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COMMISSION DECISION

of 8.2.2017

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union**

(AT.40018 – Car battery recycling)

(Only the English text is authentic)

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THE COMMISSION,

Having regard to the Treaty on the Functioning of the European Union¹,

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 Treaty², and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission Decision of 24 June 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 Treaty³,

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

Having regard to the final report of the Hearing Officer in this case⁴,

Whereas:

1. INTRODUCTION

- (1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union (TFEU). The infringement consisted in the coordination of pricing behaviour between undertakings active in the sector of lead recycling that affected trade in Belgium, Germany, France and the Netherlands. The infringement lasted from 23 September 2009 until 26 September 2012.
- (2) This Decision is addressed to:

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, respectively, Articles 101 and 102 of the Treaty on the Functioning of the European Union ('TFEU' or 'Treaty'). 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 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 6 February 2017.

- (a) Campine NV and Campine Recycling NV (collectively referred to as ‘Campine’);
- (b) Eco-Bat Technologies Ltd, Berzelius Metall GmbH and Société de Traitements Chimiques des Métaux SAS (collectively referred to as ‘Eco-Bat’);
- (c) Johnson Controls, Inc., Johnson Controls Tolling GmbH & Co. KG and Johnson Controls Recycling GmbH (collectively referred to as ‘JCI’);
- (d) Recylex SA, Fonderie et Manufacture de Métaux SA and Harz-Metall GmbH (collectively referred to as ‘Recylex’).

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The products

- (3) The products concerned by the infringement are scrap lead-acid batteries extracted from automotive vehicles and intended for treatment and recovery in the production of recycled lead⁵. Lead-acid batteries include automotive batteries and industrial batteries. Lead-acid automotive batteries are used for supplying starter-lighting-ignition power in motor vehicles with internal combustion engines such as passenger cars or commercial vehicles. This Decision covers only scrap lead-acid automotive batteries.

2.2. The undertakings subject to the proceedings⁶

2.2.1. Campine

- (4) Campine is an undertaking active in the production of recycled lead, lead alloys and other products. Campine’s total (worldwide) consolidated turnover in the business year ending 31 December 2015⁷ was approximately EUR [...] ⁸.
- (5) The relevant legal entities are:
 - (a) Campine NV, with registered offices at IZ Kanaal West, Nijverheidstraat 2, 2340 Beerse, Belgium;
 - (b) Campine Recycling NV (‘Campine Recycling’), with registered offices at IZ Kanaal West, Nijverheidstraat 2, 2340 Beerse, Belgium.

2.2.2. Eco-Bat

- (6) Eco-Bat is an undertaking active in several business areas, including the production of primary and recycled lead and the wholesale and retail trade of new lead-acid batteries and other types of batteries. The total worldwide net consolidated turnover invoiced by Eco-Bat in the business year ending 31 December 2015⁹ was approximately GBP [...] ¹⁰ (approximately EUR [...]) ¹¹.
- (7) The relevant legal entities are:

⁵ Recycled lead is also called secondary lead; primary lead refers to lead obtained from mining.

⁶ Referred to collectively as ‘parties’ and individually as ‘party’.

⁷ Campine has not provided a turnover figure for the business year 2016.

⁸ [...].

⁹ Eco-Bat has not provided a turnover figure for the business year 2016.

¹⁰ [...].

¹¹ For the period from 1 January 2015 until 31 December 2015 the average GBP/EUR exchange rate of the European Central Bank (ECB) was 1.3785.

- (a) Eco-Bat Technologies Ltd, with registered offices at Cowley Lodge, Warren Carr, Matlock, Derbyshire DE4 2LE, United Kingdom;
- (b) Berzelius Metall GmbH ('BMG'), with registered offices at Emser Straße 11, 56338 Braubach, Germany;
- (c) Société de Traitements Chimiques des Métaux SAS ('STCM'), with registered offices at 11 rue de Pithiviers, 45480 Bazoches-les-Gallerandes, France.

2.2.3. JCI

- (8) JCI is an undertaking active in several business areas, including the recycling and manufacture of lead-acid automotive batteries and other automotive batteries. JCI's consolidated worldwide turnover in the business year 2015/2016¹² was approximately USD [...] ¹³ (EUR [...])¹⁴.
- (9) The relevant legal entities are:
 - (a) Johnson Controls, Inc., with registered offices at 5757 N Green Bay Ave, Milwaukee WI 53201, United States of America;
 - (b) Johnson Controls Recycling GmbH ('JC Recycling'), with registered offices at Am Leineufer 51, 30419 Hannover, Germany;
 - (c) Johnson Controls Tolling GmbH & Co. KG ('JC Tolling'¹⁵), with registered offices at Am Leineufer 51, 30419 Hannover, Germany.

2.2.4. Recylex

- (10) Recylex is an undertaking active in the production of recycled lead and other materials (polypropylene, zinc, special metals). Recylex's worldwide turnover in the business year ending 31 December 2016 was approximately EUR [...] ¹⁶.
- (11) The relevant legal entities are:
 - (a) Recylex SA, with registered offices at 6 place de la Madeleine, 75008 Paris, France;
 - (a) Fonderie et Manufacture de Métaux SA ('F[...]), with registered offices at Rue Paepsem/Paepsemstraat 111, 1070 Anderlecht, Belgium;
 - (b) Harz-Metall GmbH ('HMG'), with registered offices at Hüttenstraße 6, 38642 Goslar, Germany;

2.3. Description of the sector

- (12) The recycling of scrap lead-acid batteries is subject to specific rules in the Union¹⁷. Member States must ensure that appropriate collection schemes are in place for

¹² Period from 1 October until 30 September ([...]).

¹³ [...].

¹⁴ For the period from 1 October 2015 until 30 September 2016 the average USD/EUR exchange rate of the ECB was 0.9005.

¹⁵ In the period between 2007 and 2013, the legal denomination of this entity was Johnson Controls Tolling AG & Co. KG. In this Decision, 'JC Tolling' refers both to Johnson Controls Tolling GmbH & Co. KG and to Johnson Controls Tolling AG & Co. KG.

¹⁶ [...].

¹⁷ For example, Directive 2006/66/EC of the European Parliament and the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1) (the 'Batteries Directive'), Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain

waste batteries so as to achieve adequate collection and recycling rates. The collection and recycling rate of (automotive) lead-acid batteries in the EU is estimated at 99 %¹⁸.

2.3.1. *The market players*

(13) There are four groups of operators in the lead recycling industry¹⁹:

- (a) *Scrap collectors* gather scrap batteries directly from collection points (such as garages, maintenance and repair workshops, battery distributors, scrapyards and other waste disposal sites, etc.) and sell them to scrap dealers or traders, or directly to recycling companies.
- (b) *Scrap dealers or traders* act as intermediaries between scrap collectors and recycling companies. Scrap dealers generally act primarily on behalf of one recycling company.
- (c) *Recycling companies* perform the treatment and recovery of scrap batteries. They acquire scrap batteries either directly from their own collection points or by purchasing them from scrap collectors or from scrap dealers or traders.
- (d) *Battery manufacturers* acquire recycled lead from recycling companies. Some battery manufacturers have their own battery collection networks or are vertically integrated with scrap battery collectors, in which case they outsource the recycling to recycling companies under tolling agreements. Some battery manufacturers also have their own recycling facilities²⁰.

2.3.2. *Supply*

- (14) On the supply side, the EU market for scrap lead-acid batteries is heterogeneous and highly atomised, with a high number of small scrap battery collectors that mainly operate at local or regional levels, and a few large collectors that operate at national level.
- (15) Scrap lead-acid batteries can be supplied from scrap collectors or from scrap dealers or traders, from customers under tolling agreements, or from the collection of disused batteries directly from new battery customers²¹.
- (16) During the period of the infringement, the main third-party suppliers of scrap batteries for Campine, Eco-Bat, JCI and Recylex were scrap collectors or scrap dealers or traders located in Belgium, Germany, France and the Netherlands²².

2.3.3. *Demand*

- (17) On the demand side, the EU market for scrap lead-acid batteries is composed of a relatively small number of recycling companies. In addition to the addressees of this

Directives (OJ L 312, 22.11.2008, p. 3), Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

¹⁸ Source: *The availability of automotive lead-based batteries for recycling in the EU*. Report prepared by IHS/Polk for the Association of European Automotive and Industrial Battery Manufacturers (Eurobat), the European Automobile Manufacturers Association (ACEA), the Japan Automobile Manufacturers Association (JAMA), the Korea Automobile Manufacturers Association (KAMA), and the International Lead Association (ILA) (<http://www.eurobat.org/brochures-reports>).

¹⁹ [...].

²⁰ [...].

²¹ [...].

²² [...].

Decision, a number of other players were and are active in Europe in the purchase and recycling of scrap lead-acid batteries.

- (18) Undertakings in the lead recycling industry are often active at several levels of the supply chain²³. Eco-Bat and JCI are active as recycling companies and as scrap battery collectors (through their own integrated collection networks or through subsidiaries which are active as scrap collectors). JCI is, in addition, mainly active as a battery manufacturer while Eco-Bat is also active in the wholesale and retail trade of new lead-acid batteries and other types of batteries. Recycling companies therefore interact with each other as suppliers, as customers and as competitors.[...]supply recycled lead to JCI but also compete with JCI for the purchase of lead scrap from scrap collectors or from scrap dealers or traders.
- (19) In economic terms, the level of demand for scrap lead-acid batteries is primarily determined by demand on the downstream market for new batteries, mainly automotive batteries. For new automotive batteries, around 70 % of estimated demand relates to the after-market and replacement segment, and around 30 % to the original equipment manufacturer (OEM)²⁴ segment. Demand in the OEM segment is directly linked to the level of motor vehicle production and is therefore dependant on general economic cycles. Demand in the after-market segment is characterised by seasonal variations (higher demand in autumn and winter), which are also influenced by the severity of weather conditions. These short-term fluctuations have a direct incidence on the demand for lead for the manufacture of batteries and, consequently, on the demand for scrap batteries. As a result, the prices for scrap batteries can vary on a weekly or daily basis²⁵.
- (20) The demand for scrap batteries is also affected by the treatment and smelting capacity of recycling companies. In recent years, whereas the market size in terms of volume of inputs has remained stable, recycling companies have invested in production capacity, which has led to overcapacity²⁶. Recycling companies also need to ensure a constant flow of input as temporarily idling and restarting a smelter is costly and time-consuming. Therefore, to ensure a minimum volume of supply, some recycling companies have concluded long-term tolling agreements with battery manufacturers or with other recycling companies (see next section).

2.3.4. Tolling agreements

- (21) Tolling agreements are agreements under which a client delivers scrap batteries to a recycling company, pays a fee to have it treated and recycled, and receives back a corresponding quantity of recycled lead. The parties generally set the tolling fee on the basis of the London Metal Exchange (LME) lead prices and of the market price of scrap batteries. Tolling agreements are generally concluded for a set yearly or monthly capacity.
- (22) During the period of the infringement, [...] had tolling agreements with [...] ²⁷. [...] ²⁸. [...] ²⁹. [...] ³⁰. [...] ³¹.

²³ [...].

²⁴ The OEM segment covers batteries installed in new motor vehicles.

²⁵ [...].

²⁶ [...].

²⁷ [...].

²⁸ [...].

²⁹ [...].

- (23) It cannot be established that any of the contacts or exchanges of information between the parties regarding those tolling agreements aimed to influence the purchase prices of scrap lead-acid batteries in an anti-competitive manner. Such contacts or exchanges of information are therefore not covered by this Decision.

2.3.5. *Price*

- (24) The price of scrap lead-acid batteries is the main cost component in the recycling of lead. Primary lead is traded on the LME and its price is subject to fluctuations based on global demand and supply, but also to trading by commodity traders³². The LME lead prices³³ are the basis for both primary lead and recycled lead prices to which producers apply their own processing charges. Eco-Bat (BMG and STCM) and Recylex publish the daily LME lead prices on their websites.
- (25) The price of scrap lead-acid batteries is in principle determined on the market and varies by location. Although there is no formal link between the LME lead prices and scrap battery prices, scrap battery prices generally follow the LME prices and may be expressed as a percentage of the LME prices.
- (26) The price of scrap batteries is generally set per metric tonne (in gross weight of scrap batteries). Suppliers and buyers generally quote prices and conclude transactions either on the basis of ex-works³⁴ (EXW) prices (net prices) or prices including shipment costs and other fees (carriage paid to (CPT) or delivered duty paid (DDP).

2.3.6. *Geographical scope of the business*

- (27) Under the Batteries Directive, the disposal in landfills or by incineration of waste automotive batteries is prohibited. Scrap batteries must therefore undergo treatment and recycling at appropriate facilities. In Member States where there are no facilities for the treatment or recycling of lead batteries, the scrap batteries collected must be exported to other Member States or to third countries to undergo treatment or recycling. As referred to in Recital (12), the trade of scrap lead-acid batteries between Member States is subject to a number of regulatory conditions and procedures which aim to restrict trans-boundary movements of hazardous waste. There is nevertheless significant trade of scrap lead-acid batteries and other waste containing lead between Member States, in particular because appropriate treatment and recycling facilities do not exist in all Member States.

2.4. **Trade between Member States**

- (28) The infringement covered at least **Germany, Belgium, France and the Netherlands**. In some instances, the infringement concerned the shipment of scrap batteries between two or more of those Member States. In addition, the undertakings subject to these proceedings participated in arrangements relating to activities in Member States other than the one in which those undertakings, or the corporate entities to which they belong or which belong to them, are established. The infringement therefore relates to an economic activity for which there is trade between Member States.

³⁰ [...].

³¹ [...].

³² [...].

³³ There are several LME lead prices according to the type of product, pricing (bid, offer, closing average, etc.), timescale (daily, monthly, etc.) and contract type (cash settlement, options, swaps, etc.).

³⁴ That is prices at the place of collection (with transport costs and related costs being assumed by the buyer).

3. PROCEDURE

3.1. The Commission's investigation

- (29) On 22 June 2012 JCI applied for immunity from fines under point 14 of the Commission Notice on Immunity from fines and reduction of fines in cartel cases³⁵ (the 'Leniency Notice') and subsequently submitted several corporate statements and documentary evidence. On 13 September 2012, the Commission granted JCI conditional immunity from fines under point 18 of the Leniency Notice.
- (30) From 26 until 28 September 2012, the Commission carried out inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of various undertakings in Belgium, Germany and France.
- (31) Eco-Bat, on 27 September 2012³⁶, Recylex, on 23 October 2012³⁷ and Campine, on 4 December 2012³⁸, submitted leniency applications.
- (32) During the course of the investigation, the Commission sent several requests for information under Article 18 of Regulation (EC) No 1/2003 to the addressees of this Decision and to other undertakings.
- (33) On 24 June 2015, the Commission initiated proceedings under Article 2(1) of Regulation (EC) No 773/2004 and adopted a Statement of Objections ('SO') against the addressees of this Decision. As provided for in point 26 of the Leniency Notice, by letters dated 24 June 2015, the Commission informed Eco-Bat and Recylex of its intention to apply a reduction of their fines within a specified band and informed Campine of its intention not to apply a reduction of its fine within a specified band.
- (34) All the addressees of the SO requested and received a DVD containing the accessible documents in the Commission's file. In addition, all the addressees made use of their rights of access to the parts of the Commission's file that were accessible only at the Commission's premises.
- (35) All the addressees of the SO set out in writing to the Commission their views on the objections raised against them and presented their observations at an oral hearing that was organised in Brussels on 17 and 18 November 2015.
- (36) At the oral hearing, the Commission asked the parties a number of questions to which they were unable to respond on the spot. The Hearing Officer allowed the parties additional time to answer those questions. The parties replied to those questions and the Commission requested additional clarifications on some of those replies.
- (37) On 18 October 2016, the Commission sent a Letter of Facts to Eco-Bat regarding the figures to be used for the calculation of any fine that would be imposed on it³⁹, to which Eco-Bat replied on 2 November 2016.
- (38) On 13 December 2016, the Commission sent letters to Campine, Eco-Bat, JCI and Recylex, to bring to their attention that, when determining the amount of the fine to be imposed in this case, the Commission intends to apply a specific increase under point 37 of the Guidelines on the method of setting fines imposed pursuant to

³⁵ [...].

³⁶ [...].

³⁷ [...].

³⁸ [...].

³⁹ [...].

Article 23(2)(a) of Regulation (EC) No 1/2003⁴⁰ ('the Guidelines on fines') (see Recitals (363)-(380)). Recylex provided comments on this letter on 23 December 2016, Eco-Bat and JCI on 3 January 2017 and Campine on 11 January 2017.

3.2. The evidence relied on

(39) The documentary evidence relied on consists of the following:

- (a) corporate statements and contemporaneous documents submitted by the immunity or leniency applicants (JCI, Eco-Bat, Campine and Recylex);
- (b) contemporaneous documents copied by the Commission during the inspections;
- (c) replies by all parties to requests for information sent by the Commission;
- (d) replies by all the parties to the Commission's SO and observations raised by the parties during and after the oral hearing.

4. DESCRIPTION OF THE INFRINGEMENT

4.1. Basic principles and organisation

(40) The objective of the cartel was to coordinate prices (target prices, maximum prices, or fixed-amount price reductions) for the purchase of scrap lead-acid automotive batteries⁴¹, and to restrict competition for such products. By achieving a reduction of the purchase prices of scrap lead-acid batteries or preventing an increase of those prices, the parties sought to increase their profit margin.

(41) The parties coordinated their behaviour through **contacts relating to prices, future market conduct, and negotiations with suppliers.**

(42) As regards prices, the parties reached agreements to reduce or to maintain the prices offered to suppliers at a certain level, or to reduce the prices offered to suppliers by a certain amount, sometimes in phased reductions over a set period of time. The parties exchanged information and agreed on prices offered to specific suppliers, on maximum price levels and target prices, and on expected price evolutions and purchasing intentions regarding Germany, Belgium, France and the Netherlands. While seeking to reduce or maintain purchase prices, the parties also tried to ensure that these prices did not go below a certain level which would encourage the suppliers to sell to third parties as it could generally result in smaller volumes available for purchase to the parties⁴².

(43) As regards future market conduct, besides exchanging information on current or future prices offered to suppliers, the parties also, on some occasions, provided information to other parties on expected volumes of purchases, on current levels of stocks, or level of activity (for instance, temporary idling of smelting facilities or temporary reductions of workforce).

⁴⁰ 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).

⁴¹ Recycling companies obtain scrap in two ways: they either collect scrap batteries directly from retail points at which disused batteries are returned or they purchase scrap batteries from scrap collectors that perform the collection function (see for instance [...]).

⁴² [...].

- (44) As regards negotiations on prices with suppliers, because of the dependency relationships between third-party scrap collectors or dealers (suppliers) and the parties (buyers) (see Section 2.3.3.), the parties informed each other on the prices offered to their respective third-party collectors or dealers, as those collectors or dealers were also in direct competition with the parties for the purchase of scrap batteries. While, at times, the discussions between the parties and their third-party collectors or dealers would be part of legitimate commercial negotiations, at other times, these communications followed an indication by another party of a disruptive price offer made to one of those collectors or dealers⁴³.

4.1.1. *Individuals involved in the cartel*

- (45) The individuals who participated in the anti-competitive conduct described in Section 4.2 are listed in the following table:

Table 1: Participating individuals

Individual	Entity	Function	Period of employment (during the period of the infringement)
<i>Campine:</i>			
[...]	Campine Recycling	[...]	[...]
[...]	Campine Recycling	[...]	[...]
		[...]	[...]
<i>Eco-Bat:</i>			
[...]	BMG	[...]	[...]
[...]	BMG	[...]	[...]
[...]	STCM	[...]	[...]
[...]	STCM	[...]	[...]
		[...]	[...]
[...]	STCM	[...]	[...]
		[...]	[...]
<i>JCI:</i>			
[...]	JC Tolling/JC Recycling ⁴⁴	[...]	[...]
[...]	JC Tolling	[...]	[...]
<i>Recylex:</i>			
[...]	Recylex	[...]	[...]
[...]	Recylex Commercial SAS ⁴⁵	[...]	[...]

⁴³ [...].

⁴⁴ [...].

⁴⁵ Until 23 June 2010, Recylex Commercial SAS was the commercial agent of Recylex for the purchase of scrap batteries to be recycled by Recylex's plants in France. From 1 January 2011, Recylex Commercial SAS carries out only a financial holding activity.

Individual	Entity	Function	Period of employment (during the period of the infringement)
		[...]	[...]
	Recylex	[...]	[...]
[...]	Recylex	[...]	[...]
[...]		[...]	[...]
[...]	FMM	[...]	[...]
[...]	FMM	[...]	[...]
[...]	HMG	[...]	[...]

- (46) The individuals who participated in the cartel held responsibilities at various levels within their undertakings, primarily at senior management level. The relations between those individuals were sometimes difficult (see for instance Recitals (93), (109), (124) and (125)). For that reason, multilateral meetings in person were relatively rare⁴⁶ and most of the contacts took place on a bilateral basis⁴⁷ (see Recital (50)).
- (47) [Employee of JCI] frequently acted as an intermediary between the parties as he had relatively good relations with all the individuals involved and had business contacts with all parties[...]⁴⁸.
- (48) It was not always the same individual who would take the initiative of the contacts. In some instances, [employee of Recylex] would contact [employee of JCI] with a proposal on a price level and [employee of JCI] would then inform the other parties⁴⁹. In other instances, the initiative was from [employee of JCI] or [employee of Eco-Bat].

4.1.2. Organisation of the cartel

- (49) The immunity applicant (JCI) and two leniency applicants (Eco-Bat and Recylex) have confirmed that, during the period between at least 23 September 2009 and 26 September 2012, a series of meetings and contacts took place between the parties⁵⁰. The parties kept each other informed directly or indirectly on what they had discussed with others⁵¹.
- (50) The majority of the anti-competitive contacts took place on a bilateral (and sometimes trilateral) basis, mainly through telephone calls, emails, or text messages. Some contacts also took place in person⁵², either through bilateral meetings or, less frequently, through multilateral meetings. The parties also met at international trade

⁴⁶ [...].

⁴⁷ [...].

⁴⁸ [...].

⁴⁹ [...].

⁵⁰ [...].

⁵¹ [...].

⁵² [...].

events or at events held by national trade associations and some of the contacts between the parties took place in the margins of those events (see for instance Recitals (90) and (94)-(95)). During those contacts the individuals involved typically exchanged information on the prices they were each offering for scrap batteries and the prices they were intending to offer in the near future in Belgium, Germany, France and the Netherlands. They then agreed on target prices or maximum prices to pay to their suppliers⁵³ or on fixed-amount price reductions.

- (51) The parties did not always apply exactly the same prices as this would have been too noticeable and the cost requirements of each party were different. Within a certain margin, however, the ex-works prices were often the same for a specific country (as purchase prices vary from one country to another).
- (52) The agreed prices did not have a fixed term or expiry date; they were valid until the next exchange between the parties or until the purchase price became irrelevant due to market developments, in which case the parties generally had a further exchange.
- (53) The pattern of bilateral contacts was generally the following: an individual from one of the parties would contact an individual from another party to agree on a maximum target price. One of these two individuals would then contact an individual from another party, indicating to that party the price level that had been agreed between the two other parties. This individual would then possibly contact an individual from another party⁵⁴.
- (54) The frequency and intensity of the contacts was driven by the development of the LME lead prices⁵⁵. In situations with significant changes in the LME there were more active periods with contacts made every week. In less active periods contacts took place less frequently than on a monthly basis. More active periods also commenced if a participant discovered or suspected that another party was not following the agreed price⁵⁶. Except in relation to specific bilateral or multilateral meetings, the contacts occurred on an ad hoc basis. The parties needed to adapt quickly to the decreasing prices so as not to risk losing volumes, because they need a constant supply of scrap batteries to keep the smelter active⁵⁷ and to preserve their profit margin.
- (55) The parties monitored the effective implementation of the agreed prices. At times, some of the parties did not always follow the agreement reached⁵⁸ and the other parties reacted (see for instance Recitals (93), (105), (107), (125), (144) and (154)). If it appeared that one of the parties did not follow the agreed price, the other parties would generally contact each other to verify this and would seek to ensure that the party concerned would follow the agreed price.
- (56) The parties were aware of the unlawful nature of the contacts and tried to limit any written communication. The majority of the contacts were done through telephone calls or text messages. Some of the individuals involved used coded language in some of their communications⁵⁹, for instance referring to weather conditions, but

53 [...].

54 [...].

55 [...].

56 [...].

57 [...].

58 [...].

59 [...].

there were no specific rules on how to communicate among the parties and the exchanges were made at irregular intervals⁶⁰. Very few notes or reports of meetings were found during the inspections and some of the individuals involved did not keep a record of any of the meetings with other parties in their diary.

- (57) The degree of involvement of the parties varied according to the geographical area discussed. For example, purchase prices in the Netherlands or Belgium were relevant for all parties, whereas purchase prices in Germany were primarily relevant for [...] ⁶¹.
- (58) The anti-competitive contacts between the parties during the period of the infringement are listed in the following table (see further description in Section 4.1.2⁶²) ('x' indicates the parties that participated in the contact⁶³; 'o' indicates the parties that did not participate in the contact but which were discussed or which were referred to by the parties that did participate in the contact; 'x/o' indicates that both situations apply; '(x)' indicates the parties that participated indirectly in the contact):

Table 2: Anti-competitive contacts

Date	Type of contact	Parties				Participants
		Campine	Eco-Bat	JCI	Recylex	
2009						
23.9.2009	Meeting (Windhagen)	x	x	x	x	Campine: [employee name] (Campine Recycling); Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name] (Recylex Commercial SAS)
2010						
10.2.2010	Email	x		x		Campine: [employee name] (Campine Recycling); JCI: [employee name] (JC Tolling/JC Recycling)
21.6.2010	Meeting (Hannover)			x	x	JCI: [employee name] (JC Tolling); Recylex: [employee name] (HMG)

⁶⁰ [...].

⁶¹ [...].

⁶² Other related events described in Section 4.2 are not listed in this table, such as contacts between parties to plan or to organise those anti-competitive contacts, contacts between parties the content of which is not known but which are related to the anti-competitive contacts listed in Table 2 (in terms of timing, persons involved, or modus operandi) or internal contacts between employees or senior executives of the same party, but which show that the parties were implementing or monitoring the agreements reached through the anti-competitive contacts or were acting as a result of those contacts. Those events are relevant for corroborating the anti-competitive conduct or for providing additional evidence or information on the anti-competitive contacts between the parties. In particular, internal contacts are relevant as they provide evidence on the implementation of the agreed prices by the party concerned or on the awareness of the anti-competitive arrangements by various persons within that party. Those related events therefore form part of the body of evidence which the Commission relies on in the present case (see Recital (59)).

⁶³ Successive emails or text messages with the same recipients and that relate to the same subject are recorded as one contact.

Date	Type of contact	Parties				Participants
		Campine	Eco-Bat	JCI	Recylex	
8.10.2010	Meeting (Hannover)			x	x	JCI: [employee name] (JC Tolling); Recylex: [employee name] (HMG)
<i>2011</i>						
21.1.2011	Telephone call			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
4.4.2011	Meeting (Cologne)	x	x	x	x	Campine: [employee name] (Campine Recycling); Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
4.4.2011	Text message		x/o	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
8.4.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
6-8.4.2011	Meeting (Brussels)			x	x	JCI: [employee name], ([employee name]); Recylex: [employee name]
27.4.2011	Emails		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling), ([employee name] (JC Tolling))
5.5.2011 and 9.5.2011 or before	Text messages		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
9.5.2011	Text message		x	x	o	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
24.5.2011	Text messages		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
9.6.2011	Telephone call, text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
23.6.2011	Text message			x	x	JCI: [employee name]; Recylex: [employee name]
12.7.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
5.8.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
5.8.2011	Email		x	x	x	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
8.8.2011	Email			x	x	JCI: [employee name] (JC Tolling/JC

Date	Type of contact	Parties				Participants
		Campine	Eco-Bat	JCI	Recylex	
						Recycling); Recylex: [employee name]
9.8.2011	Telephone call		x		x	Eco-bat: [employee name] (STCM); Recylex: [employee name]
22.8.2011 and 23.8.2011	Text messages		x	x	o	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
22.8.2011	Telephone conference		x	x	x	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
23.8.2011	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
2.9.2011	Text message		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
2.9.2011	Text messages		x	x	o	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
22.9.2011	Text messages		x	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
26.9.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
26.9.2011	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
26.9.2011	Text message		x	x	o	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
28.9.2011	Telephone call, email		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
10.10.2011	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
11.10.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
11.10.2011	Text message		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
11.10.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
13.10.2011	Text message		x	x	o	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
13.10.2011	Telephone call		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
20.10.2011	Text messages		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]

Date	Type of contact	Parties				Participants
		Campine	Eco-Bat	JCI	Recylex	
25.10.2011	Text messages		x	x	o	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
26.10.2011	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
28.10.2011 or 28.11.2011	Meeting (Hannover)			x	x	JCI: [employee name] (JC Tolling); Recylex: [employee name] (HMG)
2012						
7.3.2012	Text message	x		x		Campine: [employee name] (Campine Recycling); JCI: [employee name] (JC Tolling/JC Recycling)
7.3.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
7.3.2012	Text message		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
17.3.2012	Text messages			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
22.3.2012	Text messages			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
23.4.2012	Text messages / meeting		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
24.4.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
7.5.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
15.5.2012 or before	Unspecified contact (bilateral or trilateral)		(x)	x	x	(possibly Eco-Bat: [employee name] (BMG)); JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
15.5.2012 or before	Unspecified contact (bilateral or trilateral)		x	x	(x)	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling); (possibly Recylex: [employee name])
24.5.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
29.5.2012	Text messages			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
30.5.2012 and 31.5.2012	Unspecified contact, text messages	x		x		Campine: unknown (probably [employee name]) / [employee name]; JCI: unknown (probably [employee name]) / [employee name] (JC Tolling/JC Recycling)

Date	Type of contact	Parties				Participants
		Campine	Eco-Bat	JCI	Recylex	
31.5.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
1.6.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
4-5.6.2012	Text messages		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
8.6.2012	Telephone conference		x	x	x	Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
8.6.2012	Telephone call			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
21.6.2012	Text message			x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
On or before 27.6.2012	Telephone call	x		x		Campine: [employee name]; JCI: [employee name] (JC Tolling/JC Recycling)
27.6.2012	Text message		o	x	x	JCI: [employee name] (JC Tolling/JC Recycling); Recylex: [employee name]
12.9.2012	Meeting (Windhagen)		x	x		Eco-Bat: [employee name] (BMG); JCI: [employee name] (JC Tolling/JC Recycling)
	Number of contacts					
	x or (x)	6	28	61	39	
	o	0	7	0	6	

4.2. Chronology of events

(59) This section contains descriptions of the anti-competitive contacts between the parties and also of related relevant events (see footnote 62), which, although they do not in themselves constitute anti-competitive contacts as such or are not necessarily directly linked to those contacts, nevertheless corroborate the anti-competitive contacts or provide additional evidence or information on them (for instance as regards the timing or the frequency of contacts, the pattern of contacts and the way parties reached agreements or implemented and monitored them, the nature of those contacts, their participants, their location and venue, etc.). These facts also provide indications of the parties' pattern of conduct and its continuity over time.

4.2.1. Early instances of contacts between the parties in the period up to 23 September 2009

(60) Recylex has explained⁶⁴ that [...] in the framework of the European Tin & Lead Smelters Club⁶⁵. [...].

⁶⁴ [...].

- (61) Eco-Bat has reported that [...] ⁶⁶ [...] JCI introduced its Ecosteps battery return system ⁶⁷. [...] ⁶⁸.
- (62) According to JCI, [...] ⁶⁹ [...] ⁷⁰. [...] ⁷¹. [...] ⁷².
- (63) In 2009, prices for scrap batteries increased significantly ⁷³ and, at the same time, the introduction of JCI's Ecosteps system caused an increase in scrap battery prices. As a result, the discussions between the parties became more regular ⁷⁴, as shown in evidence of meetings and telephone contacts involving representatives of certain of the parties (Eco-Bat, JCI, Recylex) between [...] ⁷⁵. Campine has also confirmed that, as shown by an email chain ending on [...], they received information on the situation of the market from various sources, including JCI ⁷⁶.
- (64) In September 2009, those contacts became more concrete, as JCI decided to organise a multilateral meeting between the parties (see Recital (65)).

4.2.2. Year 2009 (from 23 September 2009)

Meeting between Campine, Eco-Bat, JCI and Recylex on 23 September 2009 in Windhagen (Germany)

- (65) Eco-Bat, JCI and Recylex have reported that a meeting took place on 23 September 2009 between [employee of Campine], [employee of Eco-Bat], [employee of JCI] and [employee of Recylex] in Windhagen ⁷⁷. Campine has also provided information indicating that a meeting took place on 23 September 2009, but only refers to JCI and Recylex as possible other participants ⁷⁸.
- (66) The parties have confirmed that the meeting was organised by [employee of JCI] and that the official purpose of the meeting was to discuss regulatory requirements under the REACH Regulation ⁷⁹. The meeting was followed by a dinner that evening ⁸⁰, during which the parties discussed scrap battery prices in Belgium, Germany, France and the Netherlands ⁸¹.
- (67) Recylex and JCI have explained that [employee of Recylex] wanted to bring [employee of Recylex], [...] responsible for [...] at Recylex, to the meeting but that,

⁶⁵ The European Tin & Lead Smelters Club gathered all the producers of tin and lead in Europe. The club started its activities in the 1970s and ceased around 1998.

⁶⁶ [...].

⁶⁷ Ecosteps is a closed-loop recycling programme provided by JCI's Power Solutions business. Source: http://www.johnsoncontrols.com/content/us/en/about/our_company/featured_stories/ecosteps.html.

⁶⁸ [...].

⁶⁹ [...].

⁷⁰ [...].

⁷¹ [...].

⁷² [...].

⁷³ Source: LME, *Historical price graph for lead* (<http://www.lme.com/metals/non-ferrous/lead>).

⁷⁴ [...].

⁷⁵ [...].

⁷⁶ [...].

⁷⁷ [...].

⁷⁸ [...].

⁷⁹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation and Authorisation of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1).

⁸⁰ [...].

⁸¹ [...].

because [employee of Eco-Bat] opposed this, [employee of Recylex] instead had a bilateral dinner with [employee of JCI] that evening⁸².

- (68) As regards the subject of the discussions, handwritten notes found during the inspection at Campine⁸³ show that, a few days after the meeting, [employee of Campine] debriefed [employee of Campine] about what he had heard during this meeting, among other discussions about the German and French markets, as well as about other companies which were not present at the meeting⁸⁴. [Employee of Campine]'s notes were as follows⁸⁵:

‘[...] “Reach” meeting [...] 24/09/2009

[Written on the side]

Price. [...]

Est [...] margin

TPb

Margin [...] > [...] = [...] €

LME [...] > [...] = [...] € [...] [...] is margin

Price batt [...] > [...]

Germany

65 [...] [...] [...]

90 [...] [employee of Eco-Bat]

45 Recylex before 62

[...] new [...]

aggressive

200

[...][...] DDP – [...] ex-works Recylex
others

Next week → 4..... 480. 490
+status quo Germany

*[employee name] > discuss with [...] [probably [...] (Recylex)]
signal to markets Netherlands / Belgium’.*

[...] > [...]

Before Ecobat used

then [...] [...] almost nothing more

plays with Recylex

almost 100%

[...] > French market

[...] [...]

= [...] ,

⁸² [...].

⁸³ [...].

⁸⁴ [...].

⁸⁵ In the original language, the notes were written in a mix of French and Dutch.

- (69) These notes contain information regarding the names of the parties and of the individuals involved, price levels and margins, and the national markets concerned, which indicate that those elements were discussed between the parties. Campine has provided an explanation of these notes⁸⁶ which generally tends to minimise the extent of the discussions and infers that many of these annotations may have been unrelated to the actual contents of the discussion at the meeting. On the other hand, JCI, Eco-Bat and Recylex have all independently admitted that the content of the meeting was anti-competitive⁸⁷. In addition, observations like ‘[...] *ex-works Recylex*’ suggest that these are the prices paid by the parties for the purchase of batteries, as these levels and expressions appear frequently in evidence related to occasions when prices were agreed or discussed. The next line explains the price trend for the following week. Also, the expression ‘*Price batt*’ refers to the price of batteries. Discussions on supply or tolling relationships would not have required multilateral contacts with other parties instead of the normal bilateral discussions between the scrap battery provider and the service provider.
- (70) In its reply to the SO⁸⁸, Campine confirmed its participation in this meeting but contested the anti-competitive nature of the meeting. However, Campine itself in the reply to the SO mentioned that prices for scrap batteries might have been discussed in view of the fact that the prices for scrap batteries had risen in relation to the LME quotation⁸⁹.
- (71) The Commission considers that Campine has not provided any evidence to rebut the anti-competitive nature of the meeting.

4.2.3. Year 2010

- (72) A document submitted by Campine⁹⁰, suggests that during 2010 lead prices became more stable due to increasing demand from Asia, in particular China. The Commission considers that the stability of the LME lead prices from June 2010 to April 2011 led to less frequent contacts between the parties during that period (see Recital (54)). However, the parties continued to have bilateral exchanges and agreements on prices as shown by the evidence set out in Recitals (73) to (81).

Email sent by Campine to JCI on 10 February 2010 regarding prices in Belgium and the Netherlands

- (73) On 10 February 2010, [employee of Campine] sent an email to [employee of JCI], with the subject ‘*several points*’, in which he wrote:

‘In belgium and NL, the temperature is still going down. But we still have warm air coming from Germany which contributes to a general heating up of the planet! Perhaps can you try to blow fresher air on your side to contribute to the environment also?’⁹¹

- (74) As indicated in Recital (56), the parties sometimes used coded language in their communications. According to JCI, in this email, [employee of Campine] was

⁸⁶ [...].

⁸⁷ [...].

⁸⁸ [...].

⁸⁹ [...].

⁹⁰ [...].

⁹¹ [...].

referring to weather conditions to ask [employee of JCI] to reduce purchase prices⁹². In this specific case, [employee of Campine] was informing [employee name] (JCI) that prices were decreasing in Belgium and the Netherlands but that there was no sign of a decrease in Germany, and so he was asking [employee name] (JCI) to try to reduce prices in Germany.

- (75) In its reply to the SO⁹³, Campine questioned the interpretation of this email as evidence of its awareness of the anti-competitive conduct and the meaning of the coded language. According to Campine, the use of coded language could have been an attempt at humour or irony.
- (76) The Commission considers that the use of coded language, in particular concerning weather conditions, is common to the structure of the communication between the parties (see for instance Recitals (96), (114) and (128)). Campine has not provided any meaningful explanation for this particular piece of evidence and the use of coded language by Campine's employee.

Meeting between JCI and Recylex on 21 June 2010 in Hannover

- (77) Recylex has reported that a meeting took place on 21 June 2010 between [employee name] (Recylex) and [employee name] (JCI) in Hannover. [Employee name]'s diary contained an entry for a meeting on 21 June at 12.00, marked '[...] JCI'⁹⁴. According to Recylex, this was one of a number of regular informal meetings between [employee name] (JCI) and [employee name] (Recylex) between 2009 and 2012 to discuss the purchase price levels of scrap batteries⁹⁵ (see Recitals (80), (102) and (146)).
- (78) JCI has confirmed that [employee name] (JCI) had a number of informal meetings with [employee name] (Recylex) in Hannover⁹⁶. According to JCI, these meetings concerned the purchase price levels of scrap batteries. [Employee name] usually had contacts with [employee name] after [employee name] (JCI) and [employee name] (Recylex) had agreed in general on a certain price level. [Employee name] and [employee name] would then work out the details and implement the agreed price with suppliers (see also Recitals (80) and (146)).

Internal email sent by [employee name] (Eco-Bat) to a person at Eco-Bat on 23 June 2010 regarding a concurrent offer to a client with JCI

- (79) According to evidence found during the inspection at Eco-Bat⁹⁷, on 23 June 2010, [employee name] (Eco-Bat) sent an internal email to another person at Eco-Bat asking about a tender offer to be made to a client. In this email, [employee name] wrote that Eco-Bat had agreed internally not to offer a yearly price to that client in competition with JCI and that he feared that to do so would otherwise start an unnecessary war (with JCI)⁹⁸. The other person at Eco-Bat replied, explaining that

⁹² [...].

⁹³ [...].

⁹⁴ [...].

⁹⁵ [...].

⁹⁶ [...].

⁹⁷ [...].

⁹⁸ In the original language: 'Da muss ein Missverständnis vorliegen wir hatten mit [...] darüber gesprochen. Wir hatten darüber gesprochen und dann vereinbart dass wir mit einem preis von, ich denke von [...] anbieten können. So habe ich das in Erinnerung! Wir können das Angebot auch

there must have been a misunderstanding and that they would offer a price of [...] euros, but proposed however to withdraw the offer in case this would put JCI in danger⁹⁹. These facts indicate the implementation of an anti-competitive agreement between Eco-Bat and JCI.

Meeting between JCI and Recylex on 8 October 2010 in Hannover

- (80) Recylex has reported that a meeting took place on 8 October 2010 between [employee name] (JCI) and [employee name] (Recylex) in Hannover. [Employee of Eco-Bat's name]'s paper diary contained an entry for a meeting on 8 October at 13.00 marked 'JCI [...]'¹⁰⁰. His electronic diary contained an entry for a meeting from 14.00 to 14.30 marked '[...]'¹⁰¹. According to Recylex, this was one of the regular meetings between [employee of JCI] and [employee of Recylex] between [...] and the first quarter of 2012 to discuss scrap battery prices (see also Recitals (77) and (146)). In particular, [employee of JCI] and [employee of Recylex] agreed to try to achieve a reduction in scrap battery prices for the end of 2010¹⁰².
- (81) JCI has confirmed that [employee of JCI] had a number of informal meetings with [employee of Recylex] in Hannover, including one meeting on 8 October 2010¹⁰³ (see Recital (78)).

4.2.4. Year 2011

- (82) At the beginning of 2011, [employee name] (Recylex) and [employee name] (JCI) had several contacts concerning the price of scrap batteries in the Netherlands and Germany, but the agreed trends or prices would then also be used for other countries where the companies were active, in particular France and Belgium. These discussions were usually bilateral. Occasionally, [employee of JCI] would also include [employee name] (Eco-Bat) and discussions would take place among the three of them¹⁰⁴.
- (83) [Employee name] (Recylex) was aware of the fact that, regarding the Netherlands, [employee name] (JCI) would be in close contact with [employee name] (Campine) to discuss scrap battery prices, and that [employee of JCI] would report back to [employee name] on what was agreed with Campine and vice versa. Contacts between JCI and Campine were close [...] (see Recital (22)). After the contacts with [employee name], [employee name] sent internal emails to Recylex's [...] to communicate the new purchase price targets for Recylex in France, Germany, the Netherlands and Belgium. On other occasions, [employee name] would pass on price information received from Recylex's Belgian and German purchasers to [employee

zurückziehen, wenn wir damit jci gefährden! Ein bietergespräch findet laut meinen Informationen erst im Juli statt (6)'.

⁹⁹ In the original language: 'wir waren uns doch einig, dass wir gegen JCI bei [...] keinen Jahrespreis machen. [...] sagte mir gerade, dass Du den aber angeboten hättest und jetzt morgen ein Bietergespräch wäre. Da schlagen wir einen Krieg los, der eigentlich nicht sein müsste und ich so auch derzeit vor Jahresvertragsverlängerung für Ecobat nicht möchte. Sorry, dass ich Dich damit im Urlaub störe, aber angeblich muss da noch diese Woche endgültig geboten werden. Wie sollen unbekannte Mengen da gehedgt werden vor allem außerhalb des Themas JCI?'

¹⁰⁰ [...].

¹⁰¹ [...].

¹⁰² [...].

¹⁰³ [...].

¹⁰⁴ [...].

name] (JCI) so that other parties (Eco-Bat and, when applicable, Campine) would concurrently lower the prices offered to their suppliers¹⁰⁵.

Internal email of Campine of 10 January 2011 on prices offered by Eco-Bat

- (84) On 10 January 2011, [employee name] (Campine) sent an internal email among others to [employee name] (Campine)¹⁰⁶ in which he wrote: *‘for info. At the moment STCM [Eco-Bat] does not go with the price (they should be at min [...])’*¹⁰⁷. This email shows that Campine was monitoring the implementation of agreed prices.
- (85) In its reply to the SO¹⁰⁸, Campine questioned the interpretation and relevance of this email as evidence of an anti-competitive contact with Eco-Bat. Campine argued that the information about Eco-Bat’s prices was provided by a third party with whom Campine had an agreement¹⁰⁹ and which was also supplying Eco-Bat. Campine argued that the expression *‘not go with the price’* refers to the fact that Campine successfully outbid its competitor by offering a higher price than Eco-Bat.
- (86) The Commission considers that Campine’s explanations demonstrate that Campine was indeed monitoring the prices offered by the other parties.

Email sent by JCI to Eco-Bat on 18 January 2011 and telephone call from Recylex to JCI on 21 January 2011 regarding prices in the Netherlands

- (87) On 18 January 2011 at 16.04, [employee name] (JCI) sent an email to [employee name] (Eco-Bat), with the subject *‘News from the Dutch market’*¹¹⁰, in which he referred to the prices in the Dutch market¹¹¹ and attached a letter that the Dutch collector [...] had sent to its clients in which it announced it was offering [...] euros per tonne as of 17 January 2011 due to recent changes in the LME lead prices¹¹².
- (88) On 18 January 2011 at 16.15, [employee name] forwarded the email received from [employee name] to [employee name] and [employee name] (both Eco-Bat)¹¹³.
- (89) Recylex has explained that, on 21 January 2011 at 15.54, after making a short telephone call to [employee of JCI] at 15.01¹¹⁴, [employee of Recylex] sent an email to [employee of Recylex], with another person from Recylex in copy, instructing him to lower the purchase prices offered by Recylex by fixed amounts for the following week and the week after, and explaining that the decrease had started in the Netherlands¹¹⁵. [Employee of Recylex] wrote: *‘Given the decline in the lead quotations, we should decrease the price for batteries by more than [...] next week and then [...] the following week According to my infos, the decrease has started in Holland’*.

¹⁰⁵ [...].

¹⁰⁶ [...].

¹⁰⁷ In the original language: *‘ter info. op dit moment gaat STCM niet mee in de prijs (zou min [...]) moeten zijn’*.

¹⁰⁸ [...].

¹⁰⁹ [...].

¹¹⁰ In the original language: *‘Nieuigkeiten des NL Markets’*.

¹¹¹ In the original language: *‘Hallo[...], das zum Thema des heutigen Tages [...] von heute!!!’*

¹¹² [...].

¹¹³ [...].

¹¹⁴ [...].

¹¹⁵ [...].

In the original language: *‘Compte-tenu de la baisse du cours du plomb, il conviendrait de baisser le prix des batteries de plus de [...] à raison de [...] la semaine prochaine puis [...] la semaine suivante. Selon mes infos la baisse est amorcée en Hollande’*.

Meeting between Campine, Eco-Bat, JCI and Recylex on 4 April 2011 in Cologne (Germany)

- (90) Eco-Bat, JCI and Recylex have all confirmed that, on 4 April 2011, a meeting took place during a dinner in a restaurant in Cologne between [employee of Eco-Bat], [employee of JCI], [employee of Campine] and [employee of Recylex]¹¹⁶. According to Eco-Bat, Cologne was chosen because it was a central location for the participants. The official reason for the dinner was a discussion of regulatory requirements regarding REACH issues, but the actual purpose of the meeting was to discuss the market price for scrap batteries in the Netherlands and to compile a list of each participant's suppliers¹¹⁷. According to Eco-Bat, [employee name] did not say there was a specific purpose to the dinner when he issued the invitation. According to Eco-Bat, those four persons met for dinner to collectively discuss the problem of the high and increasing prices for the purchase of lead-acid batteries. According to Eco-Bat, during the dinner the sector for used batteries in Germany and the Netherlands was discussed at length, and [employee name] also brought up the Belgian market. The discussion also included the furthering of a common approach, to lower the prices for used batteries. All meeting participants realised that such efforts were only feasible while the lead price on the LME was on a downward trend¹¹⁸. They agreed to target a maximum purchase price that would be a specific amount in euros below the applicable market price at the time in Belgium, Germany and the Netherlands. [Employee name] initiated and invited each of the attendees to the dinner and [employee name] paid the dinner bill¹¹⁹. According to Recylex, the goal of the meeting was to control the market price for scrap batteries in the Netherlands and to compile a list with the respective suppliers¹²⁰. [Employee name] coordinated subsequent contacts between the meeting participants, which were primarily made using text messages¹²¹.
- (91) In its reply to the SO¹²², Campine confirmed its participation in this meeting but contested the anti-competitive nature of the discussions. Campine also contested that there was any immediate follow up to that meeting.
- (92) Campine has not only confirmed its participation in the meeting but it has not provided any evidence to rebut the anti-competitive nature of the meeting.

Text message from Eco-Bat to JCI on 8 April 2011

- (93) On 8 April 2011 at 7.48, [employee name] (Eco-Bat) sent the following text message to [employee name] (JCI)¹²³: '[...], Plenty are cheating [...] Still above[...]. We are going to have problems, if you don't put the pressure. For the other cheaters, I will tell you when you call me tomorrow'.

Meetings between JCI and Recylex on or around 6-8 April 2011 in Brussels (Belgium)

- (94) According to Recylex, on or around 6-8 April 2011, a meeting took place between [employee name] and [employee name] (both JCI) and [employee of Recylex] at the

¹¹⁶ [...].
¹¹⁷ [...].
¹¹⁸ [...].
¹¹⁹ [...].
¹²⁰ [...].
¹²¹ [...].
¹²² [...].
¹²³ [...].

World Lead Conference in Brussels¹²⁴; the discussion concerned the purchase prices for scrap batteries. JCI has stated that [employee of JCI] met with [employee of Recylex]¹²⁵. [Employee name]'s diary shows that he attended or planned to attend the conference¹²⁶.

- (95) Although neither the precise participants nor the exact contents of the discussions held between the parties at this conference are established, the subject of the discussions between JCI and Recylex was anti-competitive because in an internal email sent on 14 April 2011¹²⁷, [employee name] mentioned that he *'had some interesting discussions and fixed various follow up'* at the conference. He also reported that the *'prices in the Open market in middle Europe were stable on [...]€ ExWorks even at increasing LME'*. He wrote that *'volume is hold back from the market due to speculation of higher prices need to keep the pricing for further two weeks to break that counter action'*.

Email exchange between Eco-Bat and JCI on 27 April 2011

- (96) On 27 April 2011 at 11.59, [employee name] (Eco-Bat) sent an email to [employee name] (JCI) with the subject *'Changes in the process'*¹²⁸ in which he wrote¹²⁹: *'Hi [...], this was also new to me. This is my first day back but I will find out more. After this wonderful Easter weather in Germany, temperatures are falling here significantly and even rain is forecasted.'*¹³⁰
- (97) On 27 April 2011 at 15.44, [employee name] sent a reply email to [employee name], putting [employee name] (JCI) in blind copy, in which he wrote¹³¹: *'[...] They even announced [...] mm of rain directly spread over the entire country, starting next week. Really crazy these awkward weather conditions, starting with dryness given the high and now all the rain, also coming down from the north. [...]'*¹³². JCI has explained that [employee name] frequently used coded language in communications with other parties. In particular, he used weather conditions to describe the market and the amount of rain in mm to indicate scrap battery prices (see also Recital (56)). The *'mm of rain'* in this email related to targeted scrap market price levels in euros. According to JCI, the figures used were clearly not related to rainfall as the total amount of rain in Germany in the month of April 2011 was around [...] mm¹³³.
- (98) On 29 April 2011, [employee name] sent an internal email to [employee name], [employee name] and [employee name] (all Recylex) in which he wrote¹³⁴:

¹²⁴ [...].

¹²⁵ [...].

¹²⁶ [...].

¹²⁷ [...].

¹²⁸ In the original language: *'Prozessänderungen'*.

¹²⁹ [...].

¹³⁰ In the original language: *'Hallo[...], war auch mir alles neu. Bin ja erst einen Tag da und werde mich mal auf unserer Seite schlau machen. Nach dem wundervollen Osterwetter in Deutschland fallen hier die Temperaturen heute deutlich und es ist sogar Regen angesagt.'*

¹³¹ [...].

¹³² In the original language: *'...die haben sogar bis zu [...] mm Regen direkt über das ganze Land verteilt ab anfang nächster Woche angesagt. Schon ein Wahnsinn diese Wetterkapriolen zuerst diese Trockenheit durch das Hoch und jetzt der Niederschlag der sich auch vom Norden ganz hinunter zieht....'*

¹³³ [...].

¹³⁴ [...].

‘yesterday morning (Thu 28th April) I gave the information to our main suppliers that prices will be from May € [...] EXW = € [...] CPT HMG. Our suppliers know the situation at the LME but they don’t understand why only we decrease the price and our competitors remain at the high level of € [...] EXW.

They all ask the same question: Why/how can it be that others are able to pay more but not Recylex?

This morning I received the information that [...] decreased the price down to € [...] EXW (= € [...] CPT HMG).

Due to the situation that I haven’t received any information of [...] (BERZELIUS/[...]) I estimate that they will decrease, too but maybe only down to € [...] EXW (= [...] CPT HMG).

I will come back to you after receiving more news from the market.’

- (99) JCI has also explained that in May 2011 [employee name] instructed [employee name] to stop aggressive pricing by [...] (referred to as [...]), in competition with Eco-Bat’s subsidiary [...], as [...] price levels were higher than what [employee name] had indicated to [employee name]¹³⁵.

Text message from JCI to Eco-Bat on 4 May 2011

- (100) On 4 May 2011 at 17.10, [employee name] (JCI) sent the following text message to [employee name] (Eco-Bat)¹³⁶: *‘Can you tell your stock breeder from [...] that his Dutch [...] is jumping [...] cm too high? The bar is at [...] cm’*. Eco-Bat has explained that the *‘stock breeder from [...]*’ referred to [employee name] (Eco-Bat), who reported to [employee name] (Eco-Bat) and that *‘Dutch [...]*’ referred to the Dutch scrap collector [...]. [...] had been paying more than agreed between [employee of Eco-Bat] and [employee of JCI] and [employee of JCI] was complaining about the amount that [employee of Eco-Bat] had paid¹³⁷.

Contacts between JCI and Recylex on 5 and 6 May 2011 and between Eco-Bat and JCI on 9 May 2011

- (101) On 5 May 2011 at 13.58, following a text message sent by [employee of Recylex] to [employee name] (JCI)¹³⁸, [employee name] sent an internal email to [employee name], [employee name] and [employee name] (all Recylex) with the subject *‘LME price down’* in which he wrote¹³⁹: *‘Following the correction on the lme around 1.550 €/t now, how do you manage to push down the batteries prices? What are the targets for next week?’*
- (102) On 5 May 2011 at 16.26, [employee name] sent a reply email to [employee name] (both Recylex) and informed him that JCI and Eco-Bat offered prices that were significantly higher than Recylex’s price. In the same email, [employee name] informed [employee name] (both Recylex) that he had organised an appointment with [employee name] (JCI) in Hannover and he further stated in the email¹⁴⁰: *‘[...]*

¹³⁵ [...].

¹³⁶ [...]. In the original language: *‘Kannst du dem [...] züchter sagen das sein holländischer [...] cm zu hoch springt. Die messlatte liegt bei [...] cm’*.

¹³⁷ [...].

¹³⁸ [...].

¹³⁹ [...].

¹⁴⁰ [...].

Maybe we can decrease the price more than described up in this e-mail and BERZELIUS maybe follow. I'll come back to you after the meeting in Hannover'.

- (103) On 6 May 2011 [employee name] (Recylex) also responded to [employee name]'s email informing him that Recylex would offer [...] euros in the following week in the Netherlands and [...] euros in Belgium¹⁴¹.
- (104) In view of the responses from [employee name] and [employee name], [employee name] (all Recylex) sent a text message to [employee name] (JCI) on 6 May 2011 at 16.21, proposing a new target price of below [...] euros and asking him to advise [employee name] (Eco-Bat) accordingly, hoping that both JCI and Eco-Bat would apply that price and therefore lose some volumes of scrap batteries to Recylex, as Recylex would be offering higher prices¹⁴².
- (105) On 9 May 2011, [employee name] (JCI) sent the following text message to [employee name] (Eco-Bat)¹⁴³: *'Hello [...] – [...] (Recylex)] asks*¹⁴⁴: *Hi Target mid-May. below[...]. Please advise [...] (Eco-Bat)] [...].* According to Eco-Bat¹⁴⁵, [employee name], [employee name] and [employee name] had set a target price to work towards. This particular message was originally a message from [employee name] to [employee name], which was then forwarded to [employee name]. [Employee name] was complaining that [employee name] was paying too much.

Contacts between Eco-Bat and JCI on 24 and 25 May 2011

- (106) On 24 May 2011 at 7.24, [employee of Eco-Bat] sent the following text message to [employee of JCI]¹⁴⁶: *'I thought that with this sunshine the water level would fall further. But in the North there are rain zones that make it increase. The trough is even shifting to the west. Only good for the harvest of asparagus'*¹⁴⁷. Eco-bat has explained¹⁴⁸ that [employee of Eco-Bat] wanted to share with [employee of JCI] his view that there was no sense in paying a higher price in Northern Germany. According to Eco-Bat, in this text message, the high or low water level related directly to the battery price and the reference *'in the North there are rain zones'* meant that there were some battery dealers in the Northern part of Germany that nevertheless offered high prices for scrap batteries¹⁴⁹.
- (107) On 24 May 2011 at 7.44, [employee of JCI] sent a text message to [employee name] (Eco-Bat), asking *'who'*, to which [employee name] (Eco-Bat) replied at 7.45: *'[...]*¹⁵⁰. Eco-Bat has explained that [...] was a collector that worked for JCI, which basically had the same function for [employee name] that [...] ([...] battery collection subsidiary) had for [employee name] (Eco-Bat)¹⁵¹. Eco-Bat explained that

¹⁴¹ [...].

¹⁴² [...].

¹⁴³ [...].

¹⁴⁴ In the original message: *'Hallo [...] fragt: Hi Target mid-May. below [...]. Please advise urgen [...]*

¹⁴⁵ [...].

¹⁴⁶ [...].

¹⁴⁷ In the original language: *'Ich dachte ja dass bei dem Sonnenschein der Wasserstand weiter sinkt. Im Norden sind aber Regengebiete die ihn wieder steigen lassen. Das tief zieht heute sogar in den Westen. Nur gut für Ruespargelernte.'*

¹⁴⁸ [...].

¹⁴⁹ The parties were using coded language. The term *'sunshine'* referred to the LME lead prices going down and *'fallen water levels'* to the prices for scrap batteries going down.

¹⁵⁰ [...].

¹⁵¹ [...].

the parties were often accusing each other of not abiding by the targets that were agreed, and that in this case, they had agreed to buy only at a lower price, but that [employee name] had found out that [...] was paying more and voiced his irritation to [employee name]¹⁵².

- (108) The same day at 9.19, [employee name] sent an internal email to [employee name] (both JCI) in which he wrote¹⁵³: ‘[...] *we should now see how we can “jump on this train” and get put the other also on it - lets have a quick call later*’.
- (109) On 25 May 2011, [employee name] sent another internal email to [employee name] (both JCI)¹⁵⁴ in which he asked [employee name] to check that: ‘[...] *should offer [...] country-wide Karlsruhe, Ulm, Correct?*’¹⁵⁵. The same day, [employee name] replied to [employee name] (both JCI): ‘*Well! The average is [...] in case [...] is present [...] in the south of [...]*’¹⁵⁶. Later the same day, [employee name] replied to [employee name] (both JCI): ‘*Slow him down - we don’t want to end up in a war with Eco-Bat*’¹⁵⁷. According to JCI, this email exchange shows that [employee name] instructed his colleague [employee name] to stop aggressive pricing by [...] (referred to under the codename ‘[...]’) which was in competition with Eco-Bat’s subsidiary [...]¹⁵⁸.

Contacts between JCI and Recylex on 9 June 2011 regarding prices in the Netherlands and Belgium

- (110) On 9 June 2011, [employee name] (JCI) called [employee name] (Recylex) to inform him that [...] in the Netherlands (a company that supplied scrap batteries to Campine¹⁵⁹ and to Eco-Bat) had obtained a price of [...] euros for scrap batteries that were delivered to FMM (Recylex)¹⁶⁰.
- (111) The same day, [employee name] sent an email to [employee name] (both Recylex) to check if this price information was correct. After an exchange of emails, [employee name] instructed [employee name] (both Recylex) to not exceed a price of [...] euros even for small amounts¹⁶¹. According to Recylex, following the information exchanged with [employee name], [employee name] (both Recylex) sent a text message to [employee name] (JCI) to inform him that Recylex would decrease the price¹⁶².

Text message from Recylex to JCI on 23 June 2011 regarding prices in the Netherlands

- (112) On 23 June 2011 at 8.44, [employee name] sent an internal email to [employee name], [employee name], [employee name] and [employee name] and two other persons at Recylex regarding prices in the Netherlands, in which he indicated that the

¹⁵² [...].

¹⁵³ [...].

¹⁵⁴ [...].

¹⁵⁵ [...]. In the original language: ‘[...] *soll mit [...] Flächendeckend über den Markt gehen - Karlsruhe, Ulm,... Stimmts?*’.

¹⁵⁶ [...]. In the original language: ‘*Also: der Durchschnitt ist [...] punktuell- [...] wo auf [...] getroffen wird. 660 im Süden von [...]*’.

¹⁵⁷ [...]. In the original language: ‘*Brems Ihn ein bisschen - wir wollen in keinen Krieg mit Ecobat geraten*’.

¹⁵⁸ [...].

¹⁵⁹ [...].

¹⁶⁰ [...].

¹⁶¹ [...].

¹⁶² [...].

Dutch collector [...] had announced that it had to pay [...] euros and [...] had announced that it had to pay [...] euros at its suppliers¹⁶³, and that Recylex was not following those prices, unless he received other instructions. According to Recylex, on 23 June 2011 at 8.50, following the information received from [employee name], [employee name] (both Recylex) sent a text message to [employee name] (JCI) to agree on a price decrease in the Netherlands¹⁶⁴.

Text message sent by JCI to Eco-Bat on 12 July 2011

- (113) On 12 July 2011 at 14.00, [employee name] (JCI) sent the following text message to [employee name] (Eco-Bat)¹⁶⁵: ‘[...] is at [...] ex. Could one check with STCM? Have already tested the others [...]’¹⁶⁶. Eco-Bat has explained that [...] supplied scrap batteries to STCM (Eco-Bat). Eco-Bat has explained that [employee name] wanted [employee name] to ask [employee name] (both Eco-Bat) if he was actually paying this price¹⁶⁷. Eco-Bat has also explained that the ‘others’ might refer to [employee name] (Recylex)¹⁶⁸.

Text message and emails between Eco-Bat, JCI and Recylex on 5, 8 and 9 August 2011 regarding prices in Germany and France

- (114) On 5 August 2011 at 5.53, [employee name] (Eco-Bat) sent the following text message to [employee name] (JCI): ‘The weather forecast says today that as of Monday the temperatures in Germany will fall sharply. Is that also what you hear from others, or will there be a storm?’¹⁶⁹. As explained in Recital (56), the parties sometimes used coded language referring to weather conditions. Eco-Bat has explained that in this email, the phrase ‘temperatures in Germany will fall sharply’ meant that the purchase prices of scrap batteries in Germany would be decreasing¹⁷⁰.
- (115) On 5 August 2011 at 10.20, [employee name] (JCI) sent an email to [employee name] (Recylex), with [employee name] (Eco-Bat) in blind copy, with the subject ‘LME movement’, in which he wrote¹⁷¹: ‘Hello [...], heard that you are in the DomRep but we need to have a call with you – please use my [...] mobile [telephone number]’.
- (116) On 8 August 2011 at 5.03, [employee name] (JCI) sent another email to [employee name] (Recylex), with the subject ‘weather conditions are further decreasing’, in which he wrote (using coded language)¹⁷²: ‘[...], you are lucky that you are in the DomRep right now - the weather here is ugly we expect in the middle of this week rain down to [...] mm - can I call you in the evening?’

¹⁶³ [...].

¹⁶⁴ [...].

¹⁶⁵ [...].

¹⁶⁶ In the original language: ‘[...] ist bei [...] ex. Könnte man mal bei STCM nachfühlen? Habe die anderen schon abgeklopft [...]’.

¹⁶⁷ [...].

¹⁶⁸ [...].

¹⁶⁹ [...]. In the original language: ‘Der Wetterbericht heute sagt dass ab Montag die Temperaturen deutlich fallen sollen in D. Ist das rundum auch so zu hören oder gibt es Sturm?’

¹⁷⁰ [...].

¹⁷¹ [...].

¹⁷² [...].

- (117) The same day at 8.20, [employee name] tried to call [employee name] (missed call)¹⁷³.
- (118) Eco-Bat and JCI have confirmed this exchange of contacts between 5 and 8 August 2011¹⁷⁴.
- (119) Recylex has explained that, at the time of an important decrease in the LME prices, [employee name] (Recylex) had a telephone call with [employee name] (Eco-Bat) and that they agreed to gradually decrease the price to be offered to scrap battery suppliers in France to a maximum of [...] euros¹⁷⁵. Recylex has explained that on 9 August 2011, [employee name] (Recylex) received a confirmation that Eco-Bat had decreased its prices to [...] euros, he therefore instructed [employee name] to also decrease the price to be offered to Recylex's suppliers.
- (120) On 9 August 2011, after a telephone call with [employee name] (Eco-Bat)¹⁷⁶, [employee name] sent the following text message to [employee name] (both Recylex): '[...]: with decrease Pb, price batteries between [...] max start. It is the moment...[...]' [employee name] was reporting to his colleague, [employee name], that [employee name] (Eco-Bat) considered that given the decrease in LME prices ('decrease Pb'¹⁷⁷), the time was right to set the maximum starting price for batteries at between [...] euros.
- (121) According to Recylex, the average purchase price offered by Recylex to its suppliers in the period following this text message decreased from [...] euros EXW at the end of July 2011 to [...] euros EXW on 11 August 2011 and to [...] euros EXW at the end of September 2011¹⁷⁸.

Contacts between Eco-Bat, JCI and Recylex on 22 and 23 August 2011

- (122) On Monday 22 August 2011 at 16.48, [employee name] (JCI) sent the following text message to [employee name] (Eco-bat)¹⁷⁹: 'Hello [...]. We should go this week to [...]. The reluctance will only start decreasing as of [...]. [...]'¹⁸⁰. Eco-Bat has explained that the text message reflects a proposal from [employee name] (JCI) to offer prices at [...] euros for the week. [Employee name] (JCI) assumed it was futile because during that time he expected the suppliers would not sell unless the buyers went up to [...] euros¹⁸¹. Eco-Bat has explained that when scrap battery suppliers become aware that buyers have low stock quantities, they often wait until higher prices are offered¹⁸².
- (123) According to Recylex¹⁸³, following a conference call between [employee name] (JCI), [employee name] (Eco-Bat) and [employee name] (Recylex), which probably took place on 22 August 2011 and had the goal of announcing a decrease in prices,

¹⁷³ [...].

¹⁷⁴ [...].

¹⁷⁵ [...].

¹⁷⁶ [...]. In the original language: '[...]: avec baisse Pb, prix batteries entre [...] max depart. C'est le moment... [...]'.

¹⁷⁷ Pb is the chemical symbol for lead.

¹⁷⁸ [...].

¹⁷⁹ [...].

¹⁸⁰ In the original language: 'Hallo [...]. Wir sollten diese woche auf [...] gehen. Die zurückhaltung wird eh erst ab [...] zurück gehen.[...]'.
¹⁸¹ [...].

¹⁸² [...].

¹⁸³ [...].

the same day, [employee name] sent an internal email to [employee name] and [employee name] (all Recylex) asking them to reduce the price to be offered on the German and the Dutch market to [...] euros ex works¹⁸⁴. He stated further: *'If we are successful, a further decrease could happen mid of next week to be around [...]€'*.

- (124) The next message dated 23 August 2011 was sent at 8.36 from [employee name] (JCI) to [employee name] (Recylex) stating¹⁸⁵: *'[...] - second step for next week [...] ex works in Germany [...]. [Employee name] (JCI) forwarded the text message to [employee name] (Eco-Bat), to show the instructions he had given to Recylex¹⁸⁶. In reaction to this text message, at 12.35 [employee name] (Eco-Bat) replied to [employee name] (JCI)¹⁸⁷: 'Exactly. His friends are attacking us with >[...] ex!!'¹⁸⁸.*

Text messages between Eco-Bat, JCI and Recylex on 2 September 2011 regarding prices in Germany

- (125) On 2 September 2011 at 15.59, [employee name] (Recylex) sent the following text message to [employee name] (JCI)¹⁸⁹: *'[...], last info: North Germany [...]€ ex paid by [...]. That is unacceptable. Please fix that with him'*. Eco-Bat has explained that [employee name] (JCI) forwarded the message to [employee name] (Eco-Bat). [Employee name] (Recylex) was complaining to [employee name] (JCI) that Eco-Bat was paying more than had been agreed¹⁹⁰.
- (126) The same day at 16.01, [employee name] (JCI) sent the following text message to [employee name] (Eco-Bat)¹⁹¹: *'Correct. And with [...] in [...] he offers [...]. No chance, he is empty. We don't get anything. [...] still at[...]. Drivers were sent on vacation [...]'¹⁹²*. Eco-Bat has explained that *'[...]'* referred to [...] in [...] (Germany), who was out of stock at the time, where [...] had offered [...] euros. [...] was having difficulty purchasing at the time¹⁹³. At 16.02, [employee name] (Eco-Bat) replied to [employee name] (JCI)¹⁹⁴: *'Yes Rgstr. Right since yesterday because all others payed 3 weeks this when I was quiet. Not once. Endless examples. Punch and Judy Show¹⁹⁵ because I Lost my Best partners'*. Eco-Bat has explained that [employee name] (Eco-Bat) was furious because he followed the agreement reached, and then he found out that the competitors were buying from his best suppliers¹⁹⁶.

Text messages between Eco-Bat, JCI and Recylex on 22 September 2011

- (127) On 22 September 2011 at 14.01, [employee name] (JCI) sent the following text message to [employee name] (Recylex)¹⁹⁷: *'Hi [...], discussed with [...] - D, CPT, Monday [...] and Wednesday [...] - NL, CPT, Mo [...] and Wed [...] brgs [...]. Eco-*

¹⁸⁴ [...].

¹⁸⁵ [...].

¹⁸⁶ [...].

¹⁸⁷ [...].

¹⁸⁸ In the original language: *'Genau seine Freunde" attackieren uns mit >[...] ab!!!!'*.

¹⁸⁹ [...].

¹⁹⁰ [...].

¹⁹¹ [...].

¹⁹² In the original language: *'Stimmt. Und beim [...] in [...] bietet er [...]. Keine chance er liegt leer. Wir bekommen auch nix. [...] immernoch bei [...]. Fahrer wurden in urlaub geschickt [...]'*.

¹⁹³ [...].

¹⁹⁴ [...].

¹⁹⁵ This is a reference to a traditional English puppet show, presumably intended to mean that the parties were fighting each other in a grotesque manner.

¹⁹⁶ [...].

¹⁹⁷ [...].

bat has explained that the message was forwarded to [employee name] (Eco-Bat). The parties had agreed to attempt to slowly bring the price down in two stages on Monday and Wednesday with different target prices for Germany and the Netherlands respectively¹⁹⁸.

Contacts between Eco-Bat, JCI and Recylex on 26 September 2011

- (128) On 26 September 2011 at 7.20, [employee name] (Eco-Bat) sent the following text message to [employee name] (JCI)¹⁹⁹: *‘The temperatures are falling dramatically. Please call after 12:30.Thank you’*²⁰⁰. As in previous contacts, [employee name] (JCI) and [employee name] (Eco-Bat) used coded language (weather conditions) to refer to the prices.
- (129) The same day at 13.53, [employee name] forwarded to [employee name] the following text message that he had originally sent to [employee name] (Recylex)²⁰¹: *‘[...] - this week like proposed – but please take care that we do not see LTA’s’*²⁰² from your suppliers like the last time [...].
- (130) Following those exchanges between [employee name] (JCI), [employee name] (Eco-Bat) and [employee name] (Recylex) that day, [employee name] sent emails to [employee name], [employee name] and [employee name] (all Recylex) asking them not to exceed a target price of [...] euros²⁰³.

Contacts between JCI and Recylex on 28 September 2011

- (131) On 28 September 2011 at 8.43, [employee name] (JCI) called [employee name] (Recylex) to inform him that HMG [Recylex] did not follow the prices for scrap batteries that had been agreed for Germany. To prove the allegation [employee name] (JCI) forwarded to [employee name] (Recylex) an email sent to him by [employee name] (Eco-Bat) the day before which included a faxed offer sent on 26 September 2011 by one of HMG’s suppliers ([...]) which offered a price that exceeded the agreed target price²⁰⁴.
- (132) Following the call and email from [employee name] (JCI), [employee name] called [employee name] and sent the following email to [employee name] and [employee name] (all Recylex) at 9.08 with the subject *‘Target price’*²⁰⁵: *‘Considering that lead prices are staying now at a low level, the message to your suppliers is [...]€ ex-works for the end of the week. This is also applicable to Germany (I just talked to [...] (Recylex))’*²⁰⁶. At 9.41, [employee name] replied to [employee name] (both

¹⁹⁸ [...].

¹⁹⁹ [...].

²⁰⁰ In the original language: *‘Die Temperaturen fallen dramatisch. Bitte Rückruf nach 12:30!! Danke’*

²⁰¹ [...].

²⁰² Eco-Bat has not been able to explain the term *‘LTA’* but believes that it may be related to the difference between the EXW price and the CPT price.

²⁰³ [...].

²⁰⁴ [...].

²⁰⁵ [...].

²⁰⁶ In the original language: *‘Compte tenu du maintien des cours du plomb à un niveau bas, le message à donner auprès de vos fournisseurs est [...] € départ pour la fin de la semaine. Ceci est valable aussi en Allemagne (je viens de parler avec [...])’*.

Recylex)²⁰⁷: *'In France we are at [...] euros starting on Monday, STCM [Eco-Bat] is paying [...] euros but we do not follow'*²⁰⁸.

Contacts between Recylex, JCI and Eco-Bat on 10-13 October 2011

- (133) On 10 October 2011 at 11.29, [employee of Recylex] sent the following text message to [employee of JCI]: *'Hi [...], we should fix new'*²⁰⁹.
- (134) On 11 October 2011 at 12.54, [employee name] forwarded to [employee name] the following text message that he had originally sent to [employee name]: *'Hi [...] - I needed to wait for these news - we should speak with [...]'*²¹⁰.
- (135) At 18.11, [employee name] sent an internal email to [employee name], [employee name] and [employee name] (all Recylex) with the subject *'Update prices'* in which he wrote²¹¹:

*'This week the situation is as follows: JCI pays [...] EXW Berzelius increased up to [...] EXW I offered [...] CPT [...] [...] EXW [...]. PS: This late eve I will have a telephone call with our contact at JC. Tomorrow I will come back to update you'*²¹²

- (136) On Thursday 13 October 2011 at 7.10, [employee of Eco-bat] sent the following text message to [employee of JCI]²¹³: *'[...] not one kilo!!! [...] is paying at our people targeted[...]. Will fight back as of Monday. It is as always. Keep quiet and get fooled.'*²¹⁴ Eco-Bat has explained that [...] is a supplier of scrap batteries and that '[...]' referred to [...], one of Recylex's subsidiaries, which was paying more than had been agreed. According to Eco-Bat, in this message [employee of Eco-Bat] was informing [employee of JCI] that he would retaliate against Recylex by increasing his price as of the following Monday²¹⁵.
- (137) The same day, [employee name] replied to the email sent by [employee name] (see Recital (135)) asking him which supplier was paying [...] EXW, specifically making a reference to Berzelius (Eco-Bat)²¹⁶. The same day, [employee name] replied to [employee name]'s email (both Recylex)²¹⁷:

'[...] (Eco-Bat) has its own logistics ("[...]"+"[...]"+"[...]"= former company "[...]"). [...] These three "guys" are paying the high price. [...] But also all over Germany [...] is paying high-prices to dominate the market [...]. This started from the beginning of this year initialized from [...]. It seems very clear that they are going a cut-throat-competition. Even JCI [...] is suffering under this situation as I heard in "the telephone call" two days ago'.

²⁰⁷ [...].

²⁰⁸ In the original language: *'En France nous sommes à [...] euros départ depuis lundi, STCM paye par endroit [...] euros mais nous ne suivons pas'*.

²⁰⁹ [...].

²¹⁰ [...].

²¹¹ [...].

²¹² Recylex has confirmed that on 11 October 2011, there was a telephone contact between [employee name] (JCI) and [employee name] (Recylex). [...].

²¹³ [...].

²¹⁴ In the original language: *'[...] nicht ein Kilo!!! [...] zahlt bei all unseren Leuten gezielt [...]. Werde ab Mo zurückschlagen. Ist wie immer. Halte still u werde vorgeführt'*.

²¹⁵ [...].

²¹⁶ [...].

²¹⁷ [...].

- (138) Recylex has explained that following the information he had received, [employee name] informed [employee name] (both Recylex) that the market did not follow the price decrease and that specifically Berzelius (Eco-Bat) was paying higher prices. [Employee name] (Recylex) called [employee name] (JCI) to give him the information he had received about Eco-Bat's lack of implementation of prices agreed²¹⁸.

Contacts between JCI and Recylex on 20 October 2011

- (139) On 20 October 2011 at 6.42, [employee of Recylex] sent the following text message to [employee of JCI]²¹⁹: *'Hi [...], with further drop on LME, suggest to decrease to [...] Exw on Monday and [...] week after. Please confirm with [...] (Eco-Bat))'*.
- (140) The same day at 6.48, [employee name] replied to [employee name]²²⁰: *'Had already a call with [...] (Eco-Bat)) - Conf call today 17:00 [...]*.
- (141) At 9.02, [employee name] (Recylex) sent an internal email to [employee name], [employee name] and [employee name], copied to three other persons at Recylex,²²¹ in which he wrote: *'Good morning, Lead price just dropped below Eur 1,300. We should immediately give a message that batteries price will decrease in several steps to reach maximum Eur [...] EXW even lower when possible. Please confirm'*. At 11.01, [employee name] (Recylex) replied to [employee name]'s email²²² confirming that he would give the information to Recylex's suppliers. At 15.11, [employee name] sent an internal email to [employee name], [employee name] and [employee name] (all Recylex), copied to three other persons at Recylex,²²³ in which he wrote: *'Please give the message to all your suppliers to decrease the price down to [...] € EXW effective next Monday. The market will follow'*.
- (142) Recylex has explained that [employee name] exchanged text messages with [employee name] (JCI) to suggest decreasing the price for scrap batteries to [...] euros EXW as of 24 October and to [...] euros for the week after and asked [employee name] (JCI) to communicate these target prices to [employee name] (Eco-Bat). Recylex has also explained that after the contacts with [employee name] (JCI) [employee name] (Recylex) instructed his team to communicate the prices to their suppliers²²⁴.

Text messages between Eco-Bat, JCI and Recylex on 25 and 26 October 2011

- (143) On 25 October 2011 at 8.04, [employee name] (Eco-Bat) sent the following text message to [employee name] (JCI)²²⁵: *'Info from 2 suppliers. [...] [Recylex] today [...]. Argument: LME increased. Well...'*²²⁶. Eco-Bat has explained that the information referred to the German market and that [employee name] was irritated

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[...].

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[...].

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[...].

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[...].

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[...].

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[...].

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[...].

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[...].

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In the original language: *'Info von 2 Lieferanten. [...] heute [...]. Argument. Gestiegene LME. Na ja....'*

that [...] ('[...]')²²⁷ was paying more than agreed (their excuse was the higher price on the LME)²²⁸.

- (144) At 8.18, [employee name] forwarded a text message originally probably (according to Eco-Bat) sent by [employee of Recylex] to [employee name]: *'That's bullshit info. Confirm that we put [...] but you have to follow guys..!'*. At 8.20, [employee name] replied to [employee name]: *'Pure lies again... check once again'*²²⁹.
- (145) On 26 October 2011, [employee name] sent a text message to [employee name] to complain that Voggenthaler (which purchased scrap batteries for Eco-Bat) had informed dealers that it would be paying [...] euros the following week²³⁰.

Meeting between JCI and Recylex on 28 October or 28 November 2011 in Hannover

- (146) According to Recylex, on 28 October 2011, a meeting took place between [employee name] (Recylex) and [employee name] (JCI) in Hannover²³¹ (see also Recitals (77) and (80)). According to Recylex, the meeting followed the usual pattern of their regular bilateral meetings between [employee name] and [employee name] and the country concerned by these exchanges was Germany.
- (147) As indicated in Recitals (78) and (81), JCI has confirmed that [employee name] had a number of informal meetings with [employee name] in Hannover, including one meeting which, according to [employee name]'s diary and his recollection, may have taken place on 28 November 2011²³². According to JCI²³³, [employee name] usually had contacts with [employee name] after [employee name] (JCI) and [employee name] (Recylex) had agreed in general on a certain price level. [Employee name] and [employee name] would then work out the details and implement the agreed price with suppliers (see also Recitals (77), (78), (80) and (81)).

4.2.5. Year 2012

Internal email of Recylex of 20 January 2012 regarding a meeting in Aachen and discussion on prices

- (148) On 20 January 2012, [employee name] sent an email to [employee name] and three other persons at Recylex, copied to [employee name] and [employee name] (all Recylex), to report about a meeting in Aachen where prices were discussed (the participants are unknown). The subject of [employee name]'s email was *'Europe Market Prices Information: Meeting Aachen'* and the email was as follows²³⁴:

*'We had our meeting in Aachen and you can find below an update of prices:
France : [...] Exw mean [...] delivered
Belgium : [...] Exw mean [...] delivered
Holland : [...] Exw mean [...] delivered
Germany: [...] Exw mean [...] delivered.
[...]'*

²²⁷ In 2011, such a company did not exist. [Employee name] may in fact have been referring to Weser-Metall GmbH, a subsidiary of Recylex GmbH (as Recylex was formerly named Metaleurop).

²²⁸ [...].

²²⁹ [...]. In the original language: *'Schlicht gelogen wieder mal... checkt ihr das doch mal.'*

²³⁰ [...].

²³¹ [...].

²³² [...].

²³³ [...].

²³⁴ [...].

- (149) On the same day, [employee name] (Recylex) sent an internal email in which he wrote²³⁵:

*‘Here is additional market information:
Berzuelius is nearly empty with batteries and lead scrap. That's the reason why
Berzuelius is paying every price and decrerase it nearly day by day.
For lead scrap they pay lowest LME minus [...] € (we have a deduction of
[...])€.’*

Text messages sent by JCI to Campine, Eco-Bat and Recylex on 7 March 2012

- (150) On Wednesday 7 March 2012 at 15.36, [employee name] (JCI) sent the following separate identical text messages to [employee name] (Campine) and [employee name] (Recylex): *‘Call you on monday direction is the same we have discussed the last time - have a nice weekend [...]’*²³⁶. According to Recylex, the purpose of this text message was to fix a new target price for scrap batteries for the German market²³⁷.
- (151) At 16.29, [employee name] (JCI) sent the following text message to [employee name] (Eco-Bat): *‘Market is on the right direction next step next week – can I call early next week?’*²³⁸.
- (152) In its reply to the SO²³⁹, Campine contested the logical purpose and the interpretation of this communication. Campine argued that [employee name] may have sent the first text message by error as Campine had at that time no activity in the German market.
- (153) The Commission considers that Campine has not provided any meaningful explanation regarding this contact. Even if it were true that Campine had no activity in the German market, this does not preclude the possibility that Campine was aware of prices in the German market and its influence in other markets (see also Recital (74)).

Emails and text messages between JCI and Recylex on 17 and 22 March 2012 regarding prices in the Netherlands and Germany

- (154) On 17 March 2012 at 6.58, [employee name] (JCI) sent the following text message to [employee name] (Recylex): *‘We are on [...] in Nl and on [...] in D but I will check and come back to you [...]’*. At 6.59 and 7.00, [employee name] forwarded to [employee name] (both JCI) the following reply he had received from [employee name]: *‘I have been told [...]EXW in Ge and Nl, who is playing the bad game? [...]’* and the message he had sent to [employee name]²⁴⁰.
- (155) According to Recylex, on 22 March 2012, following an exchange of text messages between [employee name] (Recylex) and [employee name] (JCI) to fix a new price for scrap batteries, [employee name] informed all [...] of the Recylex group to

²³⁵ [...].

²³⁶ [...].

²³⁷ [...].

²³⁸ [...]. In the original language: *‘Markt ist in der richtigen Richtung unterwegs nächster Schritt nächste Wo – darf ich anfang nächster Wo mal anrufen?’*.

²³⁹ [...].

²⁴⁰ [...].

announce a decrease in the price to be offered to Dutch and German scrap battery suppliers²⁴¹.

Text messages and meeting between Eco-Bat and JCI on 23 April 2012

- (156) On 23 April 2012, between 6.36 and 18.39, [employee name] (JCI) exchanged several text messages with [employee name] (Eco-Bat) to organise a meeting that day²⁴².
- (157) At 13.06, [employee name] (JCI) sent the following two separate identical text messages to [employee name] (JCI) and to a contact at [...] (one of the collectors working for JCI): ‘[[...] (Eco-bat)] says in no case more than [...]’²⁴³.

Text message sent by Recylex to JCI on 7 May 2012 regarding prices in Belgium, Germany and the Netherlands

- (158) On Monday 7 May 2012, [employee name] (Recylex) sent the following text message to [employee name] (JCI): ‘Hi [...], prices are at [...] Exw in Ge and L. We should push them down below [...]’²⁴⁴.

Internal emails of Eco-Bat and JCI on 15, 16 and 18 May 2012 regarding contacts with Campine, Eco-Bat and Recylex

- (159) On 15 May 2012, [employee name] informed [employee name] (both JCI) that he had agreed with [employee name] (Eco-Bat) and [employee name] (Recylex) to reduce price levels in Germany from around [...] euros to [...] euros as of 21 May 2012²⁴⁵. This indicates that [employee name] had been in contact with [employee name] (Eco-Bat) and [employee name] (Recylex), either together or separately, on 15 May 2012 or before. [Employee name] also wrote that he would call [employee name] (Campine) at the latest the following day, to align the new level for the Netherlands.
- (160) On 16 May 2012, [employee name] sent an email to [employee name] and another person (all Eco-Bat) in which he reported about a call he had received from [employee name] (Eco-Bat)²⁴⁶: ‘[...], in your absence, [...] contacted me today to inform me of their price decrease from Monday onwards: [...] ex max,[...] franco max. It seems that the other Germans are willing to do the same. [...]’.
- (161) On 18 May 2012, [employee name] (JCI) sent an email to various persons at JCI, including [employee name], in which he wrote²⁴⁷:

‘We had a call with complete Lead Europe and told them that we have a bad and a good news - the bad is that we take app. 10 - 15,000to out of the FY²⁴⁸ demand and the good news is that they should/can reduce the prices for scrap because we do not need the lead anymore. [...]. We informed our suppliers that

²⁴¹ [...].

²⁴² [...].

²⁴³ [...]. In the original language: ‘[...] sagt auf keinen Fall mehr wie [...]’.

²⁴⁴ [...].

²⁴⁵ [...]. Although this statement could not be corroborated with contemporaneous evidence, it is in line with what was discussed in Recital (158).

²⁴⁶ [...]. In the original language: ‘[...], En votre absence, [...] m’a contacté ce jour pour m’informer de leur baisse de prix à partir de lundi : [...] départ max,[...] franco max. Il semblerait que les autres allemands soient disposés à faire de même.’

²⁴⁷ [...].

²⁴⁸ [...]. FY stands for financial year.

we will reduce our prices from next week on down to [...] €/Mt ExWorks. We explain this reduction with the current LME, European economy development and our production reduction which affects the secondary lead market directly’.

- (162) This email indicates that [employee name] was implementing the agreed price reduction.
- (163) In its reply to the SO²⁴⁹, Campine contested the existence of a call between JCI and Campine. The Commission considers that this contact together with the contacts in Recitals (167) and (168) shows that Campine and JCI discussed prices in the Netherlands.

Text messages and other contacts between Campine, JCI and Recylex on 24, 29, 30 and 31 May 2012 regarding prices in the Netherlands

- (164) On 24 May 2012 at 10.41, [employee name] (Recylex) sent an internal email to [employee name], [employee name], [employee name] and another person at Recylex in which he wrote: *‘At the moment, the prices paid in BE & NL are €[...] EXW. Campine is still paying €[...] delivered and pushing the new commercial everywhere in Wallonia, [...] €[...] EXW in NL’*²⁵⁰.
- (165) The same day at 10.52, [employee name] (Recylex) sent the following text message to [employee name] (JCI)²⁵¹: *‘[...], any success with [...] Exw in NL?’*
- (166) On 29 May, at 17.45, [employee name] (JCI) sent a message to [employee name] (Recylex): *‘I will check and do so’*. The same day, at 18.25, [employee name] (Recylex) sent the following text message to [employee name] (JCI): *‘Thanks to call [...] who is putting [...] EXW in NL!!!’*²⁵².
- (167) On 31 May 2012 at 13.59, [employee name] (JCI) sent the following text message to [employee name] (Campine): *‘[...], are you in the range discussed yesterday?’*²⁵³. This text message indicates that a contact took place between JCI and Campine on 30 May 2012.
- (168) On 31 May at 16.18, [employee name] confirmed to [employee name]: *‘Checked with him - never on that level you mentioned’*. The same day, at 17.16, [employee name] (Campine) replied to [employee name] (JCI): *‘Yes certainly. We never get anything from last week on above the normal level. I am certain’*²⁵⁴.
- (169) In its reply to the SO²⁵⁵, Campine did not contest the evidence but questioned its interpretation. Campine argued that the exchanges rather suggest that Campine did not discuss future market conduct with [employee name] but that the question asked by [employee name] related to past events. The Commission considers that Campine has not provided evidence to rebut the anti-competitive contacts with [employee name] in Recitals (167) and (168) as the question from [employee name] to [employee name] related to future pricing and it was intended to ensure that Campine would apply a price in the range of EUR [...] ex-works in the Netherlands, as discussed between [employee name] and [employee name].

²⁴⁹ [...].

²⁵⁰ [...]. In the SO, there was a clerical error and this contact appears as taking place on 24 April 2012.

²⁵¹ [...].

²⁵² [...].

²⁵³ [...].

²⁵⁴ [...].

²⁵⁵ [...].

Contacts between Eco-Bat, JCI and Recylex on 1, 4, 5, 6 and 8 June 2012

- (170) On Friday 1 June 2012, [employee name] (Recylex) sent the following text message to [employee name] (JCI): *'LME down again today. Suggest [...] €EXW mid next week.'*^{256 257}.
- (171) On Monday 4 June and Tuesday 5 June 2012, [employee name] (JCI) and [employee name] (Recylex) exchanged four text messages to organise a conference call with [employee name] (Eco-Bat)²⁵⁸. In particular, on 5 June, at 7.52, [employee name] (JCI) wrote to [employee name] (Recylex): *'[...], lets call this afternoon together with [...] (Eco-Bat)'*. In this respect, it is relevant to note that contacts between JCI and Recylex also involving Eco-Bat would not have concerned legitimate matters[...].
- (172) On 6 June 2012, between 8.39 and 10.10, [employee name] (Recylex) and [employee name] (JCI) exchanged three text messages to arrange a telephone call later than day²⁵⁹.
- (173) Recylex has stated that, on 8 June 2012, [employee name] (Recylex) received a call from [employee name] (JCI)²⁶⁰. Recylex has explained that, following a conference call with [employee name] (JCI) and [employee name] (Eco-Bat), that most likely took place on 8 June 2012, and in which they agreed on a price decrease for scrap batteries, [employee name] sent an email to [employee name] (both Recylex) to inform him about the prospective price decrease, and that, in response, [employee name] agreed to communicate this decrease to Recylex's suppliers²⁶¹. Internal emails copied during the inspection at Recylex show that the various persons involved at Recylex exchanged information on prices and market conditions to check what the current prices levels in their respective countries were and to coordinate on the price levels communicated to suppliers. In particular, in one email [employee name] wrote: *'Latest information is that our competitors want to decrease down to [...] EXW but this information is in conflict with the market situation that availability becomes short.'* and in another email [employee name] wrote: *'As far as I know the market should decrease next week down to [...] Exw'*²⁶².

Text message between JCI and Recylex on 21 June 2012

- (174) On Thursday 21 June 2012 at 8.21, [employee name] (Recylex) sent the following text message [employee name] (JCI)²⁶³: *'Hi [...], following the further decrease on the lme²⁶⁴, suggest to go down to [...]€EXW next week Plse confirm Rgds [...]'*. According to JCI, this text message is indicative of the price target levels that the parties sought to achieve²⁶⁵.

²⁵⁶ [...].

²⁵⁷ The LME lead prices (daily cash settlement) decreased from 1 922 USD/t on 31 May to 1 880 USD/t on 1 June 2012 ([...]).

²⁵⁸ [...].

²⁵⁹ [...].

²⁶⁰ [...].

²⁶¹ [...].

²⁶² [...].

²⁶³ [...].

²⁶⁴ The LME lead prices decreased from 1 841 USD/t on 21 June to 1 791 USD/t on 22 June 2012 ([...]).

²⁶⁵ [...].

Contacts between JCI and Recylex (and before that, Eco-Bat) and between Campine and JCI on 25, 26 and 27 June 2012

- (175) On 26 June 2012, [employee name] sent an email to [employee name] and [employee name], with [employee name] in copy (all Recylex), in which he wrote²⁶⁶: *‘due to our telephone conference yesterday and the situation at the LME I give to our suppliers new prices: delivered to HMG [...] means [...] exw. Hope this signal has an influence to our competitors to follow’.*
- (176) The same day, [employee name] replied to [employee name], [employee name] and [employee name] (all Recylex) giving a new target price. The email reads²⁶⁷: *‘Due to the further decrease on the LME²⁶⁸, I would expect that we decrease below [...] delivered (i.e. [...] EXW).’.*
- (177) On 27 June 2012 at 11.43, [employee name] (JCI) sent the following text message to [employee name] (Recylex)²⁶⁹: *‘Hello [...] [...] (Eco-Bat)] and I discussed the second step coming next week your proposed level of last week should be the right ones - please call me. [...]’.*
- (178) On 27 June 2012 at 22.04, [employee name] sent an internal email to [employee name] (both Campine), with the subject *‘new prices as of Monday’²⁷⁰*, in which he wrote²⁷¹:
- ‘[...], had [...] [...] (JCI)] on the line: agreed to go to [...] euro as of next week Monday in line with recent LME moves.
The aim is – if the LME stays like this – to go another [...] euros lower within 1 or max 2 weeks, please pass on the message.’*
- (179) On 2 July 2012, [employee name] sent an internal email to his commercial team and to [employee name] (all Campine) giving instructions to decrease as of that moment prices offered from [...] euros per tonne to [...] euros per tonne²⁷². This price level is consistent with the level that had been discussed and agreed between the parties between 21 and 27 June 2012 (see Recitals (174)-(175)).
- (180) In its reply to the SO²⁷³, Campine claims[...]. However, this claim is not supported by any evidence and JCI has not corroborated that information²⁷⁴.

Internal email of Eco-Bat of 6 August 2012 regarding Campine and intention to refer to JCI

- (181) On 6 August 2012, [employee name] sent an internal email²⁷⁵ to [employee name] and to other persons at Eco-Bat (all Eco-Bat) with the subject *‘Campine’*. In the email he complained about Campine’s plans to install a centre for the purchase of scrap batteries in the neighbourhood of Eco-Bat’s plant and mentioned that he would

²⁶⁶ [...].

²⁶⁷ [...].

²⁶⁸ The LME lead prices had further decreased to 1 767 USD/t on 26 June 2012 ([...]).

²⁶⁹ [...].

²⁷⁰ In the original language: *‘nieuwe prijzen vanaf maandag’*.

²⁷¹ [...]. In the original language: *‘[...], heb [...] aan de lijn gehad: afgesproken om naar [...] euro te gaan vanaf volgende week maandag in lijn met recente daling van LME. De bedoeling si - als de LME zo blijft- om nog eens met een [...] -tal euro omlaag te gaan binnen 1 à max 2 weken. graag boodschap verder doorsturen aub.’*

²⁷² [...].

²⁷³ [...].

²⁷⁴ [...].

²⁷⁵ [...].

contact [employee name] (JCI). [Employee name] wrote: ‘*This is a war declaration for me. I will talk to [...] [...] and decide how to react. In my view we should get active immediately in Belgium, should this be true. But this would mean a new price war [...]*’²⁷⁶. This email indicates that at least some of the parties would refer to [employee name] (JCI) to attempt to resolve issues that threatened to disrupt the agreement on prices.

Meeting between Eco-Bat and JCI on 12 September 2012 in Windhagen

- (182) On 12 September 2012, JCI held a workshop for its suppliers [...], Berzelius (Eco-bat) and Recylex at its plant in Krautscheid²⁷⁷. According to Eco-Bat, [employee name] (Eco-Bat) met separately with [employee name] (JCI) for dinner at a hotel in Windhagen. They discussed several topics, including the price levels for scrap batteries in the Netherlands and in Germany and agreed to try to avoid an increase of those price levels²⁷⁸.

5. **LEGAL ASSESSMENT**

5.1. **Application of Article 101(1) of the TFEU**

- (183) Article 101(1) of the 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.
- (184) The anti-competitive conduct relates to the purchase of scrap lead-acid automotive batteries in Belgium, Germany, France and the Netherlands, for which there is significant trade between Member States. As the conduct was liable to affect competition within the internal market and trade between Member States, Article 101 of the TFEU is applicable.

5.2. **Nature of the infringement**

5.2.1. *Agreements and concerted practices*

5.2.1.1. Principles

- (185) Article 101(1) of the TFEU refers to ‘*agreements between undertakings*’ and ‘*concerted practices*’.
- (186) Such agreements between undertakings may be said 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 joint action or abstention from action on the market. Although Article 101(1) of the TFEU draws a distinction between the concept of agreements and that of concerted practices, the object of that distinction is to bring within the scope of those articles any form of coordination between undertakings by which, without having reached the stage where an agreement

²⁷⁶ In the original language: ‘*Das ist für mich eine Kriegserklärung. Werde mit [...] besprechen, wie wir reagieren. Ich bin der Meinung, dass wir da sofort in Belgien aktiv werden müssen, wenn es sich bewahrheitet. Dürfte aber neuen Preiskrieg bedeuten!*’.

²⁷⁷ [...].

²⁷⁸ [...].

properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition²⁷⁹. Thus, a concerted practice may be found to exist even if the parties did not explicitly subscribe to a common plan defining their action on the market but knowingly followed arrangements which facilitated the coordination of their commercial conduct²⁸⁰.

- (187) In the case of a complex infringement of a long duration, the Commission is not required to characterise the anti-competitive conduct as being exclusively an agreement or a concerted practice. The concepts of agreement and concerted practice may overlap and an anti-competitive conduct may therefore present at the same time the characteristics of an agreement and of a concerted practice²⁸¹.

5.2.1.2. Application to the present case

- (188) The facts described in Section 4 demonstrate that the parties participated in anti-competitive conduct regarding the purchase of certain types of scrap batteries in certain national or regional markets within the EU, through regular bilateral and sometimes trilateral contacts and, to a lesser extent, through multilateral contacts. The contacts took place at least from 23 September 2009 and are considered to have continued until 26 September 2012 (see Recital (245)), although the nature and intensity of those contacts varied over that period, at times in relation to a higher or lower degree of volatility of the LME lead prices (see Recital (54)). The contacts were linked to each other by their subject-matter and timing, and through references to previous contacts.
- (189) The objective of the cartel was to restrict competition on the market for scrap lead-acid automotive batteries by coordinating prices (target prices, maximum prices, or fixed-amount price reductions) for the purchase of scrap lead-acid automotive batteries (see Recitals (40)-(44)) and coordinating their behaviour through contacts relating to prices, future market conduct, and negotiations with suppliers.
- (190) As regards prices, the parties reached agreements to reduce or to maintain the prices offered to suppliers at a certain level, or to reduce the prices offered to suppliers by a certain amount, sometimes in phased reductions over a set period of time (see for instance Recitals (95), (127), (155) and (159)). At other times, the parties complained that agreed prices had not been respected and demanded corrective measures or repetition of the instruction to be given (see for instance Recitals (84), (93), (105), (106), (107), (125), (131), (136), (143)-(145) and (166)-(167)); this shows the existence of previous agreements. At other times again, price directions or timing indications were signalled or requested, which not only are infringements in themselves but sometimes also demonstrate the existence of a pre-existing concertation (see for instance Recitals (73), (89), (96), (98), (104), (109), (111), (116), (123), (124), (126), (129), (130), (132), (136), (158), (161), (170) and (174)). In any case, there was an understanding among the parties that the contents of the bilateral communication concerning the conduct described in Recital (189) would be passed on to the other parties (see for instance Recitals (53), (83), (87), (89), (104), (105), (124), (129), (134), (135), (139), (144), (166), (171) and (181)).

²⁷⁹ See judgment in *ICI v Commission* (C-48/69, ECLI:EU:C:1972:70, paragraph 64).

²⁸⁰ See judgment in *Hercules Chemicals v Commission* (T-7/89, ECLI:EU:T:1991:75, paragraph 256).

²⁸¹ See judgments in *Hercules Chemicals v Commission* (T-7/89, ECLI:EU:T:1991:75, paragraph 264) and *LVM v Commission* (T-305/94, ECLI:EU:T:1999:80, paragraph 696).

- (191) As regards future market conduct, besides exchanging information on current or future prices offered to suppliers, the parties also, on some occasions, provided information to other parties on expected volumes of purchases, on current levels of stocks, level of activity or commercial policy (for instance temporary idling of smelting facilities or temporary reductions of workforce) (see for instance Recitals (126), (148), (149) and (159)). These elements are ancillary to the agreements and concertation on prices.
- (192) The evidence indicates a pattern of collaboration between the parties. The anti-competitive conduct consisted in the coordination of pricing behaviour. There is evidence of the direct involvement of senior management of all the parties (see Table 2 and Recitals (65), (83), (87), (89) and (90)).
- (193) In the context of the contacts, even approximate information (such as price ranges or indications of price trends) was capable of removing price uncertainty on the market, therefore enabling the parties to make decisions based on more specific or more reliable data, in comparison, for instance, with information received from suppliers. Moreover, the concept of a concerted practice requires not only concertation but also conduct on the market resulting from such concertation. It may be presumed that undertakings taking part in such concertation and remaining active on the market will take account of the information exchanged with competitors when determining their own conduct on the market²⁸². That conclusion also applies where the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their competitors²⁸³. The parties did not put forward any elements which would rebut the presumption that they took the information exchanged among them into account when determining their conduct on the market. There is evidence that the parties relied on information about each other's intentions regarding negotiations with suppliers and took into account the information gathered from competitors when determining their own conduct on the market (see for instance Recitals (68)-(69), (78), (79), (84), (90), (95), (98), (119), (129), (131), (135), (137), (141), (142), (155) and (161)).
- (194) The anti-competitive contacts constituted a form of coordination and cooperation by which the parties knowingly substituted practical cooperation between them for the risks of competition. The conduct in question (as well as the contacts between the parties) took the form of either an agreement or a concerted practice in which the cartel participants refrained from determining independently the commercial policy which they intended to adopt for the purchase prices of scrap lead-acid automotive batteries, but instead coordinated their pricing behaviour through direct contacts, with a common objective to restrict competition. In addition, those contacts led to the exchange of commercially-sensitive information or information on the intentions of the parties and therefore resulted in creating a common understanding among the parties.
- (195) Given that some of the parties were active at several levels of the supply chain and also that some of the parties acted as suppliers or service providers to others (see

²⁸² See judgments in *Commission v Anic Partecipazioni* (C-49/92 P, ECLI:EU:C:1999:356, paragraph 121) and *Dole Food and Dole Fresh Fruit Europe v Commission* (C-286/13 P, ECLI:EU:C:2015:184, paragraph 127).

²⁸³ See judgments in *Tate & Lyle and Others v Commission* (T-202/98, ECLI:EU:T:2001:185, paragraph 58) and *Cimenteries CBR v Commission* (T-25/95, ECLI:EU:T:2000:77, paragraphs 1849 to 1852).

Recital (18) and Section 2.3.4), it cannot be presumed that any contact between the parties was necessarily anti-competitive. Some of the contacts on pricing and suppliers were linked to legitimate discussions on matters such as regulatory requirements, tolling agreements, or commercial partnerships (see Recitals (20)-(23) and (44)). However, legitimate contacts between the parties in the context of supply or tolling relationships differ from anti-competitive contacts regarding open-market purchase prices in several aspects. Firstly, for instance, discussions on supply or tolling relationships would have been primarily bilateral and would not have required simultaneous or subsequent contacts with other parties. The contacts between the parties described in Table 2 are anti-competitive in so far as they are functional to the attainment of the objectives described in Recital (189).

- (196) The anti-competitive conduct presents all the characteristics of an agreement and/or a concerted practice within the meaning of Article 101(1) of the TFEU.

5.2.2. *Single and continuous infringement*

5.2.2.1. Principles

- (197) As noted by the General Court in *Aalberts*²⁸⁴, ‘*the notion of a single infringement covers a situation in which several undertakings participated in an infringement in which continuous conduct in pursuit of a single economic aim was intended to distort competition, and also individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, who are aware that they are participating in the common object)*²⁸⁵’.
- (198) According to settled case-law, an infringement of Article 101(1) of the TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an overall plan, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole²⁸⁶.
- (199) Links of complementarity between agreements or concerted practices constitute objective indicia of an overall plan. Such links exist if those agreements or concerted practices are intended to deal with one or more consequences of the normal pattern of competition and, through their interaction, contribute to the attainment of a single anti-competitive objective. The Commission is required to examine in that regard all the facts capable of establishing or of casting doubt on that overall plan²⁸⁷.

²⁸⁴ Judgment in *Aalberts Industries and Others v Commission* (T-385/06, ECLI:EU:T:2011:114, paragraph 86).

²⁸⁵ See also, to that effect, judgment in *BPB v Commission* (T-53/03, ECLI:EU:T:2008:254, paragraph 257). That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves an infringement of Article [101 TFEU] (paragraph 252).

²⁸⁶ See judgments in *Commission v Anic Partecipazioni*, (C-49/92 P, ECLI:EU:C:1999:356, paragraph 81) and *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 258).

²⁸⁷ See, to that effect, judgments in *Pilkington Group and Others v Commission* (C-101/15 P, ECLI:EU:C:2016:631, paragraph 125) and *Amann & Söhne and Cousin Filterie v Commission* (T-446/05, ECLI:EU:T:2010:165, paragraph 92 and the case-law cited).

- (200) An undertaking which has participated in a single and complex infringement through its own conduct, which meets the definition of an agreement or concerted practice having an anti-competitive object within the meaning of Article 101(1) of the TFEU and was intended to help bring about the infringement as a whole, may also be liable for the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participating undertakings and that it was aware of the anti-competitive conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk²⁸⁸.
- (201) An undertaking may thus have participated directly in all the aspects of anti-competitive conduct comprising a single 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 anti-competitive conduct comprising a single 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 risk²⁸⁹. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole²⁹⁰.

5.2.2.2. Application to the present case

- (202) On the basis of the facts described in Section 4, any one of the aspects of conduct in respect of the product concerned (scrap lead-acid automotive batteries) and in respect of any one of the Member States concerned has as its object the restriction of competition and therefore constitutes an infringement of Article 101(1) of the TFEU. However, it may be concluded that these individual infringements of Article 101(1) together constitute a single and continuous infringement for which all the parties can be held liable, given that, as set out in Recitals (203)-(219) the parties' conduct (a) formed part of an overall plan pursuing a common anti-competitive objective (Recitals (203)-(208)); (b) they all intended to contribute to that overall plan (Recitals (209)-(214)) and (c) were aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same

²⁸⁸ Judgment in *Commission v Verhuizingen Coppens*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 42 and the case-law cited.

²⁸⁹ As noted by the Court of Justice in *Team Relocations*, 'that case-law [in *Commission v Anic Partecipazioni* and *Aalborg Portland*, referred to in Recital (200)] does not require, in order for the condition of awareness by an undertaking of the offending conduct of the other participants in the single and continuous infringement to be satisfied, that it be established that that undertaking was or should have been aware of the offending conduct of the initial participants in the infringement or that it adhered to that infringement from the outset. It also does not lay down that that condition of awareness can be established only if that undertaking contributed to the single and continuous infringement in a way identical to that initially put in place'. See judgment in *Team Relocations and Others v Commission* (ECLI:EU:C:2013:464, paragraph 54).

²⁹⁰ See judgments in *Commission v Verhuizingen Coppens* (C-441/11 P, ECLI:EU:C:2012:778, paragraph 43) and *Masco and Others v Commission* (T-378/10, ECLI:EU:T:2013:469, paragraph 25).

objectives, or could reasonably have foreseen that conduct and were prepared to take the risk (Recitals (215)-(219)).

(a) Existence of an overall plan pursuing a common objective

- (203) For the period of the infringement, the evidence shows that JCI, Eco-Bat, Recylex and Campine engaged in bilateral and multilateral contacts as a means to pursue a single anti-competitive object and a single economic aim, namely to distort the normal movement of prices on the market for scrap lead-acid automotive batteries. The immunity applicant and the two leniency applicants admitted that the conduct pursued a single anti-competitive object (see Recitals (65), (244) and (245)).
- (204) The evidence shows that the contacts went beyond a mere exchange of general information on the market on the occasion of sporadic contacts between competitors, but instead constituted agreements and concerted practices by which, through regular contacts, the parties coordinated their pricing behaviour, or at least disclosed to one another factors relevant for their future pricing behaviour.
- (205) During the period of the infringement, there were some occasional tensions between the parties (see for instance Recitals (46), (67), (93), (105), (107), (124) and (126)). At the same time, the contacts occurred on an ad hoc basis, in particular linked to movements of the LME lead prices (see Recitals (54) and (56)); the contacts were at times less frequent. Nevertheless, the contacts were clearly not isolated or sporadic events but part of a continuous conduct which pursued a single anti-competitive aim.
- (206) Factors such as the common characteristics of the contents of the anti-competitive contacts and the timing or the proximity in time of the contacts also confirm that they were linked and complementary. In addition, the contacts lasted for several years, generally involved the same individuals and followed a similar pattern, which shows that the parties behaved on the market in a certain way and adhered to a common plan to limit their individual commercial conduct in the purchase of scrap lead-acid automotive batteries.
- (207) The main individuals involved in the anti-competitive conduct remained essentially the same throughout the period of the infringement (see Table 1). When there were changes in those individuals, the parties introduced the successor to the other competitors to ensure the continuity of the contacts (see Recital (67)).
- (208) The majority of the contacts followed the same scheme and, in particular, were done through telephone calls or text messages in order to avoid detection. Some of the individuals involved used coded language in some of their communications, for instance referring to weather conditions (see Recitals (56), (73)-(74), (97), (109), (114), (116) and (128)).

(b) Intentional contribution to an overall plan

- (209) The parties took part in agreements and concerted practices on future pricing and the evolution of future prices. Their participation in multilateral cartel meetings and the other contacts show that each participant intentionally contributed to the overall plan that was aimed at distorting the normal movement of prices on the market for scrap lead-acid automotive batteries.
- (210) The involvement of each undertaking in the contacts was determined by their specific market position (as explained in Section 2.2, players in the lead recycling industry are often active at several levels of the supply chain).

- (211) JCI is active in the collection and recycling of scrap lead-acid batteries and in the manufacture of batteries (see Recital (8)). The evidence shows that [employee name] (JCI), who was [...] at JC Tolling/JC Recycling, frequently acted as an intermediary between the parties (see Recital (47)). The evidence shows that [employee name] (JCI) not only engaged directly in anti-competitive contacts with all the other parties but also exercised a role as one of the organisers of the cartel. Table 2 shows that JCI took part in several anti-competitive contacts with other parties during the period of the infringement. JCI initiated many of the bilateral and sometimes trilateral contacts (see for instance Recitals (87), (105), (107), (110), (113), (115), (122), (126), (154) and (157)) and organised some multilateral meetings (see Recitals (66) and (182)). JCI also facilitated the contacts between the different parties (see Recitals (82), (87), (90) and (115)). [Employee name] (JCI) also passed on information obtained from one party to another (see for instance Recitals (83) and (124)). [Employee name] was also sometimes called upon by some parties to resolve disputes between them (see for instance Recital (181)).
- (212) Eco-Bat is active in the collection and recycling of scrap lead-acid batteries (see Recital (6)). Eco-Bat is also a supplier of recycled lead to other companies, in particular to JCI. [Employee name] (Eco-Bat), who was [...] at Eco-Bat, engaged directly in anti-competitive contacts with all parties. Eco-Bat was an active cartel participant as evidenced by the high number of bilateral contacts (see for instance Recitals (87), (93), (96), (105), (114), (118), (123), (143), (151) and (182)). Table 2 shows that Eco-Bat took part in several anti-competitive contacts with other parties during the period of the infringement. Eco-Bat has also confirmed its participation in the multilateral meetings held in Windhagen and Cologne (see Recitals (65)-(69) and (90)). The evidence shows that in some instances, Eco-Bat took the initiative and contacted parties (see Recitals (93), (96), (114), (128), (136) and (143)).
- (213) Recylex is active in the collection and recycling of scrap lead-acid batteries (see Recital (10)). Recylex is also a supplier of recycled lead to other companies, in particular to JCI. [Employee name], who was [...] at Recylex, engaged directly in anti-competitive contacts with all parties (see Recitals (77), (80), (89), (94)-(95); (111), (123), (125), (131), (132) and (133)). Table 2 shows that Recylex took part in several anti-competitive contacts with other parties during the period of the infringement. The evidence shows that Recylex was also an active cartel participant as [employee name] (Recylex) took the initiative on many occasions to contact the other parties (see for instance Recitals (125), (133), (138), (158), (164), (170) and (174)). Recylex also participated in the multilateral meetings held in Windhagen and Cologne (see Recitals (65)-(69) and (90)).
- (214) Campine is active in the collection and recycling of scrap lead-acid batteries (see Recital (4)). [Employee name], who was [...] at Campine, engaged directly in anti-competitive contacts with all the other parties as he participated in the multilateral meetings in Windhagen and Cologne (see Recitals (65)-(69) and (90)). Campine also participated in some bilateral anti-competitive contacts during the period of the infringement as shown in Table 2. Campine also took the initiative in some occasions to contact other parties (see Recital (73)).
- (c) Awareness
- (215) Each party had anti-competitive bilateral or trilateral contacts with other parties, and all parties participated in multilateral meetings (see for instance Table 2 and Recitals (65)-(69) and (90)). The parties were or at least must have been aware of the general

scope and the essential characteristics of the cartel as a whole. The parties knew or must have known that such conduct was part of an overall plan in pursuit of a common unlawful object. All parties took part in multilateral meetings and were thus necessarily aware of the general scope and the essential characteristics of the cartel as a whole, including the anti-competitive object of those meetings, and also of the identity of the participants in the cartel.

- (216) The parties knew that the information exchanged was capable of removing uncertainty about each other's competitive behaviour, in particular regarding prices paid for scrap lead-acid batteries. Each party was aware that other parties used this information to decide on their own pricing behaviour as they knew, for example, that the success of a price reduction would depend on the discipline in following the instructions (see for instance Recitals (73), (84), (93), (107), (136)-(138), (143), (144), (154), (160), (166)-(168) and (176), with evidence which shows that all parties monitored the implementation of the agreed prices). If on the contrary, one party was offering higher prices, the others would not be able to buy (or to buy the same amount) at the lower price (see for instance Recitals (104), (122), (126) and (159), with evidence which shows that some parties such as Recylex, Eco-Bat or JCI had concerns in this respect). Each of the parties therefore had an interest in ensuring that all the parties implemented the agreed prices and arrangements.
- (217) The parties were aware of the unlawful nature of these contacts as some of the individuals involved (namely [employee name] (Campine), [employee name] (Eco-Bat), [employee name] (JCI), [employee name] (JCI), [employee name] (Recylex)) were cautious to use coded language in some of their communications, to limit the exchange of emails, and to not enter meetings in electronic calendars (see Recitals (56), (73)-(74), (97), (109), (114), (116), (128)).
- (218) The elements described in Recitals (215) to (217) show that the parties were aware of a wider general scheme composed of a set of (mainly) bilateral contacts among certain competitors. All of them knew or must have known that at least JCI entertained a set of bilateral contacts with the other parties in which they discussed pricing. As described in Recital (47), all parties had direct contacts with JCI (see Table 2). Each of the parties was aware that the other parties would have had similar contacts with JCI. The evidence shows that JCI reported to some other parties what had been discussed or agreed with other parties (see for instance Recitals (83), (105), (124), (127), (129) and footnote 121). The evidence also shows that Recylex reported to some other parties what had been discussed or agreed with other parties (see Recitals (83) and (127)). Likewise, the passing-on of information by Campine to JCI and to other parties (see for instance Recitals (73)-(74)) shows that they were aware how that information could be useful for the other parties, and that it would serve to provide indications on future prices or on how agreed prices were being implemented. The evidence shows that Eco-Bat was aware of discussions between other parties (see for instance Recital (105)). The evidence also shows that [employee name] (Eco-Bat) passed on information from one party to another (see Recital (128)).
- (219) On the basis of the above, it may be concluded that all parties were aware of the conduct planned or put into effect by the other parties or could reasonably have

foreseen it and were prepared to take the risk. All parties should therefore be held liable for all aspects of the single and continuous infringement²⁹¹.

5.2.2.3. Arguments of the parties

- (220) Campine claims that the functioning of the cartel as described by the Commission is incorrect as many of the anti-competitive contacts did not in fact occur during periods when the LME prices were decreasing but rather during periods when the LME prices were increasing, which, in Campine's view is inconsistent with the Commission's explanations relating to the frequency and intensity of contacts (see for instance Recital (54)). Campine bases its claim on a chronological analysis of the LME prices²⁹².
- (221) Campine claims that it was not part of a single and continuous infringement as its involvement was too sparse and sporadic. Moreover, Campine argues that gaps between three and eleven months eliminate the possibility of applying the concept of single and continuous infringement to Campine. Campine considers that liability needs to be assessed in the light of the particular contacts or incidents in which it was individually involved but not those of which it was unaware²⁹³.
- (222) Campine also argues that in the event that the Commission establishes that Campine participated in a single infringement, such infringement has been interrupted with respect to Campine by the fact that the undertaking left the cartel and re-joined it on various (isolated) occasions. Consequently, the Commission should re-assess the duration of the infringement with respect to Campine²⁹⁴.

5.2.2.4. Discussion and findings

- (223) Regarding Campine's claim contesting the links between the LME prices and the timing of the anti-competitive contacts, it is indeed correct that not all anti-competitive contacts took place during periods in which the LME lead prices decreased. However, the Commission has never relied on a strict correlation between the two to explain the pattern of anti-competitive contacts. Rather, the Commission merely contends that the contacts occurred on an ad hoc basis, in particular linked to movements of the LME lead prices and that the frequency and intensity of the contacts was driven by developments in the LME lead prices. The anti-competitive contacts took place when the parties felt it necessary and without any fixed or established periodicity. The nature and intensity of those contacts varied over the period of the infringement also in correspondence with the higher or lower degree of volatility of the LME lead prices (see Recitals (54), (56) and (58)).
- (224) The chronological analysis put forward by Campine is therefore not relevant for explaining the pattern of anti-competitive contacts given that the Commission does not rely on any links between the level of the LME lead prices and the timing of the anti-competitive contacts in order to consider, as Campine seems to imply, that during periods when the LME prices were increasing any such contacts could not have occurred. As noted in Recital (248), if the situation of the market did not require

²⁹¹ See judgments in *AC-Treuhand v Commission* (T-99/04, ECLI:EU:T:2008:256, paragraph 131), *Westfalen Gasssen Nederland v Commission* (T-303/02, ECLI:EU:T:2006:374, paragraphs 103 and 124) and *Denki Kagaku Kogyo and Denka Chemicals v Commission* (T-83/08, ECLI:EU:T:2012:48, paragraphs 52-65).

²⁹² [...].

²⁹³ [...].

²⁹⁴ [...].

the parties to be in contact with each other in order to further coordinate prices and to exchange information, there were, as noted for instance in Recitals (54), (72) and (205), periods during which contacts were less frequent. As noted in Recitals (56), (58), (186) and (202), the frequency of contacts depended on the need to rapidly adjust to changes in LME lead prices, which may explain why contacts were less frequent at certain times. During periods in which the LME prices were generally increasing there were fewer contacts between the parties. On this basis, the Commission considers that the relative stability of the LME lead prices from June 2010 to April 2011 led to less frequent contacts between the parties during that period (see Recital (74)).

- (225) Campine's arguments regarding its alleged lack of involvement in a single and continuous infringement and the alleged existence of interruptions in the infringement (see Recitals (221) and (222)) must be rejected. Campine was not only aware of the offending conduct of the other participants in the single and continuous infringement, but also contributed with its own anti-competitive conduct to the overall plan in pursuit of the same objectives (see Recitals (202)-(206), (209)-(210) and (214)).
- (226) Campine itself agrees that it participated in some meetings but argues that there is no evidence of any overall plan or agreement discussed at the meetings in which it participated²⁹⁵. However, several elements demonstrate the existence of an overall plan: the cartel meetings involved the same parties (see for instance Recitals (1), (2) and (4)-(11)), had the same object to distort the normal movement of prices in the internal market for scrap lead-acid automotive batteries (see Recitals (40)-(44), (184), (188)-(191) and (203)), followed the same pattern (see for instance Recitals (50), (54), (192) and (206)-(208)), concerned the same product and geographical scope (see for instance Recitals (28), (42), (57)), and generally involved the same individuals (see for instance Recitals (45)-(48), (206) and (207)). Campine attended all multilateral meetings held by the parties (see also Recitals (65)-(69), (90) and (94)-(95)) and also participated in some bilateral anti-competitive contacts. Moreover, Campine used coded language when communicating with some participants (see Recital (73)). Although Campine participated in fewer anti-competitive contacts than the other parties, the anti-competitive nature of those contacts is clearly demonstrated (see for instance Recitals (71), (86) and (92)).
- (227) Campine's claim that alleged gaps of several months between anti-competitive contacts would prevent the Commission from applying the concept of single and continuous infringement is addressed in Recitals (248)-(253).
- (228) The fact that Campine did not take part in all aspects of the anti-competitive conduct or that it played only a minor role in the aspects in which it did participate does not alter or invalidate the finding relating to its participation in the conduct as a whole and that of a single and continuous infringement but, rather, needs to be taken into consideration only if and when it comes to determining the fine²⁹⁶.
- (229) In accordance with the case-law cited for instance in Recital (219), it is appropriate for the Commission to attribute liability to Campine in relation to all the aspects of

²⁹⁵

[...].

²⁹⁶

See judgments in *Commission v Anic Participazioni* (ECLI:EU:C:1999:356, paragraph 90) and *Aalborg Portland and Others v Commission* (ECLI:EU:C:2004:6, paragraph 86).

anti-competitive conduct comprising the single and continuous infringement and, accordingly, in relation to the infringement as a whole.

5.2.2.5. Conclusion

- (230) On this basis, and with regard to the common design of anti-competitive contacts and the common objective of the cartel, it may be concluded that the anti-competitive conduct constitutes one single and continuous infringement for which each of the parties is held liable. The fact that Campine participated less frequently in some of the anti-competitive contacts does not alter that conclusion (this matter is addressed in the calculation of the fines, see Recitals (351), (352), (355) and (358)).

5.3. Restriction of competition

5.3.1. Principles

- (231) Article 101(1) of the TFEU expressly prohibits as incompatible with the internal market agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions. In applying Article 101 of the TFEU, there is no need to take into account the effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the internal market²⁹⁷. The same applies to concerted practices²⁹⁸. According to the case-law, *‘it is unnecessary to take account of the actual effects of an agreement where its object is to restrict, prevent or distort competition. By its very nature, an agreement fixing a [...] price for a product [...] is intended to distort competition on that market’*²⁹⁹.

5.3.2. Application to the present case

- (232) In the present case, the main aspect of the agreements and concerted practices, as described in Section 4, was the coordination of pricing behaviour through the fixing of target purchase prices, maximum purchase prices, and fixed-amount price reductions (as well as their timing), and, as a means to achieve such coordination of pricing behaviour, the exchange of commercially-sensitive information such as information on future market conduct.
- (233) These agreements and concerted practices had as their **object** the restriction of competition within the meaning of Article 101(1) of the TFEU. In particular, the parties sought to restrict competition for the purchase of scrap lead-acid automotive batteries by agreeing to limit the prices offered to suppliers or acceptable from them. Under normal market conditions, in a market where demand exceeds supply, which is the case for the scrap batteries market (see Recital (20)), and where there is a need for recycling companies to ensure regularity of supply of feed material (see Recital (20)), recycling companies would compete with each other as buyers and would therefore generally seek to offer sufficiently high prices to attract the required supply of scrap batteries. However, in the present case, the parties coordinated their pricing behaviour and exchanged information by agreeing on target prices and maximum prices at which to buy from suppliers and by agreeing on intended volumes of purchases. The parties also sought to reduce uncertainty and information asymmetry

²⁹⁷ See for instance judgment in *Volkswagen v Commission* (T-62/98, ECLI:EU:T:2000:180, paragraph 178).

²⁹⁸ See judgment in *Hüls v Commission* (ECLI:EU:C:1999:358, paragraphs 158-166).

²⁹⁹ See judgment in *BNIC v Clair* (C-123/83, ECLI:EU:C:1985:33, paragraph 22). See also judgment in *FNCBV and Others v Commission* (T-217/03 and T-245/03, ECLI:EU:T:2006:391, paragraph 85).

on the market and to limit the bargaining power of suppliers by exchanging information on the prices offered by suppliers or final agreed prices.

5.3.3. *Arguments of the parties*

- (234) Campine claims that the alleged conduct, namely an agreement between competitors on maximum purchase prices, cannot give rise to a restriction of competition by object for the following reasons: the conduct led to price decreases which do not reveal a sufficient degree of harm to competition; Campine did not agree to fix prices; no precedents indicate such sufficient degree of harm; the parties continued competing on the downstream market³⁰⁰. Campine also claims that there is no evidence that the conduct was capable of having any appreciable effect on competition³⁰¹.

5.3.4. *Discussion and findings*

- (235) The criteria of coordination and cooperation laid down by the case-law of the Court must be understood in the light of the concept inherent in the provisions of the TFEU on competition, according to which each economic operator must determine independently the commercial policy which it intends to adopt on the market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, 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 market³⁰².
- (236) Such cooperation is caught by Article 101(1) of the TFEU even in the absence of anti-competitive effects on the market³⁰³. An exchange of information between competitors has an anti-competitive object if the exchange is capable of removing uncertainties concerning the intended conduct of the participating undertakings³⁰⁴.
- (237) Horizontal price agreements may be classified as very serious infringements solely on account of their nature without the Commission being required to demonstrate an actual impact of the infringement on the market³⁰⁵. Moreover, for the purpose of applying Article 101(1) of the TFEU, there is no need to take account of the concrete effects of an agreement once it appears that it has as its object the prevention, restriction or distortion of competition³⁰⁶. In addition, in *Expedia*³⁰⁷, the Court held

³⁰⁰ [...].

³⁰¹ [...].

³⁰² See judgment in *Suiker Unie and Others v Commission* (C-40/73, ECLI:EU:C:1975:174, paragraph 174).

³⁰³ See judgment in *Hüls v Commission* (C-199/92 P, ECLI:EU:C:1999:358, paragraphs 158 to 166).

³⁰⁴ See judgment in *T-Mobile Netherlands and Others* (C-8/08, ECLI:EU:C:2009:343, paragraphs 39 and 43).

³⁰⁵ See judgments in *Prym and Prym Consumer v Commission* (C-534/07 P, ECLI:EU:C:2009:505, paragraph 75), *Erste Group Bank and Others v Commission* (C-125/07 P, C-133/07 P and C-137/07 P, ECLI:EU:C:2009:576, paragraph 103) and *Eni v Commission* (C-508/11 P, ECLI:EU:C:2013:289, paragraph 97).

³⁰⁶ See judgments in *Consten and Grundig v Commission* (C-56/64, ECLI:EU:C:1966:41), *KME Germany and Others v Commission*, (C-272/09 P, ECLI:EU:C:2011:810, paragraph 65) and *KME Germany and Others v Commission*, (C-389/10 P, ECLI:EU:C:2011:816, paragraph 75).

³⁰⁷ Judgment in *Expedia Inc. v Autorité de la concurrence and Others* (C-226/11, ECLI:EU:C:2012:795, paragraph 37).

that ‘an agreement that may affect trade between Member States and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition’. Campine’s arguments must therefore be rejected.

- (238) It is clear from the evidence that the parties substituted practical cooperation between them for the risks of competition³⁰⁸ and that the conduct consisted in the coordination of pricing behaviour. Therefore, in accordance with the case-law³⁰⁹, the conduct gives rise to a restriction of competition by object.

5.4. Effect on trade between Member States

5.4.1. Principles

- (239) The Court of Justice has established that ‘in prohibiting agreements which may affect trade between Member States and which have as their object or effect the restriction of competition Article [101](1) of the [TFEU] does not require proof that such agreements have in fact appreciably affected such trade [...], but merely requires that it be established that such agreements are capable of having that effect’³¹⁰. Furthermore, ‘in order that an agreement 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 factors of law or fact that the agreement in question may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States’³¹¹.

- (240) The principles developed by the Court in relation to the interpretation of the effect on trade concept are set out in the Commission’s Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty³¹² (the ‘Guidelines on the effect on trade concept’) which provide guidance on the methods for the application of the effect on trade criterion to common types of agreements. The Commission considers that agreements and practices covering several Member States or implemented in several Member States are in almost all cases by their very nature capable of affecting trade between Member States³¹³. The Commission considers, in particular, that cartel agreements involving price-fixing covering several Member States are by their very nature capable of affecting trade between Member States³¹⁴.

5.4.2. Application to the present case

- (241) In the present case, the market for scrap lead-acid automotive batteries is characterised by a substantial volume of trade between Member States (see Sections 2.3.6 and 2.4). In addition, the infringement covered at least Belgium, Germany, France and the Netherlands (see Recitals (1) and (28)) and concerned imports or exports (see Recital (28)), primarily because, as noted in Recital (27), in Member States where there are no facilities for the treatment or recycling of lead batteries, the scrap automotive batteries collected must be exported to other Member States or to

³⁰⁸ See judgment in *ICI v Commission* (C-48/69, ECLI:EU:C:1972:70, paragraph 64).

³⁰⁹ Case C-67/13 P, *CB v Commission*, EU:C:2014:2204, paragraph 51.

³¹⁰ Judgment in *Miller v Commission* (C-19/77, ECLI:EU:C:1978:19, paragraph 15).

³¹¹ Judgments in *Société Minière v Maschinenbau Ulm* (C-56/65, ECLI:EU:C:1966:38) and *Van Landewyck v Commission* (C-209/78 to C-215/78 and C-218/78, ECLI:EU:C:1980:248, paragraph 170).

³¹² OJ C 101, 27.4.2004, p. 81.

³¹³ See paragraph 61 of the Guidelines on the effect on trade concept.

³¹⁴ See paragraph 64 of the Guidelines on the effect on trade concept.

third countries to undergo treatment or recycling. The infringement was therefore capable of affecting trade between Member States.

5.5. Applicability of Article 101(3) of the TFEU

(242) Under Article 101(3) of the TFEU, the provisions of Article 101(1) of the TFEU may be declared inapplicable if an agreement or concerted practice contributes to improving the production or distribution of goods, or to promoting technical or economic progress, and 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.

(243) In the present case, there are no indications that the conditions of Article 101(3) of the TFEU could be fulfilled and none of the parties has claimed that they are fulfilled.

6. DURATION OF PARTICIPATION IN THE INFRINGEMENT

6.1. Commencement and end dates

(244) The Commission should take as the commencement date of each party's participation in the infringement the date of the first anti-competitive contact for which there is evidence concerning each of the parties. The date of the multilateral meeting of 23 September 2009, in which all parties participated (see Recitals (65)-(69)), should therefore be taken as the commencement date of the infringement for all the parties.

(245) In the absence of any evidence that could be interpreted as a declared intention by Eco-Bat, Campine and Recylex to distance themselves from the object of the agreement or concerted practice, the Commission should take as the end date of the infringement the date of the commencement of the Commission's inspections, that is, 26 September 2012 (see Recital (30)). In accordance with the case-law, the end date of an undertaking's participation in an infringement can be the date of the Commission's inspections even if that date occurred a certain time after the date of the last anti-competitive contact for which there is evidence³¹⁵. There is no indication that the anti-competitive arrangements came to an end before the Commission's inspections in this case. On 22 June 2012, JCI applied for leniency under the Leniency Notice (see Recital (29)). JCI can therefore be considered as having ended its involvement in the infringement, except for what was reasonably necessary to preserve the integrity of the Commission's inspections³¹⁶, on 22 June 2012. That date should therefore be taken as the end date of the infringement for JCI.

6.2. Continuity

(246) To determine the duration of each party's participation in the infringement, the Commission has examined, in accordance with the case-law³¹⁷, if there is evidence of facts sufficiently close in time for it to be reasonable to conclude that the infringement continued without interruption between two specific dates. The

³¹⁵ See judgment in *Ventouris v Commission* (T-59/99, ECLI:EU:T:2003:334, paragraphs 191-193).

³¹⁶ See point 12(b) of the Leniency Notice. The Commission allowed JCI not to inform some of its employees about the immunity application in order to preserve the integrity of the inspections.

³¹⁷ See judgments in *Dunlop Slazenger v Commission* (T-43/92, ECLI:EU:T:1994:79, paragraph 79), *Degussa v Commission* (T-279/02, ECLI:EU:T:2006:103, paragraph 113) and *Volkswagen v Commission* (ECLI:EU:T:2000:180, paragraph 188).

Commission should therefore take into account the interval between each of the successive anti-competitive contacts or related relevant events³¹⁸ in which each party participated.

- (247) The contacts between the parties took place when they felt it necessary and without any fixed or established periodicity (see Recital (54)). In particular, the parties established contact depending, among other factors, on the evolution of the LME prices. Therefore, if the situation on the market did not require the parties to be in contact with each other in order to coordinate prices and to exchange information, there were, as noted in Recital (54), periods during which contacts were less frequent. As noted in Recitals (54), (56), (188) and (205), the frequency of contacts depended on the need to rapidly adjust to changes in LME lead prices, which may explain why contacts were less frequent at certain times.

6.2.1. *Campine*

- (248) Campine participated in the infringement from 23 September 2009 until 26 September 2012. During that period, as described in Section 4, there is evidence that Campine participated in six anti-competitive contacts (see Table 2 and Recitals (65)-(69), (73), (90), (150) and (167)) and a further number of related relevant events.
- (249) Except for a period of 11 months between the anti-competitive contact of 10 February 2010 (email sent by Campine to JCI regarding prices in Belgium and the Netherlands, see Recital (73)) and the internal email of Campine of 10 January 2011 on prices offered by Eco-Bat, see Recital (84)) and a period of 10 months between Campine's participation at the World Lead Conference in Brussels on or around 6-8 April 2011 (see Recitals (94)-(95)) and the anti-competitive contact of 7 March 2012 (text message sent by JCI to Campine, see Recital (150)), there was no interval of more than four months between each of the other anti-competitive contacts or related relevant events in which Campine participated. This shows that Campine's anti-competitive contacts are sufficiently close in time to consider that Campine participated in the infringement without interruption throughout the whole of the period from 23 September 2009 until 26 September 2012, except for the above-mentioned periods of 11 months and 10 months, for which there is no direct evidence of Campine's participation in anti-competitive contacts.
- (250) Regarding those two periods of 11 months and of 10 months, it must be noted that in accordance with the case-law of the Court³¹⁹, the fact that direct evidence of an undertaking's participation in a cartel during a certain period has not been produced does not, in the case of an infringement lasting several years, preclude participation in that cartel, also during that period, from being regarded as established, provided that such participation is based on objective and consistent indicia.

³¹⁸ As noted in Recital (59) and footnote 62, not only anti-competitive contacts as such but also related relevant events are relevant for assessing the continuity in time of the underlying anti-competitive conduct.

³¹⁹ See judgments in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* (C-105/04 P, ECLI:EU:C:2006:592, paragraphs 97 and 98), *Commission v Verhuizingen Coppens* (C-441/11 P, ECLI:EU:C:2012:778, paragraph 72) and *Total Marketing Services v Commission* (C-634/13 P, ECLI:EU:C:2015:614, paragraphs 42 and 45).

- (251) There are several reasons for which Campine could not be considered as having temporarily ceased, interrupted or suspended its participation in the infringement during those two periods:
- (a) Campine participated in the infringement and was aware of it, as the minutes of the first multilateral meeting were found by the Commission at its premises. Therefore, Campine was aware of the conduct, the intentions and the objectives of the other participants and Campine has not publicly distanced itself from the conduct³²⁰.
 - (b) As noted in Recitals (54) and (247), the functioning of the cartel shows that Campine cannot be considered as having temporarily ceased, interrupted or suspended its participation in the infringement during those two periods. The anti-competitive contacts were of an ad hoc nature and were characterised by the absence of a fixed or pre-determined periodicity. In less active periods no contacts took place even for several months. Under such circumstances the interval between the anti-competitive contacts referred to in Recital (249) does not indicate any absence of continuity in the underlying agreement or concerted practice between the parties during those same periods, in as much as there is no evidence that, during those periods, Campine no longer intended to contribute to the overall plan in pursuit of a common objective. Indeed, the existence of anti-competitive contacts before and after those periods and the absence of any public distancing by Campine during those periods are sufficient to demonstrate the continuity of Campine's participation in the infringement throughout the whole period of the infringement. Moreover, the evidence and the information provided by the immunity and the other leniency applicants show that Campine was perceived by the other participants as being involved in the infringement throughout the whole period (see for instance Recitals (65), (90), (161), (166) and (181)).
 - (c) Regarding the period of 11 months between the anti-competitive contact of 10 February 2010 and the internal email of Campine of 10 January 2011, as referred to in Recital (72), the overall relative stability of the LME lead prices from June 2010 to April 2011 led to less frequent contacts between the parties during that period (see also Recitals (223)-(227)).
 - (d) In addition, the different degree of participation by Campine in the conduct can also be explained by the fact that Campine had other sources of information at other levels in the market regarding the purchase prices applied by other scrap buyers³²¹. It cannot be concluded that during those periods the other parties in the infringement did not have any precise idea of the Campine's conduct on the market, as they exchanged information on the purchase prices offered by other scrap buyers during those periods.

³²⁰ Campine did not allege that it publicly distanced itself. Moreover, neither in their replies to the SO, nor at the oral hearing, did the other parties manifest a view that Campine was at any time no longer a participant in the conduct or that they expressed surprise to see Campine renewing its participation after an alleged distancing or interruption.

³²¹ In particular, a Dutch collector working close to Campine, with which Campine had a specific agreement ([...]).

(252) The two periods of 11 and 10 months for which there is no direct evidence of Campine's participation in any anti-competitive contacts do not therefore constitute interruptions of Campine's participation in the infringement.

(253) Campine is therefore considered as having participated in the infringement without interruption from 23 September 2009 until 26 September 2012, which represents a duration of participation in the infringement of 3 years and 4 days (1 100 days).

6.2.2. *Eco-Bat*

(254) Eco-Bat participated in the infringement from 23 September 2009 until 26 September 2012. During that period, as described in Section 4, Eco-Bat participated in 28 anti-competitive contacts (see Table 2) and a further number of related relevant events.

(255) Except for a period of nine months between the anti-competitive contact of 23 September 2009 (meeting between Campine, Eco-Bat, JCI and Recylex in Windhagen (Germany), see Recitals (65)-(69)) and the internal email of Eco-Bat of 23 June 2010 (see Recital (79)), there was no interval of more than six months between each of the other anti-competitive contacts or related relevant events in which Eco-Bat participated. Considering the rationale and the organisation of the cartel, this shows that Eco-Bat's anti-competitive contacts are sufficiently close in time to consider that Eco-Bat participated in the infringement without interruption from 23 September 2009 until 26 September 2012.

(256) Regarding the above-mentioned period of nine months, as noted in Recitals (54) and (247), Eco-Bat can be considered as not having temporarily ceased, interrupted or suspended its participation in the infringement during that period by reason of the ad hoc nature of each of the anti-competitive contacts and the absence of any fixed or pre-determined periodicity in those contacts. Under such circumstances the interval between the anti-competitive contacts referred to in Recital (255) does not indicate any absence of continuity in the underlying agreement or concerted practice between the parties during that same period, in as much as there is no evidence that, during that period, Eco-Bat no longer intended to contribute to the overall plan in pursuit of a common objective. Indeed, the existence of anti-competitive contacts before and after that period and the absence of any public distancing by Eco-Bat during that period are sufficient to demonstrate the continuity of Eco-Bat's participation throughout the whole period of the infringement.

(257) Eco-Bat is therefore considered as having participated in the infringement without interruption from 23 September 2009 until 26 September 2012, which represents a duration of participation in the infringement of 3 years and 4 days (1 100 days).

6.2.3. *JCI*

(258) JCI participated in the infringement from 23 September 2009 until 22 June 2012. During that period, as described in Section 4, JCI participated in 61 anti-competitive contacts (see Table 2) and a further number of related relevant events.

(259) There was no interval of more than four months between each of those contacts or related relevant events. Given the rationale and the organisation of the cartel, this shows that JCI's anti-competitive contacts are sufficiently close in time to consider that JCI participated in the infringement without interruption from 23 September 2009 until 22 June 2012.

(260) JCI is therefore considered as having participated in the infringement without interruption from 23 September 2009 until 22 June 2012, which represents a duration of participation in the infringement of 2 years and 9 months (1 004 days).

6.2.4. *Recylex*

(261) Recylex participated in the infringement from 23 September 2009 until 26 September 2012. During that period, as described in Section 4, Recylex participated in 39 anti-competitive contacts (see Table 2) and a further number of related relevant events.

(262) Except for a period of eight months between the anti-competitive contacts of 23 September 2009 (meeting between Campine, Eco-Bat, JCI and Recylex in Windhagen (Germany), see Recitals (65)-(69)) and of 21 June 2010 (meeting between Recylex and JCI in Hannover, see Recitals (77) and (78)), there was no interval of more than three months between each of those contacts or related relevant events. Given the rationale and the organisation of the cartel, this shows that Recyclex's anti-competitive contacts are sufficiently close in time to consider that Recylex participated in the infringement without interruption from 23 September 2009 until 26 September 2012.

(263) Regarding the above-mentioned period of eight months, as noted in Recitals (54) and (247), Recylex can be considered as not having temporarily ceased, interrupted or suspended its participation in the infringement during that period by reason of the ad hoc nature of each of the anti-competitive contacts and by reason of the absence of any fixed or pre-determined periodicity in those contacts. Under such circumstances the interval between the anti-competitive contacts referred to in Recital (262) does not indicate an absence of continuity in the underlying agreement or concerted practice between the parties during that same period, in as much as there is no evidence that, during that period, Recylex no longer intended to contribute to the overall plan in pursuit of a common objective. Indeed, the existence of anti-competitive contacts before and after that period and the absence of any public distancing by Recylex during that period are sufficient to demonstrate the continuity of Recylex's participation throughout the whole period of the infringement.

(264) Recylex is therefore considered as having participated in the infringement without interruption from 23 September 2009 until 26 September 2012, which represents a duration of participation in the infringement of 3 years and 4 days (1 100 days).

7. **LIABILITY**

7.1. **Principles**

(265) To identify the addressees of this Decision, it is necessary to determine the legal entities which the Commission holds liable for the infringement.

(266) The concept of an undertaking within the meaning of Article 101 of the TFEU covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. That concept must be understood as designating an economic unit, even if in law that economic unit consists of several natural or legal persons³²². The undertaking that participated in the infringement is therefore not necessarily identical to the legal entity within the group of companies whose representatives

³²² See judgment in *Akzo Nobel and Others v Commission* (C-97/08 P, ECLI:EU:C:2009:536, paragraphs 54 and 55).

actually took part in the anti-competitive contacts. According to the case-law, Article 101 of the TFEU is aimed at economic units which consist of a unitary organisation of personal, tangible and intangible elements which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision³²³. The existence of an economic unit may be inferred from a body of evidence, even if some of that evidence, taken in isolation, is insufficient to establish the existence of an economic unit³²⁴.

- (267) It is therefore necessary to establish the undertaking(s) that the Commission should hold liable for the infringement of Article 101 of the TFEU by identifying one or more legal persons to represent the undertaking. According to the case-law, different companies belonging to the same group form an economic unit, and therefore an undertaking within the meaning of Article 101 of the TFEU, if the companies concerned do not determine independently their own conduct on the market³²⁵. If a subsidiary does not determine its own conduct on the market independently, the company which directed its commercial policy (that is to say, which exercised decisive influence)³²⁶ forms a single economic entity with the subsidiary and may be held liable in a non-discriminatory way for an infringement on the grounds that it forms part of the same undertaking.
- (268) When an economic entity infringes Article 101 of the TFEU, according to the principle of personal liability, that entity must be held liable for the infringement. The infringement must be imputed unequivocally to a legal person on whom fines may be imposed. Concerning the principle of personal liability, Article 101 of the TFEU is addressed to ‘undertakings’ which may comprise several legal entities. The principle of personal liability is not breached as long as different legal entities are held liable on the basis of their own behaviour and their conduct within the same undertaking.
- (269) The conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. In such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of EU competition law. In such circumstances, a decision finding an infringement and imposing fines can be addressed to the parent company, without it being necessary to establish the personal involvement of the parent company in the infringement³²⁷.
- (270) According to the case-law, a parent company that owns 100 % (or almost 100 %) of a subsidiary has the ability to exercise decisive control over that subsidiary. In such a

³²³ See judgments in *Mo och Domsjö v Commission* (T-352/94, ECLI:EU:T:1998:103, paragraph 87) and *Shell v Commission* (T-11/89, ECLI:EU:T:1992:33, paragraph 311).

³²⁴ See judgments in *Knauf Gips v Commission* (C-407/08, ECLI:EU:C:2010:389, paragraphs 63 and 65) and *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 120).

³²⁵ See judgment in *Michelin v Commission* (T-203/01, ECLI:EU:T:2003:250, paragraph 290).

³²⁶ See judgment in *Stora Kopparbergs Bergslags v Commission* (C-286/98 P, ECLI:EU:C:2000:630, paragraph 28).

³²⁷ See judgment in *Akzo Nobel and Others v Commission* (ECLI:EU:C:2009:536, paragraphs 58 and 59).

case, there exists a rebuttable presumption that the parent also in fact exercises that control without it being necessary for the Commission to provide further evidence on the actual exercise of control³²⁸. In particular, the parent company can be held jointly and severally liable for the payment of the fine imposed on the subsidiary, unless the parent company provides sufficient evidence to show that the subsidiary determines its conduct independently on the market³²⁹.

- (271) This Decision is therefore addressed to the legal entities that directly participated in the infringement and to the parent companies of those legal entities in so far as it is presumed or shown that they exercised decisive influence over the conduct of those legal entities.

7.2. Application to the present case

7.2.1. Campine

- (272) Campine Recycling participated in the infringement from 23 September 2009 until 26 September 2012 through the participation of [employee name] and [employee name] (both Campine Recycling). Campine Recycling should therefore be held liable for its direct participation in the infringement.
- (273) From 23 September 2009 until 26 September 2012, Campine NV directly held 100 % of the shares in Campine Recycling³³⁰. On the basis of the case-law referred to in Recital (270), the Commission may presume that Campine NV exercised decisive influence over the conduct of Campine Recycling.
- (274) Campine has not disputed the Commission's findings regarding Campine's corporate structure and has not sought to rebut the presumption relied upon by the Commission that Campine NV exercised decisive influence over the conduct of Campine Recycling.
- (275) The Commission should therefore hold Campine Recycling and Campine NV jointly and severally liable for the infringement committed by Campine. Campine Recycling should be held liable as a direct participant in the infringement from 23 September 2009 until 26 September 2012. Campine NV should be held liable as parent company of Campine Recycling during that same period.

³²⁸ See judgments in *AEG v Commission* (C-107/82, ECLI:EU:C:1983:293, paragraph 50), *BPB Industries and British Gypsum v Commission* (C-310/93 P, ECLI:EU:C:1995:101, paragraph 11), *LVM v Commission* (ECLI:EU:T:1999:80, paragraphs 961 and 984), *Stora Kopparbergs Bergslags v Commission* (ECLI:EU:C:2000:630, paragraphs 27-29), *Michelin v Commission* (ECLI:EU:T:2003:250, paragraph 290), *Tokai Carbon and Others v Commission* (T-71/03, T-74/03, T-87/03 and T-91/03, ECLI:EU:T:2005:220, paragraphs 59 and 60), *DaimlerChrysler v Commission* (T-325/01, ECLI:EU:T:2005:322, paragraph 219); *Prym and Prym Consumer v Commission* (T-30/05, ECLI:EU:T:2007:267, paragraph 146), *Akzo Nobel and Others v Commission* (T-112/05, ECLI:EU:T:2007:381, paragraphs 60-62 and 85), *General Química and Others v Commission* (T-85/06, ECLI:EU:T:2008:598, paragraphs 59 and 60), *ArcelorMittal Luxembourg and Others v Commission* (T-405/06, ECLI:EU:T:2009:90, paragraphs 89-92), *Akzo Nobel and Others v Commission* (ECLI:EU:C:2009:536, paragraphs 60 and 61), *ArcelorMittal Luxembourg v Commission and Commission/ArcelorMittal Luxembourg and Others* (C-201/09, ECLI:EU:C:2011:190, paragraphs 97-100), order in *Total and Elf Aquitaine v Commission* (C-495/11, ECLI:EU:C:2012:571, paragraph 28) and judgment in *Elf Aquitaine v Commission* (C-521/09 P, ECLI:EU:C:2013:644, paragraphs 56 and 57).

³²⁹ See judgments in *Akzo Nobel and Others v Commission* (ECLI:EU:C:2009:536, paragraph 61), *Elf Aquitaine v Commission* (T-174/05, ECLI:EU:T:2009:368, paragraphs 125, 155 and 156) and *Arkema v Commission* (T-168/05, ECLI:EU:T:2009:367, paragraphs 69, 70 and 100).

³³⁰ [...].

7.2.2. *Eco-Bat*

- (276) BMG participated in the infringement from 23 September 2009 until 26 September 2012 through the participation of [employee name] and [employee name] (both BMG). STCM participated in the infringement from 18 January 2011 until 26 September 2012 through the participation of [employee name], [employee name] and [employee name] (all STCM). BMG and STCM should therefore be held liable for their direct participation in the infringement.
- (277) From 23 September 2009 until 26 September 2012, Eco-Bat Technologies Ltd held 99.3 % of the shares in Eco-Bat Technologies GB (UK), which held 99 % of the shares in Eco-Bat BV (Netherlands). Eco-Bat BV (Netherlands) held 100 % of the shares in BMG³³¹. Eco-Bat BV (Netherlands) also held 100 % of the shares in STCM Holding SAS, which held 100 % of the shares in STCM. On the basis of the case-law referred to in Recital (270), the Commission may presume that Eco-Bat Technologies Ltd exercised decisive influence over the conduct of BMG and of STCM.
- (278) Eco-Bat has not disputed the Commission's findings regarding Eco-Bat's corporate structure and has not sought to rebut the presumption relied upon by the Commission that Eco-Bat Technologies Ltd exercised decisive influence over the conduct of BMG and of STCM.
- (279) The Commission should therefore hold BMG, STCM and Eco-Bat Technologies Ltd jointly and severally liable for the infringement committed by Eco-Bat. BMG should be held liable as a direct participant in the infringement from 23 September 2009 until 26 September 2012. STCM should be held liable as a direct participant in the infringement from 18 January 2011 until 26 September 2012. Eco-Bat Technologies Ltd should be held liable as parent company of BMG and of STCM during the period from 23 September 2009 until 26 September 2012.

7.2.3. *JCI*

- (280) JC Recycling and JC Tolling participated in the infringement from 23 September 2009 until 22 June 2012 through the participation of [employee name] (JC Recycling/JC Tolling) and [employee name] (JC Tolling). JC Recycling and JC Tolling should therefore be held liable for their direct participation in the infringement.
- (281) From 23 September 2009 until 22 June 2012, Johnson Controls, Inc. indirectly held 100 % of the shares in JC Recycling and in JC Tolling³³². On the basis of the case-law referred to in Recital (270), the Commission may presume that Johnson Controls, Inc. exercised decisive influence over the conduct of JC Recycling and of JC Tolling.
- (282) JCI has not disputed the Commission's findings regarding JCI's corporate structure and has not sought to rebut the presumption relied upon by the Commission that Johnson Controls, Inc. exercised decisive influence over the conduct of JC Recycling and of JC Tolling.

³³¹ Another entity of the Eco-Bat group, also ultimately held by Eco-Bat, owns the remaining 0.7 % in Eco-Bat Technologies GB and 1 % in Eco-Bat BV ([...]).

³³² [...].

- (283) The Commission should therefore hold JC Recycling, JC Tolling and Johnson Controls, Inc. jointly and severally liable for the infringement committed by JCI. JC Recycling and JC Tolling should be held liable as direct participants in the infringement from 23 September 2009 until 22 June 2012. Johnson Controls, Inc. should be held liable as parent company of JC Recycling and of JC Tolling during that same period.

7.2.4. *Recylex*

- (284) Recylex SA, FMM and HMG participated in the infringement from 23 September 2009 until 26 September 2012 through the participation of [employee name], [employee name], [employee name] (all Recylex), [employee name] and [employee name] (both FMM) and of [employee name] (HMG). Recylex, FMM and HMG should therefore be held liable for their direct participation in the infringement.
- (285) From 23 September 2009 until 26 September 2012, Recylex SA directly held 100 % of the shares in FMM and indirectly held 100 % of the shares in HMG³³³. On the basis of the case-law referred to in Recital (270), the Commission may presume that Recylex SA exercised decisive influence over the conduct of FMM and of HMG.
- (286) Recylex has not disputed the Commission's findings regarding Recylex's corporate structure and has not sought to rebut the presumption relied upon by the Commission that Recylex SA exercised decisive influence over the conduct of FMM and of HMG.
- (287) The Commission should hold Recylex SA, FMM and HMG jointly and severally liable for the infringement committed by Recylex. Recylex SA, FMM and HMG should be held liable as direct participants in the infringement from 23 September 2009 until 26 September 2012. Recylex SA should, in addition, be held liable as parent company of FMM and of HMG during that same period.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

- (288) Where the Commission finds that there is an infringement of Article 101 of the TFEU, it may by decision require the undertakings concerned to bring an end to such infringement in accordance with Article 7 of Regulation (EC) No 1/2003.
- (289) In the present case, it is not possible to determine with certainty that the infringement described in this Decision has ceased for all the participants. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring an end to the infringement, if they have not already done so, and to refrain from all agreements between undertakings, decisions by associations of undertakings and concerted practices which may have the same or a similar object or effect.

³³³

[...].

8.2. Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17

(290) Under Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17, the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the TFEU³³⁴.

(291) It is apparent that the infringement was committed intentionally. The facts set out in Section 4 show that contacts between the participating undertakings were frequent and had a clear anti-competitive purpose. In particular, the contacts relating to the fixing of purchase prices show the parties' intention to influence purchase prices to their benefit. The parties were aware of the anti-competitive nature of their contacts (see Recitals (215)-(219) and took precautions to conceal their arrangements and to avoid their detection (see in particular Recitals (56) and (217) and Recitals (74), (97), (114), (116) and (128)). The parties cannot claim that they did not act deliberately. In any event, the parties acted at least negligently.

- Arguments of the parties

(292) Campine claims that it did not intentionally participate in an infringement and, principally, that the Commission has failed to prove that Campine had knowledge of any overall plan embracing the single and continuous infringement.

- Discussion and findings

(293) As set out in Recital (238), the infringement constitutes an infringement by object. The participating undertakings therefore cannot claim that they did not act deliberately. More specifically, Campine itself used coded language to conceal the exact meaning of the contents of some exchanges of information (see Recital (74)). It has been shown in Recitals (219) and (229), in accordance with the case-law referred to therein³³⁵, that Campine intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by the other parties in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk. Campine did therefore intentionally participate in the infringement or at least acted negligently³³⁶. Campine's claim must therefore be rejected.

- Conclusion

(294) The Commission should therefore impose fines on the undertakings to which this Decision is addressed.

(295) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fines, have regard to all relevant circumstances and in particular to the gravity and to the duration of that infringement, which are the two criteria explicitly referred to in the Regulations. In doing so, the Commission should set the fines at a level sufficient to ensure deterrence. Moreover, the role played by

³³⁴ See also, to this effect, judgments in *Wieland-Werke and Others v Commission* (T-11/05, ECLI:EU:T:2010:201, paragraph 140), *Ferriere Nord v Commission* (T-143/89, ECLI:EU:T:1995:64, paragraph 42) and *Ferriere Nord v Commission* (C-219/95 P, ECLI:EU:C:1997:375, paragraph 50).

³³⁵ Judgments in *Commission v Anic Partecipazioni* (ECLI:EU:C:1999:356, paragraphs 83, 87 and 203) and *Aalborg Portland and Others v Commission* (C-204/00 P, paragraph 83).

³³⁶ See also Recital (298). Pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 and point 1 of the Guidelines on Fines, the Commission may impose fines on undertakings where they, either intentionally or negligently, infringe Article 101 of the Treaty.

each undertaking in the infringement is to be assessed on an individual basis. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on fines³³⁷. Finally, the Commission will apply the provisions of the Leniency Notice, as appropriate.

8.3. Calculation of the fines

- (296) The basic amount of the fines results from the addition of a variable amount and 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 sales made by an undertaking during the last full business year of its participation in the infringement. If the last year is not representative, the Commission may choose another proxy.

8.3.1. Basis for setting the basic amount of the fines

- (297) The basic amount of each fine is generally set by reference to the value of sales of each undertaking³³⁸, that is, the annual value of the undertaking's sales of goods or services to which the infringement is directly or indirectly related in the relevant geographical area within the EU.

8.3.1.1. Value of purchases of each undertaking

- (298) In the SO, the Commission stated its intention to use the value of purchases by each undertaking of the products concerned³³⁹ rather than the value of sales, given that the infringement related to purchase prices, and that the products concerned are inputs and not intermediary products or downstream products for which the value of sales could be used. In this context, the Commission noted that JCI does not sell any recycled lead but uses its entire production of recycled lead for its own production of lead-acid batteries³⁴⁰. For this reason, it would therefore not be possible to use as a proxy the sales of recycled lead.

• Arguments of the parties

- (299) Campine claims that most of its purchases in the Netherlands were made under long-term agreements that contain pricing formulas that link the purchase price to the LME lead prices and that are applied during the lifetime of the contract in a wholly mechanical way without any room for negotiation³⁴¹. In Campine's view, these purchases should be excluded from the calculation of the fine as they could not have been affected by the coordination of purchasing prices during the period of the infringement. To substantiate its claim, Campine has provided copies of those long-term agreements³⁴². One agreement was concluded on 31 May 2010 for a duration of five years and another purchase contract for the year 2011 was concluded on 23 December 2010.

³³⁷ Other than for the reasons set out in Recitals (363)-(380), the Commission has not identified any grounds that would justify departing from the general methodology outlined in the Guidelines on fines, such as for instance the application of a symbolic fine (see Recital (362)).

³³⁸ Point 12 of the Guidelines on fines.

³³⁹ See, to this effect, judgment in *Guardian Industries and Guardian Europe v Commission* (C-580/12 P, ECLI:EU:C:2014:2363, paragraph 59).

³⁴⁰ [...].

³⁴¹ [...].

³⁴² [...].

- Discussion and findings
- (300) As a precautionary remark, it should be noted foremost that the long-term agreements in question are supply agreements and not tolling agreements.
- (301) The information and evidence submitted by Campine does not demonstrate that the long-term agreements could have prevented the application of cartelised prices to the purchases made under those agreements. On the contrary, the text of those agreements would appear to indicate that while there were some elements linking the prices concluded under those agreements to factors such as the average monthly LME quotation, there was nevertheless scope for the purchases made under those agreements to have had a link with the conduct that formed part of the infringement and to the prices discussed or applied in that context. In particular, the agreements included several provisions intended to adjust and revise prices on the basis of external market conditions and market prices (prices paid by other suppliers). Overall, therefore, it does not appear from those agreements that the fixed-price mechanisms were applied during the lifetime of the contract in a wholly mechanical way without any room for negotiation.
- (302) As noted by the Court in *Pilkington Group and Others v Commission*³⁴³, ‘it follows that point 13 of the 2006 Guidelines [on fines] pursues the objective of adopting, as the starting point for the calculation of the fine imposed on an undertaking, an amount which reflects the economic significance of the infringement and the size of the undertaking’s contribution to it. Consequently, while the concept of the ‘value of sales’ referred to in point 13 of the Guidelines admittedly cannot extend to encompassing sales made by the undertaking in question which do not come within the scope of the alleged cartel, it would, however, be contrary to the goal pursued by that provision if that concept were to be understood as applying only to turnover achieved by the sales in respect of which it is established that they were actually affected by that cartel’³⁴⁴.
- (303) By analogy, the Commission is entitled to include Campine’s purchases made under the long-term agreements in the Netherlands. In this respect, it is relevant to note that whereas contacts or exchanges of information between the parties regarding tolling agreements are not covered by this Decision (see Recital (23)), on the contrary, other types of agreements, in particular supply agreements, are considered as being within the scope of the cartel to the extent that the purchases made under such agreements could have been subject to the cartel arrangements. On the basis of the case-law cited in Recital (302), regarding purchases made on the basis of agreements or contracts valid during the period of the infringement and which come within the scope of the cartel, the Commission is justified in taking the purchases at issue into account in so far as those purchases were capable of reflecting the economic importance of the infringement. Campine’s claim must therefore be rejected.

8.3.1.2. Goods or services to which the infringement is related

- (304) The products concerned are scrap lead-acid automotive batteries (see Recital (3)). As a consequence, the figures taken into account by the Commission for each of the

³⁴³ Judgment in *Pilkington Group and Others v Commission* (C-101/15 P, ECLI:EU:C:2016:631, paragraph 19).

³⁴⁴ See judgments in *Team Relocations and Others v Commission* (C-444/11 P, ECLI:EU:C:2013:464, paragraph 76) and *Guardian Industries and Guardian Europe v Commission* (C-580/12 P, ECLI:EU:C:2014:2363, paragraph 57).

parties do not include figures relating to the purchase of scrap lead-acid industrial batteries (including forklift truck batteries with or without steel casing)³⁴⁵.

(305) For technical reasons due to the inability of some of the parties to provide sufficiently detailed figures, the figures taken into account by the Commission for each of the parties do not include figures relating to the purchase of parts of waste lead-acid batteries that have been already partially separated and treated, as well as other scrap material containing lead or lead residues, and intended for treatment and recovery in view of recycling.

(306) In the letter of facts sent to Eco-Bat on 18 October 2016 (See Recital (37)), the Commission clarified that the value of purchases figures to be taken into account for the calculation of the fines refer to scrap lead-acid automotive batteries, regardless of the end use of the recycled lead and other products (for example other metals and alloys, plastics, acid, other products) obtained through the treatment and processing of such scrap lead-acid batteries. The Commission also indicated to Eco-Bat the figure it intended to take into account for the calculation of its fine, as this was higher than the figure set out in the SO³⁴⁶.

- Arguments of the parties

(307) Recylex claims that its purchases of scrap lead-acid batteries from the other undertakings that participated in the infringement or from any scrap collectors, dealers or traders that are controlled by or affiliated to those undertakings should be deducted from the total value of its purchases of scrap lead-acid batteries³⁴⁷.

(308) Recylex claims also that the value of the metal which is paid when buying scrap lead-acid batteries and recovered when reselling the recycled lead should be deducted from the amount used for setting the basic amount of the fine³⁴⁸.

- Discussion and findings

(309) Regarding Recylex's claim that intra-cartel purchases should be excluded, it should be noted that, in the present case, the intra-cartel purchases were related to the infringement as they fell within the scope of the cartel in the same manner as purchases from external third undertakings. The intra-cartel purchases are an integral part of each undertaking's value of purchases of the products concerned. The total amount of purchases of products related to the infringement reflects the economic importance of the infringement as well as the relative weight of each undertaking in the infringement. The exclusion of intra-cartel purchases following the approach advocated by Recylex would allow undertakings to avoid appropriate punishment for their involvement in the cartel. Moreover, it would enable undertakings to reduce or avoid fines simply by setting up contractual arrangements to make their purchases through another cartel participant.

(310) It is therefore not appropriate, for any of the participating undertakings, to exclude from the value of purchases to be used for setting the basic amount of the fine the purchases from any of the other undertakings that participated in the infringement or from any scrap collectors, dealers or traders that are controlled by or directly

³⁴⁵ Recylex has provided an estimate of the proportion of its purchase figures which corresponds to automotive batteries. See [...].

³⁴⁶ [...].

³⁴⁷ [...].

³⁴⁸ [...].

affiliated to those undertakings. This conclusion applies to Recylex and to the other addressees of this Decision.

- (311) Regarding Recylex's claim that the price of the underlying lead metal should not be taken into account, it has been established by the Court on several occasions³⁴⁹ that there is no valid reason to require that the turnover of a relevant market be calculated by excluding certain production costs. As noted by the Court in those cases, there are in all industries costs inherent in the final product which the manufacturer cannot control but which nevertheless constitute an essential element of its business as a whole and which, therefore, cannot be excluded from its turnover when setting the basic amount of the fine³⁵⁰. By analogy with the Court's findings in those cases, that conclusion is not invalidated by the fact that, in the present case, the price of lead constitutes a substantial proportion of the final price of scrap lead acid-batteries or that the risk of fluctuations of lead prices is far higher than for other raw materials. Recylex's claim must therefore be rejected.

8.3.1.3. Relevant geographical area

- (312) The infringement related to purchases from suppliers in Germany, Belgium, France and the Netherlands. To make its calculations, the Commission requested the parties to provide data on the value of purchases of scrap automotive lead-acid batteries³⁵¹ acquired from scrap collectors, scrap dealers or traders located in Germany, Belgium, France and the Netherlands, including purchases of scrap lead-acid batteries directly from retail points at which disused batteries are returned.

- Arguments of the parties

- (313) Recylex claims that the infringement concerning France should not be taken into account when determining the value of purchases for Recylex as it was the first undertaking to submit compelling evidence used by the Commission to establish an infringement concerning France.

- Discussion and findings

- (314) The Guidelines on fines do not contain any provision which would enable the Commission to exclude any values of purchases relating to a specific territory or market that is within the scope of the infringement. On the contrary, point 13 of the Guidelines on fines refers in a general way to '*the relevant geographic area within the EEA*' and point 18 of those guidelines contains provisions intended to ensure that the Commission '*may assess the total value of the sales of the goods or services to which the infringement relates in the relevant geographic area*'. Recylex appears, furthermore, to erroneously base part of its reasoning on the last point of 26 of the Leniency Notice, whereas the Leniency Notice only concerns the requirements to qualify for a reduction of a fine and not, in any way, the value of purchases by reference to which the Commission should set the basic amount of the fine. Recylex's claim regarding the exclusion of the value of purchases concerning France

³⁴⁹ See judgments in *Cimenteries CBR and Others v Commission* (T-25/95, ECLI:EU:T:1992:123, paragraphs 5030 and 5031), *KME Germany and Others v Commission* (ECLI:EU:C:2011:816, paragraph 62), *Outokumpu and Luvata v Commission* (T-122/04, ECLI:EU:T:2009:141, paragraph 82) and *Wieland-Werke v Commission* (T-116/04, ECLI:EU:T:2009:140, paragraph 69).

³⁵⁰ See judgment in *Cimenteries CBR and Others v Commission* (ECLI:EU:T:1992:123, paragraphs 5030 and 5031).

³⁵¹ For this purpose, scrap lead-acid batteries were defined as waste lead-acid batteries extracted from automotive vehicles.

must therefore be rejected. Recylex's claim to the same effect is, however, considered when assessing the application of the Leniency Notice (see Section 8.5). Furthermore, Recylex's claim that the infringement concerning France should not be taken into account when determining the gravity of the infringement is addressed in Recital (333).

8.3.1.4. Year of reference

(315) Under point 13 of the Guidelines on fines, the Commission '*will normally take the sales made by the undertaking during the last full business year of its participation in the infringement*'. In the SO, the Commission stated its intention to use the value of purchases made by each undertaking during the last full business year of their participation in the infringement, which was 2011.

- Arguments of the parties

(316) Recylex claims that the Commission should use the average annual value of Recylex's scrap battery purchases during the period of the infringement, that is, the average value for the period from 2009 until 2012, as the LME lead prices are highly volatile and the value of Recylex's purchases in 2009 was significantly lower than the value of its purchases in 2011³⁵².

- Discussion and findings

(317) In certain previous cases, the Commission has indeed considered that a different period or other years could be used if the last year is not representative, due for instance to '*the exponential growth of sales [...] for all the undertakings*'³⁵³, a significant decrease of the value of sales for all undertakings³⁵⁴ or in cases of significant variations in the territories of the cartel³⁵⁵. However, none of those situations apply in the present case. While, in the present case, the value of purchases varied to some extent from one year to the next, the fact that the value of purchases (or sales) for the last full business year of an undertaking's participation in the infringement may be, to some extent, higher or lower than in preceding years is not as such a reason for the Commission to deviate from the provisions of point 13 of the Guidelines on fines and to consider other periods of reference³⁵⁶. Variations in the values of purchases between different years can be attributed to a number of reasons related to the functioning of the market or to the existence of the cartel itself. There are no indications that the value of purchases varied significantly during the entire period of the infringement and the geographical area concerned by the infringement remained the same during the period of the infringement. The value of purchases in 2011 was sufficiently representative of the economic importance of the infringement since a significant number of cartel contacts took place during that year. By contrast, the year 2009 is not sufficiently representative of the economic importance of the infringement because the cartel commenced at the end of September 2009, covering therefore only a part of that year, and fewer contacts took place in 2009.

³⁵² [...].

³⁵³ See recital 384 of the Commission Decision in case COMP/39309 – LCD.

³⁵⁴ See judgment in *Samsung SDI and Others v Commission* (T-84/13, ECLI:EU:T:2015:611, paragraph 212).

³⁵⁵ See recital 200 of the Commission Decision in case COMP/38866 – Animal feed phosphates.

³⁵⁶ See for instance judgment in *Denki Kagaku Kogyo and Denka Chemicals v Commission* (T-83/08, ECLI:EU:T:2012:48, paragraphs 135-140).

- (318) Recylex has not provided sufficient reasoning for not taking into consideration the value of the sales made by Recylex during the last full business year of its participation in the infringement. It is therefore appropriate for the Commission to use the annual value of purchases for 2011 as the basis for setting the basic amounts of the fines for Recylex and for all the other parties.

8.3.1.5. Conclusion

- (319) It is therefore appropriate for the Commission to take into account the figures for the value of purchases of scrap lead-acid automotive batteries acquired in the period covering the full business year 2011 from scrap collectors, scrap dealers or traders located in Germany, Belgium, France and the Netherlands, including purchases of scrap lead-acid automotive batteries directly from retail points at which disused batteries are returned. Those figures include purchases made from other undertakings that were addressees of the Commission's SO in the present case.

8.3.2. *Basic amount of the fine*

- (320) The basic amount of the fine consists of an amount of up to 30 % of an undertaking's relevant value of purchases, depending on the degree of gravity of the infringement, multiplied by the number of years 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 value of sales, irrespective of duration³⁵⁷.

8.3.2.1. Gravity

- (321) The gravity of the infringement determines the percentage of the value of purchases to be taken into account when determining the basic amount of the fine ('gravity percentage'). To assess the gravity of the infringement, the Commission should take into consideration a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographical scope of the infringement and whether or not the infringement has been implemented³⁵⁸.

Nature of the infringement

- (322) As set out in Recitals (1), (40) and (42)-(44), the infringement consisted in horizontal price-fixing, which is, by its very nature, among the most harmful restrictions of competition. The percentage of the value of purchases to be taken into account for calculating the variable part of the basic amount should therefore, as a first step, be set at 15 %.

- Arguments of the parties

- (323) Campine claims that as this is the first time that the Commission pursues an infringement consisting only in purchase price-fixing, without any other combined infringement, such as market sharing or the controlling of output, the Commission should take into account this element when assessing the gravity of the infringement³⁵⁹.

- Discussion and findings

- (324) Horizontal price-fixing is one of the most harmful restrictions of competition falling under Article 101(1)(a) of the TFEU which expressly refers to types of conduct in

³⁵⁷ Points 19 to 26 of the Guidelines on fines.

³⁵⁸ Points 21 and 22 of the Guidelines on fines.

³⁵⁹ [...].

which undertakings ‘*directly or indirectly fix purchase or selling prices or any other trading conditions*’. Horizontal price-fixing, including of purchase prices, is not less serious because it is not combined with other types of restrictions of competition. According to the Guidelines on fines, the gravity percentage for horizontal price-fixing will generally be set ‘*at the higher end of the scale*’. Campine’s claim is therefore unfounded.

Other factors

- Arguments of the parties
- (325) JCI claims that basing the fine on purchase values fails to consider that purchase values might have been artificially lowered by the conduct in question and that, as such, fines for purchase cartels might be unfairly lower than those for sales cartels³⁶⁰.
- (326) Recylex claims, in essence, that the gravity percentage should be very low because: (i) the conduct was not liable to cause harm to customers or consumers, (ii) the infringement had a limited geographical scope, (iii) Recylex derived no substantial economic or financial benefit from its participation in the infringement and the parties often did not implement the agreement reached, and (iv) **the car battery recycling sector has been in a poor economic situation from the period of the infringement to date**³⁶¹.
- (327) Recylex also claims that the infringement concerning France should not be taken into account when determining the gravity of any infringement for Recylex as it was the first undertaking to submit compelling evidence used by the Commission to establish an infringement concerning France. Recylex claims therefore that the Commission should not take into account, when determining the percentage to be applied to Recylex’s purchases of scrap batteries, the gravity of the infringement resulting from the fact that it also covered France.
- Discussion and findings
- (328) JCI’s claim is addressed in Section 8.3.3.5.
- (329) Regarding Recylex’s claim that the gravity percentage should be very low because the conduct was not liable to cause harm to customers or consumers, the General Court has held, in substance, that the Commission is not required, under the Guidelines on fines, to take into account the actual impact of an infringement on the market when assessing the gravity of that infringement³⁶². The assessment of the gravity of the infringement is aimed at taking into account factors that reflect the economic importance of the infringement on the market (see point 6 of the Guidelines on fines). When assessing the gravity of an infringement of Article 101(1) of the TFEU, the Commission is thus only obliged to take into account the magnitude of any potential effects of the infringement on the market. Recylex’s claim in this respect must therefore be rejected.

³⁶⁰ [...].

³⁶¹ [...].

³⁶² See judgment in *Donau Chemie v Commission* (T-406/09, EU:T:2014:254, paragraphs 70-74, in particular, paragraph 72: ‘the Commission cannot be reproached for infringing the Guidelines by omitting to analyse [...] the possible impact of the infringement at issue on the market and by omitting to take such an analysis into account in its determination of the basic amount of the fine’).

- (330) Regarding Recylex's claim that the gravity percentage should be very low because the infringement had a limited geographical scope, it should be considered that the geographical scope of the infringement does not require an increase of the gravity percentage beyond the first step of 15 %. Recylex's claim in this respect is therefore irrelevant given that the assessment of the geographical scope of the infringement does not result in an increase in the gravity percentage. In any event, the gravity percentage is to be applied only to the value of purchases relating to the four Member States concerned by the infringement (Belgium, Germany, France and the Netherlands).
- (331) Regarding Recylex's claim that the gravity percentage should be very low because Recylex derived no substantial economic or financial benefit from its participation in the infringement, for the same reasons as set out in Recital (328), it is irrelevant for the assessment of the gravity of the infringement in the present case whether Recylex actually benefited economically or financially from its participation in the infringement. The size or amount of any such benefit is also irrelevant. The fact that an undertaking which participated in an infringement of Article 101(1) of the TFEU may not have substantially profited economically or financially from its participation in that infringement does not in any way reduce the magnitude of any potential effects of the infringement on the market. Recylex's claim in this respect must therefore be rejected.
- (332) Regarding Recylex's claim that the gravity percentage should be very low because the car battery recycling sector has been in a poor economic situation from the period of the infringement to date, as noted in Recital (328), the assessment of the gravity of the infringement is aimed at taking into account factors that reflect the economic importance of the infringement. In this respect, the economic situation of the sector of activity in which the parties are active is irrelevant as, here too, it is unrelated to any of the factors which could be likely to reflect the economic importance of the infringement in a manner comparable to those listed in point 22 of the Guidelines on fines. Neither the economic significance of an infringement nor its magnitude are affected by, or dependent on, the economic situation of the sector of activity to which that infringement relates. Recylex's claim in this respect must therefore be rejected.
- (333) Regarding Recylex's claim that the infringement concerning France should not be taken into account when determining the gravity of the infringement, Recylex appears, here too, to erroneously base part of its reasoning on the last point of 26 of the Leniency Notice, whereas those provisions in fact only concern the requirements to qualify for a reduction of a fine and not, in any way, the assessment of the gravity of the infringement as part of the determination of the basic amount of the fine. Recylex's argument in this respect is, in any case, irrelevant since, as set out in Recital (330), the geographical scope of the infringement does not require an increase of the gravity percentage. Recylex's claim that its purchases of scrap batteries in France should not be taken into account for determining the gravity percentage must therefore be rejected. Recylex's claim to the same effect concerning the reduction of the amount of the fine is however considered for the application of the Leniency Notice (see Section 8.5).

Conclusion

- (334) The gravity percentage should be set at 15 %. None of the factors mentioned in point 22 of the Guidelines on fines, that is the nature of the infringement, the combined

market share, the geographical scope and the implementation of the infringement, are such as to require an increase of the gravity factor in this case.

8.3.2.2. Duration

- (335) When calculating the duration of each party's participation in the infringement, the amount determined on the basis of the value of purchases is multiplied by the number of years of each party's participation in the infringement (expressed as a multiplier factor which reflects the exact number of days of participation in the infringement³⁶³).
- Arguments of the parties
- (336) Recylex claims that the duration of the infringement to be considered for the purpose of setting any fine to be imposed on it should be significantly reduced, as, in accordance with the final paragraph of point 26 of the Leniency Notice, it was the first undertaking to submit compelling evidence on 23 October 2012 which enabled to establish an additional duration of the infringement, from 23 September 2009 until 4 April 2011. According to Recylex, this period should therefore not be taken into account when determining any fine to be imposed on Recylex. Recylex claims, in particular, that the evidence it submitted enabled to establish the commencement date of the cartel at the multilateral meeting of 23 September 2009³⁶⁴.
- (337) Recylex also claims that it was the first undertaking to provide the Commission with information and compelling evidence regarding the meetings of 21 June 2010 and 8 October 2010 (see Recitals (337) and (80)) and that, as a consequence, the duration of the infringement to be taken into account for Recylex should be limited to 1 year, 5 months and 22 days.
- (338) Recylex claims, in addition, that 27 June 2012 should be taken as the end date of its participation in the infringement as this was the date of the last anti-competitive contact for which there is evidence regarding Recylex. Recylex argues in this respect that taking the date of 26 September 2012 as the end date of its participation in the infringement would unduly penalise it given that the last anti-competitive contact for which there is evidence that Recylex participated in on 27 June 2012 did not result in an agreement on prices which was intended to apply for a longer period into the future. Recylex notes in this respect that the text message of 27 June 2012 sent by [employee name] (JCI) to [employee name] (Recylex) refers to a price level proposed by [employee name] by text message to [employee name] the week before, on 21 June 2012. This price level proposed by Recylex on 21 June 2012 was meant for '*next week*' and, as it follows from an internal email of Campine of 27 June 2012, it was intended to apply for only one or maximum two weeks. Recylex notes that after this text message of 27 June 2012 sent by [employee name] to [employee name], there is no evidence of any anti-competitive contact involving Recylex.
- (339) In the alternative, Recylex claims that the Commission should view the fact that Recylex last participated in an anti-competitive contact on 27 June 2012, three months earlier than 26 September 2012, as an attenuating factor that reduces the gravity of Recylex's participation in the infringement.
- Discussion and findings

³⁶³ Rather than rounding up periods as indicated in point 24 of the Guidelines on fines.

³⁶⁴ [...].

- (340) Regarding Recylex's claim that the duration of the infringement should be significantly reduced as it was the first undertaking to submit compelling evidence regarding the multilateral meeting in Windhagen on 23 September 2009, it should be noted that the evidence submitted by Recylex on 23 October 2012 regarding the Windhagen meeting only concerns the way in which the multilateral and bilateral meetings between [employee name] (Recylex) and [employee name] (JCI) were decided and organised, and the account that [employee name] (Recylex) gave to [employee name] about those multilateral discussions. The Commission was aware and already had compelling evidence of the Windhagen meeting as it already had evidence regarding the subject and content of the discussions held at that meeting consisting of a document retrieved during the inspection conducted at Campine from 26 until 28 September 2012 (handwritten notes taken by a person being debriefed on the meeting by another person who actually participated in the meeting). In any event, the information provided by Recylex regarding the Windhagen meeting did not constitute '*additional facts increasing [...] the duration of the infringement*' in the meaning of the final paragraph of point 26 of the Leniency Notice as the Commission was aware of the Windhagen meeting since it already had evidence regarding that meeting which had sufficient probative value for the Commission to consider that anti-competitive contacts occurred during that meeting and that it therefore formed part of the period of the infringement. Recylex's claim in this respect must therefore be rejected.
- (341) Regarding Recylex's claim that it was the first undertaking to provide compelling evidence of the meetings of 21 June 2010 and 8 October 2010, while it is correct that Recylex was the first undertaking to submit information regarding those meetings, that information was not used by the Commission to '*establish additional facts increasing the gravity or the duration of the infringement*'. As noted in Recital (340), the Commission already had evidence regarding the Windhagen meeting that enabled it to establish the commencement of the infringement as of 23 September 2009. The requirement set out in the final paragraph of point 26 of the Leniency Notice relates to evidence which enables the Commission to increase the duration of the infringement, that is, to extend the period of the infringement to an earlier date, and does not refer to evidence which enables the Commission to establish that anti-competitive contacts took place between the dates of other anti-competitive contacts for which the Commission already had evidence. The conditions of the final paragraph of point 26 of the Leniency Notice are therefore not fulfilled and, consequently, Recylex's claim in this respect must therefore be rejected.
- (342) Regarding Recylex's claim that 27 June 2012 should be taken as the end date of Recylex's participation in the infringement, it should be considered, rather, that, as set out in Recital (245) and in accordance with the case-law referred to therein, in the absence of any evidence that could be interpreted as a declared intention of any of the parties to distance themselves from the object of the agreement or concerted practice, 26 September 2012 should be taken as the date on which each party (except for JCI) ended their participation in the infringement, as that is the date on which the Commission commenced its inspections. Given that the contacts between the parties took place when necessary and without any fixed or established periodicity (see Recital (54)), and in the absence of an unequivocal public distancing from Recylex, the latter's claim in this respect must therefore be rejected.
- (343) Regarding Recylex's claim that the Commission should view the fact that Recylex last participated in an anti-competitive contact on 27 June 2012 as an attenuating

factor that reduces the gravity of Recylex's participation in the infringement, it remains the case that the duration of participation in the infringement is not among the factors listed under point 22 of the Guidelines on fines to which the Commission must have regard when assessing the gravity of the infringement. It would not be relevant or appropriate to take into account the duration of the participation in the infringement when assessing the gravity of the infringement given that the duration of participation in the infringement is in any case taken into account in a separate step of the method applied by the Commission for setting the basic amount of the fine. Recylex's claim in this respect must therefore be rejected.

- Conclusion

- (344) The duration of participation in the infringement and the corresponding multiplier factor to be taken into account for calculating the variable part of the basic amount of each party's fine are set out in the following table:

Table 3: Multiplier factor for duration

Undertaking	Period of participation in the infringement; duration	Multiplier factor
Campine	23 September 2009-26 September 2012; (1 100 days)	3.01
Eco-Bat	23 September 2009-26 September 2012; (1 100 days) ³⁶⁵	3.01
JCI	23 September 2009-22 June 2012 (1 004 days)	2.74
Recylex	23 September 2009-26 September 2012; (1 100 days)	3.01

8.3.2.3. Additional amount

- (345) Under point 25 of the Guidelines on fines, in order to deter undertakings from participating in agreements or concerted practices prohibited as incompatible with the internal market, the basic amount of the fines should include an additional amount of between 15 % and 25 % of the value of purchases.
- (346) The proportion of the value of purchases to be applied for calculating the additional amount is determined on the basis of the factors set out in Recitals (321)-(334) regarding the variable part of the basic amount.
- (347) Therefore, taking into account those factors, in particular the nature of the infringement, the percentage of the value of purchases to be applied for calculating the additional amount should be set at 15 %.

8.3.2.4. Calculation of the basic amount

- (348) On the basis of the above, the basic amount of each fine is as follows:
- (a) for Campine: EUR [...]
 - (b) for Eco-Bat: EUR [...]
 - (c) for JCI: EUR [...]

³⁶⁵ The multiplier factor taken into account for STCM's period of participation in the infringement from 18 January 2011 until 26 September 2012 (618 days) is 1.69.

(d) for Recylex: EUR [...].

8.3.3. *Adjustments to the basic amount*

8.3.3.1. Aggravating circumstances

- (349) The Commission may increase the basic amount where it considers that aggravating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines.
- (350) No increase of the basic amount for aggravating circumstances should be applied for any of the addressees of this Decision.

8.3.3.2. Mitigating circumstances

- (351) The Commission may reduce the basic amount where it considers that mitigating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.
- Arguments of the parties
- (352) Campine claims that it was not involved in the anti-competitive conduct in the same way as the other parties and that its limited participation in the infringement should be taken into account as a mitigating circumstance³⁶⁶.
- (353) Recylex claims that mitigating circumstances should apply to it as it terminated the infringement following the Commission's inspections in September 2012³⁶⁷. Recylex refers in this respect to point 29 of the Guidelines on fines.
- (354) Recylex claims that mitigating circumstances should apply to it as its involvement in the infringement was considerably more limited compared to the involvement of JCI or Eco-Bat. Recylex claims in particular (i) that JCI ([employee name]) and Eco-Bat ([employee name]) were the two leaders and active coordinators of the infringement, (ii) that [employee name] in particular was the initiator of anti-competitive contacts with competitors, (iii) that Recylex was under significant pressure from JCI (JCI was an important customer of Recylex and JCI did not hesitate to retaliate against scrap battery purchasers that went against JCI's wishes), (iv) that its ability to object to the initiatives of [employee name] was limited, and (v) that Recylex often did not implement the agreed prices.
- Discussion and findings
- (355) Regarding Campine's claim that it was not involved in the infringement in the same way as the other parties, it is correct that the number of anti-competitive contacts in which Campine participated is significantly lower than for the other parties (six contacts for Campine, against 61 for JCI, 28 for Eco-Bat and 39 for Recylex). As noted in Recitals (249)-(252), there are also long periods for which there is no evidence of Campine's participation in any anti-competitive contacts. Mitigating circumstances are therefore found to exist for Campine as it had a more minor or peripheral role in the infringement. A reduction higher than 5 % would not be justified as the value of purchases figure taken into account for Campine already reflects its secondary position on the market compared to Eco-Bat, JCI and Recylex. In addition, Campine took part in all multilateral meetings and did not oppose or disrupt the cartel.

³⁶⁶ [...].

³⁶⁷ [...].

- (356) Regarding Recylex's claim that mitigating circumstances should apply to it as it terminated the infringement as soon as the Commission intervened, it is explicitly mentioned in point 29 of the Guidelines on fines that those provisions will not apply to secret agreements or practices (in particular, cartels). This claim must therefore be rejected.
- (357) Regarding Recylex's claim that mitigating circumstances should apply to it as its involvement in the infringement was considerably more limited compared to that of JCI or Eco-Bat, it is incorrect to draw such an observation given that, as shown by Table 2, Recylex participated in 39 anti-competitive contacts whereas Eco-Bat participated in 28 anti-competitive contacts. In addition, as noted in Recital (213), [employee name] took the initiative on many occasions to contact the other parties. This claim must therefore be rejected.

- Conclusion

- (358) A reduction of 5 % of the basic amount for mitigating circumstances should be applied for Campine.
- (359) No reduction of the basic amount for mitigating circumstances should be applied for Recylex or for any of the other addressees of this Decision.

8.3.3.3. Deterrence

- (360) Point 30 of the Guidelines on fines provides that the Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect and that, to that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.
- (361) In view of the total turnovers of the addressees of this Decision and the fine to be imposed on each of them, it is not necessary to apply a multiplier for deterrence for any of those addressees.

8.3.3.4. Application of point 36 of the Guidelines on fines

- (362) As regards Recylex's argument that even a mere symbolic fine would be a sufficient deterrent for Recylex, in particular given its precarious financial resources and difficult economic situation, the Court has repeatedly held that the Commission is not required, when determining the amount of the fine, to take account of the economic situation of the undertaking concerned, and, in particular, of its financial capacity, since recognition of such an obligation would be tantamount to conferring unfair competitive advantages on the undertakings least well adapted to market conditions³⁶⁸.

8.3.3.5. Increase pursuant to point 37 of the Guidelines on fines

- (363) The Guidelines on fines indicate that in order to achieve the objectives of specific and general deterrence, it is appropriate for the Commission to refer to the value of the sales of goods or services to which the infringement relates as a basis for setting the fine³⁶⁹. The combination of the *value of sales* to which the infringement relates and of the duration of the infringement is regarded as providing *an appropriate proxy*

³⁶⁸ See judgment in *SGL Carbon v Commission* (C-328/05 P, EU:C:2007:277, paragraph 100 and the case-law cited).

³⁶⁹ Point 5 of the Guidelines on fines.

*to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement*³⁷⁰ (emphasis added by the Commission).

- (364) As explained in Recital 40, the objective of the cartel was to coordinate prices for the purchase of scrap lead-acid automotive batteries. Price-fixing of purchase prices and price-fixing of selling prices differ in that the objective of price-fixing of purchase prices is not to increase the (purchase) price but, on the contrary, to reduce it or to prevent its increase. The mechanism of the general method for the setting of fines is such that the more successful a sales cartel is, the higher the value of sales and thus the amount of the fine. The inverse is true for purchase cartels: the more successful a purchase cartel is, the lower the amount of the value of purchases and thus the amount of the fine. The Commission drafted its Guidelines on fines with sales cartels in mind (points 12 to 19 refer to the value of sales and not to the value of purchases), not taking this particularity of purchase cartels into account. It is thus inherent to the fact that the cartel in the present case is a purchase cartel that the value of purchases in itself is unlikely to be an appropriate proxy for reflecting the economic importance of the infringement. This because, normally in an operating company, purchases are lower than sales in value terms, giving therefore a systematic lower starting point for the calculation of a fine. Therefore, following the general methodology of the Guidelines on fines without any adjustment would also not achieve a sufficiently deterrent effect, which is not only necessary to sanction the undertakings concerned in this case (specific deterrence) but also to deter other undertakings from engaging in this type of infringement (general deterrence).
- (365) In order to take this particularity into account and to achieve deterrence, it is appropriate for the Commission to apply, under point 37 of the Guidelines on fines, an increase of the amount of the fine in the present case (before the legal maximum of 10 % of worldwide turnover) by 10 % for all undertakings held liable for the infringement.
- (366) On 13 December 2016, the Commission sent a letter to all the addressees of this Decision to inform them of its intention to apply a specific increase under point 37 of the Guidelines on fines. The Commission invited the addressees to provide comments on this letter, which they did (see Recital (38)).
- Arguments of the parties
- (367) JCI supports the finding that the nature of the infringement, notably in a purchasing situation, requires a departure from the general methodology on the setting of fines. The particular objective of a purchasing situation can, in its view, justify an increase with a same percentage for all parties and ensure fair treatment among them.
- (368) Campine objects to the Commission's intention to apply point 37 of the Guidelines on fines. Campine claims that the SO did not contain any findings on the success of the alleged purchasing cartel, that its profit margin has not changed before, during or after the period of the infringement and that Campine has shown that the alleged conduct had no effects. Furthermore, Campine claims that there is no need for a deterrence increase as far as Campine is concerned as it has always played according to the rules and was only marginally involved in the alleged conduct. Campine also states that in the absence of any findings on the effectiveness of the alleged conduct the Commission would breach fundamental legal principles and due process in

³⁷⁰

Point 6 of the Guidelines on fines.

increasing its fine by applying point 37, all the more so as this would be a significant departure from the Commission's practice. Campine notes that, in the past, the Commission has only applied point 37 to reduce a fine or when it was justified given the exceptional circumstances of a case, for instance where there were no relevant sales.

- (369) Eco-Bat objects to the Commission's intention to apply point 37 of the Guidelines on fines. Eco-Bat claims that the Commission's intention to apply point 37 in the present case deviates from its decisional practice, in breach of the principles of legal certainty and equal treatment. It argues that point 37 is typically applied to reduce the amount of the fine and that when the Commission applies point 37 to increase the amount of the fines this is typically done in the context of market sharing arrangements where one or several undertakings had no or very limited sales in the EU. Eco-Bat notes that the Commission has not made a finding in the SO that the parties were successful in reducing the purchase prices for scrap batteries as it has not examined the actual effects of the conduct, but has relied instead on the object of the conduct. Eco-Bat also notes that in taking 2011 as the reference year, the Commission is already taking a value of purchases which is higher than the average value of purchases during the period of the infringement. Eco-Bat claims that the Commission cannot apply point 37 without adopting a new SO and granting Eco-Bat the right to request a hearing. In addition, Eco-Bat considers that the adoption of a new fining methodology 18 months after the adoption of the SO objections would breach the principle of good administration.
- (370) Recylex objects to the Commission's intention to apply point 37 of the Guidelines on fines and emphasises that any departure from the Commission's standard fining methodology must be duly reasoned. Recylex contests the underlying premise that the cartel was successful, and submits that the Commission has not set out any facts on which the assumed success of the cartel is based. Recylex further claims that the nature of the infringement is already taken into account under point 22 of the Guidelines on fines and that to take it into account under point 37 would entail taking the same factor into account twice. Recylex notes also that in previous cases concerning purchasing cartels, the existence of a purchasing cartel was not considered a reason to increase the fine. According to Recylex, it must be in a position to rebut the facts brought forward by the Commission to support any increase of the fine on the basis of point 37, as Recylex's rights of defence in the present proceedings and in any potential damages claims would otherwise be undermined. Recylex submits that, in accordance with the *Putters* case-law³⁷¹, the assessment of the need for deterrence must be individualised and take into account the specific situation of each undertaking and therefore cannot lead to the same percentage of increase of the fine for all undertakings. Recylex considers that to ensure equal treatment and avoid over-deterrence, a reduction of the fine under point 37 should apply to Recylex, as recycling scrap batteries and the production of lead accounted for 70 to 75 % of Recylex's consolidated turnover, whereas the other parties had wider product ranges and their lead recycling business accounted for a smaller share of their total turnover.
- Discussion and findings

³⁷¹ See judgment in *Putters International v Commission* (T-211/08, ECLI:EU:T:2011:289, paragraph 75).

- (371) Regarding the points raised by Campine, Eco-Bat and Recylex concerning their rights of defence, it should be noted that, in accordance with settled case-law, *‘provided that the Commission indicates expressly in the statement of objections that it will consider whether it is appropriate to impose fines on the undertakings concerned and that it sets out the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed “intentionally or negligently”, it fulfils its obligation to respect the undertakings’ right to be heard. In doing so, it provides them with the necessary elements to defend themselves not only against a finding of infringement but also against the fact of being fined*³⁷². The Commission’s intention to apply point 37 of the Guidelines on Fines does not concern a principal element of fact or law, such as the gravity or the duration of the infringement or the fact that it has been committed ‘intentionally or negligently’. The Commission was therefore under no obligation to include this intention in its SO.
- (372) In accordance with point 84 of its Best Practices Notice, the Commission has informed the addressees of this Decision of its intention to apply point 37 of the Guidelines on fines in its letter of 13 December 2016, providing adequate reasoning for applying an increase by a same set percentage for all the addresses and has granted those addressees the opportunity to make their views known before the Commission consults the Advisory Committee and before it adopts its final decision. The Commission’s intention to apply point 37 neither raises new objections against the parties nor changes the legal assessment established in the SO. In such circumstances, the Commission is under no obligation to offer the parties another oral hearing. In accordance with Article 12 of Regulation (EC) No 773/2004 and points 106 and 112 of the Best Practices Notice, parties may only request an oral hearing within the time limit set for their written reply to the SO or, by analogy, if a supplementary SO is issued.
- (373) Campine, Eco-Bat and Recylex incorrectly infer from the Commission’s letter of 13 December 2016 that the Commission considered that the cartel was ‘successful’ in achieving its aims. The Commission merely explained the inverse correlation that exists between the success of a purchase cartel and the value of purchases without concluding that the cartel in the present case was successful in achieving its aims (see also Recital 371). In the SO, the Commission took the view that the conduct constitutes an infringement by object and therefore did not examine the actual effect of the conduct (paragraphs 298 and 299 of the SO). That view has not been altered in this Decision (see Recitals (238)).
- (374) Campine, Eco-Bat and Recylex refer to the fact that the Commission has not previously applied point 37 of the Guidelines on fines to increase the fines in the case of a purchasing cartel. The fact that the Commission has not previously applied point 37 in an identical or similar way to that which is envisaged in the present case is irrelevant considering that the purpose of point 37 is precisely to enable to Commission to depart from the general methodology for the setting of fines, depending on the particularities of a given case or the need to achieve deterrence. In addition, this is the first case concerning a purchasing cartel for which the

³⁷² Judgment in *Archer Daniels Midland v Commission* (C-511/06 P, ECLI:EU:C:2009:433, paragraph 68 and the case-law cited). See also Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (the ‘Best Practices Notice’, OJ C 308, 20.10.2011, p. 6), point 84.

Commission has applied the 2006 Guidelines on fines, and under the previous guidelines on fines, the basic amount of the fines was not determined on the basis of the value of sales or value of purchases, but on other factors. Finally, the Commission is not bound by assessments which it has made in the past³⁷³. Accordingly, the fact that the Commission has not applied the same or a similar increase of the fines in one or several previous decisions in no way means that it is obliged to make the same assessment in a subsequent decision³⁷⁴.

- (375) It follows therefore that the application of point 37 may give rise to results in terms of the setting of fines that differ from the manner in which the Commission had previously applied that provision in other cases. Given that this is the first time the Commission would impose an increase in a case concerning a purchase cartel, the increase should be set at 10 %.
- (376) Recylex claims that the increase of the fine by a certain percentage for what the Commission assumes to be a lower purchase price achieved by the parties as compared to the non-cartelised price would amount to establishing the existence of damage. However, the Commission does not assume that the parties succeeded in achieving a lower purchase price. The increase pursuant to point 37 of the Guidelines on fines is intended to reflect the fact that, in the case of a purchasing cartel, the setting of the fine on the basis of the value of purchases (owing to the lack of any possibility to technically do otherwise, and in particular owing to the fact that one of the parties has no sales on the market) is likely to underestimate the economic significance of the infringement and lead to under-deterrence. The value of purchases departs from what is considered to be an appropriate proxy reflecting the economic importance of the infringement. It would therefore be erroneous to consider that an increase of the fines under point 37 could be interpreted as being capable of providing indications as regards the scope and extent of any possible damage that may have occurred as a result of the cartel.
- (377) Regarding Recylex's claim that the nature of the infringement is already taken into account under point 22 of the Guidelines on fines and that to take it into account under point 37 would entail taking the same factor into account twice, it should be noted, that, according to the Guidelines on fines, the nature of an infringement relates to the conduct (horizontal price-fixing, market-sharing and output-limitation agreements, etc.) while the increase of the fines under point 37 is intended to address the particularity that this case concerns a purchase cartel. In addition, deterrence is a factor which can be applied in addition to the gravity percentage corresponding to the factors listed in point 22.
- (378) Regarding Recylex's claim made on the basis of the *Putters* judgment, the General Court's reasoning in that case was in essence that the failure to draw a distinction between cartel participants with regard to the final fine imposed on each of them that results from the application of the 10 % ceiling laid down in Article 23(2) of Regulation (EC) No 1/2003 presents a difficulty in terms of the principle that penalties must be specific to the offender and to the offence. In any event, the plea in

³⁷³ See, to that effect, judgments in *Dansk Rørindustri and Others v Commission* (ECLI:EU:C:2005:408, paragraphs 209 to 213), *Archer Daniels Midland v Commission* (ECLI:EU:C:2009:433, paragraph 82) and *Erste Group Bank and Others v Commission* (ECLI:EU:C:2009:576, paragraph 123).

³⁷⁴ See, to that effect, judgments in *Hercules Chemicals v Commission* (ECLI:EU:T:1991:75, paragraph 357) and *Heineken Nederland and Heineken v Commission* (C-452/11 P, ECLI:EU:C:2012:829, paragraph 401).

relation to which this reasoning was brought forward was rejected by the General Court. The Commission's intention is to apply the increase under point 37 of the Guidelines on fines before the legal maximum of 10 % of worldwide turnover. The fact that the 10 % increase is applied on the value of purchases of each of the parties, resulting in a different monetary amount, which entails that the penalty is specific to the offender and to the offence. Recylex's claim in this respect is therefore irrelevant.

- (379) Regarding Recylex's claim that point 37 of the Guidelines on fines should in fact be applied to reduce its fine as the recycling of scrap lead-acid batteries accounted for a substantial proportion of its turnover compared to other parties, in *Pilkington Group and Others v Commission*³⁷⁵, the Court has noted in relation to alleged 'mono-product' undertakings that *'the difference in the proportion represented by the fine in relation to the total turnover of the undertakings concerned does not, as such, constitute a sufficient justification for departing from the method of calculation that the Commission imposed on itself'*. The Court furthermore considered that *'that 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'*. It should be noted, in addition, that Recylex has not provided any relevant facts or information to support its allegations regarding the relative size and nature of its business portfolio compared to that of the other parties. Finally, it should be noted that Recylex is active in several branches of the recycling industry and that, besides the recycling of lead, it also active in the recycling and production of other products or materials such as polypropylene, zinc or special metals (see Recital (10)).

- Conclusion

- (380) In order to take into account the particularities of this case and to achieve deterrence, it is therefore appropriate for the Commission to apply point 37 of the Guidelines on fines to increase the basic amount of the fines by 10 % for all addressees of this Decision.

8.4. Application of the 10 % of turnover limit

- (381) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking participating in the infringement must not exceed 10 % of its total turnover in the preceding business year.
- (382) The 10 % limit is calculated on the basis of the total worldwide turnover of each of the undertakings concerned for the business year 2015 or 2015/2016, as applicable (see Recitals (4), (6), (8) and (10)).
- (383) The amount of each fine after the application of the 10 % of turnover limit is as follows:
- (a) for Campine: EUR [...]
 - (b) for Eco-Bat: EUR [...]
 - (c) for JCI: EUR [...]
 - (d) for Recylex: EUR [...].

³⁷⁵ Judgment in *Pilkington Group and Others v Commission* (C-101/15 P, ECLI:EU:C:2016:631, paragraph 66).

8.5. Application of the Leniency Notice

8.5.1. JCI

- (384) On 22 June 2012, JCI applied for immunity from fines under the Leniency Notice.
- (385) On 13 September 2012, the Commission granted conditional immunity from fines to JCI pursuant to point 8(a) of the Leniency Notice as it was the first undertaking to submit information and evidence which in the Commission's view would enable it to carry out a targeted inspection in connection with the alleged cartel³⁷⁶.
- (386) JCI's cooperation fulfilled the requirements of the Leniency Notice. JCI has therefore fulfilled its cooperation obligations under point 12 of the Leniency Notice; it did not take steps to coerce other undertakings to join the cartel or to remain in it. The Commission should therefore grant JCI immunity from fines in the present case.

8.5.2. Eco-Bat

- (387) On 27 September 2012, Eco-Bat applied for immunity from fines, or in the alternative, a reduction of a fine under the Leniency Notice. On 10 October 2012, the Commission informed Eco-Bat, in accordance with point 20 of the Leniency Notice, that immunity from fines was not available in the present case.
- (388) By letter of 24 June 2015, the Commission informed Eco-Bat that it had come to the preliminary conclusion that Eco-Bat was the first undertaking to submit evidence which represented, within the meaning of points 24 and 25 of the Leniency Notice, significant added value and that the Commission intended to grant Eco-Bat a reduction within the band of 30 % to 50 % of any fine that would otherwise have been imposed on it in this case.
- (389) According to point 12 of the Leniency Notice, an undertaking that applies for a reduction of a fine is required to cooperate genuinely, fully, 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. Eco-Bat has therefore met the requirements of point 12 of the Leniency Notice.
- (390) According to point 26 of the Leniency Notice, in order to determine the level of reduction within each of the bands, the Commission will take into account the time at which the evidence fulfilling the condition in point 24 of the Leniency Notice was submitted and the extent to which it represents added value.
- (391) At the time of Eco-Bat's application, the Commission had in its possession the information submitted by the immunity applicant and the documents found during the inspections. The majority of the information and evidence provided by Eco-Bat was submitted in the initial phase of the investigation and prior to the opening of proceedings in this case, thus helping the Commission to shape and strengthen the case.
- (392) The evidence submitted by Eco-Bat provides significant added value as it strengthens the Commission's ability to prove the facts relating to the cartel as regards the following aspects: (i) Eco-Bat corroborated some information provided by the

³⁷⁶ [...].

immunity applicant and the other leniency applicants, in particular the commencement and end dates of the infringement³⁷⁷; (ii) Eco-Bat provided contemporaneous evidence about several anti-competitive contacts with the immunity applicant that had not been provided by the immunity applicant³⁷⁸. A number of those contacts concern situations where information received from one party was passed on by one party to another. Those contacts prove mutual awareness of the whole cartel and follow-up in implementation of the cartel contacts; (iii) Eco-Bat also provided explanations on multilateral and bilateral contacts with other parties, in particular information on the background and circumstances of those contacts. Eco-Bat's submissions also add clarity to the organisation of the cartel, in particular concerning the transmission of information between the parties. In particular, given that many of the anti-competitive contacts in which Eco-Bat participated were bilateral, it was important to receive corroboration from the other party involved regarding those contacts. Furthermore, Eco-Bat made a [...] available for providing information to the Commission's services. Eco-Bat's submissions contain statements or explanations given by a [...] who was a [...] at Eco-Bat during the period of the infringement³⁷⁹.

- (393) The Commission should therefore grant Eco-Bat a 50 % reduction of the fine that would otherwise have been imposed on it.

8.5.3. *Recylex*

- (394) On 23 October 2012, Recylex applied for immunity from fines, or in the alternative, a reduction of a fine under the Leniency Notice.
- (395) On 13 December 2013, the Commission informed Recylex, according to point 20 of the Leniency Notice, that immunity from fines was not available in the present case.
- (396) By letter of 24 June 2015, the Commission informed Recylex that it came to the preliminary conclusion that Recylex was the second undertaking to submit evidence of the cartel which represented, within the meaning of points 24 and 25 of the Leniency Notice, significant added value and that the Commission intended to grant Recylex a reduction within the band of 20 % to 30 % of any fine that would otherwise have been imposed on it.
- (397) At the time of Recylex's application, the Commission had already received JCI's immunity application and Eco-Bat's leniency application. The Commission also had in its possession the documents found during the inspections. Before Recylex's application, the Commission therefore already had evidence regarding many features of the cartel. Recylex's submissions have nevertheless provided evidence which is supplementary to that which the Commission had in its possession at the time. The evidence submitted by Recylex provides significant added value as it strengthens the Commission's ability to prove the facts relating to the cartel as regards the following aspects: (i) Recylex provided a description of the cartel and gave details on its historical origins; (ii) Recylex provided contemporaneous evidence about several anti-competitive contacts with other parties that had not been provided by any other party; (iii) Recylex also provided explanations on the commencement date of the infringement, the multilateral meeting in Windhagen, for which evidence was

³⁷⁷ [...].
³⁷⁸ [...].
³⁷⁹ [...].

already in the Commission's possession; (iv) Recylex also provided explanations on telephone contacts and text messages between Recylex and its competitors. In particular, given that many of the anti-competitive contacts in which Recylex participated were bilateral, it was important to receive corroboration from the other party involved regarding those contacts.

- (398) Recylex's submissions corroborate JCI's and Eco-Bat's statements and help to establish the general functioning of the cartel and its development over time as they also confirm and supplement those statements in this respect. Furthermore, Recylex made [...] available for providing information to the Commission's services. Its submissions contain statements or explanations given by Recylex's [...].
- (399) Recylex is the second undertaking which is entitled to a reduction of fines, within the available range of 20 % to 30 %.
- (400) Recylex claims however that it is entitled to a reduction for leniency in the higher band of 30 % to 50 %. In support of this claim, Recylex argues that it was the first party to provide evidence of significant added value, in particular regarding: (i) anti-competitive contacts in France, and (ii) the duration of the cartel, including the commencement date (Windhagen meeting), information about the meetings on 21 June 2010 and 8 October 2010, [...]. Recylex also claims that it was the first undertaking to provide information regarding the coded language used by some participants³⁸⁰.
- (401) Recylex's arguments must be rejected. As it follows from the administrative file, the Commission possessed numerous statements or contemporaneous documents submitted by Eco-Bat in the first month after the inspections³⁸¹. Regarding the meetings, it is correct that Recylex was the first undertaking to provide explanations regarding the Windhagen meeting, but only on organisational issues as the Commission was already aware of that meeting³⁸² and had already found during the inspection at Campine compelling evidence regarding the actual subject and content of that meeting (see Recitals (68) and (69)³⁸³). Regarding the meetings of 21 June 2010 and 8 October 2010, it is correct that Recylex was the first undertaking to provide information regarding those meetings (see Recital (341)). However, this is not sufficient to justify granting Recylex a reduction of fines in the higher band of 30 % to 50 %.
- (402) Recylex claims also that it was the first undertaking to submit evidence concerning cartel behaviour in France. This claim must be rejected as the Commission was already in possession of information regarding the geographical scope of the cartel, including France³⁸⁴.
- (403) On the basis of the above, the Commission should therefore grant Recylex a 30 % reduction of the fine that would otherwise have been imposed on it.

³⁸⁰ [...].

³⁸¹ [...].

³⁸² [...].

³⁸³ The evidence refers to handwritten notes taken by a person being debriefed on the meeting by another person who actually attended the meeting.

³⁸⁴ [...].

8.5.4. Campine

- (404) On 4 December 2012, Campine applied for a reduction of a fine under the Leniency Notice.
- (405) By letter of 24 June 2015, the Commission informed Campine that it had come to the preliminary conclusion that the information and evidence submitted by Campine did not qualify for a reduction of a fine, as such information and evidence did not unveil any new facts or corroborate any of the facts in relation to the cartel.
- (406) According to point 5 of the Leniency Notice, *‘co-operation by one or more undertakings may justify a reduction of a fine by the Commission. Any reduction of a fine must reflect an undertaking’s actual contribution, in terms of quality and timing, to the Commission’s establishment of the infringement. Reductions are to be limited to those undertakings that provide the Commission with evidence that adds significant value to that already in the Commission’s possession’*. According to point 23 of the Leniency Notice, *‘[u]ndertakings disclosing their participation in an alleged cartel affecting the Community that do not meet the conditions under section II above may be eligible to benefit from a reduction of any fine that would otherwise have been imposed’*. According to point 24 of the Leniency Notice, *‘[i]n order to qualify, 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 and must meet the cumulative conditions set out in points (12)(a) to (12)(c) above’*.
- (407) It is apparent that Campine’s application does not amount to the disclosure of its participation in the cartel. In fact, Campine stated that *‘Campine is not aware of any joint initiative aiming at exchanging specific information with other companies in a view of coordinating future market behaviour at recycling level’*³⁸⁵.
- (408) The content of Campine’s leniency application mainly consists of comments on the documents found during the inspections at its premises. However, those comments or explanations do not represent any significant added value in relation to the information already in the Commission’s possession.[...] ³⁸⁶. As explained in Recital (23), tolling agreements are not covered by the present procedure. In other instances, Campine’s explanations of the documents were limited to general statements, such as for instance: *‘This document shows an email [...]. It reports developments concerning [...] and also discusses general market trends’*³⁸⁷.
- (409) Campine was the last party to apply for leniency. At the time of Campine’s application, the Commission could already rely on the information and evidence submitted by JCI, Eco-Bat and Recylex, in addition to the documents obtained during the inspections. In fact, in its leniency application, Campine mentions that it *‘has so far not discovered any communications or other documents which are relevant to the Commission’s investigation and which are not on the Commission’s file already’*³⁸⁸.
- (410) The evidence submitted by Campine does not strengthen the Commission’s ability to prove the case. Besides the documents obtained by the Commission during the

385 [...].

386 [...].

387 [...].

388 [...].

inspections at Campine's premises, the only documents originating from Campine which are used to describe the infringement are included in Campine's replies to the Commission's requests for information and are described in Recitals (65), (68), (69), (72) and (84).

- (411) It can be concluded that Campine's application does not represent significant added value with respect to the evidence in the Commission's possession at the time of its submission. Campine has not cooperated with the Commission according to point 5 of the Leniency Notice and therefore, the Commission should not grant Campine any reduction of the fine imposed on it.

8.6. Ability to pay

- (412) According to point 35 of the Guideline 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 the imposition of the fine [...] would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value'*.
- (413) To apply point 35 of the Guidelines on fines, the Commission must assess the undertaking's financial situation, in particular its capacity to pay the fine. If the conditions laid down in point 35 of the Guidelines on fines are met, the Commission may reduce the final amount of the fine, taking into account the undertaking's ability to pay the fines imposed on it and the likely effect that such a payment would have on its economic viability.
- (414) **Recylex submitted an application** under point 35 of the Guidelines on fines.
- (415) The Commission sent requests under Article 18 of Regulation (EC) No 1/2003 to Recylex, asking it to submit details about its financial situation and the specific social and economic context it is in.
- (416) The Commission assessed the financial data and information submitted by Recylex. In particular, the Commission examined the annual financial statements of the last five financial years, as well as projections for the current year and the next two years. The Commission took into account a number of financial ratios to measure the solidity (in this case, the proportion which the expected fine would represent of the undertaking's assets and equity), profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. The Commission also examined possible restructuring plans and their state of implementation, relations with outside financial partners such as banks and relations with shareholders³⁸⁹.
- (417) When determining the amount of the fine to be imposed, the Commission is not required to take into account the poor financial situation of an undertaking, since

³⁸⁹ 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 orders in *HFB v Commission* (C-335/99 P, ECLI:EU:C:1999:608, paragraphs 35-71), *FEG v Commission* (C-7/01 P, ECLI:EU:C:2001:183, paragraphs 29-46) and *Almamet v Commission* (T-410/09, ECLI:EU:T:2012:676, paragraphs 47 *et seq.*)).

recognition of such an obligation would give unjustified advantages to undertakings least well adapted to the conditions of the market³⁹⁰.

- (418) The Commission considers that 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 in the fine which would have otherwise been imposed on that undertaking³⁹¹. 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 continue to develop the undertaking and its assets. Therefore, each party which has invoked an inability to pay must demonstrate that viable alternative solutions are not available. However, if there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure to maintain 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.
- (419) For the reasons set out in Annex I³⁹², the Commission should reject Recylex's request for a reduction of the fine on the grounds of inability to pay.

8.7. Final amount of the fines

- (420) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are as follows:
- (a) for Campine: EUR 8 158 000
 - (b) for Eco-Bat: EUR 32 712 000
 - (c) for JCI: EUR 0
 - (d) for Recylex: EUR 26 739 000

HAS ADOPTED THIS DECISION:

Article 1

1. The following undertakings have infringed Article 101 of the Treaty by participating, during the periods indicated, in a single and continuous infringement relating to the purchase of scrap lead-acid batteries extracted from automotive vehicles, covering Germany, Belgium, France and the Netherlands, which consisted of agreements and/or concerted practices that had as their object the coordination of pricing behaviour:
 - (a) Campine:
 - Campine NV, from 23 September 2009 until 26 September 2012;
 - Campine Recycling NV, from 23 September 2009 until 26 September 2012;

³⁹⁰ See judgments in *IAZ v Commission* (C-96/82, ECLI:EU:C:1983:310, paragraphs 54 and 55), *Dansk Rørindustri and Others v Commission* (ECLI:EU:C:2005:408, paragraph 327) and *SGL Carbon v Commission* (C-308/04 P, ECLI:EU:C:2006:433, paragraph 105).

³⁹¹ See judgments in *Tokai Carbon v Commission* (T-236/01, ECLI:EU:T:2004:118, paragraph 372) and *Heubach v Commission* (T-64/02, ECLI:EU:T:2005:431, paragraph 163).

³⁹² Annex I is confidential and accessible only to Recylex.

- (b) Eco-Bat:
 - Eco-Bat Technologies Ltd, from 23 September 2009 until 26 September 2012;
 - Berzelius Metall GmbH, from 23 September 2009 until 26 September 2012;
 - Société de Traitements Chimiques des Métaux SAS, from 18 January 2011 until 26 September 2012;
- (c) JCI:
 - Johnson Controls, Inc., from 23 September 2009 until 22 June 2012;
 - Johnson Controls Tolling GmbH & Co. KG, from 23 September 2009 until 22 June 2012;
 - Johnson Controls Recycling GmbH, from 23 September 2009 until 22 June 2012;
- (d) Recylex:
 - Recylex SA, from 23 September 2009 until 26 September 2012;
 - Fonderie et Manufacture de Métaux SA, from 23 September 2009 until 26 September 2012;
 - Harz-Metall GmbH, from 23 September 2009 until 26 September 2012.

Article 2

1. For the infringement referred to in Article 1, the following fines are imposed:
 - (a) Campine NV and Campine Recycling NV, jointly and severally liable for: EUR 8 158 000;
 - (b) Eco-Bat Technologies Ltd and Berzelius Metall GmbH, jointly and severally liable for: EUR 32 712 000 of which Eco-Bat Technologies Ltd, Berzelius Metall GmbH and Société de Traitements Chimiques des Métaux SAS, jointly and severally liable for: EUR 21 944 000;
 - (c) Johnson Controls, Inc., Johnson Controls Tolling GmbH & Co. KG and Johnson Controls Recycling GmbH, jointly and severally liable for: EUR 0;
 - (d) Recylex SA, Fonderie et Manufacture de Métaux SA and Harz-Metall GmbH, jointly and severally liable for: EUR 26 739 000.
2. The fines shall be credited, in euros, within a period of 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'Épargne de l'État
 1-2, place de Metz
 L-1930 Luxembourg
 LUXEMBOURG

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref.: European Commission – BUFI / AT.40018

3. After the expiry of that period, interest will 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.
4. Where an undertaking referred to in Article 1 lodges an appeal, that undertaking must cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012³⁹³.

Article 3

1. The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article in so far as they have not already done so.
2. 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.

Article 4

1. This Decision is addressed to:
 - (a) Campine NV, IZ Kanaal West, Nijverheidstraat 2, 2340 Beerse, Belgium;
 - (b) Campine Recycling NV, IZ Kanaal West, Nijverheidstraat 2, 2340 Beerse, Belgium;
 - (c) Eco-Bat Technologies Ltd, Cowley Lodge, Warren Carr, Matlock, Derbyshire DE4 2LE, United Kingdom;
 - (d) Berzelius Metall GmbH, Emser Straße 11, 56338 Braubach, Germany;
 - (e) Société de Traitements Chimiques des Métaux SAS, 11 rue de Pithiviers, 45480 Bazoches-les-Gallerandes, France;
 - (f) Johnson Controls, Inc., 5757 N Green Bay Ave, Milwaukee WI 53201, United States of America;
 - (g) Johnson Controls Recycling GmbH, Am Leineufer 51, 30419 Hannover, Germany;
 - (h) Johnson Controls Tolling GmbH & Co. KG, Am Leineufer 51, 30419 Hannover, Germany;
 - (i) Recylex SA, 6 place de la Madeleine, 75008 Paris, France;
 - (j) Fonderie et Manufacture de Métaux SA, Rue Paepsem/Paepsemstraat 111, 1070 Anderlecht, Belgium;
 - (k) Harz-Metall GmbH, Hüttenstraße 6, 38642 Goslar, Germany.

This Decision shall be enforceable pursuant to Article 299 of the Treaty.

³⁹³ OJ L 362, 31.12.2012, p. 1.

Done at Brussels, 8.2.2017

For the Commission
Margrethe VESTAGER
Member of the Commission

