation in the infringement.¹⁵⁹¹ What is material is that Elna was implicated in anti-competitive conduct and that its involvement has been proven to the requisite legal standard. In any case, as the anti-competitive conduct in this case may affect trade between Member States and has an anti-competitive object (see Sections 5.5 and 5.6), it constitutes an appreciable restriction on competition, independently of any concrete effect that it may have.¹⁵⁹²

6. ADDRESSEES OF THE PRESENT PROCEEDINGS

6.1. Principles

- (922) As a general consideration, the subject of Union competition rules is the "undertaking", a concept that is not identical with the notion of corporate legal personality in national commercial or fiscal law. The "undertaking" that participated in the alleged infringement is therefore not necessarily the same entity as the precise legal entity within a group of companies whose representatives actually took part in the cartel meetings. The term "undertaking" is not defined in the TFEU. However, in *Shell International Chemical Company v Commission*, the General Court held that:

*"in prohibiting undertakings inter alia from entering into agreements or participating in concerted practices which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market, Article 85(1) of the EEC Treaty [now Article 101(1) of the Treaty on the Functioning of the European Union] is aimed at economic units which consist of a unitary organization of personal, tangible and intangible elements which pursues a specific economic aim on a long-term basis and can contribute to the commission of an alleged infringement of the kind referred to in that provision".*¹⁵⁹³

¹⁵⁹⁰ Case T-84/13, *Samsung SDI and Others v Commission*, paragraph 75. Furthermore, as described in recital (182) at the same ECC meeting of 29 January 2003 NEC Tokin, (TECs manufacturer) indicated that it "will agree on prices for M case and functional capacitors, which [competitor, not an addressee of this Decision] and [another competitor, not an addressee of this Decision] cannot manufacture" ([...]), which implies that in fact the agreement on prices is possible at least with regard to the capacitors that are not manufactured by foreign manufacturers. More importantly, this and other quotes from that meeting show that the parties had the object of restricting competition.

¹⁵⁹¹ Judgment of the Court of Justice of 28 June 2005, *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, ECLI:EU:C:2005:408, paragraph 151.

¹⁵⁹² Judgment of the Court of Justice of 13 December 2012, *Expedia*, C-226/11, ECLI:EU:C:2012:795, paragraphs 37-38.

¹⁵⁹³ Judgment of the Court of First Instance of 10 March 1992, *Shell v Commission*, T-11/89, ECLI:EU:T:1992:33, paragraph 311; Judgment of the Court of First Instance of 14 May 1998, *Mo och Domsjö v Commission*, T-352/94, ECLI:EU:T:1998:103, paragraph 87.

- (923) The concept of "undertaking" in Union law is a functional one. The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity or its precise legal form under national law.¹⁵⁹⁴ For each undertaking that is to be held accountable for infringing Article 101 TFEU in this case, one or more legal entities have been identified which should bear legal liability for the alleged infringement. According to the case law:

*"Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 EC and 82 EC [now Articles 101 and 102 of the Treaty on the Functioning of the European Union] if the companies concerned do not determine independently their own conduct on the market".*¹⁵⁹⁵

- (924) If a subsidiary does not determine its own conduct on the market independently, the company which directed its market strategy forms a single economic entity with that subsidiary and may be held liable for an alleged infringement on the ground that it forms part of the same undertaking.
- (925) The Commission can generally presume that a wholly-owned or nearly wholly owned subsidiary essentially follows the instructions given to it by its parent company without needing to check whether the parent company has in fact exercised that decisive influence over the subsidiary's conduct.¹⁵⁹⁶ However, the parent company and/or subsidiary can rebut that presumption by producing sufficient evidence that the subsidiary *"decided independently on its own conduct on the market rather than carrying out the instructions given to it by its parent company and such that they fall outside the definition of an 'undertaking'"*.¹⁵⁹⁷ Moreover, it is clear from the case law that a presumption, even if difficult to rebut, remains within acceptable limits if it is proportionate to the legitimate aim pursued, if it is possible to bring proof to the contrary and if the rights of defence are assured.¹⁵⁹⁸

¹⁵⁹⁴ Although an 'undertaking' within the meaning of Article 101(1) TFEU is not necessarily the same as a company having legal personality, it is necessary for the purposes of enforcing decisions to identify the natural or legal person to whom the decision will be addressed. See Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *LVM v Commission*, paragraph 978.

¹⁵⁹⁵ See Judgment of the Court of Justice of 12 July 1984, *Hydrotherm*, 170/83, ECLI:EU:C:1984:271, paragraph 11 and Judgment of the Court of First Instance of 12 January 1995, *Viho v Commission*, T-102/92, ECLI:EU:T:1995:3, paragraph 50, cited in Judgment of the Court of First Instance of 30 September 2003, *Michelin v Commission*, T-203/01, ECLI:EU:T:2003:250, paragraph 290. See also Case, 48/69, *ICI v Commission*, paragraphs 132-133.

¹⁵⁹⁶ Judgment of the Court of First Instance of 14 May 1998, *Stora Kopparbergs Bergslags v Commission*, T-354/94, ECLI:EU:T:1998:104, paragraph 80, upheld in Judgment of the Court of Justice of 16 November 2000, *Stora Kopparbergs Bergslags v Commission*, C-286/98 P, ECLI:EU:C:2000:630, paragraphs 27-29; Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03, *Tokai Carbon v Commission*, paragraph 60 and Judgment of the Court of Justice of 25 October 1983, *AEG v Commission*, 107/82, ECLI:EU:C:1983:293, paragraph 50; Judgment of the Court of Justice of 10 September 2009, *Akzo Nobel and Others v Commission*, C-97/08 P, ECLI:EU:C:2009:262, paragraph 60; Judgment of the Court of Justice of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, ECLI:EU:C:2011:620, paragraph 56.

¹⁵⁹⁷ Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03, *Tokai Carbon v Commission*, paragraph 61.

¹⁵⁹⁸ Case C-521/09 P, *Elf Aquitaine v Commission*, paragraphs 60-62.

- (926) Where an alleged infringement of Article 101 TFEU is found to have been committed, it is necessary to identify a natural or legal person who was responsible for the operation of the undertaking at the time when the alleged infringement was committed so that it can answer for it.
- (927) When an undertaking that has committed an alleged infringement of Article 101 TFEU subsequently disposes of the assets which contributed to the alleged infringement and withdraws from the market in question, it continues to be answerable for the alleged infringement if it has not ceased to exist.¹⁵⁹⁹ If the undertaking which has acquired the assets carries on the violation of Article 101 TFEU, liability for the alleged infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period in which it participated through those assets in the cartel. However, if the legal person initially answerable for the alleged infringement ceases to exist, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the alleged infringement and thus liable for the activity of the entity that was absorbed.¹⁶⁰⁰ The mere disappearance of the person responsible for the operation of the undertaking when the alleged infringement was committed does not allow it to evade liability.¹⁶⁰¹ Liability for a fine may thus pass to a successor where the corporate entity which committed the violation has ceased to exist in law.
- (928) Different conclusions may, however, be reached when a business is transferred from one company to another, in cases where transferor and transferee are linked by economic links, that is to say, when they belong to the same undertaking. In such cases, liability for past behaviour of the transferor may transfer to the transferee, notwithstanding the fact that the transferor remains in existence.¹⁶⁰²

6.2. Application to this case

- (929) The Commission concludes on the basis of the facts described in Section 4 that the following legal entities have directly participated in the infringement of Article 101 TFEU and Article 53 of the EEA Agreement, or bear liability therefore as follows:
- ELNA CO., LTD.;
 - Hitachi Chemical Electronics Co., Ltd. and Hitachi Chemical Co., Ltd.;

¹⁵⁹⁹ Judgment of the Court of First Instance of 17 December 1991, *Enichem Anic v Commission*, T-6/89, ECLI:EU:T:1991:74, paragraph 237; Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraphs 47-49.

¹⁶⁰⁰ Judgment of the Court of Justice of 16 November 2000, *Cascades v Commission*, C-279/98 P, ECLI:EU:C:2000:626, paragraphs 78-79: "It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking. Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it".

¹⁶⁰¹ Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *LVM v Commission*, paragraph 953.

¹⁶⁰² Joined Cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg Portland and Others v Commission*, paragraphs 354-360; Judgment of the Court of First Instance of 27 September 2006, *Jungbunzlauer v Commission*, T-43/02, ECLI:EU:T:2006:270, paragraphs 132-133.

- Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy Stone Enterprise Co., Ltd.;
- Matsuo Electric Co., Ltd.;
- TOKIN Corporation and NEC Corporation;
- Nichicon Corporation;
- NIPPON CHEMI-CON CORPORATION;
- Rubycon Corporation and Rubycon Holdings Co., Ltd.;
- SANYO Electric Co., Ltd. and Panasonic Corporation.

6.2.1. *ELNA CO., LTD.*

(930) The evidence described in Section 4 and Annex II shows that from 26 June 1998 to 23 April 2012, participation in the infringement took place via employees of ELNA CO., LTD.. Therefore the Commission concludes that ELNA CO., LTD. is liable for its direct participation in the infringement.

(931) This Decision is therefore addressed to ELNA CO., LTD.

6.2.2. *Hitachi Chemical Electronics Co., Ltd. and Hitachi Chemical Co., Ltd.*

(932) The evidence described in Section 4 and Annex II shows that from 22 November 2000 to 18 February 2010, participation in the infringement took place via employees of Hitachi AIC Inc. (on 1 October 2009 renamed Hitachi Chemical Electronics Co., Ltd.). Therefore the Commission concludes that Hitachi Chemical Electronics Co., Ltd. is liable for its direct participation in the infringement.

(933) Throughout the infringement period from 1 August 2001 to 18 February 2010, Hitachi Chemical Co., Ltd. owned 100 % of Hitachi Chemical Electronics Co., Ltd..¹⁶⁰³ In line with the case law referred to in Section 6.1, a presumption therefore exists that Hitachi Chemical Co., Ltd. exercised decisive influence over Hitachi Chemical Electronics Co., Ltd. and consequently, that Hitachi Chemical Co., Ltd. and Hitachi Chemical Electronics Co., Ltd. formed part of the same undertaking that committed the infringement.

(934) Accordingly, the Commission concludes that Hitachi Chemical Co., Ltd. is jointly and severally liable for participation in the infringement with Hitachi Chemical Electronics Co., Ltd. for the period from 1 August 2001 to 18 February 2010.

(935) For the reasons set forth in recitals (932)-(934), this Decision is addressed to Hitachi Chemical Electronics Co., Ltd. and Hitachi Chemical Co., Ltd.

6.2.3. *Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy Stone Enterprise Co., Ltd.*

(936) The evidence described in Section 4 and Annex II shows that from 16 November 2010 to 23 April 2012, participation in the infringement took place via employees of Holy Stone Polytech Co., Ltd.) (which was renamed on 1 November 2014 to Vishay Polytech Co., Ltd.). Therefore the Commission concludes that Vishay Polytech Co., Ltd. is liable for its direct participation in the infringement.

¹⁶⁰³ [...].

- (937) Throughout the infringement period from 16 November 2010 to 23 April 2012, Holy Stone Enterprise Co., Ltd. owned 100 % of Holy Stone Holdings Co., Ltd. and [confidentiality claim pending].¹⁶⁰⁴ In line with the case law referred to in Section 6.1, a presumption therefore exists that Holy Stone Enterprise Co., Ltd. exercised decisive influence over Holy Stone Holdings Co., Ltd. and Vishay Polytech Co., Ltd. and Holy Stone Holdings Co., Ltd. exercised decisive influence over Vishay Polytech Co., Ltd. and consequently, that Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd. and Vishay Polytech Co., Ltd. formed part of the same undertaking that committed the infringement.
- (938) The entities of the Holy Stone group claim¹⁶⁰⁵ that Holy Stone Enterprise Co., Ltd. never took part in nor was aware of any of the alleged practices and that its sales in the EEA or commercial strategy were never affected directly or indirectly by the alleged practices in which Vishay Polytech Co., Ltd. participated due to independent price-setting.
- (939) The Commission imputes the infringement in question to Holy Stone Enterprise Co., Ltd. on the basis of the presumption that Holy Stone Enterprise Co., Ltd. exercised decisive influence over Vishay Polytech Co., Ltd. [confidentiality claim pending] throughout the period of participation of the undertaking in the infringement. This presumption cannot be rebutted by the fact that Holy Stone Enterprise Co., Ltd. did not participate directly in the infringement and was not necessarily aware of it¹⁶⁰⁶ and by potentially independent price-setting by entities within the Holy Stone undertaking. Attribution to the parent company of the unlawful conduct of a subsidiary does not require proof that there is an interdependence of pricing policies of the parent company and those of its subsidiary in the specific area in which the infringement occurred.¹⁶⁰⁷
- (940) Accordingly, the Commission concludes that Holy Stone Enterprise Co., Ltd. and Holy Stone Holdings Co., Ltd. are jointly and severally liable for participation in the infringement with Vishay Polytech Co., Ltd. for the period from 16 November 2010 to 23 April 2012.
- (941) For the reasons set forth in recitals (936)-(940), this Decision is addressed to Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy Stone Enterprise Co., Ltd.

6.2.4. Matsuo Electric Co., Ltd.

- (942) The evidence described in Section 4 and Annex II shows that from 29 January 2003 to 23 April 2012, participation in the infringement took place via employees of Matsuo Electric Co., Ltd. Therefore the Commission concludes that Matsuo Electric Co., Ltd. is liable for its direct participation in the infringement.
- (943) This Decision is therefore addressed to Matsuo Electric Co., Ltd.

¹⁶⁰⁴ [...].

¹⁶⁰⁵ [...].

¹⁶⁰⁶ Judgment of the General Court of 14 July 2011, *Total SA Elf Aquitaine v Commission*, T-190/06, ECLI:EU:T:2011:378, paragraph 76.

¹⁶⁰⁷ See, to that effect, Judgment of the General Court of 13 July 2011, *ENI v Commission*, T-39/07, ECLI:EU:T:2011:536, paragraph 97.

6.2.5. *TOKIN Corporation and NEC Corporation*

- (944) The evidence described in Section 4 and Annex II shows that from 29 January 2003 to 23 April 2012, participation in the infringement took place via employees of NEC TOKIN Corporation (on 19 April 2017 renamed TOKIN Corporation). Therefore the Commission concludes that TOKIN Corporation is liable for its direct participation in the infringement.
- (945) Throughout the infringement period from 1 August 2009 to 23 April 2012, NEC Corporation owned 100 % of TOKIN Corporation.¹⁶⁰⁸ In line with the case law referred to in Section 6.1, a presumption therefore exists that NEC Corporation exercised decisive influence over TOKIN Corporation and consequently, that NEC Corporation and TOKIN Corporation formed part of the same undertaking that committed the infringement.
- (946) NEC Corporation submits¹⁶⁰⁹ that the Commission has reached an incorrect conclusion that NEC Corporation exercised decisive influence over TOKIN Corporation during the period in which it owned 100 % of TOKIN Corporation, based on the presumption of liability. According to NEC Corporation, TOKIN Corporation acted independently of NEC Corporation when it came to its conduct on the market. More specifically, NEC Corporation claims that (i) it had no control or influence over the day-to-day running of TOKIN Corporation's production, sales or marketing,¹⁶¹⁰ (ii) the reporting of periodic financial results by TOKIN Corporation to NEC Corporation or the consolidation of TOKIN Corporation's accounts into the accounts of NEC Corporation were merely a regulatory requirement, (iii) the existence of personnel with roles on the boards of both NEC Corporation and TOKIN Corporation should not be used as evidence that TOKIN Corporation lacked autonomy from NEC Corporation, (iv) there is no evidence that the three individuals who held a role with NEC Corporation and concurrently were also directors on the board of TOKIN Corporation were involved or could have been aware of the alleged infringement, (v) TOKIN Corporation had its own business infrastructure that was entirely separate, in terms of structure and organisation, from NEC Corporation and (vi) TOKIN Corporation was regarded as a separate entity by the market as a whole.
- (947) In this case, NEC Corporation acknowledges that it owned 100 % of the share capital of TOKIN Corporation in the period from 1 August 2009 until 31 January 2013.¹⁶¹¹ It is therefore for NEC Corporation to adduce sufficient evidence to rebut the presumption of liability for its wholly-owned subsidiary.¹⁶¹² However NEC Corporation fails to rebut that presumption for the following reasons.
- (948) First, the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does

¹⁶⁰⁸ [...].

¹⁶⁰⁹ [...].

¹⁶¹⁰ In support of this claim, NEC Corporation provided NEC Corporation's Decision Making Guidelines dated 1 April 2015 (which is outside of the period for which NEC Corporation is attributed derivative liability) and it merely explained that there were no substantial changes in this document since the relevant liability period ([...]).

¹⁶¹¹ [...].

¹⁶¹² See Judgment of the Court of Justice of 16 June 2016, *Evonik Degussa and AlzChem v Commission*, C-155/14 P, ECLI:EU:C:2016:446 paragraphs 30-31.

not decide independently on its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. The expression 'conduct on the market' must not be interpreted narrowly but rather as relating to the company's commercial strategy.¹⁶¹³ Complete autonomy of TOKIN Corporation cannot be inferred from the supposed lack of control of NEC Corporation over the day-to-day business of its subsidiary.¹⁶¹⁴ Equally the fact that TOKIN Corporation had its own business infrastructure cannot be sufficient to show that this subsidiary was independent.¹⁶¹⁵

- (949) Second, the fact that NEC Corporation was unaware of the anti-competitive activities engaged in by TOKIN Corporation are equally incapable to show that decisive influence has not been exercised by NEC Corporation over its subsidiary.¹⁶¹⁶
- (950) Third, overlaps in personnel of NEC Corporation and TOKIN Corporation,¹⁶¹⁷ financial reporting¹⁶¹⁸ as well as consolidation of accounts¹⁶¹⁹ (irrespective of any regulatory requirements imposed by the local legislation) are actually factors that speak for the exercise of decisive influence and thus for the two legal entities constituting one economic entity and therefore one undertaking. Furthermore, NEC Corporation itself confirms¹⁶²⁰ that TOKIN Corporation required corporate approval from NEC Corporation for a number of matters, including changes of corporate or business structure, launching of a new business, major capital expenditures or disposal of substantial amount of existing assets, which is yet another element supportive of existence of decisive influence on the part of NEC Corporation.
- (951) Fourth, NEC Corporation did not produce any evidence that TOKIN Corporation independently decided on its own conduct on the market or that it disregarded the instructions given to it by NEC Corporation.¹⁶²¹
- (952) Finally, the fact that TOKIN Corporation might have been viewed by the market as an entity separate from NEC Corporation is not backed by any evidence; moreover,

¹⁶¹³ See case Judgment of the Court of Justice of 15 June 2012, *Otis v Commission*, C-494/11P, ECLI:EU:C:2012:356, paragraph 42; see also Opinion of Advocate General Kokott delivered on 23 April 2009 in Case C-97/08 P *Akzo Nobel and Others v Commission*, paragraph 94.

¹⁶¹⁴ See Opinion of Advocate General Kokott delivered on 23 April 2009 in Case C-97/08 P *Akzo Nobel and Others v Commission*, paragraph 90.

¹⁶¹⁵ See, to that effect, Judgment of the General Court of 14 July 2011, *Arkema France v Commission*, T-189/06, ECLI:EU:T:2011:377, paragraph 78.

¹⁶¹⁶ See, to that effect, Case T-189/06, *Arkema France v Commission*, paragraph 74.

¹⁶¹⁷ Judgment of the General Court of 13 December 2013, *HSE v Commission*, T-399/09, ECLI:EU:T:2013:647, paragraph 38; Judgment of the General Court of 11 July 2014, *RWE v Commission*, T-543/08, ECLI:EU:T:2014:627, paragraph 102.

¹⁶¹⁸ Joined Cases T-379/10 and T-381/10, *Keramag Keramische Werke and Others and others v Commission*, paragraph 318.

¹⁶¹⁹ See Judgment of the General Court of 23 January 2014, *Gigaset v Commission*, T-395/09, ECLI:EU:T:2014:23, paragraph 73; Case T-399/09, *HSE v Commission*, paragraphs 63-64.

¹⁶²⁰ [...].

¹⁶²¹ Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03, *Tokai Carbon v Commission*, paragraph 61.

such element, would not be sufficient to rebut the presumption of liability relied upon by the Commission.¹⁶²²

(953) Accordingly, the Commission concludes that NEC Corporation is jointly and severally liable for participation in the infringement with TOKIN Corporation for the period from 1 August 2009 to 23 April 2012.

(954) For the reasons set forth in recitals (944)-(953), this Decision is addressed to TOKIN Corporation and NEC Corporation.

6.2.6. *Nichicon Corporation*

(955) The evidence described in Section 4 and Annex II shows that from 26 June 1998 to 31 May 2010, participation in the infringement took place via employees of Nichicon Corporation. Therefore the Commission concludes that Nichicon Corporation is liable for its direct participation in the infringement.

(956) Nichicon Corporation argues¹⁶²³ that [...]’s participation in the CUP meetings violated clear instructions issued by Nichicon Corporation’s President.

(957) For Article 101 TFEU to apply, it is however not necessary for there to have been action by, or even knowledge on the part of, the partners or principal managers of the undertaking concerned; action by a person who is authorised to act on behalf of the undertaking suffices.¹⁶²⁴ As confirmed by [*confidentiality claim pending*],¹⁶²⁵ [...] was vested with managerial competences and has thus clearly been authorised to act on behalf of Nichicon Corporation. The fact that [...] may have acted contrary to the policy or instructions of the senior management is not capable of exempting Nichicon Corporation from liability for the infringement; otherwise the rules of competition could be easily circumvented by the parties. Moreover, it is rarely the case that the individuals directly participating in the cartel attend meetings with a mandate to commit an infringement.¹⁶²⁶ In fact, throughout the duration of the infringement, Nichicon Corporation was represented by at least 12 individuals,¹⁶²⁷ and at least four of them¹⁶²⁸ held management positions which were global at the time of their participation. For the above reasons, Nichicon Corporation’s claim has to be dismissed as irrelevant to Nichicon’s liability for the infringement.

(958) This Decision is therefore addressed to Nichicon Corporation.

6.2.7. *NIPPON CHEMI-CON CORPORATION*

(959) The evidence described in Section 4 and Annex II shows that from 26 June 1998 to 23 April 2012, participation in the infringement took place via employees of NIPPON CHEMI-CON CORPORATION.¹⁶²⁹ Therefore the Commission concludes

¹⁶²² Judgment of the General Court of 16 September 2013, *Repsol e.a. v Commission*, T-496/07, ECLI:EU:T:2013:464, paragraph 186.

¹⁶²³ [...].

¹⁶²⁴ Case C-68/12, *Slovenská sporiteľňa*, paragraph 25 and the case law referred to therein.

¹⁶²⁵ [...].

¹⁶²⁶ Case C-68/12, *Slovenská sporiteľňa*, paragraphs 26 and 28.

¹⁶²⁷ See Annex II.

¹⁶²⁸ See recital (76).

¹⁶²⁹ [*confidentiality claim pending*].

that NIPPON CHEMI-CON CORPORATION is liable for its direct participation in the infringement.

(960) This Decision is therefore addressed to NIPPON CHEMI-CON CORPORATION.

6.2.8. *Rubycon Corporation and Rubycon Holdings Co., Ltd.*

(961) The evidence described in Section 4 and Annex II shows that from 26 June 1998 to 23 April 2012, participation in the infringement took place via employees of Rubycon Corporation. Therefore the Commission concludes that Rubycon Corporation is liable for its direct participation in the infringement.

(962) Throughout the infringement period from 1 February 2007 to 23 April 2012, Rubycon Holdings Co., Ltd. owned 100 % of Rubycon Corporation.¹⁶³⁰ In line with the case law referred to in Section 6.1, a presumption therefore exists that Rubycon Holdings Co., Ltd. exercised decisive influence over Rubycon Corporation and consequently, that Rubycon Holdings Co., Ltd. and Rubycon Corporation formed part of the same undertaking that committed the infringement.

(963) Accordingly, the Commission concludes that Rubycon Holdings Co., Ltd. is jointly and severally liable for participation in the infringement with Rubycon Corporation for the period from 1 February 2007 to 23 April 2012.

(964) For the reasons set forth in recitals (961)-(963), this Decision is addressed to Rubycon Corporation and Rubycon Holdings Co., Ltd.

6.2.9. *SANYO Electric Co., Ltd. and Panasonic Corporation*

(965) The evidence described in Section 4 and Annex II shows that from 19 September 2001 to 31 December 2003, participation in the infringement took place via employees of SANYO Electronic Components Co., Ltd. and from 1 January 2004 to 19 April 2011 via employees of SANYO Electric Co., Ltd..

(966) Throughout the infringement period from 19 September 2001 to 31 December 2003, Sanyo Electric Co., Ltd. owned 100 % of shares in Sanyo Electronic Components Co., Ltd..¹⁶³¹ In line with the case law referred to in Section 6.1, a presumption therefore exists that Sanyo Electric Co., Ltd. exercised decisive influence over Sanyo Electronic Components Co., Ltd. and consequently, that Sanyo Electric Co., Ltd. and Sanyo Electronic Components Co., Ltd. formed part of the same undertaking that committed the infringement.

(967) Sanyo Electronic Components Co., Ltd. was merged with Sanyo Electric Co., Ltd. on 1 January 2004 and Sanyo Electronic Components Co., Ltd. ceased to exist.¹⁶³² Therefore, Sanyo Electric Co., Ltd. is also liable for Sanyo Electronic Components Co., Ltd.'s direct participation in the infringement from 19 September 2001 to 31 December 2003.¹⁶³³ Furthermore, Sanyo Electric Co., Ltd. is liable for its direct participation in the infringement from 1 January 2004 to 19 April 2011.

¹⁶³⁰ See [...].

¹⁶³¹ [...].

¹⁶³² [...].

¹⁶³³ Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich AG and Others v Commission*, paragraphs 324-328.

- (968) From 1 April 2011 to 19 April 2011, Panasonic Corporation owned 100 % of shares in Sanyo Electric Co., Ltd.¹⁶³⁴ In line with the case law referred to in Section 6.1, a presumption therefore exists that Panasonic Corporation exercised decisive influence over Sanyo Electric Co., Ltd. and consequently, that Panasonic Corporation and Sanyo Electric Co., Ltd. formed part of the same undertaking that committed the infringement.
- (969) Accordingly, the Commission concludes that Panasonic Corporation is jointly and severally liable for participation in the infringement with Sanyo Electric Co., Ltd. for the period from 1 April 2011 to 19 April 2011.
- (970) For the reasons set forth in recitals (965)-(969), this Decision is addressed to Sanyo Electric Co., Ltd. and Panasonic Corporation.

7. DURATION OF THE INFRINGEMENT

- (971) The duration of the single and continuous infringement that is established in this Decision and the period for the application of any fines is from 26 June 1998 to 23 April 2012.
- (972) For the purposes of establishing the duration to be taken into account for each of the respective legal entities involved, the Commission has taken the date of the first known anti-competitive contact of the respective undertaking with its competitors as the start date. Furthermore, the date of the latest known occurrence of anti-competitive behaviour on part of the respective undertaking has been set as the end date.
- (973) For parent companies to which liability is attributed for the unlawful conduct of their subsidiaries, the duration taken into account is the period throughout which the parent company exercised decisive influence over the subsidiary, while the subsidiary was participating directly in the infringement.
- (974) The duration taken into account for each respective legal person involved is therefore as follows:¹⁶³⁵

Addressee:	Duration:
ELNA CO., LTD.	26 June 1998 – 23 April 2012
Hitachi Chemical Electronics Co., Ltd.	22 November 2000 – 18 February 2010
Hitachi Chemical Co., Ltd.	1 August 2001 – 18 February 2010
Vishay Polytech Co., Ltd.	16 November 2010 – 23 April 2012
Holy Stone Holdings Co., Ltd.	16 November 2010 – 23 April 2012
Holy Stone Enterprise Co., Ltd.	16 November 2010 – 23 April 2012

¹⁶³⁴

[...].

¹⁶³⁵

See also Section 0 and in Annex I.

Matsuo Electric Co., Ltd.	29 January 2003 – 23 April 2012
TOKIN Corporation	29 January 2003 – 23 April 2012
NEC Corporation	1 August 2009 – 23 April 2012
Nichicon Corporation	26 June 1998 – 31 May 2010
NIPPON CHEMI-CON CORPORATION	26 June 1998 – 23 April 2012
[<i>confidentiality claim pending</i>]	26 June 1998 – 23 April 2012
[<i>confidentiality claim pending</i>]	1 February 2007 – 23 April 2012
SANYO Electric Co., Ltd.	19 September 2001 – 19 April 2011
Panasonic Corporation	1 April 2011 – 19 April 2011

7.1. Arguments of the parties and assessment thereof by the Commission

(975) Elna submits¹⁶³⁶ that the Commission should find that Elna ceased any infringement with regard to TECs as from February 2009 when it withdrew and ceased production of TECs and hence was unable to influence in any way the competitive parameters for this type of capacitors or to use any information provided by other participants during these meetings.

(976) Elna's argument should be rejected.

(977) The Commission found that parties participated in a single and continuous infringement covering both AECs and TECs as opposed to separate infringements relating to AECs and TECs respectively. The fact that Elna withdrew from the production of TECs in 2009 is not liable to affect and qualify that finding post-2009 with respect to Elna. This is owing to the fact that the liability may be attributed to an undertaking for an infringement covering, in part, products that it does not manufacture if, as is the case for Elna (see recital (756)), it either participated directly in all the forms of anti-competitive conduct comprising the single and continuous infringement, or participated in some of the forms of anti-competitive conduct comprising the single and continuous infringement and was or should have been aware of the other unlawful conduct planned or put into effect by the other cartel participants in pursuit of the same objectives.¹⁶³⁷

8. REMEDIES

8.1. Article 7(1) of Regulation (EC) No 1/2003

(978) Where the Commission finds that there is an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, it may by decision require the undertakings

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[...].

¹⁶³⁷

Case T-378/10, *Masco and Others v Commission*, paragraph 70.

concerned to bring such infringement to an end in accordance with Article 7(1) of Regulation (EC) No 1/2003.

- (979) Given the secrecy in which the cartel arrangements were carried out, it is not possible to determine with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

8.2. Article 23(2) of Regulation (EC) No 1/2003

8.2.1. Principles

- (980) Pursuant to Article 23(2) of Regulation No 1/2003, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 TFEU and/or Article 53 of the EEA Agreement.¹⁶³⁸ For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year. Pursuant to Article 23(3) of Regulation (EC) No 1/2003 the Commission must in fixing the amount of the fine, have regard to the gravity and duration of the infringement.
- (981) The principles used by the Commission to set fines are laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003¹⁶³⁹ (the "Guidelines on fines"). The Commission determines a basic amount for each undertaking depending on the gravity of the infringement. In assessing the gravity, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.
- (982) The basic amount can then be increased or reduced for each undertaking if either aggravating or mitigating circumstances are found. The Commission sets the fines at a level sufficient to ensure deterrence. The Commission assesses the role played by each undertaking participating in the infringement on an individual basis. Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice. The Commission may use rounded figures in its calculations.
- (983) The basic amount results from the sum of a variable amount and, where applicable, an additional amount. Both components of the basic amount are calculated on the basis of an undertaking's value of sales of goods or services to which the infringement relates in a given year. The Commission normally uses as a proxy the

¹⁶³⁸ Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102] of the EC Treaty [...] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p. 6).

¹⁶³⁹ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, 1.9.2006, p. 2). According to point 37 the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in their point 21.

sales made by an undertaking during the last full business year of its participation in the infringement.¹⁶⁴⁰

8.2.2. *Intent or negligence*

(984) The infringement described in this Decision consists of the exchange of future supply and demand information, price information, and customer-specific price information, and, in some instances, the conclusion, the implementation and the monitoring of pricing agreements concerning the sale of electrolytic capacitors. The evidence on file demonstrates that the parties showed their readiness to influence the market conditions to their benefit (see Section 4.3.6 for details). There are some references in the file attesting to the fact that antitrust concerns were expressed and measures of concealment were taken (see recitals (64)-(65)).

(985) As a result, the undertakings cannot claim that they did not act deliberately. In any event, the parties in this case acted at least negligently.

(986) The Commission therefore imposes fines in this case on the undertakings to which this Decision is addressed.

8.3. **Calculation of the fines**

8.3.1. *The value of sales*

(987) The basic amount of the fine is in principle set by reference to the value of sales,¹⁶⁴¹ that is, the annual value of the undertaking's sales of goods and services to which the infringement directly or indirectly relates in the entire EEA.¹⁶⁴²

(988) As described in Section 2.1 the product to which the infringement relates are AECs and TECs (electrolytic capacitors).

(989) In accordance with point 13 of the Guidelines on fines, in determining the basic amount of the fine, the Commission will use the sales made by individual undertakings during the last full business year of their participation in the infringement¹⁶⁴³.

(990) The relevant value of sales will be determined on the basis of the sales paid for by a customer within the EEA, that is, sales for AECs and TECs invoiced to customers in the EEA. The invoicing criterion accurately reflects the reality of the cartel. The value of sales includes direct sales in the EEA as well as captive sales, for those parties which are vertically integrated, to avoid unjustified advantages.¹⁶⁴⁴

(991) Based on the circumstances of the case described in Section 4, in particular the fact that (i) the infringement concerned sales of AECs as well as TECs and (ii) since the

¹⁶⁴⁰ Guidelines on fines, point 13.

¹⁶⁴¹ Guidelines on fines, point 12.

¹⁶⁴² Guidelines on fines, point 13.

¹⁶⁴³ As Elna and NCC stopped selling TECs prior to the end of their participation in the infringement, the Commission considers it appropriate to, in relation to TECs, have regard to the value of sales in the last full business year in which those parties sold TECs to avoid that the value of sales underestimates the economic significance of the infringement.

¹⁶⁴⁴ Judgment of the Court of Justice of 12 November 2014, *Guardian Industries Corp. and Guardian Europe Sàrl v Commission*, Case C-580/12 P, ECLI:EU:C:2014:2363. Only Panasonic/Sanyo (immunity applicant) had captive sales during the last year of the infringement.

discussions regarding TECs started¹⁶⁴⁵ only with the ECC meeting held on 29 October 1999 (see recitals (120)-(122))¹⁶⁴⁶ the Commission will calculate the relevant value of sales separately for the two categories of products and will apply distinct duration multipliers for those categories (for more details, see Section 8.3.3.2).

8.3.2. *Arguments of the parties and assessment thereof by the Commission*

- (992) Nichicon maintains¹⁶⁴⁷ that the alleged infringement related - if at all - only to some products and customers in the EEA and that the fine should - if at all - be based on sales to customers/RFQs for which there is direct evidence of concertation or at the very least limited to sales for products sold both in [*confidentiality claim pending*] and the EEA (given that the conduct occurred in Japan). Nichicon submits that, in any case, a potential fine would have to take account of the fact that the contacts did not at all times cover all types of electrolytic capacitors.
- (993) In the same vein, NIPPON CHEMI-CON CORPORATION argues¹⁶⁴⁸ that the Commission should at most take into account the European sales related to [*confidentiality claim pending*] customers, i.e. sales to European subsidiaries of [*confidentiality claim pending*] customers which have been negotiated by NIPPON CHEMI-CON CORPORATION, or one of its Asian affiliates, and only in as far as these were the subject of any supposed pricing exchanges.
- (994) The arguments of Nichicon and NIPPON CHEMI-CON CORPORATION should be rejected.
- (995) First, as explained in recitals (795)-(796), the infringement established in this Decision is not customer or RFQ specific and relates to AECs and TECs in general. The anticompetitive conduct covered competitor discussions on a great variety (and at times even the full range) of AECs and TECs and customers over an extended period of time. The relevant value of sales are thus the sales for AECs and TECs invoiced to customers in the EEA.
- (996) Second, contrary to the parties' assertions, it does not follow from point 13 of the Guidelines on fines that only the value of sales for products or customers actually affected by the infringement may be taken into account. On the contrary, in accordance with that provision, the Commission takes: "*the value of the undertaking's sales of goods or services to which the infringement directly or indirectly relates [...]*".
- (997) [*confidentiality claim pending*]¹⁶⁴⁹ [*confidentiality claim pending*].

¹⁶⁴⁵ For the purposes of setting the duration multipliers for the calculation of the fines, the Commission has had regard to the first and the last date on which each party participated in a contact in relation to AECs and TECs respectively, see recital (1006).

¹⁶⁴⁶ For Elna, Sanyo and Hitachi AIC, the TEC-related conduct started with the participation in the meeting of 14 November 2001 (see recitals (152)-(154)). Matsuo and NEC Tokin started their involvement in the TEC-related conduct with the attendance at the meeting of 29 January 2003 (see recitals (180)-(182)).

¹⁶⁴⁷ [...].

¹⁶⁴⁸ [...].

¹⁶⁴⁹ [...].

- (998) First, in accordance with point 13 of the Guidelines on fines, the basic amount of the fine is calculated with reference to the value of sales generated by undertakings. [*confidentiality claim pending*].
- (999) Second, the internal division of responsibility for sales is a matter internal to undertakings that does not have any bearing on setting of the fines ultimately imposed on those undertakings. It is immaterial whether or not the participants in the cartel had recourse to subsidiaries, agents, sub-agents, or branches within the EEA in order to make their contacts with purchasers established there.¹⁶⁵⁰ [*confidentiality claim pending*].

8.3.3. Basic amount of the fine

- (1000) The basic amount of the fine to be imposed consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years¹⁶⁵¹ of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration, in order to deter undertakings from even entering into horizontal price-fixing, market sharing and output limitation agreements.¹⁶⁵²

8.3.3.1. Gravity

- (1001) In assessing the gravity of the infringement, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.
- (1002) In its assessment, the Commission considers the fact that horizontal price coordination arrangements subject to this Decision are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales to be taken into account for such infringements is to be set at the higher end of the scale of the value of sales.¹⁶⁵³ The Commission also takes into account the fact that the infringement covered the entire EEA.
- (1003) Given the specific circumstances of this case, in particular the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account is 16 % for all addressees of this Decision.

8.3.3.2. Duration

- (1004) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement, as described in recital (1000). The duration multiplier is calculated on the basis of full years, months and days.

¹⁶⁵⁰ Case T-104/13, *Toshiba v Commission*, paragraph 155 and Case T-91/11, *InnoLux v Commission*, paragraph 59.

¹⁶⁵¹ If appropriate under the circumstances of the case, the Commission may count periods of less than a year as the corresponding fraction of a year (for instance, 3 months as a factor 0.25).

¹⁶⁵² Guidelines on fines, points 19-26.

¹⁶⁵³ Guidelines on fines, point 23.

- (1005) Moreover, as mentioned in recital (991), the Commission takes into account the later start of the TEC-related contacts and distinct duration multipliers are thus used in the fines calculation for the AEC and TEC related contacts.
- (1006) For the purposes of setting the duration multipliers for the calculation of the fines, the Commission has had regard to the first and the last date on which each party participated in a contact in relation to AECs and TECs¹⁶⁵⁴ respectively. Where a party stopped selling one of those products in the EEA during the infringement period (this was the case for Elna and NCC, which stopped selling TECs in the EEA on 1 August 2010 and 1 February 2005 respectively), the multiplier for TECs is based on the last date on which that party had direct sales of that product into the EEA. Where a party never sold one of the products (this was the case for NEC Tokin, Matsuo, Holy Stone in relation to AECs and for [*confidentiality claim pending*] in relation to TECs), the duration multiplier was set and the fine was calculated only for the product sold. This is however without prejudice to the scope of the parties' liability for the infringement (see recitals (753)-(765)).
- (1007) This leads to the following value of sales and duration multipliers for the addressees of this Decision, calculated based on the number of days of their cartel participation:

Table 1: Value of Sales, duration and duration multipliers

Entity	Value of sales (EUR)	Duration	Multiplier
SANYO Electric Co., Ltd. (a) and Panasonic Corporation (b)	AEC: [<i>confidentiality claim pending</i>] TEC: [<i>confidentiality claim pending</i>]	(a) AEC: 19/09/2001 to 19/04/2011 TEC: 14/11/2001 to 19/04/2011 (b) AEC and TEC: 01/04/2011 to 19/04/2011	(a) AEC: 9.58 TEC: 9.43 (b) AEC and TEC: 0.05
ELNA CO., LTD.	AEC: [<i>confidentiality claim pending</i>] TEC: [<i>confidentiality claim pending</i>]	AEC: 26/06/1998 to 23/04/2012 TEC: 14/11/2001 to 01/08/2010 ¹⁶⁵⁵	AEC: 13.82 TEC: 8.71

¹⁶⁵⁴ With respect to Nichicon, the last known TEC-related contact involving Nichicon took place on 9 March 2010 (see recitals (583)-(584)) and therefore, for the purposes of setting the duration multiplier for TECs for the calculation of the fines, the date of 9 March 2010 will be taken into account.

¹⁶⁵⁵ See recital (9).

Hitachi Chemical Electronics Co., Ltd. (a) and Hitachi Chemical Co., Ltd. (b)	AEC: [<i>confidentiality claim pending</i>] TEC: [<i>confidentiality claim pending</i>]	(a) AEC: 22/11/2000 to 18/02/2010 ¹⁶⁵⁶ TEC: 14/11/2001 to 18/02/2010 (b) AEC: 01/08/2001 to 18/02/2010 TEC: 14/11/2001 to 18/02/2010	(a) AEC: 9.24 TEC: 8.26 (b) AEC: 8.55 TEC: 8.26
Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy Stone Enterprise Co., Ltd.	TEC: [<i>confidentiality claim pending</i>]	16/11/2010 to 23/04/2012	1.43
Matsuo Electric Co., Ltd.	TEC: 519 408	29/01/2003 to 23/04/2012	9.23
TOKIN Corporation (a) and NEC Corporation (b)	TEC: [<i>confidentiality claim pending</i>]	(a) 29/01/2003 to 23/04/2012 (b) 01/08/2009 to 23/04/2012	(a) 9.23 (b) 2.72
Nichicon Corporation	AEC: [<i>confidentiality claim pending</i>] TEC: [<i>confidentiality claim pending</i>]	AEC: 26/06/1998 to 31/05/2010 TEC: 29/10/1999 to 09/03/2010	AEC: 11.93 TEC: 10.36
NIPPON CHEMI-CON CORPORATION	AEC: [<i>confidentiality claim pending</i>] TEC: [<i>confidentiality claim pending</i>]	AEC: 26/06/1998 to 23/04/2012 TEC: 29/10/1999 to 01/02/2005 ¹⁶⁵⁷	AEC: 13.82 TEC: 5.26
[<i>confidentiality claim pending</i>] ¹⁶⁵⁸ (a)	AEC: 39 789 441	(a) 29/08/2003 to 23/04/2012	(a) 8.65 (b) 5.22

¹⁶⁵⁶ While the legal entity, Hitachi AIC Inc. (on 1 October 2009 renamed Hitachi Chemical Electronics Co., Ltd.) manufactured and sold AECs only until 30 September 2009, the undertaking Hitachi AIC continued to sell AECs into the EEA until March 2010, hence beyond the end date of its cartel involvement.

¹⁶⁵⁷ See recital (34).

¹⁶⁵⁸ As mentioned in recital (1087) [*confidentiality claim pending*] has benefited from the application of point 26 of the Leniency Notice and the period from 26 June 1998 to 28 August 2003 was not taken

and [confidentiality claim pending] (b)		(b) 01/02/2007 to 23/04/2012	
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8.3.3.3. Additional amount

(1008) Irrespective of the duration of the undertakings' participation in the infringement, the Commission will include in the basic amount a sum of between 15% and 25% of the value of sales to deter undertakings from even entering into horizontal price-fixing, market-sharing and output-limitation agreements.¹⁶⁵⁹

(1009) Given the specific circumstances of this case, taking into account the criteria discussed in Section 8.3.3.1, the percentage to be applied for the additional amount should be 16 %.

8.3.3.4. Calculation and conclusion on basic amounts

(1010) Based on the criteria explained in this Section 8.3, the basic amount of the fine should be calculated as follows:

Table 2: Basic amounts

Entity	Basic amount (EUR)
SANYO Electric Co., Ltd. (a) and Panasonic Corporation (b)	(a) 32 734 000 (b) 3 284 000
ELNA CO., LTD.	[confidentiality claim pending]
Hitachi Chemical Electronics Co., Ltd. (a) and Hitachi Chemical Co., Ltd. (b)	(a) [confidentiality claim pending] (b) [confidentiality claim pending]
Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy Stone Enterprise Co., Ltd.	782 000
Matsuo Electric Co., Ltd.	850 000
TOKIN Corporation (a)	(a) [confidentiality claim pending]

into account for setting the fine to be imposed on [confidentiality claim pending]. Therefore this period is not considered for the calculation of the duration multiplier for [confidentiality claim pending].

¹⁶⁵⁹ Guidelines on fines, point 25.

and NEC Corporation (b)	(b) [<i>confidentiality claim pending</i>]
Nichicon Corporation	75 156 000
NIPPON CHEMI-CON CORPORATION	[<i>confidentiality claim pending</i>]
[<i>confidentiality claim pending</i>] (a) and [<i>confidentiality claim pending</i>] (b)	(a) 61 434 000 (b) 39 598 000

8.3.4. *Adjustment to the basic amount*

8.3.4.1. Aggravating circumstances

- (1011) The Commission may consider aggravating circumstances that result in an increase of the basic amount. These circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines.
- (1012) As already set out in paragraph 358 of the SO, it should be recalled that NEC Corporation has already been held liable for an infringement of Article 81 EC Treaty (now Article 101 TFEU) and Article 53 of the EEA Agreement by the Commission decision of 19 May 2010 in the case COMP/38.511 — DRAMs. The latter decision established that NEC Corporation (and two of its subsidiaries) participated in anti-competitive conduct amounting to price coordination in respect of major PC/server OEMs respectively for DRAM and Rambus DRAM products for the period from 1 July 1998 until 28 February 2001 and through a joint-venture from 1 March 2001 until 15 June 2002. Therefore, the Commission takes recidivism into account as an aggravating circumstance against NEC Corporation, which formed part of a single undertaking together with the direct cartel participant, NEC TOKIN Corporation for the period from 1 August 2009 to 23 April 2012 and which continued its participation in the Capacitors infringement for almost two years after the adoption of the DRAMs decision.
- (1013) In view of the rationale set out in recitals (1011) and (1012), the basic fine imposed on NEC Corporation shall be increased by 50% on account of the repeated infringement for the entire period of its parental liability (1 August 2009 – 23 April 2012).
- (1014) NEC Corporation claims¹⁶⁶⁰ that the factual and legal basis for applying recidivism against NEC Corporation is incorrect. According to NEC Corporation, the 'repeat' infringements (namely the DRAMs infringement and the infringement subject to this Decision) have not been perpetrated by the same undertaking. NEC Corporation also submits that the fact that the Commission is minded to hold NEC Corporation liable for the conduct of NEC TOKIN Corporation does not mean that NEC Corporation can be regarded as a repeat offender given that NEC Corporation is not accused of having directly participated in the conduct investigated in this case. Furthermore,

¹⁶⁶⁰ [...].

NEC Corporation maintains that the DRAMs infringement relates to an area of business in which NEC TOKIN Corporation, alleged cartel participant in this case, has no involvement. In addition to that, NEC Corporation argues that should any uplift for recidivism be imposed, it could only be applied to the conduct after the DRAMs decision (19 May 2010) and while NEC TOKIN Corporation was a 100% subsidiary of NEC Corporation.

- (1015) NEC Corporation's arguments should be rejected.
- (1016) As follows from point 28 of the Guidelines on fines and from the case law of the Court of Justice, the aggravating circumstance of repeated infringement is characterised by the continuation or repetition by an undertaking of the same or a similar infringement after the Commission or a national competition authority has made a finding that the undertaking infringed Article 101 TFEU or 102 TFEU.¹⁶⁶¹
- (1017) It should be recalled that the Union competition law refers to the activities of undertakings and that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.¹⁶⁶² As regards the conduct of a subsidiary, that conduct may be imputed, for the purposes of the application of Article 101 TFEU, to the parent company where the parent company and its subsidiary form part of a single economic unit and form a single undertaking for the purpose of that article.¹⁶⁶³
- (1018) In this case, the Commission has found that while it was NEC TOKIN Corporation that participated directly in the infringement in the period 29 January 2003 – 23 April 2012, NEC TOKIN Corporation formed, together with NEC Corporation part of the same NEC Tokin undertaking that committed the infringement in the period from 1 August 2009 to 23 April 2012 (see Section 6.2.5 for further details).
- (1019) Since NEC Corporation was found to have breached Article 101 TFEU in the DRAMs decision adopted on 19 May 2010,¹⁶⁶⁴ it is a recidivist in this case where it is held liable for the same type of infringement (see recital (945) for the basis of NEC Corporation's liability).
- (1020) Furthermore, the Commission notes that the fact that NEC TOKIN Corporation was active (and the infringement in this case was committed) in a business area other than that subject to DRAMs prohibition decision is irrelevant for the purposes of finding recidivism. A case of repeated infringement is not only recognised in situations where the infringements relate to the same product market. It is sufficient that the Commission is dealing with infringements falling under the same provision of the TFEU,¹⁶⁶⁵ in this case Article 101(1) TFEU.
- (1021) Finally, in accordance with point 28 of the Guidelines on fines, the percentages corresponding to the increases applied for aggravating circumstances, including the increase for recidivism are applied to the basic amount of the fine, which is

¹⁶⁶¹ See, Judgment of the Court of Justice of 5 March 2015, *Commission v Versalis SpA*, C-93/13 P and C-123/13 P, ECLI:EU:C:2015:150, paragraph 87 and the case law referred to therein.

¹⁶⁶² See C-93/13 P and C-123/13 P, *Commission v Versalis SpA*, paragraph 88 and the case law referred to therein.

¹⁶⁶³ See C-93/13 P and C-123/13 P, *Commission v Versalis SpA*, paragraph 90.

¹⁶⁶⁴ Commission Decision of 19 May 2010 in Case No COMP/38.511 – DRAMs.

¹⁶⁶⁵ Joined Cases T-101/05 and T-111/05, *BASF AG v Commission*, paragraph 64.

determined by reference to the gravity and duration of the infringement.¹⁶⁶⁶ As regards the repeated infringement specifically, it is among the factors to be taken into consideration in the analysis of the gravity of the infringement in question¹⁶⁶⁷ and as such is not associated with the duration of the infringement. Therefore, the uplift for recidivism is not calculated solely with reference to the period for which such aggravating circumstance persists and the multiplier resulting from recidivism is applied for the entire period of NEC Corporation's liability for the repeated infringement.

8.3.4.2. Mitigating circumstances

- (1022) As described in recitals (754), (759) and (764), the Commission finds that Sanyo, NEC Tokin and Matsuo are liable for the entire single and continuous infringement except for the CUP meetings because their participation in the CUP meetings has not been established and there is no proof that these parties were aware of the CUP meetings. For this reason, the Commission grants a 3% reduction of the basic amount of the fine to Sanyo, NEC Tokin and Matsuo.
- (1023) Furthermore, as described in recital (761), the Commission finds that Nichicon is liable for the entire single and continuous infringement except for the MK meetings because its participation in the MK meetings has not been established and there is no proof that it was aware of the MK meetings. For this reason, the Commission grants a 3% reduction of the basic amount of the fine to Nichicon.
- (1024) The reduction of 3% is comparable to the uplifts that are used to reflect a higher gravity of an infringement (nature, geographical scope etc.) and should not be out of proportion with such type of uplifts.

8.3.4.3. Arguments of the parties and assessment thereof by the Commission

Negligent infringement

- (1025) Nichicon argues¹⁶⁶⁸ that the attempt of its president to bring the competitor meetings in line with competition law, the subsequent withdrawal from the meetings upon failure of such attempt and the participation of a Nichicon employee in the CUP meetings in violation of Nichicon's policies imply that Nichicon could only be held liable for a negligent rather than intentional infringement.
- (1026) Nichicon's argument should be rejected.
- (1027) The Courts have consistently held that for an infringement to be regarded as having been committed intentionally it is not necessary for an undertaking to have been aware that it was infringing the competition rules set out in the TFEU. It is sufficient that it could not have been unaware that the contested conduct had as its object or

¹⁶⁶⁶ See also Joined Cases T-101/05 and T-111/05, *BASF AG v Commission*, paragraph 73.

¹⁶⁶⁷ Judgment of the General Court of 30 September 2009, *Hoechst GmbH v Commission*, T-161/05, ECLI:EU:T:2009:366, paragraph 140 and the case law referred to therein.

¹⁶⁶⁸ [...].

effect the restriction of competition in the internal market, and affected or might affect trade between Member States.¹⁶⁶⁹

- (1028) In this case, the parties were aware of the collusive nature their contacts had (see recitals (64)-(65) and therefore could not have been unaware of the possible repercussions they were facing. This is all the more so since the cartel participants were not local undertakings, but undertakings with a global presence. These undertakings should have ensured that their employees were sufficiently familiar with and respected the competition rules.
- (1029) Consequently, no mitigating circumstance can be retained on the ground of negligence.

Substantially limited involvement

- (1030) Nichicon submits¹⁶⁷⁰ with reference to the third indent of point 29 of the Guidelines on fines that its culpability was limited compared to that of the other undertakings. According to Nichicon, it had internal compliance policies in place as from 1 October 2002 in order to avoid violations of competition law. While it participated in ECC meetings, it would repeatedly have tried to limit the scope of these meetings to collecting industry statistic and voiced concerns about the initiatives by other undertakings to coordinate on pricing. Nichicon further maintains that it subsequently withdrew from the ATC meetings and the other undertakings understood that Nichicon's withdrawal was being motivated by antitrust concerns. According to Nichicon, the participants to CUP meetings were then aware of Nichicon's policies and of the fact that Nichicon employee's ([...]) attendance at those meetings was in violation thereof. Nichicon further claims that Nichicon's role in the alleged infringement was also objectively limited in that it did not take a leading role in any of the meetings and that it had more sporadic bi-/tri-lateral contacts compared to other undertakings concerned and therefore Nichicon submits that it was not involved in all aspects of the alleged infringement.
- (1031) Hitachi AIC also argues¹⁶⁷¹ that its limited participation in the infringement justifies a downward adjustment on grounds of mitigating circumstances. More specifically, Hitachi AIC submits that overall, it participated in the meetings identified by the Commission to a much lesser extent than the other parties and that it took part in far fewer bi-/tri-lateral discussions, while not participating in any such bi-/tri-lateral contacts for a period of almost three years during the most active period of the cartel.
- (1032) Furthermore, Holy Stone claims¹⁶⁷² that its participation in the alleged practice was minimal compared to that of the core players and that such limited participation should be taken into account by the Commission when assessing the degree of individual involvement in an alleged violation of Article 101 TFEU. Holy Stone submits that it did not share any sensitive information regarding any of its customers, that the minutes from the MK meetings attended by Holy Stone do not

¹⁶⁶⁹ See Judgment of the Court of Justice of 1 February 1978, *Miller v Commission*, 19/77, ECLI:EU:C:1978:19, paragraph 18, and Judgment of the Court of Justice of 8 February 1990, *Tipp-Ex v Commission*, C-279/87, ECLI:EU:C:1990:57.

¹⁶⁷⁰ [...].

¹⁶⁷¹ [...].

¹⁶⁷² [...].

include reference to any of its EEA customers and in general that such meeting minutes only include few lines concerning Holy Stone contrary to extensive observations about other attending undertakings and their situation. Furthermore, according to Holy Stone, unlike for other parties, there is almost no allegation of Holy Stone participating in bi-/tri-lateral contacts.

- (1033) The parties' arguments should be rejected for the following reasons.
- (1034) An undertaking participating in a cartel can be given the benefit of a mitigating circumstance only where the undertaking concerned has produced evidence that its participation in the infringement was substantially reduced and has demonstrated consequently that, during the period in which it was a party to the infringing agreements it actually avoided applying them by adopting competitive conduct in the market.¹⁶⁷³ In this case, none of the parties' involvement can be considered as substantially reduced.
- (1035) The fact that Nichicon did not participate in numerous bi-/tri-lateral contacts throughout the cartel period does not amount to a mitigating circumstance, in particular in light of the same or largely similar nature and the common purpose of the multilateral meetings and bi-/tri-lateral contacts that Nichicon participated in throughout the infringement period. Furthermore, in relation to the ECC, ATC and CUP meetings and the bi/trilateral contacts, Nichicon was aware of the offending conduct planned or put into effect by the other participants in pursuit of the same objectives or it could at the very least reasonably have foreseen that conduct and was prepared to take the risk (see also recital (760)).
- (1036) Moreover, the fact that Nichicon has put in place a compliance programme is an aspect internal to the undertaking that does not alter the fact that the undertaking participated in anti-competitive meetings. Whilst the Commission welcomes measures taken by undertakings to avoid the recurrence of cartel infringements, such measures cannot change the reality that infringements occur and need to be appropriately sanctioned.¹⁶⁷⁴
- (1037) Furthermore, as it transpires from the evidence (see for example recitals (271)-(272) or (299)-(303)), even the introduction of a compliance programme has not prevented Nichicon from continuing its involvement in the infringement. The alleged withdrawal from anti-competitive meetings due to compliance concerns invoked by Nichicon was in fact followed shortly by involvement in both bi-lateral contacts and multilateral collusive meetings with the same parties (see also recitals (806)-(808)).
- (1038) In addition, the fact that Nichicon did not assume a leading role in any of the meetings attended cannot possibly qualify as a mitigating circumstance. On the contrary, pursuant to the third indent of point 28 of the Guidelines on fines, the finding of a leadership role in the infringement on part of a cartel member may be

¹⁶⁷³ Judgment of the General Court of 14 May 2014, *Reagens v Commission*, T-30/10, ECLI:EU:T:2014:253, paragraph 268.

¹⁶⁷⁴ Judgment of the General Court of 29 April 2004, *Tokai Carbon Co. Ltd and Others v Commission* (Tokai Carbon), T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-242/01, ECLI:EU:T:2004:118, paragraph 343. See also Judgment of the General Court of 16 November 2011, *Plásticos Espanoles (ASPLA) v Commission*, T-76/06, ECLI:EU:T:2011:672, paragraph 131 and case law cited.

considered as an aggravating circumstance leading to the increase of the basic fines amount.

- (1039) Hitachi AIC also cannot validly argue that its participation in the infringement subject to this Decision was in any way limited. Hitachi AIC was implicated in at least 60 separate anti-competitive contacts over the period of its cartel involvement and that involvement cannot be qualified as significantly more sporadic compared to the other members of the cartel (see for comparison recital (744) for an overview of the number of contacts that each individual party participated in).
- (1040) Even if Holy Stone did not share or only infrequently shared commercially sensitive information with its competitors, it participated in the cartel meetings and was therefore aware of the arrangements made. Moreover, it did not in any way indicate that it objected to the agreed measures or that it participated in the meetings in a different spirit. Such behaviour therefore did not raise any doubts regarding Holy Stone's adherence to the cartel. Holy Stone has also not demonstrated that it disrupted the very operation of the cartel¹⁶⁷⁵.

Adoption of competitive market conduct

- (1041) Nichicon argues¹⁶⁷⁶ that, regardless of any alleged discussions during meetings in which it participated, Nichicon unilaterally adopted competitive conduct. In support of its claim, Nichicon quotes extensively from the evidence on the Commission file purportedly showing frequent complaints by other undertakings about the conduct of Nichicon, which persisted throughout the entire duration of the infringement. Furthermore, Nichicon maintains that its pricing generally showed a strong decreasing tendency, which would indicate that Nichicon did not adhere to any allegedly collusive strategy among the producers with regard to price increases for products marketed in the EEA.
- (1042) Nichicon's arguments should be rejected.
- (1043) It is settled case law that the fact that an undertaking proven to have participated in collusion on prices with its competitors did not behave on the market in the manner agreed with those competitors is not necessarily a matter which must be taken into account as a mitigating circumstance. An undertaking which, despite colluding with its competitors, follows a more or less independent policy in the market may simply be trying to exploit the cartel for its own benefit.¹⁶⁷⁷ It is clear from the evidence that Nichicon indeed tried to exploit the cartel for its own benefit (for example, “[Nichicon] *only exchange information for their own convenience*”¹⁶⁷⁸ or “[...] *price destruction driven by Nichicon just for its own benefit of securing the market*”).

¹⁶⁷⁵ Judgment of the General Court of 12 December 2012, *Ecka Granulate and non ferrum Metallpulver v Commission*, T-400/09, ECLI:EU:T:2012:675, paragraph 86 and the case law cited.

¹⁶⁷⁶ [...].

¹⁶⁷⁷ Judgment of the General Court of 25 October 2011, *Aragonesas Industrias y Energía/Commission*, T-348/08, ECLI:EU:T:2011:621, paragraph 297; Judgment of the General Court of 14 May 1998, *Cascades v Commission*, T-308/94, ECLI:EU:T:1998:90, paragraph 230, and Judgment of the General Court of 9 July 2003, *Cheil Jedang v Commission*, T-220/00, ECLI:EU:T:2003:193, paragraph 190.

¹⁶⁷⁸ [...].

share”¹⁶⁷⁹ or “There are two discrepancies in the price(s) at which Nichicon promised to set”).¹⁶⁸⁰

- (1044) It is further noted that each of the undertakings contributes to the realisation of the common plan in the manner appropriate to its own specific circumstances and the argued competitive conduct on the market does not exclude intentional contribution to that plan. Actual market behaviour of an undertaking concerns the implementation of collusive conduct and cannot serve as an indication to other cartel members that that undertaking was participating in the anti-competitive contacts in a different spirit.¹⁶⁸¹ While the evidence suggests that Nichicon might have put pressure on the prices, Nichicon frequently and systematically participated in the anti-competitive arrangements and did not distance itself from the cartel.

Cooperation outside the scope of Leniency Notice

- (1045) Nichicon claims¹⁶⁸² that it has cooperated with the Commission beyond its legal obligation to do so, referring in particular to its responses to the Commission's requests for information dated 30 May 2014 and 19 August 2014. Nichicon submits that its cooperation outside the scope of the Leniency Notice generally enabled the Commission to establish the existence of the alleged infringement more easily, as illustrated by the Commission's references to information provided by Nichicon in the SO. Moreover, NEC TOKIN Corporation argues¹⁶⁸³ that its voluntary response to the 28 March 2014 Commission's request for information, when under no legal obligation to provide such response, should be recognised as a mitigating circumstance. NEC TOKIN Corporation further submits that the information and documents sought by the Commission's request for information and provided by NEC TOKIN Corporation were entirely outside the jurisdictional scope of Article 18 of Regulation (EC) No 1/2003.
- (1046) The parties' arguments should be rejected.
- (1047) Point 29 of the Guidelines on fines provides that “*the basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as: (...) where the undertaking concerned has effectively cooperated with the Commission outside the scope of the Leniency Notice and beyond its legal obligation to do so*”. The Commission notes that in secret cartel cases granting a reduction of the fines for cooperation outside the Leniency Notice can only be of an exceptional nature.¹⁶⁸⁴ Appraisal of the cooperation has to be made against the quality and objective usefulness of the information provided for the investigation.¹⁶⁸⁵
- (1048) It must be stressed that answering to the Commission's requests for information in itself cannot constitute a mitigating circumstance.¹⁶⁸⁶ In fact, undertakings are

¹⁶⁷⁹ [...].

¹⁶⁸⁰ [...].

¹⁶⁸¹ Case T-191/06, *FMC Foret v Commission*, paragraph 253; Case T-462/07 *Galp Energia Espana and others v Commission*, paragraphs 474 and 475.

¹⁶⁸² [...].

¹⁶⁸³ [...].

¹⁶⁸⁴ Judgment of the General Court of 5 June 2012, *Imperial Chemical Industries Ltd v Commission*, T-214/06, ECLI:EU:T:2012:275, paragraphs 258-262.

¹⁶⁸⁵ Case T-214/06, *Imperial Chemical Industries Ltd v Commission*, paragraph 265.

¹⁶⁸⁶ Joined Cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce*, paragraphs 184-185.

required to answer requests for information and are subject to penalties in case they provide the Commission with incorrect or misleading answers to a request for information.¹⁶⁸⁷

- (1049) A reduction of the fine for cooperation outside of the Leniency Notice can only be considered in situations where an undertaking provides information to the Commission without being asked to do so. Otherwise, the purpose of the leniency provisions would be undermined as, first, it would have the effect of granting to all parties participating in a cartel a reduction of the fine if they provided to the Commission, at the Commission's request, useful information and/or evidence and, second, it would encourage undertakings to adopt a 'wait-and-see' approach rather than supplying the Commission, on their own initiative, and as quickly and as comprehensively as possible, with such information and evidence.¹⁶⁸⁸
- (1050) In this case, neither NEC Tokin nor Nichicon have gone beyond what was required when replying to the Commission's request for information in accordance with Article 18 (4) of Regulation (EC) No 1/2003. Both Nichicon and NEC Tokin failed to supply to the Commission any additional and objectively useful information which could be regarded as an act of spontaneous cooperation on the undertakings' part capable of enabling the Commission to find the infringement more easily and justifying the finding of a mitigating circumstance.¹⁶⁸⁹ The usefulness of the information supplied by the parties was in fact limited since it did not enable the Commission to establish the existence, extent or duration of the infringement.¹⁶⁹⁰ The fact alone that reference is made in the SO and/or Decision to the information provided by Nichicon as part of its reply to the Commission's request for information does not automatically imply that such information enabled the Commission to find the infringement more easily nor gives rise to any entitlement to fines reduction.
- (1051) In the case of NEC Tokin, it was moreover only at a later stage, upon provision of relevant information on its own initiative and under the umbrella of the Leniency Notice that the undertaking showed a spirit of cooperation meriting a reduction of the fine in accordance with the Leniency Notice. Where the Commission takes an undertaking's cooperation into account, by reducing the fine pursuant to the Leniency Notice (which is the case for NEC Tokin), such undertaking cannot validly complain that the Commission did not apply a further reduction to the fine imposed on that undertaking, outside the scope of that notice.¹⁶⁹¹

Point 37 of the Guidelines on fines

- (1052) [*confidentiality claim pending*] submits,¹⁶⁹² also with reference to previous Commission decisions,¹⁶⁹³ that it should be rewarded with an additional reduction of

¹⁶⁸⁷ Article 20(4) and Article 23(1)(a) and (c) of Regulation (EC) No 1/2003.

¹⁶⁸⁸ Joined Cases C-293/13 P and C-294/13 P, *Fresh Del Monte Produce*, paragraphs 184-185.

¹⁶⁸⁹ See, to that effect Judgment of the General Court of 6 December 2005, *Brouwerij Haacht v. Commission*, T-48/02, ECLI:EU:T:2005:436, paragraph 104 and the case law referred to therein.

¹⁶⁹⁰ Case T-214/06, *Imperial Chemical Industries Ltd v Commission*, paragraph 266.

¹⁶⁹¹ See, to that effect, Judgment of the General Court of 16 June 2001, *Solvay SA v Commission*, T-186/06, ECLI:EU:T:2011:276, paragraphs 313-316.

¹⁶⁹² [...].

the fine pursuant to point 37 of the Guidelines on fines in recognition of the extraordinary level of cooperation it provided to the Commission.

- (1053) First, as [*confidentiality claim pending*] rightly points out in its submission,¹⁶⁹⁴ the Commission has significant discretion as to whether it will apply point 37 of the Guidelines on fines or not. Second, the circumstances in this case differ from the cases referred to by [*confidentiality claim pending*] in that [*confidentiality claim pending*] is not "*a very small independent company*" (*Mushrooms* case), nor an immunity applicant that "*assisted the Commission to take the necessary investigatory measures from the very beginning*" (*Raw Tobacco* case). In the *RFP* case, the grounds on which a reduction was granted pursuant to point 37 of the Guidelines on fines do not relate to the level of cooperation provided, but rather to the length of the proceedings. Third, the Commission's practice in previous decisions (such as *Abrasives*, *Mountings*, *Shrimps* or *Envelopes* cases) does not itself serve as a legal framework for the fines imposed in competition matters.¹⁶⁹⁵ On the contrary, the proper application of the Union competition rules requires that the Commission may at any time adjust the level of fines to the needs of the competition policy.¹⁶⁹⁶

8.3.4.4. Conclusion on the adjusted basic amount

- (1054) Based on the reasons described in Section 8.3.4, aggravating circumstance on the account of repeated infringement will be applied against NEC Corporation and a mitigating circumstance on the ground of not being liable for the entire single and continuous infringement will be applied to Sanyo, NEC Tokin, Matsuo and Nichicon.

8.3.5. Deterrence

- (1055) The Commission pays particular attention to the need to ensure that fines have a sufficiently deterrent effect. To that end, the Commission may increase the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.¹⁶⁹⁷
- (1056) Panasonic Corporation had a worldwide total turnover of EUR 61 826 123 926 in the financial year ending 31 March 2017.¹⁶⁹⁸ It is considerably larger than that of the other addressees and it is particularly large compared to Panasonic's respective sales

¹⁶⁹³ For example, Commission Decision of 25 June 2014 in Case COMP/AT.39965 – *Mushrooms*, Commission Decision of 20 October 2005 in Case COMP/C.38.281/B2 – *Raw Tobacco Italy* (“*Raw Tobacco*”), Commission Summary Decision of 24 June 2015 in Case COMP/AT.39563 – *Retail food packaging* (“*RFP*”), Commission Decision of 2 April 2014 (provisional) in Case COMP/AT.39792 – *Steel Abrasives* (“*Abrasives*”), Commission Decision of 28 March 2012 in Case COMP/39.452 – *Mountings for windows and window-doors* (“*Mountings*”), Commission Decision of 27 November 2013 in Case COMP/AT.39633 – *Shrimps*, Commission Decision of 10 December 2014 in Case COMP/AT.39780 – *Envelopes*.

¹⁶⁹⁴ [...].

¹⁶⁹⁵ Judgment of the General Court of 30 September 2003, *Manufacture française des pneumatiques Michelin v Commission*, T-203/01, ECLI:EU:T:2003:250, paragraph 292 and the case law referred to therein.

¹⁶⁹⁶ Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri A/S v Commission*, paragraph 169 and the case law referred to therein.

¹⁶⁹⁷ Guidelines on fines, point 30.

¹⁶⁹⁸ JPY 7 343 707 million / 118.78 (average ECB exchange rate EUR/JPY for the financial year in question).

of AECs and TECs. Therefore, it is appropriate to apply a factor of 1.2 for Panasonic Corporation. Panasonic Corporation has not been a direct cartel participant but is attributed liability for the unlawful conduct of its subsidiary SANYO Electric Co., Ltd. for a fraction of Sanyo's infringement period (only 19 days - from 1 April 2011 to 19 April 2011, whereas Sanyo participated in the infringement from 19 September 2001 to 19 April 2011). The deterrence multiplier of 1.2 is therefore applied to Panasonic Corporation for the 19 days period of parental liability. As Panasonic Corporation and SANYO Electric Co., Ltd. were part of the same undertaking for that period of 19 days, the amount of the increase for deterrence applied to Panasonic Corporation will be also added to the fine imposed on SANYO Electric Co., Ltd.

8.3.6. *Application of the 10% turnover limit*

- (1057) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking must not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.
- (1058) The amounts set out in Section 8.3.3.4 would exceed 10% of the total turnover for the following undertakings: Elna, NCC and [*confidentiality claim pending*] and will hence be reduced accordingly not to exceed the 10% turnover limit.
- (1059) NEC TOKIN Corporation argues¹⁶⁹⁹ that the final amount of any fine imposed on it should not exceed 10% of the total turnover of NEC TOKIN Corporation and its subsidiaries in the business year preceding the Commission's decision. In making the argument, NEC TOKIN Corporation relies on the alleged recognition by the Commission made at paragraph 1 of the SO that NEC Tokin is considered an undertaking.
- (1060) NEC Tokin Corporation's argument cannot be upheld for the following reasons. First, paragraph 1 of the SO cannot be viewed in isolation and has to be read in conjunction with other parts of the SO. Namely, paragraph 58 of the SO clearly stipulates that "*NEC TOKIN Corporation and NEC Corporation will be together referred to as "NEC Tokin" throughout this SO, unless otherwise specified*". Therefore, the expression used in paragraph 1 of the SO cannot be validly interpreted as referring solely to NEC TOKIN Corporation and its subsidiaries.
- (1061) [*confidentiality claim pending*] submits¹⁷⁰⁰ that any reduction of its fine based on the grant of partial immunity should be considered after the application of the 10% limit, similar to other leniency reductions. According to [*confidentiality claim pending*], there is nothing that prevents the Commission from applying partial immunity after the 10% cap and doing otherwise would discourage small mono-product undertakings from cooperation and undermine the Commission's leniency policy.
- (1062) First, it is inherent in the logic of the leniency policy that the application of point 26 of the Leniency Notice never results in a reduction of the final amount of the fine,¹⁷⁰¹ but rather in the reduction of the basic amount and therefore on the fine

¹⁶⁹⁹ [...].

¹⁷⁰⁰ [...].

¹⁷⁰¹ See, to that effect the Judgment of the General Court of 24 March 2011, FRA.BO SpA v Commission, T-381/06, ECLI:EU:T:2011:111, paragraph 70.

applied before the 10% cap, reflecting the adjustments on the basis of the gravity and duration of the infringement. It is possible that, in the case of an infringement committed by an undertaking with a relatively focused product portfolio (which is the case of [*confidentiality claim pending*]), the basic amount of the fine will exceed 10% of its turnover and, consequently, a reduction in the basic amount of the fine on account of the application of point 26 of the Leniency Notice will not necessarily result in a reduction in the amount of the fine actually payable by the undertaking.¹⁷⁰² However, the fact that a reduction of the fine granted to a party is superseded by the effects of another provision applied in favour of and for the benefit of that party (in this case Article 23(2) of Regulation No 1/2003, which aims at ensuring that the fine imposed on each undertaking is not to exceed 10% of its total turnover in the preceding business year and hence that that undertaking is able to pay the fine imposed) is not capable of calling the Commission fine-setting methodology in question.¹⁷⁰³ Another view would also be inconsistent with the judgment of the Court of Justice in *Pilkington Group v Commission*, according to which the scope of an undertaking's product portfolio does not "*constitute a sufficient justification for departing from the method of calculation*" adopted by the Commission in the Guidelines on Fines. To take such a consideration into account "*would be tantamount to conferring an advantage on the least diversified undertakings on the basis of criteria that are irrelevant in the light of the gravity and the duration of the infringement*".¹⁷⁰⁴

8.3.7. Leniency

- (1063) Pursuant to point 8(a) of the Leniency Notice and subject to the fulfilment of the requirements of Section II.A of the Leniency Notice, the Commission will grant immunity from any fine which would have been imposed on an undertaking disclosing its participation in an alleged cartel affecting the Union if that undertaking is the first to submit evidence and information which in the Commission's view will enable it to carry out a targeted inspection.
- (1064) Pursuant to points 23 and 24 of the Leniency Notice, undertakings that do not meet the immunity conditions, while disclosing their participation in the cartel may be eligible to benefit from a reduction of the fine that would otherwise be imposed on them, provided that they meet the cumulative conditions of point 12 of the Leniency Notice and submit evidence of significant added value with respect to the evidence already in the possession of the Commission.
- (1065) In this case, in addition to the immunity application from Sanyo, the Commission received applications for reduction of fines under the Leniency Notice from Hitachi AIC, Holy Stone, NEC Tokin, [*confidentiality claim pending*] and Elna¹⁷⁰⁵.

¹⁷⁰² See Judgment of the Court of Justice of 7 September 2016, *Pilkington Group v Commission*, C-101/15 P, ECLI:EU:C:2016:631, paragraphs 64-65.

¹⁷⁰³ See, to that effect, the Judgment of the General Court of 24 March 2011, *FRA.BO SpA v Commission*, T-381/06, ECLI:EU:T:2011:111, paragraphs 60-61.

¹⁷⁰⁴ Case C-101/15 P *Pilkington Group v Commission*, paragraph 66.

¹⁷⁰⁵ See recitals (45) and (47) for specification of the legal entities on behalf of which the immunity and/or leniency applications were submitted, which cover the addressees of this Decision but also extend to other entities within the respective undertakings.

- (1066) The Commission has assessed whether and when each leniency applicant has provided significant added value with respect to the evidence already in the Commission's possession and concludes the following:

Sanyo

- (1067) On 4 October 2013 Sanyo (including Panasonic and hereinafter referred to also as “immunity applicant”) applied for a marker pursuant to points 14 and 15 of the Leniency Notice¹⁷⁰⁶ with regard to an alleged worldwide cartel in the capacitors industry. [...]. On 19 February 2015, the Commission granted conditional immunity from fines to Sanyo pursuant to point 8 of the Leniency Notice.
- (1068) The Commission considers that the immunity applicant was the first to submit information and evidence which would enable the Commission to carry out a targeted inspection in connection with the cartel concerned by this Decision, as required by point 8(a) of the Leniency Notice.
- (1069) To be granted immunity from fines at the end of the administrative proceedings, an undertaking also needs to fulfil the criteria set out in points 12 and 13 of the Leniency Notice. According to point 12 of the Leniency Notice, the undertaking is required to cooperate genuinely, on a continuous basis and expeditiously throughout the administrative procedure, must have ended its involvement in the alleged cartel immediately following its application and must not have destroyed, falsified or concealed evidence of the alleged cartel nor disclosed the fact or any of the content of its contemplated application, except to other competition authorities. According to point 13 of the Leniency Notice, the undertaking must not have taken steps to coerce other undertakings to join the cartel or to remain in it.
- (1070) There are no indications that Sanyo would not have fulfilled its cooperation obligations under point 12 of the Leniency Notice or have taken steps to coerce other undertakings to join the cartel or to remain in it.
- (1071) The Commission therefore concludes that Sanyo is granted immunity from any fines that would otherwise have been imposed on it for the involvement in the infringement.

Hitachi AIC

Dates of relevant leniency submissions

- (1072) On 4 April 2014, Hitachi AIC applied for immunity and/or reduction of fines under the Leniency Notice by providing a corporate statement accompanied by contemporaneous evidence. Hitachi AIC supplemented its application with further corporate statements and documentary evidence.¹⁷⁰⁷ The Commission considers that for the purposes of the leniency assessment, the leniency submissions (and annexes thereto) of [...] and [...] are of particular importance.

Assessment of significant added value

¹⁷⁰⁶ Commission Notice on Immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17–22.

¹⁷⁰⁷ Hitachi AIC provided in total [...].

- (1073) At the time of Hitachi AIC's initial application, the Commission had already received an immunity application from Sanyo, which provided evidence regarding the existence of the cartel and its main features: the undertakings involved, the period concerned, the type and nature of the anti-competitive conduct.
- (1074) Nevertheless, in its leniency submissions, mainly those dated [...], Hitachi AIC provided useful evidence, [*confidentiality claim pending*] and further corroborating the evidence already in the Commission's possession by explanations on the conduct and its collusive nature. The evidence provided in such a timely manner (a set of requests for information, the first investigative measure in this case, was sent out by the Commission on 28 March 2014) strengthened the Commission's ability to prove the facts relating to the cartel.

Conclusion

- (1075) The Commission considers that Hitachi AIC was the first undertaking to provide significant added value within the meaning of point 26 of the Leniency Notice. As Hitachi AIC also met the other requirements in accordance with points 23 and 24 of the Leniency Notice, it qualifies for a reduction of the fine that would otherwise be imposed.
- (1076) Having regard to the timely manner and the level of cooperation and the disclosure of useful evidence in relation to the continuous nature of the cartel, the Commission grants Hitachi AIC a reduction of 35 % of any fine that would otherwise have been imposed on it for the infringement.

[*confidentiality claim pending*]

Dates of relevant leniency submissions

- (1077) On 26 May 2014, [*confidentiality claim pending*] applied for a reduction of fines under the Leniency Notice by providing a corporate statement accompanied by contemporaneous evidence. [*confidentiality claim pending*] supplemented its initial application with numerous leniency submissions [...].

Assessment of significant added value

- (1078) At the time of the [*confidentiality claim pending*]'s leniency application, extensive evidence in the form of corporate statements as well as contemporaneous documents demonstrating the existence of the cartel and its main features was known to the Commission.
- (1079) Nevertheless, the evidence supplied by [*confidentiality claim pending*] starting with its first corporate statement dated 26 May 2014 significantly improved the Commission's knowledge of the cartel and enabled it to extend the duration of the infringement. The detailed contemporaneous evidence as well as additional explanations submitted by [*confidentiality claim pending*] allowed the Commission to accelerate the investigation and complete the understanding of the framework within which the cartel operated.
- (1080) More specifically, [*confidentiality claim pending*]'s submissions corroborated the evidence on file and allowed the Commission to prove a larger number of

contacts.¹⁷⁰⁸ Its submissions covered the whole period of the infringement (1998-2012). [*confidentiality claim pending*] also provided additional incriminating evidence which resulted in the increase of the duration of the infringement¹⁷⁰⁹ and evidence which allowed the Commission to uncover an additional operative aspect of the cartel, namely the existence, nature and content of the CUP meetings held in the period 2006-2008. Furthermore, [*confidentiality claim pending*] enabled the Commission to show continuous and uninterrupted cartel involvement for at least one of the cartel members, namely Nichicon¹⁷¹⁰; moreover, the Commission relies on [*confidentiality claim pending*]'s evidence for setting the start date of the cartel (see recitals (108)-(111) for details).

- (1081) The evidence supplied by [*confidentiality claim pending*] therefore represents significant added value with respect to the evidence which the Commission had in its possession at the time. It is noted however that prior to [*confidentiality claim pending*]'s initial application, another leniency applicant, namely Hitachi AIC had already provided evidence meeting the significant added value threshold (see Section 8.3.7.2 for more details). Furthermore, at the time of [*confidentiality claim pending*]'s application, the Commission had already received leniency applications from Holy Stone (25 April 2014) and NEC Tokin (21 May 2014). However, for the reasons set out in recitals (1102)-(1103) and (1125), the Commission takes the view that these submissions did not provide significant added value.

Conclusion

- (1082) The Commission considers that [*confidentiality claim pending*] was the second undertaking to provide significant added value within the meaning of point 26 of the Leniency Notice. As [*confidentiality claim pending*] also met the other requirements in accordance with points 23 and 24 of the Leniency Notice, it qualifies for a reduction of the fine that would otherwise be imposed.
- (1083) Having regard to the considerable value of its contribution to prove the infringement (as explained in recitals (1079)-(1080)), the early stage at which the evidence was provided and the level of cooperation, the Commission grants [*confidentiality claim pending*] a 30% reduction of the fine that would otherwise have been imposed on it for the infringement.
- (1084) Furthermore, [*confidentiality claim pending*] provided evidence enabling the Commission to establish additional facts increasing the duration of the infringement by the period from 26 June 1998 to 28 August 2003.
- (1085) According to point 26 of the Leniency Notice,
- "If the applicant for a reduction of a fine is the first to submit compelling evidence in the sense of point (25) which the Commission uses to establish additional facts increasing the gravity or the duration of the infringement, the Commission will not*

¹⁷⁰⁸ [*confidentiality claim pending*] was the only undertaking to provide evidence of anti-competitive conduct for the years 1998, 1999, 2000, 2001, 2002, 2003 (with the exception of one contact) and 2004; [...] strengthened the evidence for the years 2005-2012.

¹⁷⁰⁹ [*confidentiality claim pending*] enabled the Commission to extend the duration of the infringement by the period from 26 June 1998 to 28 August 2003.

¹⁷¹⁰ In the period 2006-2008, Nichicon attended solely multilateral CUP meetings, for which evidence was provided by [*confidentiality claim pending*].

take such additional facts into account when setting any fine to be imposed on the undertaking which provided this evidence".

- (1086) In this case, the information provided by [*confidentiality claim pending*] as part of its leniency cooperation constitutes stand-alone evidence not requiring further corroboration, hence amounting to compelling evidence within the meaning of point 26 of the Leniency Notice.
- (1087) Therefore, pursuant to point 26 of the Leniency Notice, the period by which the duration of the infringement was extended by using evidence provided by [*confidentiality claim pending*] (26 June 1998 -28 August 2003) is not taken into account when setting the fine for [*confidentiality claim pending*].

Arguments of [confidentiality claim pending] and assessment thereof by the Commission

- (1088) [*confidentiality claim pending*] argues that its contribution merits the award of the first position in the leniency ranking. It claims that Hitachi AIC's submission did not have any significant added value. According to [*confidentiality claim pending*], Hitachi AIC (i) did not submit any evidence [*confidentiality claim pending*];¹⁷¹¹ (ii) [*confidentiality claim pending*].¹⁷¹² While [*confidentiality claim pending*] acknowledges that Hitachi AIC submitted evidence in [*confidentiality claim pending*], it considers that the overall evidentiary content and scope of these documents is unfit to corroborate Sanyo's existing evidence over the relevant period.¹⁷¹³
- (1089) This argument must be rejected.
- (1090) The assessment of the significant added value is carried out with respect to the evidence already available on the Commission file. Therefore, in determining the added value of Hitachi AIC's leniency cooperation, the Commission assessed Hitachi AIC's contribution by comparison with the information available on the Commission's file at the date of such contribution and not by comparison with the evidence submitted at a later stage, for example by [*confidentiality claim pending*].
- (1091) In this case, at the moment of Hitachi AIC's submission, the Commission was in possession of information that showed anti-competitive behaviour concerning multilateral as well as bi-lateral contacts and [*confidentiality claim pending*]. [*confidentiality claim pending*]. This evidence helped the Commission to prove further facts related to the electrolytic capacitors cartel. Therefore, the Commission considers that Hitachi AIC was the first undertaking to bring significant added value.
- (1092) In its reply to the SO¹⁷¹⁴ [*confidentiality claim pending*] argues that by its leniency contribution, it extended the period of infringement to 7 November 2003. As set out in recitals (1084)-(1087), the Commission applied point 26 of the Leniency Notice to [*confidentiality claim pending*] for the period 26 June 1998 - 28 August 2003. The end date of the period for which the Commission applied point 26 of the Leniency Notice was set on the basis of the fact that Sanyo was the first undertaking to reveal

¹⁷¹¹ [...].

¹⁷¹² [...].

¹⁷¹³ [...].

¹⁷¹⁴ [...].

the details of the meeting held on 28 or 29 August 2003.¹⁷¹⁵ Hence, by the time of the [*confidentiality claim pending*]'s relevant submission, the Commission already knew that the cartel conduct was in place on 28 or 29 August 2003 and accordingly could not apply point 26 of the Leniency Notice for any further period after that date.

- (1093) [*confidentiality claim pending*] further argues that it is entitled to partial immunity on account of providing compelling evidence proving an increased level of gravity. More specifically, [*confidentiality claim pending*] claims that by providing evidence with respect to the ECC and CUP meetings, it uncovered conduct which had a more serious anti-competitive nature than other parts of the cartel.¹⁷¹⁶
- (1094) This argument must be rejected. Throughout the whole period of the cartel, the parties exchanged price information, supply and demand information, and in some meetings (ECC and CUPs) the undertakings even concluded price agreements.¹⁷¹⁷ However, whether the parties engaged in agreements and/or concerted practices does not have any impact on the gravity of the conduct. Both the concerted practices (conducted via exchanges of price information and exchanges of supply and demand information) and the price agreements as manifestations of the collusive conduct in this case are part of the same serious violation of Article 101(1) TFEU. A violation of Article 101(1) TFEU by a single and continuous infringement consisting "only" of concerted practices is not a less serious infringement than a violation of Article 101(1) TFEU by a single and continuous infringement consisting of agreements and concerted practices. Since [*confidentiality claim pending*]'s evidence did not impact on the gravity of the infringement, there is no reason to apply point 26 of the Leniency Notice on the basis of the evidence that [*confidentiality claim pending*] provided with respect to the ECC and CUP meetings.
- (1095) [*confidentiality claim pending*] also argues that since it was the first undertaking to inform the Commission about the existence of the CUP meetings, it should not be held liable for the CUP meetings in their entirety, similar to the other parties not being held liable for CUP meetings due to lack of participation therein.¹⁷¹⁸
- (1096) This argument must be rejected. The ECC, ATC, MK and the CUP meetings as well as the bi-/tri-lateral contacts described in this Decision are part of a single and continuous infringement.¹⁷¹⁹ The CUP meetings were a forum that was not materially different from the other multilateral meetings.¹⁷²⁰ While it is true that [*confidentiality claim pending*] revealed for the first time the existence of CUP meetings, CUP meetings neither increased the gravity (see also recital (1094)) nor had an impact on the duration of [*confidentiality claim pending*]'s involvement in the cartel. More specifically, the CUP meetings were held in parallel with MK meetings attended equally by [*confidentiality claim pending*] (and documented on file already prior to [*confidentiality claim pending*]'s first leniency submission). Therefore there is no basis for [*confidentiality claim pending*] to argue that it is entitled to benefit

¹⁷¹⁵ [...].

¹⁷¹⁶ [...].

¹⁷¹⁷ See recital (72).

¹⁷¹⁸ [...].

¹⁷¹⁹ See also recitals (730)-(743).

¹⁷²⁰ See also recitals (788)-(792).

from the application of point 26 (last sentence) of the Leniency Notice in relation to the CUP part of the cartel.

Elna

Dates of relevant leniency submissions

- (1097) On [*confidentiality claim pending*], Elna applied for immunity and/or reduction of fines under the Leniency Notice by providing a corporate statement and contemporaneous evidence. The initial application was further supplemented by two additional leniency submissions.

Assessment of significant added value

- (1098) The Commission finds that Elna's submission of [*confidentiality claim pending*] provided evidence which represents significant added value with respect to the evidence that the Commission had in its possession at the time. In particular, Elna reported on anti-competitive behaviour which confirmed the EEA-inclusive scope of the cartel covering also European customers. Elna's assertions in the corporate statement were moreover supported by preexisting evidence of compelling nature.

Conclusion

- (1099) The Commission considers that Elna was the third undertaking to provide significant added value within the meaning of point 26 of the Leniency Notice. As Elna also met the other requirements in accordance with points 23 and 24 of the Leniency Notice, it qualifies for a reduction of the fine that would otherwise be imposed.
- (1100) Having regard to the disclosure of useful evidence in relation to the EEA-inclusive scope of the cartel, the Commission grants Elna a reduction of 15 % of any fine that would otherwise have been imposed on it for the infringement.

NEC Tokin

Dates of relevant submissions

- (1101) On [*confidentiality claim pending*], NEC Tokin (including NEC Corporation) applied for a reduction of fines under the Leniency Notice by providing a corporate [*confidentiality claim pending*]. The initial application was further supplemented by additional leniency submissions on [...].

Assessment of significant added value

- (1102) Despite the fact that NEC Tokin was the second undertaking (after Hitachi AIC) to submit an application for a reduction of fines, NEC Tokin only provided significant added value after [*confidentiality claim pending*] and Elna respectively. More specifically, NEC Tokin's contribution amounted to significant added value following its submission of [...], the date on which NEC Tokin provided evidence demonstrating the continuous and uninterrupted cartel involvement of one of the parties (Nichicon) by way of participation in bi-lateral contacts, thereby strengthening the Commission's ability to prove the facts relating to the cartel¹⁷²¹.

¹⁷²¹ [...].

- (1103) While NEC Tokin provided relevant information in its corporate statements of [...], mainly on bi-/tri-lateral contacts and on multilateral MK meetings (including mainly information on meeting dates, venues and their attendees), such information did not represent significant added value. The information provided was either unsupported by preexisting evidence (for bi-/tri-lateral contacts) or merely supported by evidence consisting in emails with invitations to the meetings, dealing with the logistics of the meetings; copy of calendars/agendas etc. (for multilateral MK meetings) which could not in themselves demonstrate the anti-competitive nature of the contacts and meetings. In sporadic instances, where information on substance (mainly copies of MK information sheets) was provided, it duplicated or at best corroborated extensive evidence that was already on file. Overall, the information provided by NEC Tokin before its submission of [...] did not strengthen in any significant way the ability of the Commission to prove the cartel and thus did not constitute significant added value within the meaning of point 26 of the Leniency Notice.

Conclusion

- (1104) The Commission considers that NEC Tokin was the fourth undertaking to provide significant added value within the meaning of point 26 of the Leniency Notice. As NEC Tokin also met the other requirements in accordance with points 23 and 24 of the Leniency Notice, it qualifies for a reduction of the fine that would otherwise be imposed.
- (1105) Having regard to the disclosure of useful evidence demonstrating the continuous and uninterrupted involvement of one of the parties (Nichicon) in the cartel, the Commission grants NEC Tokin a reduction of 15 % of any fine that would otherwise have been imposed on it for the infringement.

Arguments of NEC TOKIN Corporation and assessment thereof by the Commission

- (1106) NEC TOKIN Corporation argues¹⁷²² that it should be placed second in the leniency ranking, ahead of [confidentiality claim pending].
- (1107) NEC TOKIN Corporation further submits¹⁷²³ that it should in any event be ranked ahead of Elna, [confidentiality claim pending].
- (1108) NEC TOKIN Corporation's arguments should be rejected for the following reasons.
- (1109) The Commission notes that in general, at the time of NEC Tokin's first corporate statement, extensive evidence showing the existence of multi-year, multilateral cartel conduct, identifying the cartel members, the content of discussions as well as the nature of the conduct was already available to the Commission.
- (1110) An examination of NEC Tokin's first corporate statement ([confidentiality claim pending]) as well as its subsequent four submissions reveals that in the context of the overall case and evidence available on file by the time of the relevant submissions, the importance and added value of information provided in these submissions was only limited (see recital (1103) for more details).
- (1111) It is true that NEC Tokin, with its first corporate statement, contributed to the compilation of a request for information addressed by the Commission to the parties

¹⁷²² [...].
¹⁷²³ [...].

on 18 July 2014 by providing [*confidentiality claim pending*], but it did neither provide meaningful information on substance nor confirm the anti-competitive nature of such meetings. Moreover, at that stage, the Commission was already in possession of extensive information from sources other than NEC Tokin about the cartel taking place already from 29 August 2003¹⁷²⁴ until the cartel's end date,¹⁷²⁵ including information on the organisation of multilateral anti-competitive meetings on a monthly or bi-monthly basis, on their collusive nature and on the dates and attendees of such meetings. Consequently, the Commission devised the requests for information on the basis of this extensive body of information, a minority of which represented information submitted by NEC Tokin. Furthermore, it is noted that the 18 July 2014 request for information was not the first request for information issued in this case.¹⁷²⁶ In the totality of circumstances, the Commission was not dependent on the request for information of 18 July 2014 and the outcome of its inquiry in establishing the case against the parties or in progressing with the case, given the availability of extensive compelling evidence on file.

- (1112) With respect to the contemporaneous evidence ([*confidentiality claim pending*]) [*confidentiality claim pending*], given the generally poor evidentiary value of this evidence, it is immaterial for the assessment of the time at which NEC Tokin provided evidence representing significant added value whether the translations of such evidence were provided simultaneously with the first corporate statement or at a later stage. [*confidentiality claim pending*]. All of these contemporaneous documents either lack substance or duplicate (at best corroborate) documentary evidence already on the Commission file at the time of the NEC Tokin's first leniency submission and hence cannot constitute significant added value.
- (1113) On the number of Commission citations of the evidence provided by NEC Tokin, this quantitative element is not a factor strictly indicative of the extent to which evidence provided by leniency applicants represents significant added value. In the same vein, by not referring to certain relevant evidence in the SO/Decision, such evidence is not automatically deprived of its value.
- (1114) For the sake of comparison, in contrast with NEC Tokin, Rubycon provided, starting already with its first corporate statement (26 May 2014), extensive, stand-alone evidence enabling the Commission, amongst others, to uncover an additional operative aspect of the cartel, namely the existence, nature and content of the CUP meetings held in the period 2006-2008 and to uncover anti-competitive meetings taking place in 2003 and 2004.
- (1115) Also Elna, compared with NEC Tokin's first five corporate statements brought significant added value to the case by reporting on anti-competitive behaviour, which confirmed the EEA-inclusive scope of the cartel, covering also European customers. Elna's assertions in the corporate statement were moreover supported by preexisting evidence of compelling nature.

¹⁷²⁴ [...].

¹⁷²⁵ [...].

¹⁷²⁶ The first RFI was sent out to the addressees on 28 March 2014.

- (1116) NEC TOKIN Corporation also argues¹⁷²⁷ that it should be placed ahead of Elna in the leniency ranking because Elna's first corporate statement (submitted on [confidentiality claim pending]) did not itself provide significant added value as concluded by the Commission. NEC TOKIN Corporation infers from the wording of the SO that Elna met the significant added value threshold since it enabled the Commission to conduct unannounced inspections in the EEA. On that basis, NEC TOKIN Corporation claims that the Commission possessed already prior to Elna's submission information that would enable the Commission to carry out the inspections.
- (1117) The basis for NEC TOKIN Corporation's argument is wrong. The standard prescribed for immunity applicants differs from that applicable to leniency applicants seeking a reduction of fines under the Leniency Notice. The requirements set out in points 9(a) and (b), which are to be met in order to qualify for immunity from fines do not extend to Elna. Elna is a leniency applicant which supplied the Commission with evidence constituting significant added value on [confidentiality claim pending]. The fact that, by providing such evidence Elna incidentally also facilitated the Commission's task in organizing targeted inspections in Europe is immaterial for the purposes of assessing added value of Elna's contribution to the case and its leniency ranking.
- (1118) Further to its claim that it should have been awarded the second place in the leniency ranking, NEC TOKIN Corporation considers¹⁷²⁸ that the Commission's approach to assessing the significance of added value contradicts the Leniency Notice. According to NEC TOKIN Corporation, the concept of significance seeks to preserve the chronological order in which leniency applications are made, subject to possibility to discount formal applications without content or those duplicating material already in the Commission's possession. Further to that, NEC TOKIN Corporation maintains that the Commission, in assessing significance of added value, deprived the chronological order of leniency applications of any real effect.
- (1119) NEC TOKIN Corporation's argument should be rejected.
- (1120) Pursuant to point 24 of the Leniency Notice, in order to qualify for reduction of fine, *"the undertaking must provide the Commission with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the Commission's possession"*. NEC TOKIN Corporation therefore correctly concludes that the concept of significance aims at disregarding formal applications or submissions that duplicate evidence already in the Commission's possession. However, it also follows from point 26 of the Leniency Notice that the eligible leniency applicants are rewarded in the order in which they provide significant added value to the case and not in order in which they submit their leniency applications (as incorrectly suggested by NEC TOKIN Corporation): *"first undertaking to provide significant added value: a reduction of 30-50% [...] second undertaking to provide significant added value [...]"*.

¹⁷²⁷ [...].
¹⁷²⁸ [...].

- (1121) NEC TOKIN Corporation claims¹⁷²⁹ that it should be granted the highest reduction available, [*confidentiality claim pending*].
- (1122) NEC TOKIN Corporation's claim has to be rejected for the following reasons. First, the bi-/tri-lateral element of the infringement was already known to the Commission at the time of the first NEC Tokin's leniency submission (see for example recitals (531)-(533), (566), (569) and (638)). Second, although as set out in recital (1111), NEC Tokin contributed to the compilation of the request for information addressed by the Commission to the parties on 18 July 2014, NEC Tokin's contribution was not such as to add significant value to the Commission's case. Lastly, the initial leniency submissions of NEC Tokin generally lacked substance and significant added value was provided to the Commission only after making the sixth corporate statement, more than seven months following the first investigative step of the Commission (request for information of 28 March 2014). Moreover, NEC Tokin's leniency cooperation did not accelerate the Commission's investigation in this case.
- (1123) NEC TOKIN Corporation argues that the Leniency Notice confirms that the fine reductions can be granted even for incremental added value.¹⁷³⁰ The Commission cannot agree with this statement since point 24 of the Leniency Notice clearly states that in order to qualify for reduction of fine, an undertaking must provide the Commission with evidence of the alleged infringement which represents significant added value with respect to the evidence already in the Commission's possession.

Holy Stone

Dates of relevant submissions

- (1124) On 25 April 2014, Holy Stone applied for immunity and/or reduction of fines under the Leniency Notice and provided a corporate statement together with contemporaneous evidence. On [...], Holy Stone supplemented its initial application with another corporate statement and further evidence.

Assessment of significant added value

- (1125) The Commission found that the information provided in the corporate statements as well as the contemporaneous evidence submitted by Holy Stone contain no description of anti-competitive behaviour in relation to the electrolytic capacitors cartel.

Conclusion

- (1126) In conclusion, Holy Stone has not submitted evidence that represents, within the meaning of points 24 and 25 of the Notice, significant added value with respect to the evidence already in the Commission's possession. Hence, Holy Stone should not be granted any reduction in the fine to be imposed on it.

¹⁷²⁹ [...].
¹⁷³⁰ [...].

8.3.8. Ability to pay

8.3.8.1 Introduction

- (1127) In accordance with point 35 of the Guidelines on fines, "[i]n 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 [...] would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value."
- (1128) In exercising its discretion under point 35 of the Guidelines on fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.
- (1129) The following addressees of this Decision submitted applications claiming their "inability to pay" (ITP) the fine under point 35 of the Guidelines on fines:
- (1) [confidentiality claim pending]
 - (2) Matsuo Electric Co., Ltd.
- (1130) The Commission has considered those claims and carefully assessed the available financial data of the undertakings to which those addressees belong. These undertakings received requests for information pursuant to Article 18(1) and (2) of Regulation (EC) No 1/2003 asking them to submit details about their individual financial situation and the specific social and economic context they are in.
- (1131) Insofar as the undertakings argue that the estimated fine would have a negative impact on their financial situation, without adducing credible evidence demonstrating their inability to pay the expected fine, the Commission points to settled case law according to which the Commission is not required, when determining the amount of the fine to be imposed, to take into account the poor financial situation of an undertaking, 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.¹⁷³¹
- (1132) The financial situation of the undertakings concerned is assessed at the time the Decision is adopted and on the basis of the financial data and information submitted by the undertakings.
- (1133) In assessing the undertakings' financial situation, the Commission considers the annual financial statements of the last (usually five) financial years, as well as their projections for the current financial year and the next (usually) two financial years.

¹⁷³¹ See Judgment of the Court of Justice of 8 November 1983, *IAZ International Belgium and Others v. Commission*, 96/82-102/82, 104/82, 105/82, 108/82 and 110/82, ECLI:EU:C:1983:310, paragraphs 54-55. See Judgment of the Court of Justice of 28 June 2005, *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, ECLI:EU:C:2005:408, paragraph 327. See Judgment of the General Court of 29 June 2006, *SGL Carbon AG v. Commission*, C-308/04 P, ECLI:EU:C:2006:433, paragraph 105. See Judgment of the General Court of 2 June 2016, *Global Steel Wire and Others v. Commission*, T-426/10 to T-429/10 and T-438/12 to T-441/12, ECLI:EU:T:2016:335, paragraphs 492-493.

The Commission takes into account and relies upon a number of financial ratios to measure the solidity (in this case, the proportion which the expected fine would represent of the undertaking's equity and assets), profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. The analysis is both prospective and retrospective but with a focus on the present and immediate future of the concerned undertakings. In addition, the Commission takes into account possible restructuring plans and their state of implementation, relations with outside financial partners such as banks and relations with shareholders (to assess the ability of those shareholders to assist the undertakings concerned financially).¹⁷³²

- (1134) The fact that an undertaking may go into liquidation as a result of the imposition of a fine does not necessarily mean that there will always be a total loss of the value of the assets of that undertaking and, therefore, this may not, in itself, justify a reduction of the fine which would have otherwise been imposed on that undertaking.¹⁷³³ This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management ensure the continuity of the undertaking and of its assets. Therefore, each applicant claiming an inability to pay must demonstrate that good and viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure keeping the undertaking as a going concern, the Commission considers that there is a sufficiently high risk that the undertaking's assets would lose a significant part of their value if, as a result of the fine to be imposed, that undertaking was to be forced into liquidation.
- (1135) The Commission also assesses the specific social and economic context in case the undertaking's financial situation, including the situation of their assets, is found to be sufficiently critical following the analysis described in recitals (1133)-(1134).
- (1136) Consequently, where the conditions laid down in point 35 of the Guidelines on fines are met, the Commission may reduce the final amount of the fine on the basis of the financial and qualitative analysis of the concerned undertaking as described in recitals (1133)-(1135) and taking into account its ability to pay the fine imposed on it and the likely effect that such a payment would have on the economic viability of the concerned undertaking.

¹⁷³² By analogy with the assessment of "serious and irreparable harm" in the context of interim measures, the Commission bases its assessment of the undertaking's ability to pay on the financial situation of the undertaking as a whole, including its shareholders, irrespective of the finding of liability (see Order of the President of the Court of Justice of 14 December 1999, *HFB v. Commission*, C-335/99 P, ECLI:EU:C:1999:608, paragraphs 35-71; Order of the President of the Court of Justice of 23 March 2001, *FEG v. Commission*, C-7/01 P, ECLI:EU:C:2001:183, paragraphs 29-46 and Order of the President of the General Court of 7 May 2010, *Almamet v. Commission*, T-410/09 R, ECLI:EU:T:2010:179, paragraph 47 and subsequent paragraphs).

¹⁷³³ See Judgment of the Court of First Instance of 29 April 2004, *Tokai Carbon and Others v. Commission*, T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01, ECLI:EU:T:2004:118, paragraph 372. See Judgment of the Court of First Instance of 29 November 2005, *Heubach v. Commission*, T-64/02, ECLI:EU:T:2005:431, paragraph 163. See Judgment of the General Court of 2 June 2016, *Global Steel Wire and Others v. Commission*, T-426/10 to T-429/10 and T-438/12 to T-441/12, ECLI:EU:T:2016:335, paragraphs 494-497.

[confidentiality claim pending]

- (1137) The ITP claim submitted by [confidentiality claim pending] should be rejected for the reasons set out in the confidential Annex III accessible only to [confidentiality claim pending].

Matsuo

- (1138) The ITP claim submitted by Matsuo Electric Co., Ltd. should be rejected for the reasons set out in the confidential Annex IV accessible only to Matsuo.

8.4. Conclusion: final amount of individual fines

- (1139) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 should therefore be as follows:

Table 3: Final amounts

Entity	Final amount (EUR)
SANYO Electric Co., Ltd. and Panasonic Corporation	0
ELNA CO., LTD.	18 162 000
Hitachi Chemical Electronics Co., Ltd. and Hitachi Chemical Co., Ltd.	18 476 000
Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy Stone Enterprise Co., Ltd.	782 000
Matsuo Electric Co., Ltd.	824 000
TOKIN Corporation and NEC Corporation	16 445 000
Nichicon Corporation	72 901 000
NIPPON CHEMI-CON CORPORATION	97 921 000
Rubycon Corporation	

and Rubycon Holdings Co., Ltd.	28 424 000
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HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement in the electrolytic capacitors sector covering the whole EEA, which consisted of agreements and/or concerted practices that had as their object the coordination of pricing behaviour:

- (a) ELNA CO., LTD. from 26 June 1998 to 23 April 2012;
- (b) Hitachi Chemical Electronics Co., Ltd. from 22 November 2000 to 18 February 2010, Hitachi Chemical Co., Ltd. from 1 August 2001 to 18 February 2010;
- (c) Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone Enterprise Co., Ltd. from 16 November 2010 to 23 April 2012;
- (d) Matsuo Electric Co., Ltd. from 29 January 2003 to 23 April 2012, but whose liability does not extend to the CUP meetings;
- (e) TOKIN Corporation from 29 January 2003 to 23 April 2012, NEC Corporation from 1 August 2009 to 23 April 2012, but whose liability does not extend to the CUP meetings;
- (f) Nichicon Corporation from 26 June 1998 to 31 May 2010, but whose liability does not extend to the MK meetings;
- (g) NIPPON CHEMI-CON CORPORATION from 26 June 1998 to 23 April 2012;
- (h) Rubycon Corporation from 26 June 1998 to 23 April 2012, Rubycon Holdings Co., Ltd. from 1 February 2007 to 23 April 2012;
- (i) SANYO Electric Co., Ltd. from 19 September 2001 to 19 April 2011, Panasonic Corporation from 1 April 2011 to 19 April 2011, but whose liability does not extend to the CUP meetings.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

- (a) ELNA CO., LTD.: EUR 18 162 000;
- (b) Hitachi Chemical Electronics Co., Ltd. and Hitachi Chemical Co., Ltd., jointly and severally: EUR 17 310 000;
- (c) Hitachi Chemical Electronics Co., Ltd.: EUR 1 166 000;
- (d) Vishay Polytech Co., Ltd., Holy Stone Holdings Co., Ltd. and Holy

- Stone Enterprise Co., Ltd., jointly and severally: EUR 782 000;
- (e) Matsuo Electric Co., Ltd.: EUR 824 000;
 - (f) TOKIN Corporation and NEC Corporation, jointly and severally: EUR 5 036 000;
 - (g) TOKIN Corporation: EUR 8 814 000;
 - (h) NEC Corporation: EUR 2 595 000;
 - (i) Nichicon Corporation: EUR 72 901 000;
 - (j) NIPPON CHEMI-CON CORPORATION: EUR 97 921 000;
 - (k) Rubycon Corporation and Rubycon Holdings Co., Ltd., jointly and severally: EUR 27 718 000;
 - (l) Rubycon Corporation: EUR 706 000;
 - (m) SANYO Electric Co., Ltd. and Panasonic Corporation, jointly and severally: EUR 0.

The fines shall be credited, in euros, within three months from the date of notification of this Decision to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: European Commission – BUFI/AT.40136

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.¹⁷³⁴

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

¹⁷³⁴ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

Article 4

This Decision is addressed to:

- ELNA CO., LTD., 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama-shi, Kanagawa Prefecture, 222-0033, Japan;
- Hitachi Chemical Electronics Co., Ltd., 1500, Ogawa, Chikusei-shi, Ibaraki, 308-8521, Japan;
- Hitachi Chemical Co., Ltd., 9-2, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-6606, Japan;
- Vishay Polytech Co., Ltd., 16 Aza-Ohdaira, O-aza-Kumagami, Miharumachi, Tamura-gun, Fukushima 963-7704, Japan;
- Holy Stone Holdings Co., Ltd., Level 5, Development Bank of Samoa Building, Beach Road, Apia, Samoa;
- Holy Stone Enterprise Co., Ltd., 1F, No.62, Sec.2. Huang Shan Rd., Nei Hu Dist., Taipei, Taiwan, Republic of China;
- Matsuo Electric Co., Ltd., 3-5-3 Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan;
- TOKIN Corporation, 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan;
- NEC Corporation, 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan;
- Nichicon Corporation, Oike-Agaru, Karasuma-Dori, Nakagyo-Ku, Kyoto, 604-0845, Japan;
- NIPPON CHEMI-CON CORPORATION, 6-4, Osaki 5-Chome, Shinagawa-Ku, Tokyo, 141-8605, Japan;
- Rubycon Corporation, 1938-1 Nishi-Minowa, Ina-City, Nagano Prefecture 399-4593, Japan;
- Rubycon Holdings Co., Ltd., 1938-1 Nishi-Minowa, Ina-City, Nagano Prefecture 399-4593, Japan;
- SANYO Electric Co., Ltd., 1-1, Sanyo-cho, Daito City, Osaka, 574-0035, Japan;
- Panasonic Corporation, 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 21.3.2018

For the Commission
Margrethe VESTAGER
Member of the Commission



ANNEX I

Chronology of multilateral meetings and bi-/tri-lateral contacts of individual undertakings

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Definitions of the terms used in this Annex..... 3

Chronology of multilateral meetings and bi-/tri- lateral contacts of individual undertakings..... 4

Definitions of the terms used in this Annex¹

ECC meetings	Meetings of "Electrolytic Capacitor(s) Circle" or "Electrolytic Capacitor Conference"
ATC meetings	Meetings of "Aluminium Tantalum Conference" or "Aluminium Tantalum Capacitors group"
MK meetings	Meetings of "Market Study Group" or "marketing group"
CUP meetings	"Cost Up" or "Condenser Up" meetings

¹ See Decision, recital (69).

Chronology of multilateral meetings and bi-/tri-lateral contacts of individual undertakings

Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
26/06/1998 ²	ECC	x					x	x	x	
05/11/1998 ³	ECC	x					x	x	x	
18/12/1998 ⁴	ECC	x					x	x	x	
29/10/1999 ⁵	ECC						x	x	x	
17/12/1999 ⁶	ECC	x					x	x	x	
28/01/2000 ⁷	ECC						x	x	x	
25/05/2000 ⁸	ECC	x					x	x	x	
28/07/2000 ⁹	ECC	x					x	x	x	

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
20/09/2000 ¹⁰	ECC						X	X	X	
22/11/2000 ¹¹	ECC	X	X				X	X	X	
19/09/2001 ¹²	ECC	X	X				X	X	X	X
14/11/2001 ¹³	ECC	X	X				X	X	X	X
19/03/2002 ¹⁴	ECC	X	X				X	X	X	X
17/07/2002 ¹⁵	ECC	X	X				X	X	X	X
29/08/2002 ¹⁶	ECC	X	X				X	X	X	X
18/09/2002 ¹⁷	ECC	X	X				X	X	X	X
29/01/2003 ¹⁸	ECC	X	X		X	X	X	X	X	X
19/02/2003 ¹⁹	ECC	X	X				X	X	X	X

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
15/05/2003 ²⁰	ECC	x	x		x	x	x	x	x	x
28 or 29/08/2003 ²¹	ATC	x	x		x	x	x	x	x	x
07/11/2003 ²²	ECC	x					x	x	x	
05/12/2003 ²³	ATC	x					x	x	x	x
17/12/2003 ²⁴	ATC	x	x		x	x	x	x	x	x
17/03/2004 ²⁵	ATC	x	x			x	x	x	x	x
21/04/2004 ²⁶	ATC	x	x		x	x	x	x	x	x
13/05/2004 ²⁷	ATC	x	x			x	x	x	x	x

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
17/06/2004 ²⁸	ATC	x	x		x	x	x	x	x	x
23/07/2004 ²⁹	ATC	x	x		x	x	x	x	x	x
11/11/2004 ³⁰	ATC	x	x		x	x	x	x	x	x
03/12/2004 ³¹	ATC	x				x	x	x	x	x
16/02/2005 ³²	ATC	x	x		x	x	x	x	x	x
March 2005 ³³	MK	x	x		x	x		x	x	x
April/May 2005 ³⁴	bi-lateral					x	x			
04/08/2005 ³⁵	MK		x		x	x		x	x	x
10/11/2005 ³⁶	MK	x	x		x	x		x	x	x

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
16/12/2005 ³⁷	MK	x	x		x					x
January 2006 ³⁸	tri-lateral							x		x
26/01/2006 ³⁹	bi-lateral				x	x				
12/04/2006 ⁴⁰	MK	x	x		x	x		x	x	x
04/07/2006 ⁴¹	CUP						x	x	x	
12/07/2006 ⁴²	MK	x	x		x	x		x	x	x
13/09/2006 ⁴³	MK	x	x		x	x		x	x	x
18/10/2006 ⁴⁴	MK	x	x		x	x		x	x	x
13/12/2006 ⁴⁵	CUP		x				x	x	x	

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
22/12/2006 ⁴⁶	CUP		x				x	x	x	
16/01/2007 ⁴⁷	CUP		x				x	x	x	
09/02/2007 ⁴⁸	bi-lateral	x						x ⁴⁹		
14/02/2007 ⁵⁰	MK	x	x		x	x		x	x	
15/02/2007 ⁵¹	CUP	x	x				x	x	x	
15/03/2007 ⁵²	CUP	x	x				x	x	x	
April 2007 ⁵³	tri-lateral							x		x
19/04/2007 ⁵⁴	CUP	x	x				x	x	x	
17/05/2007 ⁵⁵	CUP	x	x				x	x	x	

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⁴⁹ NIPPON CHEMI-CON CORPORATION [...].

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
04/06/2007 ⁵⁶	CUP	x	x				x	x	x	
19/06/2007 ⁵⁷	CUP	x	x				x	x	x	
02/08/2007 ⁵⁸	MK	x	x		x	x		x	x	x
24/08/2007 ⁵⁹	CUP	x	x				x	x	x	
26/09/2007 ⁶⁰	CUP	x	x				x	x	x	
September 2007 ⁶¹	bi-lateral							x	x	
06/11/2007 ⁶²	MK	x	x		x	x		x	x	x
13/02/2008 ⁶³	MK	x	x		x	x		x	x	
21/03/2008 ⁶⁴	CUP	x	x				x	x	x	

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
16/04/2008 ⁶⁵	CUP	x	x				x	x	x	
14/05/2008 ⁶⁶	MK	x	x		x	x		x	x	x
21/05/2008 ⁶⁷	CUP	x	x				x	x	x	
02/06/2008 ⁶⁸	CUP	x	x				x	x	x	
04/06/2008 ⁶⁹	MK	x	x		x	x		x	x	
25/06/2008 ⁷⁰	CUP	x	x				x	x	x	
10/07/2008 ⁷¹	MK	x	x		x	x		x	x	x
15/07/2008 ⁷²	CUP	x	x				x	x	x	
08/09/2008 ⁷³	CUP	x					x	x	x	
10 or	MK	x	x		x	x		x	x	x

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
11/09/2008 ⁷⁴										
September and October 2008 ⁷⁵	bi-lateral							X	X	
07/10/2008 ⁷⁶	CUP		X				X	X	X	
05/11/2008 ⁷⁷	MK	X			X	X		X	X	X
10/11/2008 ⁷⁸	CUP	X	X				X	X	X	
February 2009 ⁷⁹	bi-lateral					X	X			
11/03/2009 ⁸⁰	MK	X			X	X		X	X	X
21/04/2009 ⁸¹	bi-lateral					X				X
1 and 7 May	bi-lateral							X		X

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
2009 ⁸²										
21/05/2009 ⁸³	MK	x	x		x	x		x	x	x
May 2009 ⁸⁴	bi-lateral					x				x
16/07/2009 ⁸⁵	MK		x		x	x		x	x	x
July 2009 ⁸⁶	bi-lateral					x	x			
July 2009 ⁸⁷	bi-lateral					x				x
July 2009 ⁸⁸	bi-lateral						x	x		
21/08/2009 ⁸⁹	MK	x				x		x	x	x
17/09/2009 ⁹⁰	MK	x	x		x	x		x	x	x
13/11/2009 ⁹¹	bi-lateral							x	x	

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
November 2009 ⁹²	MK	x			x	x		x	x	x
9 and 11/12/2009 ⁹³	bi-lateral							x	x	
21/12/2009 ⁹⁴	MK	x	x		x	x		x	x	x
December 2009 ⁹⁵	bi-lateral							x		x
January 2010 ⁹⁶	bi-lateral							x		x
25/01/2010 ⁹⁷	bi-lateral	x						x		
18/02/2010 ⁹⁸	MK	x	x		x	x		x	x	

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
23/02/2010 ⁹⁹	bi-lateral							x	x	
09/03/2010 ¹⁰⁰	involving three parties					x	x			x
07/04/2010 ¹⁰¹	bi-lateral							x	x	
21/04/2010 ¹⁰²	MK	x			x	x		x	x	x
21/05/2010 ¹⁰³	MK	x			x	x		x	x	x
31/05/2010 ¹⁰⁴	tri-lateral						x	x	x	
17/06/2010 ¹⁰⁵	MK	x			x	x		x	x	x
16/07/2010 ¹⁰⁶	MK	x			x	x		x	x	x
16/09/2010 ¹⁰⁷	MK	x			x	x		x	x	x

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Date	Meeting/ contact	Elna	Hitachi AIC	Holy Stone	Matsuo	NEC Tokin	Nichicon	Nippon Chemi-Con	Rubycon	Sanyo
06/10/2010 ¹⁰⁸	bi-lateral	x						x ¹⁰⁹		
15 or 16/11/2010 ¹¹⁰	MK	x		x	x	x		x	x	
20/12/2010 ¹¹¹	MK	x		x	x	x		x	x	x
25/01/2011 ¹¹²	bi-lateral					x				x
19/04/2011 ¹¹³	MK	x		x	x	x		x	x	x
29/08/2011 ¹¹⁴	MK	x		x	x	x		x	x	
24/10/2011 ¹¹⁵	MK	x		x	x	x		x	x	
23/04/2012 ¹¹⁶	MK	x		x	x	x		x	x	

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¹⁰⁹ NIPPON CHEMI-CON CORPORATION [...].

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ANNEX II ¹

NAMES AND EMPLOYMENT RECORD OF INDIVIDUALS INVOLVED IN THE CARTEL

¹ The list of employees in this Annex is not exhaustive.

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Matsuo.....	17
Nippon Chemi-Con.....	21
NEC Tokin	25
Nichicon	28
Rubycon.....	38
Sanyo	45

ELNA

Participating individual	Meetings /contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
1. [...]	MK CUP	14/02/2007 – 21/05/2009	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
2. [...]	MK CUP Bi-/tri-lateral contacts	24/08/2007, 21/05/2008 (CUP); 06/11/2007- 23/04/2012 (MK); 09/02/2007, 25/01/2010, 6/10/2010, (bi- /tri-lateral contacts)	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
3. [...]	ECC ATC MK	17/12/1999 – 12/07/2006	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

4. [...]	ECC ATC	28 or 29/08/2003, 07/11/2003, 05/12/2003, 03/12/2004	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

5. [...]	MK Bi-/tri-lateral contacts	17/09/2009, 21/12/2009, 18/02/2010, 21/04/2010, 21/05/2010, 17/06/2010, (MK) 25/01/2010 (bi-/tri-lateral contacts)	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
6. [...]	MK	12/03/2006, 12/06/2006, 14/02/2007 (MK)	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
7. [...]	ECC	26/06/1998, 18/12/1998, 25/05/2000, 28/07/2000 (ECC)	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

8. [...]	ECC	05/11/1998	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
9. [...]	ATC	28 or 29/08/2003, 23/07/2004	Elna Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	

HITACHI AIC

Participating individual	Meetings /contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
1. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
			[confidentiality claim]	[...]	[...]	[...]	

			<i>pending]</i>		[...]	[...]	
2. [...] (also referred to as [...])	<i>[confidentiality claim pending]</i>	<i>[confidentiality claim pending]</i>	<i>[confidentiality claim pending]</i>	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

3. [...]	[confidentiality claim pending]	[confidentiality y claim pending]	[confidentiality y claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
4. [...]	[confidentiality claim pending]	[confidentiality y claim pending]	[confidentiality y claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	

5. [...]	<i>[confidentiality claim pending]</i>	<i>[confidentiality claim pending]</i>	<i>[confidentiality claim pending]</i>	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
6. [...]	<i>[confidentiality claim pending]</i>	<i>[confidentiality claim pending]</i>	<i>[confidentiality claim pending]</i>	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
7. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

8. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
9. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
10. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
11. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
12. [...]	[confidentiality claim pending]	[confidentiality claim pending]	[confidentiality claim pending]	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
13. [...]	[confidentiality claim]	[confidentiality claim]	[confidentiality claim]	[...]	[...]	[...]	[...]

	<i>pending]</i>	<i>pending]</i>	<i>pending]</i>		[...]	[...]	
--	-----------------	-----------------	-----------------	--	-------	-------	--

HOLY STONE

Participating individual	Meetings /contacts	Period of involvement in meetings/ contacts	Entity	Employment Dates	Positions	Period	ID
1. [...]	MK	23/04/2012 (MK	Holystone Polytech Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	

MATSUO

Participating individual	Meetings /contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
1. [...]	ATC MK	11/11/2004 (ATC) 10/11/2005,	Matsuo Electric Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	

		06/11/2007, 04/06/2008 (MK)			[...]	[...]	
					[...]	[...]	
2. [...]	ATC	11/11/2004	Matsuo Electric Co., Ltd.	[...]	[...]	[...]	
					[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
3. [...]	MK	14/02/2007, 4/06/2008, 10/07/2008, 10 or 11/09/2008, 05/11/2008, 17/09/2009, 21/05/2010 (MK)	Matsuo Electric Co., Ltd.	[...]	[...]	[...]	
					[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
4. [...]	MK Bi-/tri- lateral contacts	16/02/2005 – 23/04/2012 (MK) 26/01/2006 (bi-/tri-lateral contact)	Matsuo Electric Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

5. [...]	MK	17/09/2009, 18/02/2010, 21/04/2010, 21/05/2010, 17/06/2010, 23/04/2012 (MK)	Matsuo Electric Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
6. [...]	ECC ATC	14/11/2001, 29/01/2003, 15/05/2003, (ECC) 28 or 29/08/2003, 21/04/2004, 17/06/2004, 23/07/2004, 11/11/2004 (ATC)	Matsuo Electric Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

NIPPON CHEMI-CON

Participating individual	Meetings / contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
1. [...]	ECC ATC MK CUP Bi-/tri-lateral contacts	17/12/1999-18/02/2010 (ECC, ATC, MK, CUP) 9 February 2007 bi-/tri-lateral contacts	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
2. [...]	MK CUP Bi-/tri-lateral	04/07/2006 – 10/11/2008 (CUP); 10/07/2008 – 19/07/2010	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	

	contacts	(MK); 31/05/2010 (bi-/tri-lateral contacts)			[...]	[...]	
					[...]	[...]	
3. [...]	ECC	28/08/2003 or	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
	ATC	29/08/2003 –			[...]	[...]	
	MK	23/04/2012;			[...]	[...]	
	CUP	(ECC, ATC, MK, CUP)			[...]	[...]	
	Bi-/tri- lateral contacts	09/2007, 09 and 10/2008, 11/2009, 01/2010, 25/01/2010			[...]	[...]	
		Bi-/tri-lateral contacts			[...]	[...]	
					[...]	[...]	
					[...]	[...]	

4. [...]	ECC ATC MK	17/07/2002- 04/06/2008	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
5. [...]	ECC	17/12/1999, 22/11/2000, 19/09/2001, 14/11/2001, 17/07/2002 (ECC)	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
6. [...]	ECC	28/07/2000, 20/09/2000 (ECC)	Nippon Chemi-Con Corporation;	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
7. [...]	MK	10/11/2005, 06/11/2007, 04/06/2008 (MK)	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
8. [...]	Bi-/tri- lateral contacts	9 and 11/12/2009, 23/02/2010 (bi-/tri-lateral contacts)	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
9. [...]	Bi-/tri- lateral contacts	01 and 07/05/2009, (bi-/tri-lateral contacts)	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
10. [...]	Bi-/tri-lateral contacts	07/04/2010 (bi-/tri-lateral contacts)	Nippon Chemi-Con Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	

NEC TOKIN

Participating individual	Meetings /contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
1. [...]	ECC ATC MK Bi-/tri-lateral contacts	29/01/2003 – 05/08/2010 (ECC, ATC, MK) 26/01/2006 02/2009, 21/04/2009,	NEC TOKIN Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

		07/2009, 07/2009, 09/03/2010 (bi-/tri-lateral contacts)			[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
2. [...]	MK Bi-/tri- lateral contacts	06/11/2007 – 16/07/2010; (MK) 02/2009,	NEC TOKIN Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	

		06/2009, 07/2009, 25/01/2011 (bi-/tri-lateral contacts)			[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
3. [...]	MK	12/07/2006, 14/02/2007	NEC TOKIN Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
4. [...]	ATC	11/11/2004 (ATC)	NEC TOKIN Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

NICHICON

Participating individual	Meetings / contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
1. [...]	ECC	25/05/2000 –	Nichicon	[...]	[...]	[...]	[...]

	ATC	03/12/2004 (ECC, ATC)	Corporation		[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
2. [...]	ECC ATC	19/02/2003 - 16/02/2005 (ECC, ATC)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
3. [...]	ATC	13/05/2004	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
4. [...]	CUP	04/07/2006-	Nichicon	[...]	[...]	[...]	[...]

	Bi-/tri-lateral contacts	10/11/2008 (CUP) 02/2009, 07/2009, 31/05/2010 (bi-/tri-lateral contacts)	Corporation		[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
5. [...]	ATC	21/04/2004, 13/05/2004, 23/07/2004, 11/11/2004,	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	

		16/02/2005 (ATC)			[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
6. [...]	ECC ATC	18/09/2002, 29/01/2003, 19/02/2003, 15/05/2003, (ECC) 17/03/2004 (ATC)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
7. [...]	ECC	28/07/2000, 20/09/2000 (ECC)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
8. [...]	ECC CUP	19/03/2002 (ECC) 07/10/2008 (CUP)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
9. [...]	ECC	26/06/1998, 05/11/1998, 18/12/1998, 29/10/1999, 28/01/2000, 25/05/2000 (ECC)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
10. [...]	ATC	23/07/2004 (ATC)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
11. [...]	ATC	23/07/2004 (ATC)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
12. [...]	CUP	10/11/2008 (CUP)	Nichicon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	

RUBYCON

Participating individual	Meetings / contacts	Period of involvement in meetings/ contacts	Entity	Employment dates	Positions	Period	ID
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1. [...]	MK CUP Bi-/tri-lateral contacts	12/04/2006 – 23/04/2012 (MK, CUP) 31/05/2010 (bi-/tri-lateral contacts)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
2. [...]	MK CUP	04/08/2005 – 16/07/2010 (MK, CUP)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

3. [...]	ECC	22/11/2000 - 18/09/2002 (ECC)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
4. [...]	MK	12/04/2006, 12/07/2006, 14/02/2007 (MK)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
5. [...]	Bi-/tri-	07/04/2010	Rubycon	[...]	[...]	[...]	[...]

	lateral contacts	(bi-/tri-lateral contacts)	Corporation		[...]	[...]	
					[...]	[...]	
6. [...]	ECC, ATC, CUP, Bi-/tri-lateral contacts	26/06/1998 – 03/12/2004 (ECC, ATC) 22/12/2006, 16/01/2007, 21/05/2008, 02/06/2008 (CUP) 09/2007, 09-10/2008, 13/11/2009, and 11/12/2009 (bi-/tri-lateral contacts)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
7. [...]	MK	10/11/2005, 04/06/2008	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	

8. [...]	ECC ATC	18/09/2002 – 11/11/2004 (ECC, ATC)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
9. [...]	ECC	14/11/2001,	Rubycon	[...]	[...]	[...]	[...]

	ATC	29/01/2003, 15/05/2003	Corporation		[...]	[...]	
		(ECC)			[...]	[...]	
		13/05/2004			[...]	[...]	
10. [...]	ECC	19/09/2001, 14/11/2001, 19/03/2002, 17/07/2002	Rubycon Corporation	[...]	No info	[...]	[...]
11. [...]	ATC	23/07/2004	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

12. [...]	ATC	23/07/2004 (ATC)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
13. [...]	CUP	10/11/2008 (CUP)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
14. [...]	Bi-/tri- lateral contacts	09 and, 11/12/2009, 23/02/2010 (bi-/tri-lateral contacts)	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

					[...]	[...]	
					[...]	[...]	
15. [...]	ECC	05/11/1998 (ECC)	Rubycon Corporation	[...]	[...]	[...]	[...]
16. [...]	Bi-/tri- lateral contacts	31/05/2010	Rubycon Corporation	[...]	[...]	[...]	[...]
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	

SANYO

Participating individual	Meetings /contacts	Period of involvement in meetings/ contacts	Entity	Employment Dates	Positions	Period	ID
-----------------------------	-----------------------	--	--------	------------------	-----------	--------	----

1. [...]	MK Bi-/tri-lateral contacts	10/07/2008-16/07/2010 (MK) 05/2009, 12/2009, 01/2010, 09/03/2010, 25/01/2011 (bi-/tri-lateral contacts)	Sanyo Electric Co., Ltd. Positions in Affiliate Companies: Sanyo Electronic Components Co., Ltd. (Marketing & Sales Department, Tokyo Sales Office: 01/1997 – 2001, Marketing & Sales Department, Tokyo Sales Office 2, Sales Office Manager: 2001 – 2002, Marketing & Sales Department, Sales Planning, Manager:	[...]			
					[...]	[...]	[...]

			2002, Marketing & Sales Department Overseas 2 Sales Department, Asia Sales Department, Section 1, Manager, 2002 – 03/2004)				
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2. [...]	MK meetings	17/09/2009 (MK)	Sanyo Electric Co., Ltd.	[...]	[...]	[...]	[...]		
	Bi-/tri-lateral contacts	21/04/2009, 05/2009, 07/2009, 01/2010, 09/03/2010 (bi-/tri-lateral contacts)			[...]	[...]			
					[...]	[...]			
					[...]	[...]			
					[...]	[...]			
					[...]	[...]			
3. [...]	ATC meetings	28/08/2003 – 21/08/2009 (ATC, MK)	Sanyo Electric Co., Ltd.	[...]	[...]	[...]	[...]		
	MK meetings	01/2006, 04/2007, 12/2009 (bi-/tri-lateral			Positions in Affiliate Companies: Sanyo Electronic	[...]		[...]	
	Bi-/tri-lateral contacts					[...]		[...]	

		contacts)	Components Co., Ltd (Sales Department, Asia Sales Team, Manager: 1998 – 2001; Sales & Marketing Department, Asia Sales Department, General Manager: 2001 – 2003		[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
					[...]	[...]	
4. [...]	Bi-/tri-lateral contacts	01 and 07/05/2009 (bi-/tri-lateral contacts)	Sanyo Electric Co., Ltd.	[...]	[...]	[...]	[...]
					[...]	[...]	

5. [...]	ECC meetings	17/12/1999 – 06/11/2007	Sanyo Electric Co., Ltd.	[...]			[...]
	ATC meetings	(ECC, ATC, MK)	Positions in Affiliate Companies:		[...]	[...]	
	MK meetings		Sanyo Electronic Components Co., Ltd (Marketing & Sales Department, Tokyo Sales Office, Manager: 1997 – 2001; Marketing & Sales Department, General Manager: 2001 – 2003; Electronic Device Company Sales & Marketing Department, Domestic 1 Sales		[...]	[...]	

			Department, General Manager/Dom estic 1 Sales Department Tokyo Sales Office 1, Sales Office, Manager: 2003 – 2004)		[...]	[...]	
6. [...]	ECC	14/11/2001, 29/01/2003 (ECC)	Sanyo Electric Co., Ltd. Positions in Affiliate Companies: 06/1999- 04/2004 Management positions at Sanyo Electronic Components Co, Ltd.	[...]	[...]	[...]	[...]