



EUROPEAN COMMISSION
Competition DG

CASE AT.39610 – Power Cables

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Articles 7 and 23(2) Regulation (EC) 1/2003

Date: 02/04/2014

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Brussels, 2.4.2014
C(2014) 2139 final

COMMISSION DECISION

of 2.4.2014

addressed to:

ABB AB, ABB Ltd, Brugg Kabel AG, Kabelwerke Brugg AG Holding, Nexans France SAS, Nexans SA, nkt cables GmbH, NKT Holding A/S, Prysmian Cavi e Sistemi S.r.l., Prysmian S.p.A., The Goldman Sachs Group, Inc., Pirelli & C. S.p.A., Safran SA, Silec Cable, SAS, General Cable Corporation, Sumitomo Electric Industries, Ltd., Hitachi Metals, Ltd., J-Power Systems Corporation, Furukawa Electric Co. Ltd., Fujikura Ltd., VISCAS Corporation, SWCC SHOWA HOLDINGS CO., LTD., Mitsubishi Cable Industries, Ltd., EXSYM Corporation, LS Cable & System Ltd., Taihan Electric Wire Co., Ltd.,

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

AT.39610 - Power cables

(Only the English, French, German and Italian texts are authentic)

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COMMISSION DECISION

of **XXX**

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ABB AB, ABB Ltd, Brugg Kabel AG, Kabelwerke Brugg AG Holding, Nexans France SAS, Nexans SA, nkt cables GmbH, NKT Holding A/S, Prysmian Cavi e Sistemi S.r.l., Prysmian S.p.A., The Goldman Sachs Group, Inc., Pirelli & C. S.p.A., Safran SA, Silec Cable, SAS, General Cable Corporation, Sumitomo Electric Industries, Ltd., Hitachi Metals, Ltd., J-Power Systems Corporation, Furukawa Electric Co. Ltd., Fujikura Ltd., VISCAS Corporation, SWCC SHOWA HOLDINGS CO., LTD., Mitsubishi Cable Industries, Ltd., EXSYM Corporation, LS Cable & System Ltd., Taihan Electric Wire Co., Ltd.,

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement
AT.39610 - Power cables**

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THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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

Having regard to the Commission decision of 30 June 2011 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 81 and 82 of the Treaty,³

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

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

Whereas:

¹ OJ C 115, 9.5.2008, p. 47.

² OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty 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 31.3.2014.

1. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

- (1) This Decision relates to a cartel concerning (extra) high voltage submarine ("SM") and (extra) high voltage underground ("UG") power cables.

1.1. The products covered by the infringement

- (2) UG and SM power cables are used for the transmission and distribution of electrical power. UG power cables are used for terrestrial projects and are laid underground. SM power cables are used for submarine projects and are laid under water. The technology used in UG and SM projects is similar, but SM cables require an additional layer of armour in the form of a protective metal layer designed to increase tensile strength and reduce the risk of damage to the power cable when being laid and once in place on the sea bed. For the installation of SM power cables a cable laying vessel is required.
- (3) The main feature that differentiates UG and SM power cables from cables which are used in aerial transmission lines is that the former are insulated, while the latter are installed as bare cables.
- (4) Power cables, whether UG or SM, are typically classified as either low voltage ("LV"), medium voltage ("MV") or (extra) high voltage ("HV"). There is no universally understood or accepted delineation between LV, MV and HV.⁵ In previous decisions, the Commission has considered that LV cables include cables rated up until 1 kV, that MV generally refers to cables rated from 1 kV to 33/45 kV and that HV generally refers to cables rated between 33/45 kV and 132 kV. Extra HV usually refers to cables for voltages rated above 150 kV.⁶
- (5) There are two basic types of UG and SM power cables depending on the insulation used. UG power cables can either be paper insulated (oil filled or "OF" cables), or use extruded plastics (such as cross linked polyethylene or "XLPE" cables). SM power cables can also be OF and XLPE, or use an additional type of paper insulation applied for direct current transmission called mass impregnated paper ("MI" cables). MI and OF technologies are older and usually proprietary. XLPE technology is more recent and more widely available.
- (6) UG and SM power cables may carry alternating current ("AC") or direct current ("DC"). In general AC is used for short distances and DC is used for long distances. For example, for distances less than 60 km, OF and XLPE AC SM power cables are

⁵ Prysmian describes LV as up to 35 kV, MV as 35 to 45 kV and HV as 45 kV and upwards in ID [...], Prysmian reply to RFI of 20 October 2009. However, in ID [...], Prysmian reply to RFI of 29 November 2010, Prysmian describes HV as all types of cables from and above 34 kV. Nexans has stated that there is no universally understood or accepted delineation in the industry. However it typically considers LV as including cables rated 1 kV, MV as above 1 kV and cables above 60 or 66 kV as HV in ID [...], Nexans reply to RFI of 20 October 2009. EXSYM and nkt refer to the voltage classification of the International Electrotechnical Commission and state that LV is 1 kV or less, MV is 1 kV to 30 kV while HV is 30 kV and above, ID [...], EXSYM reply to RFI of 20 October 2009 and ID [...], nkt reply to RFI of 20 October 2009.

⁶ Commission Decision 2003/176/EC of 19 July 2000 in Case COMP/M.1882 - *Pirelli/BICC*, OJ L 70, 14.3.2003, p. 2; Commission Decision of 5 July 2005 in Case COMP/M.3836 - *Goldman Sachs/Pirelli Cavi e Sistemi Energia/Pirelli Cavi e Sistemi Telecom*, OJ C 183, 26.7.2005, p. 2; Commission Decision of 6 January 2006 in Case COMP/M.4050 - *Goldman Sachs/Cinven/Ahlsell*, OJ C 20, 27.1.2006, p. 31–31; Commission Decision of 9 February 2011 in Case COMP/M.6092 - *Prysmian/Draka Holding*, OJ C 7, 12.1.2011.

used. For longer distances, MI or XLPE DC SM power cables are used. For distances over 150km, only MI DC SM power cables are recommended.⁷

- (7) Different accessories or equipment are used in the supply and installation of power cables. First, UG power cables are often manufactured in shorter lengths than the actual distance they have to bridge. Different cables are therefore connected with joints to obtain the required distance. A joint is the insulated and fully protected connection between two cables. Second, terminations are used to connect cables to power plants and substations. Third, for OF cables, oil feeding equipment is used.
- (8) In certain limited cases, a cable producer may sell only a power cable to another cable producer. However the majority of the power cables covered by this Decision are sold as part of a project. Such projects consist of a combination of the power cable, the necessary additional equipment, installation and services. The products concerned by this Decision therefore include the defined power cables (see Recitals (11)-(13)) as well as all products, works and services sold to the customer related to a sale of power cables when such sales are part of a power cable project.
- (9) While the customers are often national grid operators, the suppliers of power cables are global actors. Power cables are sold worldwide.⁸
- (10) The parties applied a home territory principle, whereby Japanese and Korean producers would not compete for power cable projects in the European home territory and Europeans would not compete for power cable projects in the Japanese and Korean home territories. The parties did not specify any voltage levels for the application of this principle. Concerning the allocation of projects in other territories, referred to as the "export territories", the parties aimed to extend their collusive cooperation to all cables regardless of the voltage (see Recitals (141) (b), (225) and (265)).
- (11) Regardless of this absence of voltage limits in the cartel agreements, the investigation has confirmed that the cartel involved at least UG power cable projects in the EEA with voltages of 110 kV and above regardless of the type of cable concerned. The evidence presented in Section 3 contains several examples of 110 kV projects that were included in the collusive agreements (see Recitals (113), (231)(g), (279)(e), (280)(d) and (322)(d)).
- (12) Moreover, the investigation has also confirmed that the cartel involved at least SM power cable projects in the EEA involving cables with voltages of 33 kV and above, regardless of the type of cable concerned. The evidence presented in Section 3 contains several examples of wind farm projects requiring 33 kV power cables that were included in the collusive agreements (see Recitals (84), (202), (234)(a) and (321)(d)).
- (13) It is therefore concluded that the cartel arrangements covered all types of UG power cables of 110 kV and above and SM power cables of 33 kV and above including all products, works and services sold to the customer related to a sale of power cables when such sales are part of a power cable project.

⁷ ID [...], Prysmian reply to SO of 24 October 2011; [...]; ID [...], Nexans reply to RFI of 30 November 2009; ID [...], Nexans submission of 3 August 2010.

⁸ ID [...], [...]; ID [...], Prysmian reply to RFI of 20 October 2009; [*Confidentiality claim pending*]; see, generally, the facts as set out in Section 3.

1.2. The market players that were involved in the infringement

- (14) The individuals representing the market players in the cartel arrangement and who are relevant for the purpose of this Decision are listed in Annex II.

Nexans⁹

- (15) Nexans SA is the ultimate parent company of the Nexans Group.¹⁰ Nexans SA is a company based in Paris, France. The Nexans Group is one of the leading producers and suppliers of SM and UG power cables worldwide.

- (16) Before 2001, the Nexans Group was wholly-owned by [...]. From 12 June 2001 onwards, Nexans SA has carried out its UG and SM power cable activities in the EEA through various subsidiaries, located, among others, in France (Nexans France SAS), Norway (Nexans Norway A/S) and Spain (Nexans Iberia SL). While Nexans France SAS ("Nexans") is directly wholly-owned by Nexans SA, the subsidiaries located in, among others, Norway and Spain are wholly-owned by Nexans Participations, which is in turn wholly-owned by Nexans SA.

Pirelli/Prysmian¹¹

- (17) Prysmian Cavi e Sistemi Energia S.r.l., which on 1 December 2011 changed its name to Prysmian Cavi e Sistemi S.r.l. ("Prysmian"), is one of the leading producers and suppliers of SM and UG power cables worldwide. Prysmian forms part of the Prysmian group, headed by Prysmian S.p.A. which is based in Milan, Italy. From 18 February 1999 until 28 July 2005, Prysmian was owned by Pirelli & C. S.p.A. ("Pirelli"). In 2005, Pirelli sold its power cable activities to a subsidiary of The Goldman Sachs Group Inc. ("Goldman Sachs").

Sumitomo/Hitachi/JPS¹²

- (18) Sumitomo Electric Industries, Ltd. ("Sumitomo") is a Japanese company which was active in the production and supply of UG and SM power cables at least between 18 February 1999 and 30 September 2001.
- (19) Hitachi Cable Ltd., which on 1 July 2013 ceased to exist in law following its merger with Hitachi Metals, Ltd. ("Hitachi"), is a Japanese company which was active in the production and supply of UG and SM power cables at least between 18 February 1999 and 30 September 2001.
- (20) On 1 October 2001, Sumitomo and Hitachi transferred the responsibility for the production and export sales activities for UG and SM power cables to their joint venture J-Power Systems Corporation ("JPS").¹³ Sumitomo and Hitachi each own 50% of the voting shares in JPS. Sumitomo and Hitachi retained their respective sales activities for the Japanese electric power companies and other customers. In October 2004 sales to electric power companies in Japan were also transferred to

⁹ ID [...], Nexans reply of 5 January 2011 to RFI of 29 November 2010.

¹⁰ ID [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009. Nexans is a French société anonyme (company number 393 525 852 R.C.S.) and therefore referred to as Nexans SA. Nexans France is a French société par actions simplifiée (company number 428 593 230 R.C.S.) and therefore referred to as Nexans France SAS.

¹¹ ID [...], Pirelli reply of 14 December 2010 to RFI of 29 November 2010 and ID [...], Prysmian reply of 17 January 2011 to RFI of 29 November 2010.

¹² ID [...], []; ID [...], []; ID [...], [...]; ID [...], [...].

¹³ ID [...], [...].

JPS.¹⁴ On 3 February 2014 Hitachi and Sumitomo signed a transfer agreement pursuant to which Hitachi plans to transfer its 50% shareholding in JPS to Sumitomo by 1 April 2014.¹⁵

Furukawa/Fujikura/VISCAS¹⁶

- (21) Furukawa Electric Co. Ltd. ("Furukawa") is a Japanese company which was active in the production and supply of UG and SM power cables at least between 18 February 1999 and 30 September 2001.
- (22) Fujikura Ltd. ("Fujikura") is a Japanese company which was active in the production and supply of UG and SM power cables at least between 18 February 1999 and 30 September 2001.
- (23) On 1 October 2001, Furukawa and Fujikura transferred to their joint venture VISCAS Corporation ("VISCAS"), in which each of them owned 50% of the voting shares, part of their power cable business including the design and sale of certain UG and SM power cables for projects outside of [country, covered by the home territory principle]. Furukawa and Fujikura however retained the production capabilities and the sales in [country, covered by the home territory principle] and outside [country, covered by the home territory principle] to [nationality] customers. At the beginning of 2005, Furukawa and Fujikura transferred their respective power cable manufacturing facilities and certain sales to VISCAS, but they still retained the sales in [country, covered by the home territory principle] to certain reserved customers.¹⁷

ABB¹⁸

- (24) The ABB group is one of the leading producers and suppliers of SM and UG power cables worldwide. ABB AB ("ABB") produces and supplies power cables from its Swedish plant in Karlskrona.¹⁹ The parent company of ABB is ABB Ltd, based in Zurich, Switzerland.²⁰

Showa/Mitsubishi/EXSYM²¹

- (25) SWCC SHOWA HOLDINGS CO., LTD. (formerly Showa Electric Wire & Cable Co., Ltd.)²² ("Showa"), is a Japanese company which was active in the production and supply of UG and SM power cables at least between 5 September 2001 and 30 June 2002.
- (26) Mitsubishi Cable Industries, Ltd. ("Mitsubishi") is a Japanese company which was active in the production and supply of UG and SM power cables at least between 5 September 2001 and 30 June 2002.

¹⁴ ID [...], ID [...], ID [...], JPS however retained some sales to certain customers in Japan.

¹⁵ ID [...], Hitachi doc.

¹⁶ ID [...], Furukawa reply of 21 January 2011 to RFI of 29 November 2010; ID [...], Fujikura reply of 5 January 2011 to RFI of 29 November 2010; ID [...], VISCAS reply of 5 January 2011 to RFI of 29 November 2010.

¹⁷ ID [...], VISCAS reply of 16 November 2009 to RFI of 20 October 2009.

¹⁸ ID [...].

¹⁹ ID [...].

²⁰ ID [...].

²¹ ID [...], Showa reply of 5 January 2011 to RFI of 29 November 2010; ID [...], [...]; ID [...], EXSYM reply of 5 January 2011 to RFI of 29 November 2010; ID [...], EXSYM reply of 20 November 2009 to RFI of 20 October 2009; ID [...], Showa reply to SO of 30 November 2011.

²² ID [...] and ID [...], EXSYM reply of 20 November 2009 to RFI of 20 October 2009.

- (27) On 1 July 2002, Showa and Mitsubishi transferred their power cable operations entirely to EXSYM Corporation ("EXSYM"),²³ with the exception of sales of power cables to Japanese companies other than power utilities which they retained.²⁴ Until 29 September 2005, both Showa and Mitsubishi held 50% of the shares in EXSYM. On 30 September 2005, the allocation of new shares to Showa resulted in Showa holding 60% and Mitsubishi holding the remaining 40% of the shares.²⁵
- Brugg²⁶
- (28) Brugg Kabel AG ("Brugg") is a Swiss company active worldwide in the production and supply of UG power cables. Brugg was incorporated in 1991 and is a [97-100]% owned subsidiary of Kabelwerke Brugg AG Holding.²⁷

²³ ID [...], EXSYM reply of 20 November 2009 to RFI of 20 October 2009; ID [...], Mitsubishi reply of 5 December 2010 to RFI of 22 October 2012; [...], Showa reply to SO of 30 November 2011.

²⁴ See Articles 2 and 4 of the 2002 JVA, ID [...]. See also ID [...], EXSYM reply to RFI of 20 October 2009 and ID [...], Mitsubishi reply to RFI of 22 October 2012.

²⁵ ID [...], EXSYM reply of 20 November 2009 to RFI of 20 October 2009.

²⁶ ID [...], Brugg reply of 14 December 2010 to RFI of 29 November 2010.

²⁷ ID [...], Brugg reply of 16 November 2009 to RFI of 20 October 2009.

Sagem/Safran/Silec²⁸

- (29) Between 20 May 1998 and 11 May 2005 a business unit of the French company Sagem SA ("Sagem") was active in the UG power cable business.²⁹ On 11 May 2005 Sagem merged with the Snecma Group to form Safran SA ("Safran"), and the UG power cable business was transferred to a wholly owned subsidiary of Safran called Safran Communications SA.
- (30) On 30 November 2005, the power cable business was transferred to a newly created subsidiary of Safran called Silec Cable, SAS ("Silec").³⁰
- (31) On 22 December 2005 Silec was acquired by the Spanish company Grupo General Cable Sistemas, S.A. ("General Cable"). General Cable is owned by General Cable Corporation, a US based company.³¹
- nkt³²
- (32) nkt cables GmbH ([company]) ("nkt") is based in Cologne, Germany and currently produces and supplies SM and UG power cables.³³ However, during its infringement period it only produced UG power cables. NKT Holding A/S is the ultimate parent company of NKT cables group.³⁴
- LS Cable³⁵
- (33) LS Cable & System Ltd. ("LS Cable") (formerly LG Cable Ltd. ("LG Cable") until March 2005) is based in Korea and although it is currently active in the production and supply of UG and SM power cables, during its infringement period it only produced UG power cables. In July 2008, LS Cable became a wholly-owned subsidiary of LS Corp.

²⁸ ID [...], Safran reply of 14 December 2010 to RFI of 29 November 2010; ID [...], General Cable reply of 5 January 2011 to RFI of 29 November 2010.

²⁹ ID [...], Safran reply of 16 November 2009 to RFI of 20 October 2009.

³⁰ ID [...], ID [...], Safran reply of 16 November 2009 to RFI of 20 October 2009.

³¹ ID [...], General Cable reply of 16 November 2009 to RFI of 20 October 2009.

³² ID [...], nkt reply of 5 January 2011 to RFI of 29 November 2010.

³³ ID [...], nkt reply of 4 November 2009 to RFI of 20 October 2009. See for example: <http://www.nktcables.com/nkt%20cables/About%20nkt%20cables.aspx>; ID [...], nkt reply of 30 October 2009 to RFI of 20 October 2009.

³⁴ ID [...], nkt reply of 4 November 2009 to RFI of 20 October 2009.

³⁵ ID [...], LS Cable reply of 21 December 2010 to RFI of 29 November 2010; ID [...], LS Cable reply of 30 November 2009 to RFI of 20 October 2009. On 23 March 2011 LS Cable Ltd. changed its name to LS Cable & System Ltd.; see ID [...], LS Cable reply to RFI of 6 May 2011.

Taihan³⁶

- (34) Taihan Electric Wire Co., Ltd. ("Taihan") is based in Korea and is currently active in the production and supply of UG power cables.

1.3. Description of the sector

1.3.1. The supply

- (35) The addressees of this Decision are the main producers and suppliers of HV SM and HV UG power cables worldwide.³⁷ The market for HV SM and HV UG cables is very specialised and limited.³⁸ Overall, there are not many companies operating in the relevant sector, especially in the EEA where many of the addressees are the only suppliers for certain of the products that are the subject of this Decision.³⁹ Many of the addressees are considered or consider themselves to be global and European leaders in their respective markets.⁴⁰
- (36) While all of the addressees of this Decision produce a range of HV UG power cables, only some produce HV SM power cables.
- (37) Brugg, Sagem/Safran/Silec, LS Cable and Taihan did not produce SM power cables at the time of the infringement. nkt won a SM power cable project in 1996 and built a SM power cable factory specifically for the production of the required cables. Due to time table delays, nkt lost the contract in 1999 and closed its SM power cable factory in 2001.⁴¹ Between 2001 and 2010, nkt was not active on the market for SM power cable projects.⁴² Nexans, Furukawa, Fujikura, VISCAS, Sumitomo, Hitachi, JPS, Mitsubishi, Showa and EXSYM were all producing SM power cables at the time of the infringement, except for some types of cables, such as MI and/or DC XLPE, while Prysmian and ABB produced a full range of SM power cables. LS Cable has recently started manufacturing SM power cables,⁴³ but was not active in this sector between 11 November 2002 and 26 August 2005.⁴⁴

³⁶ ID [...] and ID [...], Taihan reply of 5 January 2011 to RFI of 29 November 2010; ID [...], Taihan reply to SO of 7 November 2011.

³⁷ ID [...] and ID [...], replies of [...] and Prysmian, respectively, to RFI of 20 October 2009; [Confidentiality claim pending] and ID [...], Annexes E.01-E.44 to Prysmian reply to SO of 24 October 2011; ID [...], LS Cable submission of 5 July 2010.

³⁸ ID [...], Nexans reply to SO of 26 October 2011; <http://www.icf.at/members/> - ICF member list HV Cables; http://www.subcablenews.com/links/submarine_cable_manufacturers.html.

³⁹ In EU-countries such as the United Kingdom, Italy and Germany, sometimes only two or three addressees have market shares (2003) of 70%, 60% and 95% respectively – Lear Report Ex-Post Review of Merger Control Decisions, p. 108, http://ec.europa.eu/competition/mergers/studies_reports/lear.pdf.

⁴⁰ Lear Report Ex-Post Review of Merger Control Decisions, p. 107, http://ec.europa.eu/competition/mergers/studies_reports/lear.pdf; Credit Suisse Report 12 February 2013, p. 5, https://doc.research-and-analytics.csfb.com/docView?language=ENG&source=emfromsendlink&format=PDF&document_id=1009691261&extdocid=1009691261_1_eng_pdf&serialid=A8S%2FQDmg%2Bx7j5zbSMQHI2IMAJcq1mFCPwPsId2%2BpLCw%3D; Prysmian Annual Report 2008, p. 15; http://www.nexans.com/eservice/Corporate-en/navigate_208174/Overview.html; <http://www.reuters.com/article/2010/11/22/prysmian-draka-idUSLDE6AL05Q20101122>.

⁴¹ ID [...], nkt reply to SO of 3 November 2011.

⁴² ID [...], nkt reply to SO of 3 November 2011.

⁴³ ID [...], LS Cable reply of 30 November 2009 to RFI of 20 October 2009.

⁴⁴ ID [...], LS Cable reply of 30 November 2009 to RFI of 20 October 2009.

- (38) Nexans and Prysmian both produced SM cables during the infringement period and both owned a cable laying vessel for the installation of SM power cables.
- (39) Further, for a long time, LS Cable and Taihan were not able to produce the joints preferred for XLPE UG power cables and relied on the other market players for the supply of these joints.⁴⁵

1.3.2. *The demand*

- (40) HV UG power cables are mostly requested for the underground transmission of electricity between power stations, substations and transformers. These cables are mainly purchased by large national grid operators and other electricity companies.
- (41) HV SM power cables are generally used for the submarine transmission of electricity, for instance to link two transmission networks on land that are separated by a body of water. In addition, HV SM power cables are used to connect off shore oil platforms or wind farms to onshore electricity networks. The customers for HV SM power cables are usually national utilities and private developers of off shore wind farms and oil platforms such as energy and oil companies.
- (42) For complex HV power cable projects, grid operators may turn to contractors, which are companies specialised in the planning and development of infrastructural works. In that case, it is the contractor who contacts the power cable supplier.⁴⁶
- (43) HV SM and UG power cables are usually purchased on a project-by-project basis, where the customer defines the specifications of the project. Contracts for the supply of HV power cables are typically awarded through competitive tenders. Occasionally, customers requesting HV UG power cables use a framework agreement to tender the supply of a certain maximum quantity of cables for a specific period of time.⁴⁷
- (44) Customers normally require prospective bidders to be pre-qualified before accepting them as potential suppliers. This means having previous successful references of past projects or proof of a successful type testing.⁴⁸ Although the tests of UG power cables are normally based on parameters established by the International Electrotechnical Commission (“IEC”) or by the European Committee for Electrotechnical Standardization (“CENELEC”), there are no pre-established standards for HV SM power cables, and therefore each customer determines its required standards for its projects by making reference to international standards and applicable national legislation.⁴⁹
- (45) In order to become a qualified supplier of HV power cables in the Union, suppliers usually have to meet comprehensive testing requirements (type tests) imposed by the grid operators.⁵⁰

⁴⁵ ID [...], Taihan reply to SO of 7 November 2011.

⁴⁶ ID [...], Prysmian reply to SO of 24 October 2011.

⁴⁷ ID [...], Prysmian reply to SO of 24 October 2011.

⁴⁸ A type or qualification test is a long term test (12-18 months) under different electrical conditions of the cable that will be actually installed (ID [...], footnote 72, Nexans submission of 8 October 2010; ID [...], Prysmian reply to SO of 24 October 2011, paragraphs 148, 215, 273-278).

⁴⁹ [...], the international standard IEC62067 was set in October 2001 by the IEC and was widely adopted in Europe. It governs power cables above 220 kV. [...]

⁵⁰ ID [...], nkt reply to SO of 3 November 2011.

1.4. Inter-state trade

- (46) It is clear from the evidence at hand that from February 1999 to January 2009, there was a considerable amount of trade in HV UG and SM power cables between the Member States of the Union and the Contracting Parties to the EEA Agreement. The main European manufactures are well known suppliers which are active across the EEA with sales in virtually all Member States⁵¹ and with manufacturing and sales and marketing facilities in several Member States.

2. THE COMMISSION'S INVESTIGATION

- (47) On 17 October 2008, ABB applied for a marker pursuant to points 14 and 15 of the Commission Notice on Immunity from fines and reduction of fines in cartel cases (the "Leniency Notice").⁵² On that same date, ABB filed an application for immunity from fines pursuant to points 8 and 14 of the Leniency Notice. The application was supplemented by several oral corporate statements and by documentary evidence. The Commission granted ABB conditional immunity on 22 December 2008.
- (48) From 28 January to 3 February 2009, the Commission carried out unannounced inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of Nexans (France) and Prysmian (Italy).
- (49) On 2 February 2009, Sumitomo, Hitachi and JPS jointly applied for immunity in accordance with point 14 of the Leniency Notice or, alternatively, for a reduction of fines in accordance with point 27 of the Leniency Notice. Following their application, Sumitomo, Hitachi and JPS supplied the Commission with further oral statements and documentation.
- (50) On 20 April 2009, Mitsubishi applied for immunity in accordance with point 14 of the Leniency Notice or, alternatively, a reduction of fines in accordance with point 27 of the Leniency Notice. The application was accompanied by an oral corporate statement and several documents. Mitsubishi provided information on anticompetitive conduct occurring in relation to (i) HV UG power cables, and (ii) MV and HV SM power cables which lasted from at least [time period], with *ad hoc* agreements in the export territories continuing until 2002.
- (51) During the course of the investigation, the Commission sent several requests for information pursuant to Article 18 of Regulation (EC) No 1/2003 or point 12 of the Leniency Notice to the parties involved in the present Decision.
- (52) On 30 June 2011, the Commission initiated proceedings and adopted a Statement of Objections ("SO") in respect of the legal entities Nexans France SAS, Nexans SA, Pirelli & C. S.p.A., Prysmian Cavi e Sistemi Energia S.r.l., Prysmian S.p.A., The Goldman Sachs Group, Inc., Sumitomo Electric Industries, Ltd., Hitachi Cable Ltd., J-Power Systems Corporation, Furukawa Electric Co. Ltd., Fujikura Ltd., VISCAS Corporation, SWCC SHOWA HOLDINGS CO., LTD., Mitsubishi Cable Industries, Ltd., EXSYM Corporation, ABB AB, ABB Ltd., Brugg Kabel AG, Kabelwerke Brugg AG Holding, nkt cables GmbH, NKT Holding A/S, Silec Cable, SAS, [non-

⁵¹ See, for instance, ID [...] concerning Prysmian; ID [...], Nexans reply to RFI of 20 October 2009; ID [...], Safran reply to RFI of 17 May 2013.

⁵² OJ C 298, 8.12.2006, p. 17–22.

addressee], Safran SA, General Cable Corporation, LS Cable & System Ltd., and Taihan Electric Wire Co., Ltd.

- (53) On that same day, the Commission informed Sumitomo, Hitachi and JPS that the criteria for immunity from fines were not met, and that, pursuant to point 29 of the Leniency Notice, it intended to apply a reduction of a fine within a specified band as provided for under point 26 of the Leniency Notice. In addition, the Commission informed Mitsubishi that the criteria for immunity from fines were not met and that its leniency request was rejected as the company had not submitted evidence which represented significant added value with respect to the evidence already in the Commission's possession.
- (54) All addressees of the SO were provided with a CD ROM which provided them access to the accessible parts of the Commission's investigation file. In addition, legal representatives of the addressees made use of their rights of access to the parts of the Commission's file that were only available at the Commission's premises.
- (55) From 17 November 2011 onwards, the Commission granted the parties access to the investigation file of the Spanish authorities. This file consisted of (i) non-confidential versions of the documents prepared by the Spanish authorities as well as its written communication with undertakings involved in the production of power cables and (ii) the documents seized by the Spanish authorities during its inspections at General Cable on 28 January 2009. For the latter documents, the Commission granted all addressees initially a "*lawyers-only*" access. On the basis of this access, parties could then request non-confidential versions of the documents they considered relevant for the exercise of their rights of defence. None of these documents were used in the SO.
- (56) All addressees of the SO made known in writing to the Commission their views on the objections raised against them by the prescribed deadlines.
- (57) On 16 May 2012 and on 1 June 2012 the Commission made available to all the parties to the proceeding, for comments, extracts from the non-confidential versions of the replies to the SO from ABB and JPS. In addition, all parties received a letter correcting the instances where certain paragraphs in the SO did not accurately reflect the factual information contained in the evidence.
- (58) Finally, certain parties received additional extracts from non-confidential versions of the replies to the SO when this was considered relevant for the exercise of their rights of defence. Fujikura has received access to and has been given the opportunity to comment on Furukawa's replies to requests for information concerning the liability for VISCAS' involvement in the arrangement, and vice-versa. The same applied for Mitsubishi and Showa concerning their respective replies relating to the liability for EXSYM's involvement. Prysmian has received access to and has been given the opportunity to comment on the replies to the request for information ("RFI") and the reply to the SO from Goldman Sachs concerning the liability for Prysmian's involvement. Goldman Sachs has received access to and has been given the opportunity to comment on Prysmian's replies to RFIs and its reply to the SO as well as on Prysmian's comments on Goldman Sachs' replies.
- (59) Except for Furukawa, all addressees participated in the Oral Hearing that lasted from 11 to 18 June 2012.
- (60) On 14 November 2012, the General Court partially annulled the decisions adopted by the Commission to carry out the unannounced inspections at the premises of Nexans and Prysmian in so far as they concerned LV and MV power cables. The General

Court considered that the Commission, before the adoption of those decisions, only had reasonable grounds for ordering an inspection covering HV SM and UG power cables.⁵³ The Commission has not used or relied on any evidence with regard to LV and MV power cables which was obtained during the inspections. This Decision does include evidence concerning SM power cables used for wind farms of 33 and 36 kV as evidence regarding such cables was in the Commission's possession prior to the inspections.⁵⁴

- (61) On 11 September 2013, the Commission sent Letters of Facts to Fujikura, Furukawa, Goldman Sachs, Mitsubishi and Showa with regard to information received after the SO. All parties replied to their respective Letter of Facts.

3. DESCRIPTION OF THE EVENTS

3.1. Origin of the cartel arrangements

- (62) The cartel appears to have its origins in the [...], [...].⁵⁵
- (63) [information pre-dating the infringement period].⁵⁶
- (64) [information pre-dating the infringement period]^{57, 58, 59, 60, 61, 62, 63, 64}
- (65) [information pre-dating the infringement period]⁶⁵ At a meeting in February 1999, the negotiations had reached the point where the parties jointly agreed on the intention to restrict competition. From this meeting onwards, the parties allocated projects in the EEA and in non-EEA territories. [...]

3.2. Objectives of the cartel arrangement

- (66) The main producers of UG and SM power cables participated in a network of multilateral and bilateral meetings and contacts aimed at restricting competition for SM and UG power cable projects in specific territories by agreeing on market and customer allocation and thereby to distort the normal competitive process.⁶⁶

⁵³ Case T-135/09 *Nexans France S.A.S. and Nexans S.A. v Commission* [2012] not yet reported, paragraphs 81-93 and Case T-140/09 *Prysmian Spa and Prysmian Cavi e Sistemi Energia Srl v Commission* [2012] not yet reported, paragraphs 79-91. On 15 March 2013, Nexans SA and Nexans France SAS brought an appeal against the judgment of the General Court, see Case C-37/13 P.

⁵⁴ The judgment does not specify the voltage levels of HV or MV cables but relies on previous merger decisions that defines HV as cables in the range 33/45 – 132 kV (Commission Decision 2003/176/EC of 19 July 2000 in Case COMP/M.1882 - *Pirelli/BICC*, OJ L 70, 14.3.2003, paragraph 14). The fact that the Commission had information concerning 33 kV SM projects prior to the inspection is clear from the fact that the General Court explicitly refers to such documents in its review.

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⁵⁷ [...]. [...].

⁵⁸ [...].

⁵⁹ [...]

⁶⁰ [...].

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⁶⁶ [...]

3.3. Implementation of the cartel arrangements

- (67) Adhering to the rules of the cartel, from February 1999 onwards, the parties allocated projects according to the geographic region or customer. In addition, they exchanged information on prices and other commercially sensitive information in order to ensure that the designated power cable supplier or "allottee" would make the lowest price while the other companies would either submit a higher offer or refrain from bidding or submit an offer that was unattractive to the customer.⁶⁷ The parties installed reporting obligations to allow monitoring of the agreed allocations. Finally, the parties also implemented practices to reinforce the cartel such as the collective refusal to supply accessories or technical assistance to certain competitors in order to ensure the agreed allocations.
- (68) To ensure the implementation of the cartel arrangements, the parties held periodical meetings and had contacts by email, telephone or fax.
- (69) Within the cartel, and in line with [information pre-dating the infringement period], the European producers Nexans and Pirelli/Prysmian were normally referred to as "R" ("Regular") members, the Japanese producers Sumitomo, Hitachi and JPS, Furukawa, Fujikura and VISCAS (and later also EXSYM) as "A" ("Associated") members and the Korean companies LS Cable and Taihan as "K". In addition, the parties used the term "R associates" for ABB, Sagem/Safran/Silec, Brugg and nkt, while "A associates" was also used to refer to LS Cable, Taihan and Mitsubishi, Showa and EXSYM during a certain period.⁶⁸
- (70) Most of the parties participated in two main types of meetings:
- (a) the so called "A/R meetings", between representatives of the European and Japanese producers, and
 - (b) regional meetings, such as the recurrent "R meetings" (also referred to as "seminars") in which only the local producers participated.⁶⁹
- (71) In addition to the A/R meetings and R meetings, meetings including the Korean companies ("A/K/R" meetings), bilateral and multilateral meetings between selected parties and meetings at the occasion of industry conferences (such as the International Cablemakers Federation ("ICF") sessions) were also frequent.
- (72) Given the long period over which the cartel has been operating, certain aspects and details of the cartel arrangements, such as the geographic areas considered as "home territories", the voltage levels covered by the arrangements or how projects were allocated within certain territories, have evolved over time. However, the evidence gathered by the Commission shows that the main features of the cartel arrangements described below have in essence been maintained over time.
- (73) The cartel had two main configurations:
- (a) On the one hand, the European, Japanese and Korean producers had as their objective the allocation of territories and customers. This configuration is referred to as the "A/R cartel configuration" (see Section 3.3.1). Pursuant to this configuration Japanese and Korean producers refrained from competing

⁶⁷ [...]
⁶⁸ [...]
⁶⁹ [...]

for projects in the European home territory while the European producers would stay out of Japan and Korea. The parties also allocated projects in most of the rest of the world and made use of a 60/40 quota arrangement for a certain period of time.

- (b) On the other hand, the “European cartel configuration” involved the allocation of territories and customers by the European producers for projects inside the European home territory or allocated to the European producers (see Section 3.3.2).⁷⁰

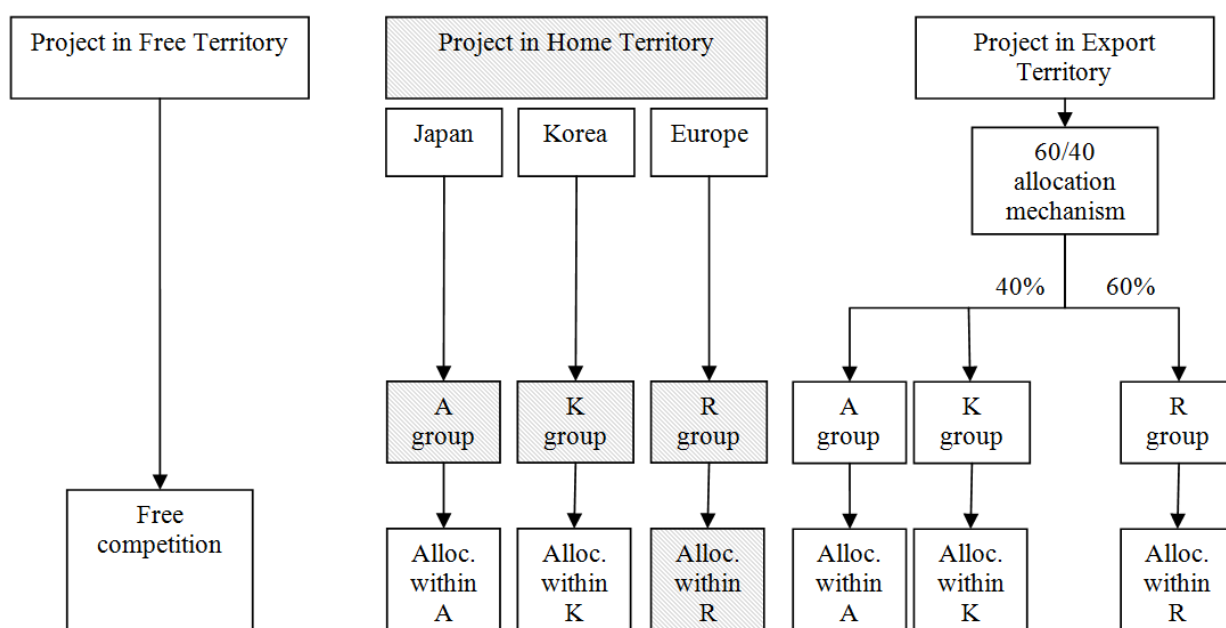
(74) These configurations were not separate but formed a composite whole.⁷¹

3.3.1. *Allocation mechanisms of the A/R cartel configuration*

- (75) The geographical allocation by the A/R configuration of the cartel involved three types of territories: (i) the "Home Territories", (ii) the "Export Territories" in which [...] projects were allocated between the Japanese/Korean and European competitors, and (iii) the "Free Territories", each one with its own allocation mechanisms. **Graph 1** demonstrates how the allocation mechanism worked:

⁷⁰ [...].
⁷¹ Section 4.3.3.

Graph 1: A/R Allocation mechanisms



3.3.1.1. Home Territories

- (76) The definition of home territories was based on the location of the production facilities or the traditional area of influence of a given cable producer.
- (77) The parties recognised a European home territory, a Japanese home territory, which originally only encompassed Japan but was subsequently extended to include [Japanese home territory] at a certain point in time and a Korean home territory.
- (78) In the home territories, the parties applied a "home market rule", according to which the European R suppliers would not compete for Japanese and Korean projects and Japanese and Korean producers would in turn not compete for projects within the European home territory. The allocation of projects in these home territories was therefore, in general, not subject to any discussion since the allocation was automatically understood to be made to the corresponding R or A/K group. It was then up to the R or A/K producers to allocate each project within their respective home territories (see *"Allocation mechanisms of the European cartel configuration"* in Section 3.3.2).
- (79) The European home territory was originally defined by the A and R members as encompassing the factory base of Nexans and Prysmian (Italy, the United Kingdom, Norway and France) and subsequently as the EEA. [...] the precise geographical extent of this definition, as interpreted by the A and R members, varied as the membership of the Union varied over time. For historical reasons, for a long time, Greece remained outside the definition of the European home territory.⁷²

⁷²

[...] Greece remained outside the definition of the European home territory as Furukawa had supplied cables to Greek customers in the 1950s and as a result continued to receive enquiries in respect of certain Greek projects due to its pre-existing contacts there. As a consequence, the projects located in Greece that were listed in the position sheets counted towards the 60/40 allocation.

- (80) In some cases, however, projects located in/or around the Union did become the subject of allocation discussions between European and Japanese and Korean suppliers. Examples include:
- (i) Projects in the periphery of the EEA or connecting the EEA with third countries⁷³
- (81) When the Japanese A members of the cartel received bid enquiries for projects in the periphery of the Union or connecting the Union with third countries, they had an interest to ensure that the projects would count towards the 60% quota and be allocated to the European R side. The A producers thus agreed to collaborate with the R side to ensure that the final customer would select the R member to whom the project had been allocated. Such collaboration took the form of the submission of cover prices, or protection or dummy bids for example by offering unacceptable commercial or technical terms.⁷⁴
- (82) [...] detailed information on four projects in which such collaboration took place: the Spain-Morocco project (see notably Recital (232)); the Estonia-Finland project (see notably Recital (312)); a project in Norway (see, notably Recital (321) (a), and a project in Corfu (see, notably Recital (247)).⁷⁵ The evidence available details that the collaboration went so far that the European producers offered assistance to the Japanese producers in the translation of questionnaires issued by the customer and the Japanese producers requested and received "guidance" on how to answer the questions raised by the customer (see notably Recital (232)).
- (ii) Projects for which the Japanese producers had received invitations from European customers to submit offers
- (83) [...] when the Japanese A producers received invitations from European customers to submit offers, they would seek "guidance" via the coordinator of the A side who would in turn seek "guidance" from the coordinator of the European R side. The coordinator of the R side, after having consulted with the R members would then pass on the "guidance" to the coordinator of the A side who would in turn pass on that "guidance" to the A member who had received the original invitation.⁷⁶ This "guidance" would generally consist of an instruction to decline the invitation to bid or to submit a dummy bid or cover price.⁷⁷
- (84) [...] several examples of projects inside the European home territory for which such guidance was sought and received: a project of RWE Solutions, SAG-EL GmbH (see Recital (231)(g)); the Borkum West project (see Recital (279)(a)); a project of SAG Montagegesellschaft mbH involving SM cables for an offshore wind farm (see Recital (321)(d)); a project by the Public Power Corporation PPC in Greece (see Recital (279)(d)); a further project involving Corfu (see references included in

⁷³ [...] in general the A producers applied the narrowest definition of the European home territory possible, in order to maximise the number of project enquiries they could report as being outside the European home territory to the secretary of the A side for onward reporting to the secretary of the R side. These would then be listed in the position sheet and would thus be included in the 60/40 allocation.

⁷⁴ [...]

⁷⁵ [...]

⁷⁶ [...]

⁷⁷ [...] employees on occasion gave presentations to potential European customers which made it highly unlikely that [...] would even be invited to submit a bid, see [...]

Recital (247)); a possible cooperation with European outsider Hellenic Cables (see Recital (248)); a project by Piacenza Power Plant (see Recital (279)(b)); the NoordZee Wind project (see Recital (231)(d));⁷⁸ the UK national grid project (see Recital (231) (b)); a UK Siemens project (see Recital (231) (f)) and other UK projects (see Recital (231) (c)).⁷⁹

(iii) Projects in the European home territory regarding which the A Associates EXSYM, Taihan and LS Cable were requested not to bid

- (85) [...] sometimes the Japanese A coordinator was requested by the European R side to prevent A associates EXSYM, LS Cable and Taihan from competing against the R producers for projects located in the European home territory. [...] evidence of instances of such intervention in projects in (i) Spain – the Unión Fenosa project (see Recital (243)), (ii) Greece – the Corfu project (see Recital (284)) and (iii) Italy (see notably Recital (263)).⁸⁰
- (86) In such instances, both Nexans and Prysmian are known to have contacted the Japanese A coordinator to ensure that EXSYM, LS Cable and Taihan remained outside the European home territory.⁸¹ In addition, there is evidence that on certain occasions guidance was provided in the form of a floor price level ("FPL"), *"in order not to lower the market price less than [a] certain level"* (see for instance Recital (331)).⁸²

3.3.1.2. Export territories

- (87) "Export territories" were those territories which were not home territories or "free territories" (the latter territories were in principle not covered by the cartel arrangements - see Recital (93)). In the export territories, for a certain time, a 60/40 rule was applied, according to which 60% of the projects (in value) were allocated to the European R producers and 40% to the Japanese A producers (or the Korean producers).⁸³
- (88) As explained above (Recital (75)), once a project had been assigned to the R or A group, it was up to each group to decide the secondary allocation of the project to a specific cartel member.
- (89) In several instances, the cartel members further collaborated by submitting cover prices or dummy bids, for example by offering unacceptable commercial or technical terms in order to ensure that the customer would select the member to whom the project had been allocated without raising suspicion. [...] detailed information on the manner in which cover bids were issued.⁸⁴
- (90) On some occasions, mainly when there were too many "outsiders" in the running for a project in the export territories, the parties decided against the allocation of the project. Instead, a floor price would be established.

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⁸¹ [...]

⁸² [...]

⁸³ See, for instance, [...], [Confidentiality claim pending]

⁸⁴ [...] [...], an allocation would first be decided, following which the producer designated as the winner would indicate its bid price. Other producers would then submit cover bids at agreed percentages above that price.

- (91) Some countries which fell under the 60/40 allocation rule were considered as "preferred territories"⁸⁵ for certain European producers. This applies to [preferred territories], which used to be preferred territories for [...]. [...] the preferred territories were included in the position sheets and counted for the 60/40 allocation rule; however, [...] would be favoured for the purposes of allocation.⁸⁶
- (92) The Commission's file contains numerous documents that clearly demonstrate all parties' involvement in the allocation of projects in the export territories. This Decision refers only to a fraction of these documents, sufficient to make it clear that the allocation of projects in the export territories formed part of the overall scheme of the cartel in which the parties participated. A more complete overview of the contacts between the parties in this respect is provided in Annex I to this Decision.

3.3.1.3. Free Territories

- (93) In the "*free territories*" (or "*friendly fight*" territories) there was no allocation mechanism and the cartel members were free to compete for any project.⁸⁷ Recitals 540 and 617 of the SO remarked that the arrangements applied throughout most of the world. There is however insufficient evidence to argue that the cartel arrangements which form the subject of this Decision applied in the United States as well. Information [...]⁸⁸ and found in contemporaneous evidence⁸⁹ indicates that the United States, as a free territory, was excluded for the purposes of the configurations described in this Decision.⁹⁰

3.3.1.4. Communications and monitoring between R and A

- (94) The contacts between the R and A groups were maintained by means of multilateral and bilateral meetings, e-mails, faxes and telephone calls, mostly between the coordinators of each group. [information pre-dating the infringement period] the parties assigned no chairman. Each group used a less formal communication window or coordinator to represent the interests of the respective European and Japanese/Korean side.⁹¹ On the European R side, [company representative A1] of Nexans acted as coordinator,⁹² while on the Japanese A side the secretariat of the cartel rotated between the companies JPS, VISCAS and EXSYM. The coordinators of each group were also the contacts to whom producers either forwarded the bid enquiries they had received from customers located in the home territory of the other group in order to receive instructions ("guidance") on how to respond, or complained when the rules were not fully respected by producers in the other group.

⁸⁵ ID [...], in which [...] complained about the Korean companies being active in [preferred territory], an "R preferred territory".

⁸⁶ [...];[*Confidentiality claim pending*] and [*Confidentiality claim pending*]

⁸⁷ [...]

⁸⁸ [...]

⁸⁹ [*Confidentiality claim pending*], [...].

⁹⁰ The parties were therefore, in the request for information dated 17 May 2013 and during their individual state-of-play meetings early autumn 2013, informed that United States' sales would be excluded in the allocation made under point 18 of the Guidelines on fines. On 6 December 2013, all parties received access to a less redacted version of [*Confidentiality claim pending*] There is no evidence that other territories were excluded in a similar manner. [*information pre-dating the infringement*].

⁹¹ [...]

⁹² [...];[*Confidentiality claim pending*] In general, however, in most emails the other main representatives of the cartel were added in copy.

- (95) [information pre-dating the infringement period], the participants in the cartel arrangements were acutely aware of the illegality of their behaviour and the need to maintain secrecy.⁹³ [information pre-dating the infringement period], the participants stressed that the [...] arrangement had to be " [information pre-dating the infringement period] ".⁹⁴ During the operation of the cartel, participants were reminded on several occasions of the need to keep the cartel a secret: "*sending mails, dangerous*".⁹⁵ Regardless of these attempts to conceal the cartel's existence, there is a large amount of evidence witnessing multiple multilateral and bilateral contacts between the participants in the cartel (see also Annex I).
- (96) As indicated, the parties referred to meetings between the European and Japanese producers as A/R meetings and they were usually held in hotels, alternating between European and Asian locations.⁹⁶ At the A/R meetings, the parties normally discussed the allocation of projects in the export territories.⁹⁷ On some occasions, the parties also discussed projects within the Union. Representatives of Nexans [non-addressee] and Pirelli/Prysmian on the European R side, and JPS (before: Sumitomo and Hitachi), VISCAS (before: Furukawa and Fujikura) and EXSYM on the Japanese A side would normally attend the meetings. [company representative A2] and [company representative A1] (Nexans) appear to have chaired the A/R meetings.⁹⁸
- (97) While the parties did not formally draft minutes of the A/R meetings, the Commission investigation uncovered notes of several such meetings from [Confidentiality claim pending] ,⁹⁹ [company representative CD1] and [company representative C2] (JPS), [company representative D1] (Hitachi)¹⁰⁰ and various employees of EXSYM.¹⁰¹
- (98) From the notes it is clear that generally the A/R meetings would proceed along the same lines. First the general situation in the sector was discussed, including new projects around the world, the status of competitors and the industry as a whole. This general discussion might be separated for SM and UG projects or cover both SM and UG power cable projects together. The second part of the meeting was devoted to discussions on specific UG and/or SM projects in the export territories that were or would be subject to allocation among the participants.¹⁰²
- (99) During a certain period of the cartel, its participants developed a detailed methodology for the follow up of the 60/40 rule in the export territories. The administration of these projects was maintained in so-called "position sheets", (also referred to by the cartel members as "PS"), which are tables in which the value of the projects allocated to each cartel member was recorded together with the respective cumulated value of each group in order to verify whether the 60/40 split was being

⁹³ ID [...], which contains notes of the A/R meeting on 18 February 1999 in Zurich, where reference is made to the fine imposed on ABB in Commission Decision 1999/60/EC in Case No IV/35.691 - *Pre-insulated pipe cartel*, OJ L 24/1, 30 January 1999.

⁹⁴ [...]

⁹⁵ ID [...], notes of an A/R meeting on 23 January 2002 in Japan.

⁹⁶ [...]

⁹⁷ [...]

⁹⁸ As indicated by EXSYM in ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

⁹⁹ [Confidentiality claim pending]

¹⁰⁰ [...]

¹⁰¹ ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

¹⁰² [...]

respected. [company representative A1] of Nexans maintained the position sheets and the sheets were sent to the coordinator of the A/R group on the Japanese side.¹⁰³ Separate position sheets existed for SM and UG power cables. The position sheets were regularly updated. [...] 19 different versions of the position sheets¹⁰⁴ which were used at least from 12 September 2000 until November 2004.¹⁰⁵

- (100) [Confidentiality claim pending]¹⁰⁶ [Confidentiality claim pending].¹⁰⁷
[Confidentiality claim pending].¹⁰⁸
- (101) A blank position sheet for UG power cable projects, based on the versions obtained by the Commission, is provided for illustration purposes in Table 2.

Table 2: Blank position sheet

Year	Order and preferences A	A Asso	A S/T	R	R Asso	R S/T	A&R Outsd	Comm ents	RA+As s. Totals	RA Totals
	Orders									
	projects									
	projects									
	projects									
	Subtotal Orders									
	Leaderships									
	projects									
	projects									
	projects									
	balance needed									
	Subtotal Leaderships									
	%									
	Orders + Leaderships									
	%									
	Entitlement									
	Position									

- (102) In the position sheets, several UG power cable projects in the export territories are listed with voltages ranging from [...] kV to [...] kV. The starting dates of the projects range from 2000 until 2003.¹⁰⁹
- (103) The position sheets contain numerous abbreviations, which refer directly to the main structure of the cartel. In Table 3 an overview is provided of these abbreviations and their explanations.

103 [...]
104 [...]
105 [...]
106 [Confidentiality claim pending]
107 [Confidentiality claim pending]
108 [Confidentiality claim pending]
109 [...]

Table 3: Abbreviations position sheet¹¹⁰

orders	Refers to projects where the following steps had already taken place: (i) tenders had been issued by customers; (ii) coordination of bids had taken place between the European and the Japanese producers; (iii) bids had been submitted by those invited to bid, including the producer to whom the project had been allocated as a result of the award; and (iv) orders for products and services had been placed by the customers with the producer who had won the bid.
leaderships	Refers to projects for which steps (i) to (iii) had taken place but step (iv) had not yet taken place.
entitlement	Refers to the overall understanding that there should be a 60%/40% allocation of projects between the European and Japanese producers over time.
R	Refers to " <i>Regular</i> " members, signifying the original European members of the group, which were [non-addressee]/Nexans and Pirelli/Prysmian.
R Asso	Refers to the associates of the European producers. These are ABB, Sagem/Safran/Silec, Brugg, and nkt.
A	Refers to the " <i>Associate</i> " members, signifying the Japanese producers Sumitomo, Hitachi and later JPS, Furukawa and Fujikura and later VISCAS.
A Asso	Refers to the associates of the Japanese producers. These are Taihan, LS Cable and (during a certain period) Mitsubishi, Showa and EXSYM.
A S/T	Refers to a subtotal of the Japanese producers and their associates.
R S/T	Refers to a subtotal of the European producers and their associates.
A&R Outsd.	Refers to producers outside the group members or their associates ("outsiders").

¹¹⁰

[...]

- (104) The columns titled "A", "A Asso", "A S/T", "R", "R Asso", "R S/T" and "A&R Outsd." contain figures that refer to the value of a particular project in millions of Euro.¹¹¹
- (105) The lay-out of the position sheets for SM power cables is similar to the position sheets used for UG power cables. In the SM position sheets, several SM power cable projects, mostly in the export territories, are listed with voltages ranging from [...] kV to [...] kV. The (expected) order dates of the projects range from 2002 until 2004.¹¹²
- (106) The Commission has found no formal rules on discipline and compensation. From individual pieces of evidence it is clear, however, that the participants in the A/R meetings and the coordinators were responsible for keeping their smaller competitors disciplined within their group (see notably Recitals (349) and (358)). In addition, the evidence contains multiple references to the settlement of debts and to compensation, which indicates that the parties dealt with disputes among themselves (see notably Recitals (169), (354) and (392)).

3.3.2. *Allocation mechanisms of the European cartel configuration*

- (107) Two types of projects were subject to (further) allocation among the European producers:
- (a) Projects which had been allocated to the R group in the course of the allocation of projects in the export territories, and
 - (b) Projects which were automatically allocated to the R group pursuant to the home territories rule, meaning projects in the European producers' home territory.
- (108) [Confidentiality claim pending].¹¹³ [Confidentiality claim pending].¹¹⁴ Regarding France and Spain it appears that special arrangements existed between Nexans, Sagem/Safran/Silec and Prysmian.¹¹⁵ [...] has indicated that Nexans, Prysmian and ABB applied a home country principle according to which the Baltic and North Sea area was allocated to ABB and to some extent Nexans. In addition, the Mediterranean area was divided between Prysmian and Nexans. [...] the parties applied *ad hoc* exceptions to this allocation in order to ensure optimal production facility loading for each supplier.¹¹⁶ For the purpose of this Decision it is not necessary to take a position on whether the allocation within Europe was partly done in accordance with and in order to respect home markets.
- (109) The presence of local subsidiaries of Nexans and Prysmian in Italy, France and Spain added a complication to the allocation. Occasionally friction occurred as a result of the activities of local subsidiaries. The head offices were then called upon to mediate (see for instance Recitals (322)(d) and (372)(n)).
- (110) There is some evidence that the parties active in a Member State that was shared kept track of the allocations on "*local lists*" or local position sheets. While examples of

¹¹¹ [...]

¹¹² [...]

¹¹³ [Confidentiality claim pending]

¹¹⁴ [Confidentiality claim pending]

¹¹⁵ [Confidentiality claim pending]; [...] [Confidentiality claim pending]

¹¹⁶ [...]

these documents have not been found, the documents on file contain several references to the existence of local lists/local position sheets (see for instance Recital (335)).

3.3.2.1. Communications and monitoring between R

- (111) The contacts between the members of the European cartel configuration Nexans, Pirelli/Prysmian, nkt, Brugg, Sagem/Safran/Silec and ABB were maintained by means of periodic R meetings (also referred to as "seminars"), other bilateral and multilateral meetings, e-mails, faxes and telephone calls.
- (112) As the R cartel members were aware of the illegal nature of their contacts, they often referred to projects inside the European home territory by means of abbreviations or code names. In the file, which contains thousands of emails and fax messages on projects, the projects located in the export territories are mostly quoted by their full name. Projects in the European home territory are identifiable because the parties would mostly stick to these abbreviations or code names.
- (113) Some examples of this practice include:
- [Confidentiality claim pending]¹¹⁷ [Confidentiality claim pending]¹¹⁸
[Confidentiality claim pending]¹¹⁹ [Confidentiality claim pending]¹²⁰
[Confidentiality claim pending]¹²¹
- (114) [Confidentiality claim pending].¹²² [Confidentiality claim pending].¹²³ [Confidentiality claim pending].¹²⁴ [Confidentiality claim pending].¹²⁵ The parties would then discuss projects in the EEA and in the export territories and indicate which producer claimed or obtained "pref [preference]" or "interest" for a certain project.
- (115) Several of these meetings took place in Divonne (France). [Confidentiality claim pending]¹²⁶ There is evidence of Divonne meetings/seminars taking place since 2001. Other evidence demonstrates that the organisation of the R meetings was alternating between the companies.¹²⁷

3.4. Chronology of key contacts

- (116) As the amount of (contemporaneous) evidence is vast, this Section only contains references to the most salient items of evidence. Annex I forms an integral part of this Decision and contains full references to all the evidence presented in this Section and to the additional relevant evidence available. Furthermore, as the evidence with regard to individual projects is often cryptically worded, the Commission was not able to identify with certainty all the projects which were subject to discussions

¹¹⁷ [Confidentiality claim pending]

¹¹⁸ [Confidentiality claim pending]

¹¹⁹ [Confidentiality claim pending]

¹²⁰ [Confidentiality claim pending]

¹²¹ [Confidentiality claim pending]

¹²² [Confidentiality claim pending] and [Confidentiality claim pending]

¹²³ [Confidentiality claim pending]

¹²⁴ [Confidentiality claim pending]

¹²⁵ [Confidentiality claim pending]

¹²⁶ [Confidentiality claim pending]

¹²⁷ ID [...], Brugg reply of 7 May 2010 to RFI of 31 March 2010.

between the parties in the course of their market and customer allocation. Nevertheless, the Commission has made its best efforts to state the names of all projects located in the EEA.

The end of the [information pre-dating the infringement period]

- (117) [information pre-dating the infringement period] [...].¹²⁸ [information pre-dating the infringement period]¹²⁹
- (118) [information pre-dating the infringement period]^{130 131 132 133 134}
- (119) [information pre-dating the infringement period]^{135 136 137}
- (120) [information pre-dating the infringement period]^{138 139}
- (121) [information pre-dating the infringement period].
- (122) [information pre-dating the infringement period]¹⁴⁰
- (123) [information pre-dating the infringement period].
- (124) [information pre-dating the infringement period].¹⁴¹
- (125) [information pre-dating the infringement period]^{142 143 144}
- (126) [information pre-dating the infringement period]^{145 146}
- (127) [information pre-dating the infringement period].¹⁴⁷
- (128) [information pre-dating the infringement period].¹⁴⁸
- (129) [information pre-dating the infringement period]^{149 150}
- (130) [information pre-dating the infringement period]^{151 152}
- (131) [information pre-dating the infringement period]^{153 154}

128 [...]

129 [...]

130 [...]

131 [...]

132 [...]

133 [...]

134 [...]

135 [...]

136 [...]

137 [...]

138 [...]

139 [...]

140 [...]

141 [...]

142 [...].

143 [...]

144 [...]

145 [...]

146 [...]

147 [...]

148 [...].

149 [...]

150 [...]

151 [...].

152 [...].

- (132) [information pre-dating the infringement period] ¹⁵⁵ ¹⁵⁶
(133) [information pre-dating the infringement period] ¹⁵⁷ ¹⁵⁸
(134) [information pre-dating the infringement period] ¹⁵⁹ ¹⁶⁰
(135) [information pre-dating the infringement period] ¹⁶¹ ¹⁶²
(136) [information pre-dating the infringement period] ¹⁶³

153 [...]
154 [...]
155 [...]
156 [...]
157 [...]
158 [...]
159 [...]
160 [...]
161 [...]
162 [...]
163 [...]

1999

(137) On 18 February 1999 an A/R meeting was held at the Mövenpick Hotel in Zurich between [company representative A2] ([...]), [company representative B6] (Pirelli), [company representative E2] (Furukawa), [company representative F1] (Fujikura), [company representative D5] (Hitachi) and [company representative C2] (Sumitomo). This meeting related to SM power cable matters. [...] contemporaneous notes of the meeting which demonstrate that the parties discussed:¹⁶⁴

- (a) a cartel fine imposed on ABB in the Pre-Insulated Pipe cartel investigation;
- (b) the participants of the cartel arrangement: "3 (2+1) + 4A". The Japanese proposal was that the arrangements should include three European companies ([...], Pirelli and ABB) and four Japanese companies (Furukawa, Fujikura, Hitachi and Sumitomo, therefore excluding Mitsubishi and Showa). [non-addressee] and Pirelli's view was however that Mitsubishi and Showa should be included and ABB excluded.¹⁶⁵
- (c) the parameters of the cartel arrangement with respect to SM power cable projects. These parameters relate to the quotas which should be assigned to the European and Japanese groups, the allocation of territories and the monitoring of the quotas in the export territories by means of the position sheets. The participants raised the following issues:
 - a flexible quota of the projects assigned to the European or the Japanese companies: the European proposed a 70%/30% split while the Japanese proposed a 60%/40% split;
 - a home territory principle on a "factory basis"; meaning that the home territories would be determined by the location of the production facilities of the undertakings. The notes record that Italy, the United Kingdom, Norway, and France would be R's territory whereas Japan would be A's territory. There appears to be doubt over Sweden (ABBs factory basis), Korea and [Japanese home territory] as these territories are followed by a question mark.
 - a proposal to monitor the follow-up of the quota assigned to the European or the Japanese companies in the export territories through position sheets in the following way: (i) for projects within one side's home territory and with no enquiry or cover bid requested to any company on the other side, there would be no need to add any amount to the position sheet; (ii) in the same situation but where an enquiry or cover bid had been made/requested of a company on the other side, 7.5% of the value of the project would be added to the relevant home territory manufacturer, and (iii) for projects that connected a home territory and an export territory, 50% of the value of the project would be added to the relevant home territory manufacturer.

The notes also record that subsequent meetings might take place every two months in either Europe or South East Asia.

¹⁶⁴

[...]

¹⁶⁵

[...] it had a dispute with Nexans in or about 1997.

- (138) The A/R meeting on 18 February 1999 is considered as the starting date of the cartel arrangements and forms the beginning of a series of multilateral meetings between [non-addressee], Pirelli, Furukawa, Fujikura, Sumitomo and Hitachi. Four further A/R meetings were organised in 1999. From contemporaneous notes, it appears that [company representative A2] ([...]), [company representative B6] (Pirelli), [company representative E2] (Furukawa), [company representative F1] (Fujikura), [company representative C2] (Sumitomo) and [company representative D5] (Hitachi) were regular participants at these and subsequent meetings.¹⁶⁶
- (139) The second A/R meeting of 1999 took place at the Banker's Club in Kuala Lumpur (Malaysia) on 24 March 1999. Representatives of [non-addressee], Pirelli, [non-addressee], Furukawa, Fujikura, Hitachi and Sumitomo attended the meeting.¹⁶⁷ The presence of [non-addressee], producer of UG power cables only, indicates that the meeting was focused on UG matters.¹⁶⁸ At this meeting [non-addressee] proposed that a [...] arrangement could be organised [information pre-dating the infringement period], on the basis of a limited number of members, no written records, agreements or rules and without formal chairmen or secretariat.¹⁶⁹
- (140) European and Japanese companies met each other at a third A/R meeting in Tokyo on 3 and 4 June 1999. The meeting on 3 June focused on SM projects and was attended by at least [company representative B6] (Pirelli), [company representative A2] ([...]) and [company representative C2] (Sumitomo). The meeting on 4 June focused on UG projects and was attended by representatives of the "7 Brothers", which are the 4 major Japanese producers - Sumitomo, Hitachi, Fujikura and Furukawa - and three other producers – [non-addressee], Pirelli and [non-addressee].¹⁷⁰ Although the Commission has no notes of this meeting, [...] a final agreement on the terms of the [...] cartel organisation was not reached.¹⁷¹
- (141) At the fourth A/R meeting, organised on 26 July 1999 in London, [non-addressee], Pirelli, Furukawa, Fujikura, Sumitomo and Hitachi discussed:
- (a) the possibility of including additional members to the cartel, in particular:¹⁷²
- Sagem, for which [...]’s representative ([company representative A2]) indicated that *"we can involve Sagem as member in near future but not overnight (ready to talk bilateral basis)"*.
 - ABB, for which the Japanese producers indicated that its involvement was "absolutely necessary", after [non-addressee]’s representative had submitted that ABB’s "capacity is limited"
 - Brugg for which it was stated that it would be a member but not for the time being: *"To be a member but, at this moment they are reluctant to talk"*.

166 [...]
 167 [...]
 168 [...]
 169 [...]
 170 [...]
 171 [...]
 172 [...]

- Mitsubishi and Showa, regarding which the four Japanese companies explained their approach. "4A's policy against MK" [Mitsubishi and Showa]
- (b) the rules and conditions for the allocation of projects in the export territories:
- in principle, allocation would be for projects with voltages of 220 kV and above. Only exceptionally and after "careful discussion", could a project with a voltage of 220 kV or above be "Free", meaning that each company could quote its price independently.
 - projects with voltages below 220 kV would in principle be "Free", though "Allo[cation]" would take place *"as much as possible"*.
 - after internal R discussions, the R members agreed that the companies would decide after one year whether or not to include cables of 132 kV depending on the *"outsiders status"*. *"Outsiders"* refers to those companies not involved in the cartel. To review whether cables of 132 kV should be included, the companies would hold "a routine and regular meeting to exchange the situation".
 - the quota in the export territories was confirmed as 40% for the Japanese producers and 60% for the European producers.
 - several UG and SM power cable projects were discussed, with voltages ranging from 66 to 400 kV. A project in Cyprus was discussed in detail. This project had apparently been allocated to [non-addressee] ([non-addressee] is designated "allottee" in the notes). However, several other companies had quoted lower prices. The notes list all companies that submitted a bid for the project and the amount of their bid. [...] such situations, whereby the participants had allocated a project but still others submitted lower bids, were at the origin of the discussions between the Japanese and European producers about a possible new arrangement.
- (c) the preferred territories [preferred territories] (see also, Recital (91)). The notes list what appears to be the proposals made in the previous meeting in Tokyo (all these territories to R) and the discussion that took place after [company representative C2] (Sumitomo) had written a memo on the subject ([preferred territories] to R, [preferred territory] with reservations to R due to "local arrangement" and [preferred territory] still "pending").
- (d) the home territory principle as the Japanese producers *"strongly asked R to convince ABB and Sagem not to attack A's [Japanese home territory] 345 / R just noted"*.¹⁷³
- (e) the appointment of coordinators as the European companies urged the Japanese to *"nominate authorized A-coordinator to avoid mis. communication"*.
- (142) The notes of further A/R meetings demonstrate that the meetings followed generally the same pattern: the participants would first discuss the general situation in the sector, including the situation at each of the participants where relevant. Then, the issues of possible additional participants and the situation of the competitors would

¹⁷³

[...]

be raised. Finally, the meeting would focus on UG and SM power cable projects in the export territories, whereby the participants would talk about the outcome of recent bid procedures and the allocation of upcoming projects. There was generally no discussion on the application of the home territory principle unless one of the situations mentioned under Section 3.3.1.1 (i), (ii) or (iii) came up.

(143) At the A/R meeting on 19 October 1999 in Kuala Lumpur, [non-addressee], [non-addressee], Pirelli, Furukawa, Fujikura, Sumitomo and Hitachi discussed:

(a) the subject of additional participants in the cartel:

- Sagem: *"R explained that R has opened the door to Silec. [...]."*
- Brugg: *"very difficult! Approach is possible but they like the game".*
- ABB: *"No further step mentioned by R".* The notes also record a meeting between JPS and ABB in July 1999 (see Recital (144)): *"A explained ABB's visit to A4 during 12 to 18. Sept and that ABB showed their interest to corporate [cooperate] something ad hoc basis. (A felt that still ABB has a strict regulation /rule internally.) A recommend R to have a meeting with ABB in HKG. A/R understood that ABB's visiting A is a kind of signal to corporate [cooperate]"*.
- Mitsubishi and Showa: The four Japanese producers Furukawa, Fujikura, Hitachi and Sumitomo explained their policy against Mitsubishi and Showa, an issue already dealt with in the meeting on 26 July 1999 (see Recital (141)). Apparently [non-addressee], Pirelli and [non-addressee] did not understand this position of the Japanese when at the same time they were coordinating a project in [Japanese home territory] with Mitsubishi and Showa. The European companies *"... asked A to include M/K strongly"*.¹⁷⁴

(b) the need for the appointment of a coordinator for the Japanese companies Furukawa, Fujikura, Sumitomo and Hitachi: *"R strongly requested A to nominate A coordinator to avoid misunderstanding/miscommunication between A and R. R explained R already nominated []¹⁷⁵ as R coordinator [time period]. A promised to nominate someone as A coordinator as soon as possible"*.¹⁷⁶ This statement demonstrates that at least since 1999 the R members of the cartel were organised in such a manner that a 'neutral' representative was assigned. [...] the A side had difficulty appointing a 'neutral' representative as they feared that one producer would benefit from the transparency offered by that role.¹⁷⁷

(c) the allocation of projects in the export territories. The notes record that the "modification proposed by A" as discussed in the previous A/R meeting on 26 July 1999, and described in Recital (141) was "reconfirmed".¹⁷⁸ In addition, the participants agreed that only the allocation business should be *"reported and*

¹⁷⁴

[...]

¹⁷⁵

A [...] employee.

¹⁷⁶

[...].

¹⁷⁷

[...]

¹⁷⁸

[...]

*recorded on Position Sheet", and reconfirmed that the reporting should take place as follows:*¹⁷⁹

<i>Voltage</i>	<i>Enquiry</i>	<i>General</i>	<i>Status</i>	<i>Award</i>
<i>220 KV and above</i>	<i>Should report</i>	<i>Principle</i>	<i>Allocation</i>	<i>Report&Record</i>
		<i>Exception</i>	<i>Free</i>	<i>No report</i>
<i>220 KV below</i>	<i>Report if necessary</i>	<i>Principle</i>	<i>Free</i>	<i>No report</i>
		<i>Exception</i>	<i>Allocation</i>	<i>Report & Record</i>

(144) In addition to the A/R meetings, between 31 August and 15 September 1999, [company representative C2] (Sumitomo) had several bilateral meetings with representatives of European companies. One of the meetings with representatives of ABB took place in Japan.¹⁸⁰ [...], the representatives of ABB expressed their interest in cooperating on an ad-hoc basis for three projects located in the export territories. Apparently, a final agreement was not reached and the three projects were left open to free competition.¹⁸¹ This was standard procedure at the time: also at the A/R meeting on 19 October 1999 three projects were labelled "free" when a decision on the allocation thereof could not be reached: *"A/R finally decided above 3 projects would be free unfortunately"*.¹⁸²

(145) [...] at least Sumitomo and Hitachi *de facto* implemented the home territory principle in this period. [...] three projects in the European home territory in the late 1990s which [...] were part of discussions between European and Japanese producers. As a result of these discussions, Sumitomo and Hitachi ensured that these projects would not be offered to them but to European companies. Sumitomo and Hitachi did this by giving a poor presentation, offering only long delivery dates or by submitting an unattractive bid.¹⁸³ [...] in exchange for Sumitomo's and Hitachi's cooperation on these projects the European producers agreed to allocate a project in [non-EEA territory] to the Japanese producers.¹⁸⁴

2000

(146) In 2000 there were at least four A/R meetings between [non-addressee], Pirelli, Sumitomo, Hitachi, Fujikura and Furukawa. [...] contemporaneous diary entries witnessing the meetings on 1-2 March, 11 May, in July and on 29 November 2000.¹⁸⁵ According to these diary entries, the participants to these meetings were at least [company representative A2] and [company representative A1] ([...]), [company representative B1] (Pirelli), [company representative F1] (Fujikura), [company representative E2] (Furukawa) [company representative C2] (Sumitomo) and [company representative D1] (Hitachi) although not all participants may have

179 [...].
180 [...]
181 [...]
182 [...]
183 [...]
184 [...]
185 [...]

attended all meetings. Annex I contains further details about these meetings. From contemporaneous notes that exist of the A/R meetings in July and November 2000, it appears that the topics discussed concerned projects in the export territories and the 'outsiders' ABB, Brugg, [non-addressee], Mitsubishi, Showa and the Korean companies.¹⁸⁶

- (147) Diary notes of [company representative] ([...]), dated 9 February 2000, demonstrate the application of the home territory principle during this period.¹⁸⁷ On this date, [company representative] recorded (i) the allocation of the Norned project to the European R producers and indicated that Furukawa would decline to bid ("(R) NORNED Y decline"), and (ii) the allocation of two projects for the customer Viking to R.
- (148) An entry for 17 April 2000 in [company representative]'s diary [...] provides an insight in the mechanism of the cover bid process for allocated projects in the export territories.¹⁸⁸ [...] this diary entry contains the results of a meeting of the Japanese producers on this same date. At this meeting, the price levels to be quoted in a tender for a non-EEA UG project were agreed upon. [...], after the allocation of a project had been decided, the producer designated as the allottee would indicate his bid price to the other cartel participants. Other producers would then submit cover bids at agreed percentages of that price.
- (149) Between April and June 2000, ABB started participating in the cartel. Sometime during this period, [company representative I4] of ABB attended a meeting with [company representative X] of [non-addressee] [position held by company representative X],¹⁸⁹ in which they discussed which company was better suited to win a project in Europe.¹⁹⁰
- (150) [...] faced retaliation by Pirelli the moment it won a project in Italy in April or May 2000. Pirelli then competed against ABB to obtain a project in Malmö (Sweden). [...] considered this action to be retaliation for ABB's violation of the home territory principle within Europe.¹⁹¹
- (151) ABB's awareness of the allocation of projects within Europe is also evidenced in an internal email of 10 April 2000 [...]. This email contains the phrase: *"I suspect that when [non-addressee] let Viking go to Pirelli and NorNed to us, the NSI [North Sea Interconnector, linking Norway and England] became their compensation"*.¹⁹²
- (152) Further evidence of awareness of the application of a market and customer allocation scheme within Europe is found in notes drafted by [company representative] of [...] in the context of an internal [...] meeting on 14 April 2000:

"HV

Western Europe only active on home market

¹⁸⁶

[...]

¹⁸⁷

[...]

¹⁸⁸

[...]

¹⁸⁹

ID [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009.

¹⁹⁰

[...]

¹⁹¹

[...]

¹⁹²

[...]. The Viking project had been subject to allocation by the A/R configuration first, as can be seen in Recitals (145) and (147). In the end, the NorNed project was shared between ABB and Nexans while the NSI was carried out under the form of a consortium.

France closed

Italy closed

N: changing".¹⁹³

- (153) [...] ABB was called to order around July 2000 when it appeared that it had ignored a project allocation in the export territories. [...], ABB had under-quoted. When called to explain, ABB argued it made a mistake in its bid rather than recognising that it had cheated.¹⁹⁴
- (154) The notes of the A/R meeting in July 2000 mention "P.S." which points to the discussion of a position sheet.¹⁹⁵ The first position sheet available dates from 12 September 2000. Although based on the projects listed, it must have been created earlier, possibly in the spring or summer of that year. It is a table set up as an Excel spread sheet which was in the possession of [company representative] ([...]).¹⁹⁶ [...], the position sheets were prepared by [company representative A1] ([...]).¹⁹⁷
- (155) The position sheet lists several UG and SM projects in countries outside the Union and one SM project in Greece. For UG projects, the position sheet distinguishes between projects already allocated, those for which no agreement had been reached and those "to be arranged" in the future. The voltages vary between [...] kV and [...] kV. The SM section appears to list future projects not yet awarded, but the collusive nature of its content is evidenced by one of the projects for which it is stated: "*PI [Pirelli] ready to cooperate*". The voltages of the power cable projects listed range between [...] kV and [...] kV.¹⁹⁸

2001

- (156) In January 2001 [company representative I3] (ABB) became [position] in the High Voltage cable business of ABB. [...], [company representative I3] was instructed by his superior to ensure that he was the main person engaging in collusive conduct for power cables on ABB's behalf.¹⁹⁹
- (157) On 22 February 2001, [non-addressee], Pirelli, Sumitomo, Hitachi, Furukawa and Fujikura participated in an A/R meeting. According to the contemporaneous notes, the participants discussed the participation of Sagem, ABB, Taihan and LG and EXSYM.²⁰⁰
- [...] (...) *Nexans expects sign of policy change*".
 - "*Brugg seems more cooperative*".²⁰¹
 - "*ABB is little bit "predictable" not past as "unpredictable"*"
 - "*Korea understands the current international discussion. [company representative N2] of TEC [Taihan] confirmed cooperation of [project outside*

¹⁹³ [...]

¹⁹⁴ [...]

¹⁹⁵ [...]

¹⁹⁶ [...]

¹⁹⁷ [...]

¹⁹⁸ [...]

¹⁹⁹ [...]

²⁰⁰ [...]

²⁰¹ Brugg is mentioned several times in the notes.

*the EEA] bulk tender on behalf of both TEC and LG under the following pre-conditions: They want preference of [follow three projects in the export territories]. AR basically agreed on 1. & 2. (3. has to be discussed among 6A companies later)."*²⁰²

(158) The last quote makes clear that Taihan and LG both were aware of and respected the cartel agreements at this moment and that Showa and Mitsubishi were included in the internal negotiations of the Japanese companies (as 6A refers to Fujikura, Furukawa, Hitachi, Sumitomo and Showa and Mitsubishi).

(159) This is confirmed by other phrases used in the notes of this meeting:²⁰³

[project in the export territories]: *"One consortium of (Nx) [Nexans], ABB & P [Pirelli] preferred. Y/F [Furukawa/Fujikura], Mit [Mitsubishi] and Korea [LG and Taihan] will cover. Price level should be deliberated".*

This phrase demonstrates as well that once a project had been allocated, the price level was established in common agreement and that the other participants would enter "cover bids" to ensure that the allottee(s) was or were awarded the project.²⁰⁴

(160) Showa's position was set out in more detail:²⁰⁵

[project in the export territories]: *"Sho [Showa] agreed to increase price level to Nx's [Nexans'] one. If Nx gets contract, Sho will be subcontracted for some portion."*

It appears therefore that parties could agree to subcontract work in exchange for "assistance" in obtaining a project.

(161) The participation of Brugg in the A/R allocation at this time is also confirmed:²⁰⁶

[project in the export territories]: *"P was lowest amongst () bidders at 6.8M\$. Br [Brugg] complained price level to make it lower and then to agree to 6.8".*

(162) Moreover, in order to keep the other companies informed of major upcoming projects in the home territories [company representative A2] and [company representative A1] (Nexans) informed the other parties of the fact that the due date for the North Sea Interconnector ("NSI") project should be delayed.²⁰⁷

(163) In March 2001, [company representative I3] (ABB) was introduced by his predecessor, [company representative I2], to [company representative A2] (Nexans) and [company representative B1] (Pirelli). During this meeting, held in a hotel in Zurich, [company representative I3] was made aware of the cartel arrangements and of the ways in which the illicit cooperation was being carried out. [...] it was clear for [company representative I3] that his role was to continue the cooperation between the companies that had taken place prior to his assignment to the cable business. [...] [company representative I3] understood from this meeting that [company representative I2], [company representative A2] and [company representative B1] had cooperated in the past on bids and were discussing SM power cable projects.²⁰⁸

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- (164) On 25 April 2001, at least Nexans, Hitachi, and Sumitomo attended the second A/R meeting of that year.²⁰⁹
- (165) The contemporaneous notes of this meeting demonstrate that it was the task of the A side to ensure the cooperation of the A associates Showa, Mitsubishi, LG and Taihan: "[...] *It seemed that MK [Mitsubishi and Showa] started discussion toward integration, but not known how it goes on.*". The notes continue: "*A contacted TH & LG [Taihan and LG Cable] to harness them into scheme. On case by case basis, continue to contact them, who have short site [sic] and short temper but seem to want cooperation.*".²¹⁰
- (166) In the same vein, the R participants reported on the activities within Europe and on the developments with regard to ABB, Brugg, and Sagem: "*[company representative I3] [ABB] (...) contacted [company representative A2] of Nexans to try to seek some possibilities. [company representative A2] reports ABB becomes a little bit more reasonable. Sagem, Brugg still has large appetite.*".²¹¹
- (167) Depending on the allocation of a particular project, however, Nexans would also contact the A associates directly to ensure their cooperation: "[project in the export territories]: NX [Nexans] *contacted K [Showa] to succeed in sharing among NX, Brugg and K.*"²¹²
- (168) From the notes of this A/R meeting, it follows that the submission of the cover bids for projects in the export territories was also arranged between the parties: "[...] *Cover bids should be mixed between A and R.*"²¹³
- (169) In addition, parties that were wrongfully denied an allocated project could request compensation from the other side. Apparently, Pirelli was competing for a project in the export territories that was in fact allocated to the Korean companies. Therefore, the parties considered: "*If PI [Pirelli] gets order, 4A and 2K need to have a meeting to find the way to compensate them.*"²¹⁴
- (170) Moreover, the parties discussed in detail the allocation of projects in [non-EEA territory]: "*regarding how to allocate [non-EEA territory] business, "Even" was confirmed between A and R starting with this [project name]. Up to filling up R's deficit of 18 km), allocation shall automatically be given to R and then changed to A. Then it reciprocally and automatically be given to A or R to balance each total cable "length" given to A and R.*"²¹⁵
- (171) Power cable accessories also became the subject of a specific arrangement between the parties: "*Non-Proliferation of Joints: (...) NX [Nexans] claims that members should control supply of accs of 220KV and above cables (110kV cable accs situation to complicated).*"²¹⁶ *Proposal from PI [Pirelli]: Accs for 220kV and above cables. 1) Accs(materials): all members to declare who they to and what control they*

²⁰⁹ [...]

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²¹⁶ For 110 kV cables Nexans stated that the situation was complicated, probably meaning that it would be too difficult to apply the same strategy for voltages below 220 kV.

have 2) Technology: Proposal to promote EPDM design of one piece joint. Each member to consider their design and bring info to the next meeting".²¹⁷

- (172) Given that some cable producers competing with the Japanese and European companies – such as Taihan or LG – did not produce certain joints, they had to rely on the Japanese and European companies to source the joints they needed in order to be able to compete for certain projects.²¹⁸ By restricting access to joints, the Japanese and European companies were in a better position to, first, reduce competition in the power cable business by hindering third parties' access to accessories, and second, to pressure other competitors to adhere to the cartel arrangements.²¹⁹
- (173) The subject of new participants in the cartel came back at the A/R meeting of 11 June 2001. This meeting was attended at least by representatives of Hitachi and Sumitomo and probably by representatives of Furukawa, Fujikura, Nexans and Pirelli.²²⁰ The contemporaneous notes mention ABB as a "*Problem: ABB, how to harness them*", while [addressee] "*shows interest*" for a project in the export territories.²²¹
- (174) The participants also said goodbye to their colleague [company representative Y] (a representative of [non-addressee]), who was to retire at the end of June 2001. The notes contain a reference stating that he was " *[time period] involved with 'cooperation'*".²²² This phrase demonstrates on the one hand the close personal relations the participants had developed over the years [...].
- (175) The notes mention two projects affecting the EEA:
- (a) the Spain-Morocco interconnection – SM, 400 or 500 kV – and
 - (b) the Norned project – SM, 450 kV – connecting Norway and the Netherlands which, according to the notes, was split between ABB (70%) and Nexans (30%).²²³
- (176) [...] both projects were allocated to the European R producers.²²⁴ These projects were further discussed in subsequent A/R meetings.
- (177) On 19 July 2001, [company representative A1] (Nexans) sent an email message to [company representative D1] (Hitachi) and [company representative F1] (Fujikura) – with copy to [company representative B7], [company representative B3] and [company representative B2] (Pirelli), [company representative E2] (Furukawa) and [company representative C2] (Sumitomo).²²⁵ This is the earliest multilateral email message that was uncovered and it forms the start of continuous and prolific contacts by email between the parties over the years to come.

²¹⁷ [...]

²¹⁸ ID [...], Taihan reply to SO of 7 November 2011.

²¹⁹ The issue of allowing "outsiders" access to accessories comes back frequently in the course of the cartel. It was raised for instance at the A/R meeting of 20 June 2002, [...], [Confidentiality claim pending]

²²⁰ [...] normally the same individuals attended these meetings on behalf of the European and the Japanese companies. See also [...]

²²¹ [...]

²²² [...]

²²³ [...]. See Recital (147) where it is mentioned that Furukawa had agreed to decline to bid for this project.

²²⁴ [...]

²²⁵ [...]

- (178) In his message, [company representative A1] notifies several new projects in the export territories for allocation. In addition, he urges the Japanese companies to increase their efforts to involve Showa, Mitsubishi, LG and Taihan in the cartel arrangements on a regular basis, otherwise Nexans and Pirelli would not be able to involve the European companies ABB, Brugg and Sagem:

*"Results of A action vis a vis MIT, SHOW and LG/TH is extremely poor and disappointing in particular as demonstrated in [a project in the export territories]. STATISTICS OF PAST PROJECTS AND POTENTIAL ON NEW PROJECTS SHOW THERE IS ROOM TO SATISFY EVERYBODY BUT IF "A" STAYS ON ITS POSITION NOT TO INVOLVE SH, MIT, LG/TH on regular basis our scheme has great likelihood to fully collapse soon. We therefore urge A to react otherwise we wont be able to do anything long with AB, BRG, SAGEM etc".*²²⁶

- (179) [company representative D1] (Hitachi) replied on 26 July 2001 by giving his comments on the new projects. Regarding one of the projects in the export territories, he mentions that the *"Outsiders e.g. [...] ([...]), ABB, [...] will be involved. Show or Mit shows some interest"*. [company representative D1] continued by writing (i) that the Japanese A4 companies (Sumitomo, Hitachi, Furukawa and Fujikura) had contacted Showa and Mitsubishi, proposing them *"the basic scheme of regular table"*, and that both companies would let them know their comments by the middle or end of August; and (ii) that LG and Taihan were angry due to Pirelli's activities, apparently against the Korean companies' interest, but that they ("K") agreed to have a meeting with the Japanese A and the European R companies. For a project in [Japanese home territory], [company representative D1] wrote *"Absolutely A (A's home territory). We are very concerened about ABB's behaviour"*.²²⁷
- (180) Also on 26 July 2001, a meeting in Zurich took place between [company representative I3] (ABB) and [company representative B6] (Pirelli). The discussion focused on the allocation of two Danish wind farm projects: the Nysted project and the Rödsand project.²²⁸ This meeting was followed up by subsequent contacts between representatives of ABB and Pirelli on 11 October 2001 and 23 October 2001. During a conference call on this last date, the two parties agreed the minimum price to be quoted by ABB to ensure that Pirelli would be awarded the Rödsand project.²²⁹ ABB would then be entitled to the Nysted contract. [...] the price which Pirelli proposed that ABB should bid for the Rödsand project was higher than what ABB normally would have submitted.²³⁰ Eventually, both parties managed to secure the contracts, as had been agreed.
- (181) The contacts between the Japanese A4 companies and Showa and Mitsubishi eventually led to a commitment on the part of the latter two companies. The notes of the A/R meeting on 5 September 2001 reflect the willingness of Showa and Mitsubishi to become "members", which would translate into a direct participation in the A/R meetings in the future: *"Mit/Show (...) declared to intention to be a member*

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 227 [...]
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*respectively taking in mind they are not equal to majour 4".*²³¹ Representatives from at least Sumitomo, Fujikura, Hitachi, Nexans and Pirelli attended the meeting.²³²

- (182) At this A/R meeting, internal developments within Pirelli, Nexans, Mitsubishi and Showa, Furukawa and Fujikura and ABB formed the subject of the first general part of the meeting. [company representative C2] (JPS) undertook to contact "[company representative I3] of ABB, presumably to clarify ABB's intentions concerning the project in [Japanese home territory] mentioned in Recital (179).²³³
- (183) Nevertheless, the relationship between Pirelli and Nexans on the one hand, and ABB on the other hand, remained tense. Pirelli reported that it had suffered a great loss in a United Kingdom project as a result of the actions of ABB.²³⁴
- (184) [...], two days later, on 7 September 2001, the first A/R/K meeting took place.²³⁵ Information on the participants other than [...] is not available. LS Cable, Furukawa, Showa and Mitsubishi explicitly deny attending this meeting.²³⁶ It is likely that the meeting was attended by Taihan and by the same participants as the meeting on 5 September 2001 as Hitachi, Fujikura, Nexans and Prysmian have not denied attending the meeting.
- (185) [company representative C2] (JPS) and [company representative F3] (VISCAS) had a meeting with [company representative L2] and [company representative L1] of Sagem on 12 November 2001, the day before the A/R meeting on 13 November 2001. [...] notes of this meeting from which it can be concluded that Sagem was aware of, and participated in the A/R allocation.²³⁷ At this meeting, Sagem recognised that it understood [Japanese home territory] was "*Japanese home territory*". Sagem undertook to support the bid of the Japanese producers in this territory.²³⁸
- (186) One day following the meeting with Sagem, on 13 November 2001, an A/R meeting took place in London. [company representative B1], [company representative B3] and [company representative B7] (Pirelli), [company representative A1], and [company representative A2] (Nexans), [company representative F3] (VISCAS), [company representative C2] and [company representative CD1] (JPS) participated.²³⁹ At this meeting [company representative A2] (Nexans) confirmed that talks were possible with Sagem.²⁴⁰ The notes refer to the newly formed joint ventures JPS and VISCAS and planned formation of EXSYM (referred to as "M/K"). [company representative A2] stated that EXSYM was "*welcome to join the circle*".²⁴¹ However ABB, in his opinion, would not join the cartel and its behaviour was

²³¹ [...]

²³² [...]

²³³ [...]. A bilateral meeting between ABB and JPS took place on 15 November 2001, [...]

²³⁴ [...]

²³⁵ [...]

²³⁶ ID [...], LS Cable submission of 9 February 2012; ID [...], Showa reply to SO of 30 September 2011; ID [...], Mitsubishi reply to SO of 20 September 2011; ID [...], Furukawa reply to SO of 11 November 2011.

²³⁷ [...]

²³⁸ [...]

²³⁹ [...]

²⁴⁰ [...]

²⁴¹ [...] mentions of "*Mit/Showa welcome to the table*".

considered as "unpredictable".²⁴² Nexans and Pirelli remarked that ABB was *"Aggressive in Europe. Active in 400kV. London, Denmark Spain, Austria"*.²⁴³ With Brugg and nkt, however, "talks are possible".²⁴⁴ The notes also confirm that Showa was seen as an "A associate" for the purposes of the position sheets.²⁴⁵

- (187) Concerning the organisation of the A/R allocation, the R parties Nexans and Pirelli again urged their Japanese counterparts to appoint coordinators for UG and SM projects, as they had done in Europe. For the reasons explained in Recital (143) (the Japanese companies were concerned that the coordinator would obtain an unfair advantage for his company), the Japanese had so far refrained from this. The discussion led to the comment that the coordination of projects in the European cartel configuration was *"based on good will. In land, Nexans and Pirelli working OK"*.²⁴⁶
- (188) The parties further discussed the recurrence of meetings: "Two months meeting" "R one month discuss". And *"Generally tend to discuss. One month in Europe. Communicate soon after (...)"*.²⁴⁷ According to these notes, A/R meetings were therefore to take place every two months, and R meetings once a month, while the results of these R meetings would be communicated soon thereafter to the A producers.
- (189) The notes also make clear that the parties were well aware of the illicit nature of their contacts, as it was remarked: *"Sending mails, dangerous. How to improve communication"*.²⁴⁸
- (190) During this A/R meeting the parties continued their discussion on the Spain-Morocco interconnection. The notes report that Nexans and Pirelli showed "strong interest". At the meeting, the project was formally allocated to them: "Allocation to (R) decided".²⁴⁹
- (191) That this decision was indeed implemented follows for instance from the email exchange on the Spain-Morocco project, that took place subsequent to this meeting. On 25 December 2001, [company representative F3] of VISCAS communicated to [company representative C2] of JPS the fact that VISCAS had received an invitation for a pre-qualification ("PQ") tender for this project.²⁵⁰ On the same date, [company representative C2] forwarded this message to [company representative A1] and [company representative A2] of Nexans, and put [company representative B1] of Pirelli in copy: *"Please be notified that we received following PQ tender / Spain (REE) – Morocco (ONE) 2nd 400 kV AC S/M cable..."*.²⁵¹ Subsequently, [company representative B1] (Pirelli) asked [company representative A1] (Nexans) to confirm the allocation of this tender to the R group: *"Please ask A confirmation on allocation*

²⁴² [...], which mentions *"ABB will never accept to sit (...) ABB (unpredictable)"*. [...] states: *"ABB will not join. Behaviour is unpredictable"*.

²⁴³ [...] The other notes provided by [...] on this meeting contain a similar comment: *"Basically, they are more active in the European market rather than in exports. Offensive with 400 kV, London, Denmark, Spain, Austria"*, [...]

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²⁵¹ [...]

to R of this".²⁵² The A side complied with the allocation decision. At the A/R meeting of 30 January 2002, they confirmed that "A did not submit".²⁵³

- (192) In addition, at the A/R meeting of 13 November 2001, the European R participants gave an update on the North Sea Interconnector project (see Recital (162)). The notes refer to a "*Sensitive situation*" with regard to this project. The quote "*Contact [initials] [[company representative B1], Pirelli] in the event of another enquiry*" may hint at the fact that one or more of the Japanese companies had received an invitation to bid from the customer involved.²⁵⁴ A project in Greece was also discussed concerning certain non-identified Greek islands.²⁵⁵
- (193) The A/R meeting was used by Pirelli and Nexans to complain about LG's activities. Apparently, LG had competed strongly for several projects in the European home territory "*LG has submitted low prices in Spain (400 kV XLPE for Union Fenosa)*"²⁵⁶ and [...] [preferred territory]: "*Suffered from LG activity*". The participants of the meeting therefore considered allocating projects in [Japanese home territory] to the Korean companies in order to protect Europe: "*In exchange of feeding Korea with [Japanese home territory], don't come to Europe*".²⁵⁷
- (194) [...] the European R producers complained at this time that the two Korean companies Taihan and LG submitted bids for projects in the European home territory that were too low. The Korean companies complained of the same practice by Nexans and Pirelli, who had quoted low prices to a major Korean customer.²⁵⁸ Both actions had also been the subject of the A/R/K meeting held on 7 September 2001.
- (195) The notes shed light on other details of the A/R allocation mechanism for projects in the export territories. After the name of the project, it is mentioned "*AR try to contact Mit. Showa. Want to have this project for R-ass*". This statement indicates that [company representative A2] (Nexans) negotiated on behalf of the R associates.²⁵⁹
- (196) The parties also agreed to put additional information into the position sheets regarding guidance on prices: "*Anything for guidance shall be put in the position sheet. Make remarks*".²⁶⁰
- (197) In line with what was agreed at the A/R meeting of 13 November 2001, a month later, on 14 December 2001, an R meeting was organised in Divonne, France. [*Confidentiality claim pending*].²⁶¹ The location, a chateau in Divonne, would be used repeatedly for several R meetings as well.

2002

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²⁵⁴ [...].

²⁵⁵ [...].

²⁵⁶ [...].

²⁵⁷ [...]. Similar statement is found in [...].

²⁵⁸ [...]

²⁵⁹ [...] A similar statement is found in [...].

²⁶⁰ [...].

²⁶¹ [*Confidentiality claim pending*]. Brugg has confirmed the participation of [company representative J2], see ID [...], Brugg reply of 7 May 2010 to RFI of 31 March 2010. In the annexes supplied by Brugg, Pirelli is also mentioned, ID [...], Brugg reply of 7 May 2010 to RFI of 31 March 2010.

- (198) On 11 January 2002, [company representative C2] (JPS) met with [company representative I1] of ABB ([company representative I3] could not attend the meeting) at Arlanda airport, Stockholm. [company representative C2] explained the home territory principle to [company representative I1]. During the meeting, [company representative I1] warned [company representative C2] of ABB's strict compliance policy.²⁶² [company representative C2] set out the main other characteristics of the cartel: cash payments had sometimes been made in the past to equalise the balance and the agreements provided for a European sphere of influence and a Japanese sphere of influence and he, [company representative C2], was the coordinator on the Japanese side.²⁶³
- (199) [...] ABB's internal instructions prevented its employees from engaging in cartel meetings.²⁶⁴ According to [...], [company representative I1] and [company representative I3] (ABB) regularly attended dinner or drinks meetings held after A/R meetings.²⁶⁵
- (200) In addition, [...] [company representative C2] and [company representative I1] coordinated their bid in either 2001 or the beginning of 2002 for a project in the export territories that had been allocated to the Japanese producers.²⁶⁶
- (201) [...] participation in several meetings in which various projects were allocated among ABB, Nexans and Pirelli. These meetings were held under the cover of consortium discussions for the North Sea Interconnector (NSI) project.²⁶⁷
- (202) As indicated in Recital (180), in 2001 Pirelli and ABB had divided the Nysted and Rødsand wind farm projects between themselves. In 2002 and 2003, ABB, Pirelli and Nexans met to divide a further range of potentially upcoming wind farm projects. [...], the companies agreed to split the wind farm projects equally between them, and three meetings were held thereto in the course of 2002-2003. Regular participants were [company representative B6] and [company representative B1] (Pirelli), [company representative I3] and [company representative I4] (ABB) and [company representative A2] and [company representative A1] (Nexans).²⁶⁸
- (203) At a meeting in 2002, [company representative A2] of Nexans also directly addressed [company representative I3] of ABB indicating that ABB had taken its fair share of extra-high voltage underground power cable projects within Europe. Sometime later, [company representative A2] indicated that ABB was not expected to bid aggressively on a further European project.²⁶⁹
- (204) On 29 January 2002, Nexans visited Taihan and LG Cable in Korea. According to Nexans' report of this meeting, both companies *"were open for discussion. Wish to continue discussion. Complain. Badly treated by A/R. Ready to participate once treated correctly. Case by case basis. Briefly mentioned the scheme. Any market to be opened. Korea build up too much capacity. They want to consider two, three*

²⁶² [...].
²⁶³ [...].
²⁶⁴ [...]
²⁶⁵ [...]
²⁶⁶ [...]
²⁶⁷ [...]
²⁶⁸ [...]
²⁶⁹ [...]

month regular meeting. TEC [Taihan], LG ([company representative M4], [company representative M5], [company representative M6], from LG). [initials] [company representative C2], [JPS] proposal, case by case. Have the intention to continue talking from Korea".²⁷⁰

- (205) On 30 January 2002, Pirelli, Nexans, VISCAS and JPS came together for an A/R meeting in Akasaka. In addition to the report of Nexans on the visit to LS Cable and Taihan (see Recital (204)), the attendants discussed the enlargement of the group of participants in the cartel again. The Japanese participants confirmed that the joint venture of Mitsubishi and Showa (referred to as "MK") would start from July.²⁷¹
- (206) Concerning the European R associates, the notes of the A/R meeting report that Nexans had stated *"Brugg and Sagem invited in the meeting. Will continue. ABB never wanted to join. NKT may be necessary because more active in export market".²⁷²*
- (207) At the meeting, the parties discussed the outcome of the Spain-Morocco tender. The notes describe *"A did not submit, Ne/P [Nexans/Pirelli] consortium".* While ABB may not have wanted to join the A/R scheme, the notes state that the company had cooperated in the allocation of the Spain-Morocco project within Europe²⁷³ *"ABB cooperate",²⁷⁴* thereby indicating that ABB had agreed to support the bid made by Nexans and Pirelli.
- (208) Concerning the projects in the export territories, the parties discussed the allocation percentages on the basis of the position sheets. According to the notes, [company representative C2] (JPS) was of the opinion that the allocation should be 40:60, while [company representative A2] claimed it should be 35:65.²⁷⁵
- (209) The parties renegotiated their scheme to allocate projects in [non-EEA territory] (see also, Recital (170)). [non-EEA territory] would either be divided into Northern and Southern parts, which would rotate among R and A, or [non-EEA territory] projects would be allocated *"two by two"* (also referred to as *"2x2"*), whereby two projects would go to the R side and the next two projects would go to the Japanese/Korean producers. The other producers would cover for the allottee.²⁷⁶
- (210) The participants in the meeting decided to take the second alternative, with the involvement of A associates Mitsubishi and Showa (EXSYM) and R associates Sagem and [non-addressee].²⁷⁷ *[Confidentiality claim pending]*.²⁷⁸ In his reply of 20 February 2002, [company representative A1] explained that Pirelli was the contact point for [non-addressee]. A meeting with [non-addressee] had taken place and [company representative A1] explained how it had proceeded: *"We have exposed the 2x2 Scheme and they say it might not be adapted to this country where very often it is the client who choose the supplier independently of the price ranking. They also*

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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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[...] The latter document contains the notes of the A/R meeting of 5 April 2002 where the parties decided that the 2x2 Scheme or "AARR" as it is referred to, should run eight times. [...].

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[Confidentiality claim pending]

indicated that to their opinion this would mean a 50/50 R/A Splitting of the market. We clearly explained that the 2x2 is only to allow quicker allo [allocation] and that the balance is made yearly on the global PS [position sheet] situation ie 2x2 does not mean 50/50 Split of the [non-EEA territory] market". [company representative A1] also reported that Sagem had not given an opinion yet.²⁷⁹

- (211) [...] a position sheet originally created on 20 February 2002, by the assistant of [company representative A1] (Nexans).²⁸⁰ The position sheet lists projects from the year 2000 onwards and appears to have been continuously updated until March 2004. [...].²⁸¹ [Confidentiality claim pending].²⁸²
- (212) Nexans, Pirelli, VISCAS and JPS subsequently attended an A/R meeting on 5 April 2002. The notes of this meeting record the following with respect to the European producers Brugg, Sagem, nkt and ABB; reflecting their increased participation in the cartel activities: *"There is a gradually growing cooperative atmosphere with Brugg, Sagem, [...]. Access to ABB has also become easier than previously"*. For the newly announced joint venture EXSYM, the notes mention *"[company representative G1] will be [function], [company representative H1] [function]. They will also attend the next meeting for Exsym"*.²⁸³
- (213) At this meeting the Japanese participants JPS and VISCAS complained about the fact that R had submitted prices for a project in the export territories without prior consultation. [company representative C2] (JPS) set out to seek evidence of this violation of the rules.²⁸⁴ Prices were also exchanged at the A/R meeting itself. The notes of the meeting contain the phrase *"... As for Nexans, they are considering to reduce to a level (14,0-14,5 M\$) which is slightly higher than nkt (13 M\$)"*, with regard to a project in the export territories that was under discussion.²⁸⁵
- (214) In the course of 2002, an additional rule was added to the cartel. The parties were faced with recurring projects offered by contractors/utilities, whereby the contractor/utility was based in A or R territory, but the project in a different territory (either an export territory or another home market). For projects located in the export territories, the parties agreed to allocate them on a case by case basis. For projects from utilities, for example [customer names] etc. however, the *"territory is prioritized"*. This entailed that projects in the export territories would generally be allocated to R if the utility was European, and to A if the utility was Japanese. If the customer came from the A home market but the project was located in R, then allocation would be given to R, and *vice versa*. These rules were agreed in the A/R meeting held on 20 June 2002 and clarified in subsequent meetings and contacts by email between JPS, VISCAS, EXSYM, Nexans, Pirelli and Brugg.²⁸⁶
- (215) Nexans, Pirelli, JPS and VISCAS attended this A/R meeting on 20 June 2002. EXSYM did not yet attend; the notes mention that EXSYM *"might possibly join the*

²⁷⁹ [Confidentiality claim pending] and ID [...], Nexans reply to RFI of 20 March 2009.

²⁸⁰ [...]

²⁸¹ [...].

²⁸² [Confidentiality claim pending]

²⁸³ [...].

²⁸⁴ [...].

²⁸⁵ [...].

²⁸⁶ See Annex I for the meetings, and documents [Confidentiality claim pending] and ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

next meeting".²⁸⁷ In addition, VISCAS and JPS pointed to EXSYM's positive contribution to the arrangements and requested a more favourable allocation of future projects in [non-EEA territory].²⁸⁸

- (216) From the planning of the R meetings it is clear that they would follow the format of the A/R meetings that took place at regular intervals. In this way, the main R parties Nexans and Pirelli, who attended the A/R meetings, could update the R associates Brugg, nkt and Sagem about the recent developments.
- (217) [Confidentiality claim pending]²⁸⁹ [Confidentiality claim pending]²⁹⁰ [Confidentiality claim pending].²⁹¹ [Confidentiality claim pending].²⁹²
- (218) Prior to the large A/R meeting in London (Thames Valley) in September 2002, [company representative A1] (Nexans) stressed the importance of EXSYM's attendance in the A/R meetings in an email to [company representative CD1] (JPS):
- "A had confirmed that although EXSYM could not attend last meeting (despite prior announcement they would) they would be attending the next one (This London meeting). Could you confirm who will attend from EXSYM? Please note that a representative of AB [ABB] will attend the dinner,²⁹³ it would be a pity not to show a complete attendance in this case and would probably not help progressing in the improvement of the Scheme. (...) We have now on regular basis contacts with NK [nkt], SIL [Sagem], BC [Brugg] if we do not have EXSYM on board this is meaningless".²⁹⁴*
- (219) In reply, [company representative CD1] (JPS) confirmed that EXSYM would be "joining the club" as of 3 September 2002. The cooperation of EXSYM would be limited to UG projects.²⁹⁵ On 4 September 2002, [company representative H1] (EXSYM) personally confirmed EXSYM's adherence to the cartel to [company representative A1] (Nexans).²⁹⁶
- (220) Nexans, Pirelli, VISCAS and JPS attended the A/R meeting on 6 and 7 September 2002 in London (Thames Valley).²⁹⁷ [...] [company representative I3] (ABB) attended the dinner preceding the A/R meeting on 6 and 7 September 2002. [company representative I3] had received an invitation from [company representative A2] (Nexans). [company representative I3] only attended for an hour and a half the actual A/R meeting on 7 September 2002.²⁹⁸
- (221) [...], [company representative C2] (JPS) explained to [company representative I3] at this A/R meeting that the Japanese suppliers would not bid for projects that had been

²⁸⁷ [...]

²⁸⁸ [...].

²⁸⁹ [Confidentiality claim pending]

²⁹⁰ [Confidentiality claim pending]

²⁹¹ [Confidentiality claim pending]

²⁹² [Confidentiality claim pending]

²⁹³ ABB eventually attended the dinner prior to the A/R meeting and part of the A/R meeting on 6 September 2002. [...].

²⁹⁴ [...].

²⁹⁵ [...].

²⁹⁶ [Confidentiality claim pending] The notes of the A/R meeting of 6 September 2002 also report that EXSYM would join "the club" for Land [UG] projects only, [...].

²⁹⁷ [...].

²⁹⁸ [...]

originally supplied by European suppliers, and vice versa ([...] the "origination principle").²⁹⁹ [...] the company had implemented this origination principle the moment it supported the bid made by Nexans and Pirelli on the Spain-Morocco project (see Recital (207)). [...] a predecessor of this project had been allocated to Nexans and Pirelli.³⁰⁰

(222) [Confidentiality claim pending].³⁰¹ [Confidentiality claim pending].³⁰² [Confidentiality claim pending]³⁰³

(223) In 2002, the Korean companies Taihan and LG Cable were still reliant upon other producers for the supply of certain joints for UG power cables. [Confidentiality claim pending].³⁰⁴ [Confidentiality claim pending].³⁰⁵ [Confidentiality claim pending]³⁰⁶

(224) On 14 November 2002, Nexans, Pirelli, JPS, VISCAS and EXSYM attended an A/R meeting in Tokyo.³⁰⁷

(225) At this meeting, the general rules of the A/R cartel on the allocation of projects in the export territories were explained to EXSYM:

"Basic policy for Scheme operation

- Covering voltage classes with [...]kV or above for CV and [...] voltage classes for OF [Oil Filled power cables]

- However, in addition to the above, for projects for which arrangements can be made, as much arrangements as possible will be made.

(...)

- Quota A:R=40:60

For projects involving electric power companies, companies located in relevant countries should be given preference".

and

"- Disclosure of GPL [Guiding Price List] table for accessories. Each company will compare it with its cost prices and confirm.

- Immediately confirm the contents of the A/R position sheet".³⁰⁸

(226) It is noted that, although this description of the cartel rules makes a reference to the "voltages" of the cables, the arrangements were not limited to the cables themselves, but to the projects as a whole (which include additional products and services such as accessories³⁰⁹, installation works, etc.), as is clearly indicated by the second indent

299

[...]

300

[...]

301

[Confidentiality claim pending]

302

[Confidentiality claim pending]

303

[Confidentiality claim pending]

304

[Confidentiality claim pending]

305

[Confidentiality claim pending]

306

[Confidentiality claim pending]

307

ID [...]; ID [...], EXSYM reply of 7 May 2011 to RFI of 31 March 2010.

308

ID [...], EXSYM reply of 7 May 2011 to RFI of 31 March 2010.

309

See the penultimate indent in Recital (225).

("- However, in addition to the above, for **projects** ...") Moreover, in the meeting notes references are made to the R associates ABB, Brugg, Sagem and nkt.³¹⁰

(227) [Confidentiality claim pending].³¹¹ Notes of this meeting were [Confidentiality claim pending]³¹² and [...] ³¹³ and EXSYM.³¹⁴ Nexans, Pirelli, JPS, VISCAS and LG Cable and Taihan attended the meeting. According to the contemporaneous notes, the following question was put to [company representative M3] (LG) and [company representative N1] (Taihan) "*Can Korea Cooperate*" to which the answer was "*Ready to cooperate, project by project*".³¹⁵ In addition, the Korean companies "*confirmed that they would participate in the Scheme in the long term*".³¹⁶

(228) At this meeting the home territory rules were spelled out: "Territories: Domestic: *R at large*+ [preferred territory] [Europe in the wide sense, plus [preferred territory], the preferred territory [...]]; *K* [Korea, the home territory of the Koreans]; *J*+*[Japanese home territory]* [Japan and [Japanese home territory], home territory of the Japanese companies]".³¹⁷

and

"*Entire Europe, [preferred territories] are R's territories. If there is any infringement, then territories of Korea side will not be accepted*".³¹⁸

(229) EXSYM, Taihan and LG Cable were informed of the involvement of ABB, Brugg, Sagem and nkt.³¹⁹ [Confidentiality claim pending].³²⁰ In most of the electronic correspondence gathered during the investigation, the messages were in general also sent in copy to other individuals involved in the cartel arrangements for example [company representative C2] and [company representative D3] (JPS), [company representative F3] (VISCAS), [company representative H1] (EXSYM), [company representative A2] (Nexans) and [company representative B2], [company representative B3] and [company representative B1] (Pirelli).

(230) On 27 and 28 November 2002, Nexans, Pirelli, Sagem, nkt and Brugg all attended an R meeting in La Chapelle en Serval, France.³²¹ [Confidentiality claim pending].³²²

(231) The cooperation in the A/R cartel configuration led to a growing stream of "enquiry notifications". Such notifications were sent to the coordinator of the European side at the event of receipt of an enquiry by a Japanese company to bid for a project located in the European home territory and *vice versa*. Where necessary, these enquiry notifications were accompanied by a request for guidance on what to do or how to

³¹⁰ [...].

³¹¹ [Confidentiality claim pending]

³¹² [Confidentiality claim pending]

³¹³ [...].

³¹⁴ ID [...], EXSYM reply of 7 May 2011 to RFI of 31 March 2010.

³¹⁵ [...].

³¹⁶ ID [...], EXSYM reply of 7 May 2011 to RFI of 31 March 2010.

³¹⁷ [Confidentiality claim pending]; [...].

³¹⁸ ID [...], EXSYM reply of 7 May 2011 to RFI of 31 March 2010.

³¹⁹ [...].

³²⁰ [Confidentiality claim pending]

³²¹ [Confidentiality claim pending]; ID [...], reply nkt of 7 May 2010 to RFI of 31 March 2010; ID [...], reply Brugg of 7 May 2010 to RFI of 31 March 2010.

³²² [Confidentiality claim pending]

bid. There are several examples of JPS informing Nexans of the receipt of project enquiries. A brief overview is provided here:

- (a) JPS informed Nexans on 16 January 2002 about a received enquiry on a UG project in Spain of 400 kV.³²³
 - (b) At the end of April 2002, [company representative CD1] (JPS) requested the European companies to "*Please advise how "A" can respond to the following enquiry*", with regard to a project enquiry from the United Kingdom.³²⁴ [Confidentiality claim pending],³²⁵ [company representative A1] (Nexans) replied: "*RP [Pirelli] is clearly involved and we would appreciate if A declines*".³²⁶
 - (c) [Confidentiality claim pending].³²⁷
 - (d) In June 2002, [company representative F3] (VISCAS) requested guidance from [company representative CD1] (JPS) on how to deal with an enquiry for a SM project in the Netherlands.³²⁸ [company representative CD1] notified [company representative A1] of the enquiry and asked "*please advise us how we should react to this enquiry*".³²⁹ The issue was raised at the A/R meeting on 20 June 2002 where it was decided that A should receive guidance.³³⁰
 - (e) [Confidentiality claim pending].³³¹
 - (f) [Confidentiality claim pending].³³²
 - (g) Upon its adherence to the A/R scheme, EXSYM also started notifying the receipt of enquiries from customers to the coordinators. On 12 December 2002, [company representative H1] (EXSYM) reported an invitation for a 64/110 kV project from a German customer to [company representative CD1]. [company representative CD1] forwarded this notification to [company representative A1], with the subscript "*He will be declining to quote*".³³³
- (232) The cooperation extended to mutual assistance *after* the allocation of projects. With regard to the Spain-Morocco project, in Recitals (190) and (191) it is explained that this project was allocated to the R side. Pirelli and Nexans had laid down a consortium bid, while ABB had 'cooperated' (see also Recital (207)). Some days after the A/R meeting of 30 January 2002, [company representative A1] (Nexans) requested the A side (JPS and VISCAS) to present a pre-qualification bid to this project as the client would not open the pre-qualification documents with only two respondents (the consortium offer by Pirelli/Nexans and the bid by ABB).³³⁴ A series of actions ensued, all designed to ensure that the consortium offer by Pirelli/Nexans

323 [...].

324 [Confidentiality claim pending] and [...]

325 [Confidentiality claim pending]

326 [...].

327 [Confidentiality claim pending]

328 [...].

329 [...]

330 [...].

331 [Confidentiality claim pending]

332 [Confidentiality claim pending]

333 [...]

334 [...].

would be selected as the winner. The actions provide a clear indication of the great lengths to which the participants were prepared to go in order to ensure the implementation of an allocation. A summarised chronological overview is provided here:³³⁵

- (a) First, the Japanese side ([company representative CD1] of JPS) requested advice on the documents to submit;³³⁶
- (b) [company representative A1] (Nexans) sent the contents of the pre-qualification file to [company representative CD1];³³⁷
- (c) The Japanese side then received an invitation for the preparatory meeting of the customer and an invitation to bid. This was forwarded to [company representative A1] with the comment that they "*would like to decline*".³³⁸
- (d) [company representative A1] replied: "*we insist on your full support for this project which include participating to the meetings as well as submitting an offer*" and urged "*may I remind you of our support*" referring to the support by the R side in an earlier bid procedure for a project in the export territories.³³⁹
- (e) [company representative CD1] conceded and promised to submit an offer.³⁴⁰
- (f) [company representative CD1] then requested input for the questions [...] should ask at the preparatory meetings with the customer.³⁴¹ [company representative CD1] also requested the list of documents to be submitted with the bid.³⁴²
- (g) [company representative B1] (Pirelli) provided [company representative CD1] with a full overview of the price levels the A side had to submit³⁴³ and gave details on the technical part of the offer.³⁴⁴
- (h) [company representative CD1] thanked [company representative B1] and asked "*can we understand that we can include these documents in our proposal without any modification?*". In addition, he asked whether further documents should be submitted.³⁴⁵ Moreover, [company representative CD1] requested a draft of the bid bond as submitted by Nexans/Pirelli.³⁴⁶
- (i) [company representative B1] provided [company representative CD1] with templates for the bid bond,³⁴⁷ and a copy of the commercial comments to be

335 [...]

336 [...]

337 [...]

338 [...].

339 [...]

340 [...].

341 [...]. A first reply of [company representative A1] is found in [...].

342 [...]. This request was also issued at the A/R meeting which took place on 20 June 2002 at which the parties agreed that the "*list of compulsory documents for submission will be communicated*", [...].

343 [...].

344 [...]

345 [...]

346 [...].

347 [...].

sent.³⁴⁸ [company representative B1] also visited [...] in person to explain the procedure.³⁴⁹

- (j) [company representative CD1] subsequently requested input on the work schedule to be given to the customer "*so that we will not make any better than your proposal*"³⁵⁰
 - (k) [company representative B1] provided the work schedule of Nexans/Pirelli with the request to extend the schedule of [...] by 30 months.³⁵¹
 - (l) [company representative CD1] notified [company representative B1] and [company representative A1] the questionnaire the customer had sent in reply to their "*Shit proposal*" and requested translation thereof.³⁵²
 - (m) [company representative CD1] requested several documents Nexans and Pirelli had prepared for the customer electronically, so he could send a modified version to the customer.³⁵³
 - (n) [company representative A1] provided the requested information while leaving some of the work for [...] "*This is a minimum work you have to do*". He urged [company representative CD1] "*take care to vary*" from the information Nexans/Pirelli had provided.³⁵⁴
 - (o) At the start of the negotiations phase, one year later, [company representative A1] reminded [company representative CD1] that he expected his "*continuous support*".³⁵⁵
- (233) Eventually, the project was indeed awarded to the consortium Nexans/Pirelli. In the specialised press, [company representative A2] (Nexans) declared that "*it was the largest contract awarded to the submarine power industry in 2003*".³⁵⁶
- (234) As was the case for the A/R cartel configuration, the parties exchanged information and prices for allocated projects within the European cartel configuration. The parties could then prepare their cover bids and ensure that they would not bid higher than the allottee. Alternatively, the allottee would give instructions (‘guidance’) to the other parties to ensure that his bid remained the best. In addition, the parties would inform the cartel members of each allocation or the desire to be allocated a specific project. While several examples of such emails were found, it is obvious that the parties were acutely aware of the illegality of their behaviour and preferred to discuss matters by phone or resorted to very brief, cryptic descriptions in their emails. Some examples of these cryptic descriptions are given in the exchanges below:

³⁴⁸ [...]

³⁴⁹ [...]. The possibility of a visit to Japan in order to help JPS was already raised at the A/R meeting of 5 April 2002, [...].

³⁵⁰ [...].

³⁵¹ [...]

³⁵² [...], which includes the translation provided by [company representative B1].

³⁵³ [...]

³⁵⁴ [...]. Several other small requests were made by [company representative CD1] and answered by [company representative A1], [...].

³⁵⁵ [...]. [Confidentiality claim pending] and [...] which detail that the project was discussed at the A/R meeting on 21 January 2003.

³⁵⁶ <http://www.powergenworldwide.com/index/display/articledisplay/204080/articles/power-engineering-international/volume-12/issue-4/features/sharing-the-power.html>.

- (a) On 12 June 2002, [company representative B1] (Pirelli) sent his offer for the wind farm project Scroby Sands in the United Kingdom to [company representative A1] (Nexans).³⁵⁷
- (b) [Confidentiality claim pending]³⁵⁸
[Confidentiality claim pending]
- (c) [Confidentiality claim pending]³⁵⁹
- (d) [Confidentiality claim pending]³⁶⁰
- (e) [Confidentiality claim pending]³⁶¹
- (f) [Confidentiality claim pending]³⁶² [Confidentiality claim pending]³⁶³
[Confidentiality claim pending]³⁶⁴ [Confidentiality claim pending]³⁶⁵
- (g) [Confidentiality claim pending]³⁶⁶
- (h) [Confidentiality claim pending]³⁶⁷ [Confidentiality claim pending]³⁶⁸
[Confidentiality claim pending]³⁶⁹
- (i) [Confidentiality claim pending]³⁷⁰ [Confidentiality claim pending]³⁷¹
[Confidentiality claim pending]³⁷²
- (235) [Confidentiality claim pending]³⁷³
- (236) [Confidentiality claim pending]³⁷⁴ [Confidentiality claim pending]³⁷⁵
2003
- (237) A large number of meetings and contacts took place in 2003. A detailed overview is provided in Annex I.
- (238) [Confidentiality claim pending]³⁷⁶
- (239) [Confidentiality claim pending]³⁷⁷

³⁵⁷ [Confidentiality claim pending]; [...].

³⁵⁸ [Confidentiality claim pending]

³⁵⁹ [Confidentiality claim pending]

³⁶⁰ [Confidentiality claim pending]

³⁶¹ [Confidentiality claim pending]

³⁶² [Confidentiality claim pending]

³⁶³ [Confidentiality claim pending]

³⁶⁴ [Confidentiality claim pending]

³⁶⁵ [Confidentiality claim pending]

³⁶⁶ [Confidentiality claim pending]

³⁶⁷ [Confidentiality claim pending]

³⁶⁸ [Confidentiality claim pending]

³⁶⁹ [Confidentiality claim pending]

³⁷⁰ [Confidentiality claim pending]

³⁷¹ [Confidentiality claim pending]

³⁷² [Confidentiality claim pending]

³⁷³ [Confidentiality claim pending]

³⁷⁴ [Confidentiality claim pending]

³⁷⁵ [Confidentiality claim pending]

³⁷⁶ [Confidentiality claim pending]

³⁷⁷ [Confidentiality claim pending]

- (240) On 23 January 2003 [company representative N1] (Taihan) complained to [company representative CD1] (JPS) about the activities of Pirelli in Korea. [company representative CD1] offered his apologies on behalf of Pirelli.³⁷⁸
- (241) [Confidentiality claim pending]³⁷⁹ nkt organised the meeting and sent out the invitations.³⁸⁰ [company representative L2] (Sagem) received an invitation for the meeting. Safran claims that there is insufficient evidence to confirm that Sagem indeed participated in the meeting. According to Safran, the fact that [company representative L2] (Sagem) received an invitation for this meeting cannot establish that he indeed attended.³⁸¹ Safran has not adduced any evidence which would establish with certainty that [company representative L2] did not attend the meeting.
- (242) [Confidentiality claim pending]³⁸²
- (243) On 24 February 2003, [company representative A1] reported a number of upcoming projects to [company representative CD1], among which one project located in Spain. He requested: "*Please confirm that LG will not quote on those enquiry which R pref or R territory*".³⁸³ [company representative CD1] subsequently verified with [company representative N1] (Taihan) whether Taihan and LG Cable would be able to cooperate with this instruction,³⁸⁴ while he warned [company representative A1] that Taihan and LG Cable were still "*outsiders*".³⁸⁵ [company representative CD1] replied on 27 February 2003: "*Have received their reply as follows: 1. Spain; LG no quote. TEC [Taihan] quoted with high price. Asking TEC to disclose their offered price*".³⁸⁶ [Confidentiality claim pending]³⁸⁷ [company representative N1] (Taihan) eventually provided the prices it had quoted.³⁸⁸
- (244) Representatives from Nexans, JPS, EXSYM, Taihan and LG Cable all attended an A/R/K meeting on 4 March 2003 in Seoul, to discuss the allocation of projects in the export territories.³⁸⁹
- (245) Nexans, Pirelli, JPS and VISCAS all attended an A/R meeting in Tokyo on 27 March 2003. EXSYM attended the meeting only for the UG part. Contemporaneous notes of this meeting exist, [...] by Nexans [...].³⁹⁰ Besides discussing projects in the export territories, the parties repeated the rules on the allocation of projects by utilities and contractors. Both sets of notes include a table in which this aspect of the home

³⁷⁸ [...].

³⁷⁹ [Confidentiality claim pending]

³⁸⁰ [Confidentiality claim pending]; ID [...], reply Brugg of 7 May 2010 to RFI of 31 March 2010.

³⁸¹ ID [...], Safran reply to SO of 3 October 2011.

³⁸² [Confidentiality claim pending]

³⁸³ [...]

³⁸⁴ [...].

³⁸⁵ [...].

³⁸⁶ [...]

³⁸⁷ [Confidentiality claim pending]

³⁸⁸ [Confidentiality claim pending]; [...]. In September 2003, [company representative CD1] (JPS) reported to [company representative A1] (Nexans) that the customer had requested Taihan to make a price revision, [...]; [Confidentiality claim pending]

³⁸⁹ [Confidentiality claim pending] [...] With respect to the participants see also ID [...], LS submission of 6 September 2010.

³⁹⁰ [Confidentiality claim pending] [...]

territory rule is set out.³⁹¹

	A		R	
	<i>POWER AUTH EQUIV</i> [Power Authority or equivalent]	<i>CONTRACT.</i> [contractor]	<i>POWER AUTHOR EQUIV</i>	<i>CONTRACT.</i>
<i>Allo</i>	A	A PREF	R	R PREF.
	<i>SOME EXCEPTIONS</i>		<i>SOME EXCEPTIONS</i>	

- (246) The notes also refer to an "invasion" of Pirelli in Korea³⁹² and [...] it is mentioned that LG was taking part in a project in Spain.³⁹³
- (247) At this A/R meeting, a large project in Greece was also discussed. As indicated in Recital (79), for historical reasons Greece was excluded from the normal definition of the European territory and thereby from the home territory principle. At the meeting it was nevertheless decided to allocate the project to R.³⁹⁴ In the course of 2003 and 2004, the parties allocated further projects in Greece to R and/or requested guidance from R.³⁹⁵
- (248) [company representative B2] (Pirelli) sent an email to [company representative CD1] (JPS) in April 2003 with the aim of avoiding that any of the A parties would offer technological assistance to a potential Greek competitor that was not a cartel member.³⁹⁶
- (249) [Confidentiality claim pending]³⁹⁷ [Confidentiality claim pending]³⁹⁸
- (250) An email of [company representative CD1] (JPS) of 19 May 2003 to [company representative A1] (Nexans), [company representative B3] and [company representative B1] (Pirelli), [company representative F3] (VISCAS) provides an example of the implementation of the contractor rule. In the project concerned, the contractor was Japanese; however the project was located in Europe. [company representative CD1] therefore asked the R partners for comments on the price levels to apply.³⁹⁹
- (251) The contemporaneous notes of the A/R meeting on 13 June 2003 in Milan demonstrate once more that the parties sought to limit the risk of exposure of the cartel. The meeting was attended by representatives of Nexans, Pirelli, JPS, VISCAS

³⁹¹ [Confidentiality claim pending] [...].

³⁹² [...];[Confidentiality claim pending]

³⁹³ [...].

³⁹⁴ [Confidentiality claim pending]; [...].

³⁹⁵ [...];[...];[...];[...];[...], [...];[...];[Confidentiality claim pending]; [...]; [...];[Confidentiality claim pending]; [...];[Confidentiality claim pending] [...].

³⁹⁶ [...].

³⁹⁷ [Confidentiality claim pending]

³⁹⁸ [Confidentiality claim pending]

³⁹⁹ ID [...]

and EXSYM (only for UG power cables).⁴⁰⁰ The notes [...] contain the phrase: "More careful about exchanging information",⁴⁰¹ [Confidentiality claim pending]⁴⁰² At the meeting, further instances of Korean violations of the home territory principle were made: "Korea preparing to attacking in Europe".⁴⁰³

(252) [Confidentiality claim pending]⁴⁰⁴ [Confidentiality claim pending]⁴⁰⁵

(253) [Confidentiality claim pending]⁴⁰⁶ [Confidentiality claim pending]

(254) At the A/R meeting in Tokyo on 11 September 2003, the subject of security was back on the agenda. The contemporaneous notes from JPS contain a reference to a French antitrust complaint by EDF: "Security matter. No papers. More serious for projects in Eur."⁴⁰⁷ [Confidentiality claim pending]⁴⁰⁸ Representatives of Nexans, Pirelli, JPS, VISCAS and EXSYM (for UG power cables only) attended the meeting.

(255) At the meeting, the attendants also discussed the "K situation": "K (LG) attacked in Italy: Spain 400kV Italy 400kV [preferred territory] [...]kV and [...]kV, UK 132KV".⁴⁰⁹ [Confidentiality claim pending]⁴¹⁰

(256) [...] notes of the meeting mention that EXSYM, in order to obtain an order in the export territories "Had to under quote BRG [Brugg]".⁴¹¹ Nexans' representative wrote down: [project name] "trouble by Brugg (after ABB trouble) ... A is willing not to collaborate anymore with BC and ABB".⁴¹² [...] notes continue with "Will ask BC at next R meeting" which refers in all likelihood to commitments made by Nexans or Prysmian to raise the issue with Brugg.⁴¹³

(257) Finally, the notes [...] also provide some details regarding the allocation of projects in the export territories. For one project it is mentioned "E-bid on September 17 (...) Price from NXN by tonight", while for another the notes state: "Final negotiation stage (...) Guidance sent. Waiting for NXN's final bid."⁴¹⁴

(258) [Confidentiality claim pending]⁴¹⁵ [Confidentiality claim pending]

	[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]
[Confidentiality]	[Confidentiality claim pending]	[Confidentiality claim pending]	

⁴⁰⁰ [Confidentiality claim pending]; [...]

⁴⁰¹ ID [...]

⁴⁰² [Confidentiality claim pending]

⁴⁰³ ID [...]

⁴⁰⁴ [Confidentiality claim pending]

⁴⁰⁵ [Confidentiality claim pending]

⁴⁰⁶ [Confidentiality claim pending]

⁴⁰⁷ ID [...]

⁴⁰⁸ [Confidentiality claim pending]

⁴⁰⁹ [Confidentiality claim pending] and [...].

⁴¹⁰ [Confidentiality claim pending]

⁴¹¹ ID [...]

⁴¹² [Confidentiality claim pending]

⁴¹³ ID [...]

⁴¹⁴ ID [...]

⁴¹⁵ [Confidentiality claim pending]

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

(259) [*Confidentiality claim pending*]⁴¹⁶

(260) [*Confidentiality claim pending*]

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

[*Confidentiality claim pending*]⁴¹⁷

(261) [*Confidentiality claim pending*]

(262) [*Confidentiality claim pending*]⁴¹⁸

(263) [*Confidentiality claim pending*]⁴¹⁹ [*Confidentiality claim pending*]⁴²⁰
[*Confidentiality claim pending*]⁴²¹

(264) [*Confidentiality claim pending*]⁴²²

(265) Eventually, the parties agreed to hold a further A/K/R-meeting on 17 October 2003.⁴²³ At the preparatory meeting, which was held in the morning, Nexans, JPS, EXSYM and VISCAS set out the main aim of the meeting with LG and Taihan. This is evidenced by the contemporaneous notes of [...] Nexans. The notes [...] read:

*"Confirm the willingness. Put on the table. No attack in domestic market each other. Vice versa. Korea attacking in Italy, [non-EEA territory], Germany, Spain. [...] Principle, No attack each other in domestic. 220KV and above with exception. As much as possible."*⁴²⁴

(266) [*Confidentiality claim pending*]⁴²⁵ [*Confidentiality claim pending*]⁴²⁶

(267) [*Confidentiality claim pending*]⁴²⁷

⁴¹⁶ [*Confidentiality claim pending*]
⁴¹⁷ [*Confidentiality claim pending*]
⁴¹⁸ [*Confidentiality claim pending*]
⁴¹⁹ [*Confidentiality claim pending*]
⁴²⁰ [*Confidentiality claim pending*]
⁴²¹ [...]
⁴²² [*Confidentiality claim pending*]
⁴²³ [*Confidentiality claim pending*]
⁴²⁴ ID [...].
⁴²⁵ [*Confidentiality claim pending*]
⁴²⁶ [*Confidentiality claim pending*]
⁴²⁷ [*Confidentiality claim pending*]

	[Confidentiality claim pending]	[Confidentiality claim pending]
[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]
[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]
[Confidentiality claim pending]		[Confidentiality claim pending]

(268) The "General Understanding" was set out at the actual A/R/K meeting held in the afternoon of 17 December 2003, in which [company representative M7] and [company representative M3] (LG Cable) and [company representative N1] and [company representative N3] (Taihan) participated. The notes [...] state the following:

"Basically [...]kV and above. OF [Oilfilled] and XLPE. Except some cases. [...]kV and [...]kV where possible.

Geographical application: No interference in Domestic Market. Japan. Korea [Japanese home territory]. Domestic market, EU, [non-EEA territory] ([...] long time traditional). [...]

Can Korea confirm?"⁴²⁸

(269) [Confidentiality claim pending]⁴²⁹

(270) After hearing the general understanding, [...] LG is quoted as saying: "LG, Europe OK. [non-EEA territory], not agreed (...)"⁴³⁰[Confidentiality claim pending]⁴³¹

(271) [Confidentiality claim pending]

[...] notes provide: "ABB try to get [company representative I3] once in a while. Most difficulty, ABB NXNS, Pirelli, ABB, Sagem, Brugg, NKT([...])".⁴³²[Confidentiality claim pending]⁴³³

(272) [Confidentiality claim pending]⁴³⁴

(273) [Confidentiality claim pending]⁴³⁵

(274) [Confidentiality claim pending]⁴³⁶

(275) [Confidentiality claim pending]⁴³⁷ [Confidentiality claim pending]⁴³⁸

⁴²⁸ ID [...]

⁴²⁹ [Confidentiality claim pending]

⁴³⁰ ID [...]

⁴³¹ [Confidentiality claim pending]

⁴³² ID [...]

⁴³³ [Confidentiality claim pending]

⁴³⁴ [Confidentiality claim pending]

⁴³⁵ ID [...] and [Confidentiality claim pending]

⁴³⁶ [Confidentiality claim pending] and [Confidentiality claim pending]

⁴³⁷ [Confidentiality claim pending]

- (276) [Confidentiality claim pending]⁴³⁹ [Confidentiality claim pending]⁴⁴⁰
- (277) Outside of the A/R meetings, [...] has reported that at a bilateral meeting on 24 November 2003, [company representative C2] (JPS) agreed with [company representative I3] (ABB) that JPS would not engage in competition against ABB in Scandinavia and ABB would not compete against JPS in Japan. This understanding was not related to any specific project or type of cable.⁴⁴¹ Moreover, during the meeting [company representative C2] (JPS) expressed his interest in a number of projects in the export territories.
- (278) Representatives of Nexans, Pirelli, JPS, VISCAS and EXSYM all attended an A/R meeting on 27 November 2003. At this meeting, the Korean companies LG Cable and Taihan were criticised because of infringements in the home territory of the R participants. Nexans proposed that "*countermeasures should be taken immediately*".⁴⁴² JPS tried to deflect the situation by stating: "*Considering issues of home territories, a grace period should be set. How about a year? I think we should wait and see for a year and make a final decision*". JPS also considered that LG Cable and Taihan should be dealt with "*separately*", as "*TEC [Taihan] seems to be a bit calmer than LG*".⁴⁴³
- (279) In 2003, the application of the home territory principle was visible mostly in the continuous stream of enquiry notifications and other contacts between the Japanese A group and the European R producers. As was the case in 2002 (see Recital (231)), whenever an A side producer received an enquiry from an R side customer, contact was sought with the respective coordinators ([company representative A1] (Nexans) and [company representative CD1] (JPS)) to receive guidance on the desired course of action. A full overview of the communications is found in Annex I. A summary is provided below:
- (a) [Confidentiality claim pending]⁴⁴⁴
 - (b) On 3 July 2003, [company representative F3] (VISCAS) reported an enquiry notification to [company representative C2], [company representative D3] and [company representative CD1] (JPS) concerning a project in Italy, for which it had "*declined to quote*".⁴⁴⁵
 - (c) [Confidentiality claim pending]⁴⁴⁶
 - (d) On 2 September 2003, [company representative CD1] (JPS) consulted [company representative A1] (Nexans) on a project in Greece. He promised: "*we will agree on R pref. taking the geographical aspect into consideration*".⁴⁴⁷
 - (e) On 22 October 2003, [company representative M3] (LG Cable) reported an enquiry for a 110 kV project from a customer in Finland to [company

438 [Confidentiality claim pending]

439 [Confidentiality claim pending]

440 [Confidentiality claim pending]

441 [...]

442 ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

443 ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

444 [Confidentiality claim pending]

445 ID [...]

446 [Confidentiality claim pending]

447 ID [...]

representative CD1] (JPS), with copy to [company representative N1] (Taihan).⁴⁴⁸ [Confidentiality claim pending]⁴⁴⁹

(280) As explained in Recital (234) for the year 2002, in 2003 the R parties continued their exchange of prices and information and requests for allocation. A detailed overview of these exchanges is provided in Annex I. A summary is provided below:

(a) [Confidentiality claim pending]⁴⁵⁰ [Confidentiality claim pending]⁴⁵¹
[Confidentiality claim pending]⁴⁵²

(b) [Confidentiality claim pending]⁴⁵³

(c) [Confidentiality claim pending]⁴⁵⁴

(d) [Confidentiality claim pending]⁴⁵⁵

(e) [Confidentiality claim pending]⁴⁵⁶

(f) [Confidentiality claim pending]⁴⁵⁷

(g) [Confidentiality claim pending]⁴⁵⁸

(h) [Confidentiality claim pending]⁴⁵⁹

(i) In bilateral contacts, [company representative I3] (ABB) agreed with [company representative B1] (Pirelli) and [company representative A2] (Nexans) that in exchange for ABB 'receiving' the Estlink project (connecting Estonia and Finland), ABB would not compete on the project Spain-Mallorca.⁴⁶⁰

(281) [Confidentiality claim pending]⁴⁶¹ [Confidentiality claim pending]⁴⁶²

(282) [Confidentiality claim pending]⁴⁶³

2004

(283) [Confidentiality claim pending]⁴⁶⁴ [Confidentiality claim pending]⁴⁶⁵ [Confidentiality claim pending]⁴⁶⁶

(284) [Confidentiality claim pending]⁴⁶⁷ [Confidentiality claim pending]⁴⁶⁸

⁴⁴⁸ ID [...]

⁴⁴⁹ [Confidentiality claim pending]

⁴⁵⁰ [Confidentiality claim pending]

⁴⁵¹ [Confidentiality claim pending]

⁴⁵² [Confidentiality claim pending]

⁴⁵³ [Confidentiality claim pending]

⁴⁵⁴ [Confidentiality claim pending]

⁴⁵⁵ [Confidentiality claim pending]

⁴⁵⁶ [Confidentiality claim pending]

⁴⁵⁷ [Confidentiality claim pending]

⁴⁵⁸ [Confidentiality claim pending]

⁴⁵⁹ [Confidentiality claim pending]

⁴⁶⁰ [...] According to the notes of the A/R meeting of 27 November 2003, the Estlink project was indeed allocated to ABB, ID [...]

⁴⁶¹ [Confidentiality claim pending]

⁴⁶² [Confidentiality claim pending]

⁴⁶³ [Confidentiality claim pending]

⁴⁶⁴ [Confidentiality claim pending]

⁴⁶⁵ [Confidentiality claim pending]

⁴⁶⁶ [Confidentiality claim pending]

- (285) [Confidentiality claim pending]⁴⁶⁹
- (286) Nexans, Pirelli, JPS, VISCAS and EXSYM all attended an A/R meeting on 28 January 2004. Contemporaneous notes by EXSYM of the meeting mention that JPS had been subject to a tax audit at the beginning of 2004. During the meeting, JPS stated that the tax auditors "*are computer specialists*" and therefore "*special attention is necessary for information management*".⁴⁷⁰
- (287) At this A/R meeting, the participants were also specifically briefed on the fact that a "*meeting within R*" was scheduled for the following week. In addition it was announced that "*nkt will be participating*".⁴⁷¹
- (288) Several SM and UG power cable projects were discussed and allocated at the meeting. The parties confirmed amongst others that the project in Corfu should go to "*R*", the European companies.⁴⁷² In the notes [...], the comment "*Showa OK but Mit. difficult*" is added.⁴⁷³
- (289) [...][Confidentiality claim pending] notes of the meeting mention that the parties added a pragmatic rule to diminish the need for guidance in cases where the project involved only a small length of cable. When the cable length was below one kilometre, the project would still have to be reported but the parties were free to make a quote. Only on an *ad hoc* basis would agreements be made on the quote to be submitted.⁴⁷⁴
- (290) The notes by EXSYM also record a discussion between Nexans and EXSYM outside of the main meeting, about the project in Greece (see Recitals (247) and (284)). Nexans had claimed preference for this project and requested EXSYM for cooperation. EXSYM refused.⁴⁷⁵
- (291) By email of 6 February 2004, EXSYM informed Nexans that its "*final decision would not be changed*". [company representative A1] subsequently complained to [company representative CD1] and [company representative C2] (JPS) about EXSYM's behaviour: "*we believe agressing us (RN is the allottee) in Europe will really not help improving the overall scheme*".⁴⁷⁶
- (292) [Confidentiality claim pending]⁴⁷⁷
- (293) [Confidentiality claim pending]⁴⁷⁸ [Confidentiality claim pending]⁴⁷⁹
- (294) From 9 to 12 February 2004, [company representative I3] (ABB) visited JPS, VISCAS and EXSYM. At a meeting with representatives of at least JPS and VISCAS, the Japanese producers discussed the application of the home territory

⁴⁶⁷ [Confidentiality claim pending]

⁴⁶⁸ [Confidentiality claim pending]

⁴⁶⁹ [Confidentiality claim pending]

⁴⁷⁰ ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

⁴⁷¹ ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

⁴⁷² ID [...]; [Confidentiality claim pending]

⁴⁷³ ID [...]

⁴⁷⁴ ID [...]; [Confidentiality claim pending]

⁴⁷⁵ ID [...], EXSYM reply of 7 May 2010 to RFI of 31 March 2010.

⁴⁷⁶ ID [...]

⁴⁷⁷ [Confidentiality claim pending]

⁴⁷⁸ [Confidentiality claim pending]

⁴⁷⁹ [Confidentiality claim pending]

principle with ABB.⁴⁸⁰ [...], VISCAS and JPS referred to three large European SM power cable projects for which they would not be competing or not aggressively competing.⁴⁸¹

- (295) Nexans, Pirelli, Sagem, Brugg and nkt all attended an R meeting on 10 February 2004.⁴⁸² [Confidentiality claim pending]
- (296) [Confidentiality claim pending]⁴⁸³ [Confidentiality claim pending]⁴⁸⁴
- (297) On 1 March 2004, [company representative I3] (ABB) had a meeting with [company representative A2] and [company representative A1] (Nexans) in Zurich. [Confidentiality claim pending]⁴⁸⁵
- (298) [Confidentiality claim pending]⁴⁸⁶
- (299) [Confidentiality claim pending]⁴⁸⁷
- (300) On 26 March 2004, an A/R meeting took place in Italy. Representatives of Nexans, Prysmian, VISCAS, EXSYM (only for UG) and JPS attended the meeting. At the meeting, participants received an update on the participants in the European cartel configuration. The notes also mention that an "*R internal meeting*" would take place in the next week. It is indicated that Brugg followed the guidance for a project in the export territories. The order status of several projects inside the European home territory is also mentioned.⁴⁸⁸
- (301) Nexans, Pirelli, JPS, VISCAS and EXSYM attended the A/R meeting in Tokyo on 9 June 2004. During the discussion of SM power cable projects, the dispute between Nexans and EXSYM about the project in Greece came up: "*Greece project. Surprised to the attitude of EXM [EXSYM]. EXM making noise. Frozen. Have to decrease price.*".⁴⁸⁹ Under the heading "*LAND*" [UG projects], it is mentioned for ABB "*Unfair trade action on Switchgear. (...) Brought to EUR. ABB getting become more and more difficult. (...) Can discuss only very important projects. Not for small projects. Can discuss with only one person.*".⁴⁹⁰ ABB was the immunity applicant in Case COMP/F/38.899 – Gas Insulated Switchgear. After the immunity application of ABB, the Commission carried out inspections on 11 and 12 May 2004 (that is to say one month before the A/R meeting). Moreover, the parties also discussed the application of a new antitrust law in [non-EEA territory] in detail.⁴⁹¹
- (302) The notes of the A/R meeting also contain a heading on Korea. The notes mention "*H.T.[Home territory]: respect*".⁴⁹² One month after the A/R meeting, [company representative N1] (Taihan) complained by email to [company representative CD1]

480 [...]

481 [...]

482 [Confidentiality claim pending] ID [...], reply Brugg of 7 May 2010 to RFI of 31 March 2010; ID [...], reply nkt of 7 May 2010 to RFI of 31 March 2010.

483 [Confidentiality claim pending]

484 [Confidentiality claim pending]

485 [Confidentiality claim pending]; [...].

486 [Confidentiality claim pending]

487 [Confidentiality claim pending]

488 ID [...]

489 ID [...]

490 ID [...]

491 ID [...]

492 ID [...]

(JPS) about actions of a Pirelli subsidiary in Korea. [*Confidentiality claim pending*]⁴⁹³ [...] interjected that the Korean companies had been very active in both Italy and [*non-EEA territory*], [...].⁴⁹⁴

- (303) [*Confidentiality claim pending*]⁴⁹⁵ [*Confidentiality claim pending*]⁴⁹⁶ [*Confidentiality claim pending*]⁴⁹⁷ [*Confidentiality claim pending*]⁴⁹⁸ [*Confidentiality claim pending*]⁴⁹⁹
- (304) The increased awareness of ongoing cartel investigations was also a reason for JPS to allegedly halt its participation in the cartel arrangements. [...], [company representative C2] was charged with notifying the end of JPS' involvement to the European cartel participants. He had meetings with [company representative I3] (ABB) and [company representative A2], [company representative A1] (Nexans) and [company representative B1] (Pirelli) on 19 and 20 July 2004.⁵⁰⁰ During his visits to ABB and Nexans/Pirelli, [company representative C2] also announced that his successor ([company representative C1]) would respect the allocations that had been agreed before 20 July 2004.⁵⁰¹ An additional number of projects in the export territories were discussed and allocated on the spot.⁵⁰²
- (305) [*Confidentiality claim pending*]⁵⁰³
- (306) [*Confidentiality claim pending*]⁵⁰⁴ [*Confidentiality claim pending*]⁵⁰⁵ [*Confidentiality claim pending*]⁵⁰⁶
- (307) nkt and Safran (on behalf of Sagem) have disputed their participation in this meeting and claim that the case file documentation cited to confirm their attendance is ambiguous.⁵⁰⁷ [*Confidentiality claim pending*]⁵⁰⁸ [*Confidentiality claim pending*]⁵⁰⁹
- (308) [*Confidentiality claim pending*]⁵¹⁰
- (309) [*Confidentiality claim pending*]⁵¹¹ [*Confidentiality claim pending*]⁵¹²
- (310) Nexans and ABB held a further "Windmill" meeting on 12 October 2004.⁵¹³ [*Confidentiality claim pending*]⁵¹⁴

⁴⁹³ [*Confidentiality claim pending*]

⁴⁹⁴ ID [...]

⁴⁹⁵ [*Confidentiality claim pending*]

⁴⁹⁶ [*Confidentiality claim pending*]

⁴⁹⁷ [*Confidentiality claim pending*]

⁴⁹⁸ [*Confidentiality claim pending*]

⁴⁹⁹ [*Confidentiality claim pending*]

⁵⁰⁰ [...]. For further details on these meetings, see Annex I.

⁵⁰¹ [...]

⁵⁰² [...]

⁵⁰³ [*Confidentiality claim pending*]

⁵⁰⁴ [*Confidentiality claim pending*]

⁵⁰⁵ [*Confidentiality claim pending*]

⁵⁰⁶ [*Confidentiality claim pending*]

⁵⁰⁷ ID [...], nkt reply to SO of 3 November 2011; ID [...], Safran reply to SO of 3 October 2011.

⁵⁰⁸ [*Confidentiality claim pending*]

⁵⁰⁹ [*Confidentiality claim pending*]

⁵¹⁰ [*Confidentiality claim pending*]

⁵¹¹ [*Confidentiality claim pending*]

⁵¹² [*Confidentiality claim pending*]

⁵¹³ [*Confidentiality claim pending*] [...]

- (311) [Confidentiality claim pending]⁵¹⁵
- (312) During this time, JPS continued to apply the home territory principle. In November 2004, it rejected the possibility to bid for the Estlink project, claiming difficulties with their "factory load".⁵¹⁶ On 5 November 2004, [company representative CD1] (JPS) forwarded this rejection internally to [company representative C2] (JPS) stating that he had discussed this project on the phone with [company representative B1] (Pirelli).⁵¹⁷
- (313) [Confidentiality claim pending]⁵¹⁸ This is in line with what was discussed at the meeting between Nexans and ABB on 12 October 2004 (see Recital (310)). [...] [company representative A2] (Nexans) called [company representative I3] (ABB) and provided him with a price level which ABB should bid at the Iberdrola project.⁵¹⁹
- (314) [Confidentiality claim pending]
- (315) [Confidentiality claim pending]⁵²⁰ [Confidentiality claim pending]⁵²¹ [Confidentiality claim pending]⁵²² [Confidentiality claim pending]⁵²³
- (316) [Confidentiality claim pending]⁵²⁴ [Confidentiality claim pending]⁵²⁵ [Confidentiality claim pending]⁵²⁶ [Confidentiality claim pending]⁵²⁷
- (317) [Confidentiality claim pending]⁵²⁸
- (318) [Confidentiality claim pending]⁵²⁹ [Confidentiality claim pending]⁵³⁰
- (319) [Confidentiality claim pending]⁵³¹ [Confidentiality claim pending]⁵³²
- (320) [Confidentiality claim pending]⁵³³
- (321) In addition to the contacts listed above, in 2004 the A and R parties also exchanged several other enquiry notifications in instances where the A parties were invited to tender for projects in the R home territory. Again, a summary is provided below while a full overview is given in Annex I:

514 [Confidentiality claim pending]
515 [Confidentiality claim pending]
516 ID [...]
517 ID [...]
518 [Confidentiality claim pending]
519 [...]
520 [Confidentiality claim pending]
521 [Confidentiality claim pending]
522 [Confidentiality claim pending]
523 [Confidentiality claim pending]
524 [Confidentiality claim pending]
525 [Confidentiality claim pending]
526 [Confidentiality claim pending]
527 [Confidentiality claim pending]
528 [Confidentiality claim pending]
529 [Confidentiality claim pending]
530 [Confidentiality claim pending]
531 [Confidentiality claim pending]
532 [Confidentiality claim pending]
533 [Confidentiality claim pending]

- (a) On 13 January 2004, [company representative CD1] (JPS) sent [company representative A1] (Nexans) a fax with the notification of a project in Norway. He added that JPS "will decline".⁵³⁴ VISCAS intended to submit a "protection bid" for the project and requested guidance on the price to quote from [company representative A1]. VISCAS argued that it could not decline to bid as it had shown much interest in the project when the client visited VISCAS earlier.⁵³⁵ [company representative F3] (VISCAS) requested further guidance on this project on 5 November 2004.⁵³⁶
 - (b) [company representative CD1] (JPS) also forwarded a notification of an enquiry for a potential project on a *Mediterranean Sea Crossing between [non-EEA territory] and Europe* to [company representative A1] (Nexans), [company representative B1] (Pirelli) and [company representative F3] (VISCAS).⁵³⁷
 - (c) At the A/R meeting on 28 January 2004, the parties agreed to allocate the Norned and Estlink projects to "R".⁵³⁸
 - (d) On 20 February 2004, [company representative CD1] requested [company representative A1] (Nexans), [company representative B1] (Pirelli) and [company representative F3] (VISCAS) for guidance in connection with an enquiry for an off shore wind farm project in Germany.⁵³⁹
 - (e) [company representative A1] (Nexans) requested "R" preference for a project in Greece, in an email of 8 November 2004 to [company representative F3] (VISCAS). In reply, [company representative F3] confirmed that VISCAS would decline to quote.⁵⁴⁰
- (322) Moreover, in 2004, the R participants exchanged several emails on projects located inside the European home territory that were allocated or for which guidance was necessary. Many of these emails contain cryptic references to projects, as the senders were aware of the illegal nature of the exchanges. In addition, many emails refer to previous contacts by phone, indicating that exchanges on projects and prices by phone were preferred. Several examples of such emails are mentioned below. A full overview is found in Annex I.
- (a) [Confidentiality claim pending]⁵⁴¹
 - (b) [Confidentiality claim pending]⁵⁴²
 - (c) [Confidentiality claim pending]⁵⁴³
 - (d) [Confidentiality claim pending]⁵⁴⁴ [Confidentiality claim pending]⁵⁴⁵
[Confidentiality claim pending]⁵⁴⁶ [Confidentiality claim pending]⁵⁴⁷

534 [Confidentiality claim pending]
 535 [Confidentiality claim pending]
 536 ID [...]
 537 ID [...]
 538 ID [...];[Confidentiality claim pending]
 539 [...]
 540 ID [...]
 541 [Confidentiality claim pending]
 542 [Confidentiality claim pending]
 543 [Confidentiality claim pending]

- (e) [Confidentiality claim pending]⁵⁴⁸
- (f) [Confidentiality claim pending]⁵⁴⁹
- (g) [Confidentiality claim pending]⁵⁵⁰
- (h) [Confidentiality claim pending]⁵⁵¹ [Confidentiality claim pending]
- (i) [Confidentiality claim pending]⁵⁵² [Confidentiality claim pending]⁵⁵³
- (j) [Confidentiality claim pending]⁵⁵⁴ [Confidentiality claim pending]⁵⁵⁵
[Confidentiality claim pending]⁵⁵⁶
- (k) [Confidentiality claim pending]⁵⁵⁷
- (l) [Confidentiality claim pending]⁵⁵⁸ [Confidentiality claim pending]⁵⁵⁹
- (m) [Confidentiality claim pending]⁵⁶⁰
- (n) [Confidentiality claim pending]⁵⁶¹
- (o) [Confidentiality claim pending]⁵⁶²
- (p) [Confidentiality claim pending]⁵⁶³
- (q) [Confidentiality claim pending]⁵⁶⁴
- (r) [Confidentiality claim pending]⁵⁶⁵

2005

- (323) EXSYM's participation in the A/R configuration of the cartel continued to be limited to UG power cable projects.[Confidentiality claim pending]⁵⁶⁶
- (324) [Confidentiality claim pending]⁵⁶⁷

544 [Confidentiality claim pending]
 545 [Confidentiality claim pending]
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 556 [Confidentiality claim pending]
 557 [Confidentiality claim pending]
 558 [Confidentiality claim pending]
 559 [Confidentiality claim pending]
 560 [Confidentiality claim pending]
 561 [Confidentiality claim pending]
 562 [Confidentiality claim pending]
 563 [Confidentiality claim pending] and [Confidentiality claim pending]. For further exchanges on this project, see Annex I.
 564 [Confidentiality claim pending]
 565 [Confidentiality claim pending]
 566 [Confidentiality claim pending]
 567 [Confidentiality claim pending]

- (325) [Confidentiality claim pending]⁵⁶⁸
- (326) [Confidentiality claim pending]⁵⁶⁹ [Confidentiality claim pending]⁵⁷⁰
- (327) [...] knowledge of local arrangements in Spain. [company representative A2] (Nexans) had informed [company representative [...]] [...] that local arrangements were in place between Pirelli, Nexans and Sagem.⁵⁷¹
- (328) [Confidentiality claim pending]⁵⁷² [Confidentiality claim pending]⁵⁷³ [Confidentiality claim pending]⁵⁷⁴
- (329) [Confidentiality claim pending]⁵⁷⁵ [Confidentiality claim pending]⁵⁷⁶
- (330) [Confidentiality claim pending]⁵⁷⁷ [Confidentiality claim pending]⁵⁷⁸ [Confidentiality claim pending]⁵⁷⁹ [Confidentiality claim pending]⁵⁸⁰ [Confidentiality claim pending]⁵⁸¹
- (331) [Confidentiality claim pending]⁵⁸² [Confidentiality claim pending]⁵⁸³
- (332) [Confidentiality claim pending]⁵⁸⁴ [Confidentiality claim pending]⁵⁸⁵
- (333) [Confidentiality claim pending]⁵⁸⁶ [Confidentiality claim pending]
- (334) [Confidentiality claim pending]⁵⁸⁷
- (335) [Confidentiality claim pending]⁵⁸⁸ [Confidentiality claim pending]⁵⁸⁹
- (336) [Confidentiality claim pending]
- (337) With regard to the project of Natural Gaz he indicated: "I still think that this job is a good opportunity for [company representative B2] to solve definitively his [non-EEA territory] debt".
- (338) [Confidentiality claim pending]⁵⁹⁰ [Confidentiality claim pending]

568 [Confidentiality claim pending]

569 [Confidentiality claim pending]

570 [Confidentiality claim pending]

571 [...]

572 [Confidentiality claim pending]

573 [Confidentiality claim pending]

574 [Confidentiality claim pending]

575 [Confidentiality claim pending]

576 [Confidentiality claim pending]

577 [Confidentiality claim pending]

578 [Confidentiality claim pending]

579 [Confidentiality claim pending]

580 [Confidentiality claim pending]

581 [Confidentiality claim pending]

582 [Confidentiality claim pending]

583 [Confidentiality claim pending] A full overview of the email exchange at the beginning of 2005 with regard to Prysmian's actions in Korea is provided in Annex I.

584 [Confidentiality claim pending]

585 [Confidentiality claim pending]

586 [Confidentiality claim pending]

587 [Confidentiality claim pending]

588 [Confidentiality claim pending] References to the full exchange are available in Annex I.

589 [Confidentiality claim pending]

590 [Confidentiality claim pending]

- (339) [Confidentiality claim pending]⁵⁹¹ [Confidentiality claim pending]⁵⁹²
[Confidentiality claim pending]⁵⁹³ [Confidentiality claim pending]⁵⁹⁴
- (340) [Confidentiality claim pending]⁵⁹⁵
- (341) [Confidentiality claim pending]⁵⁹⁶ [Confidentiality claim pending]⁵⁹⁷
- (342) [Confidentiality claim pending]⁵⁹⁸ [Confidentiality claim pending]⁵⁹⁹
- (343) As was discussed earlier (Recital (340)) LS Cable, Nexans and Pirelli met on 7 and 8 March 2005 in Zurich. According to LS Cable, the focus of the meeting was two-fold: Pirelli complained about LS Cable's aggressive pricing strategy in [preferred territory] while LS Cable was faced with aggressive competition in Korea by a Pirelli subsidiary.⁶⁰⁰ [Confidentiality claim pending]⁶⁰¹ [Confidentiality claim pending]⁶⁰²
[Confidentiality claim pending]⁶⁰³ [Confidentiality claim pending]⁶⁰⁴ [Confidentiality claim pending]⁶⁰⁵
[Confidentiality claim pending]⁶⁰⁶ [Confidentiality claim pending]⁶⁰⁷
- (344) [Confidentiality claim pending]⁶⁰⁸ [Confidentiality claim pending]
[Confidentiality claim pending]
- (345) nkt has declared that the proposal for coordinator roles in several Union Member States and EEA Contracting Parties was indeed raised by Nexans' employees at the meeting. The other parties did not accept the proposal.⁶⁰⁹
- (346) [Confidentiality claim pending]⁶¹⁰ [Confidentiality claim pending]⁶¹¹ [Confidentiality claim pending]⁶¹²
[Confidentiality claim pending]⁶¹³ [Confidentiality claim pending]⁶¹⁴ [Confidentiality claim pending]⁶¹⁵
[Confidentiality claim pending]⁶¹⁶

⁵⁹¹ [Confidentiality claim pending]
⁵⁹² [Confidentiality claim pending]
⁵⁹³ [Confidentiality claim pending]
⁵⁹⁴ [Confidentiality claim pending] For the follow up of this exchange of emails, see Annex I.
⁵⁹⁵ [Confidentiality claim pending]
⁵⁹⁶ [Confidentiality claim pending]
⁵⁹⁷ [Confidentiality claim pending]
⁵⁹⁸ [Confidentiality claim pending] Annex I contains a full overview of the exchange of emails in relation to these meetings.
⁵⁹⁹ [Confidentiality claim pending]
⁶⁰⁰ ID [...], LS Cable submission of 6 September 2010.
⁶⁰¹ [Confidentiality claim pending]
⁶⁰² [Confidentiality claim pending]
⁶⁰³ [Confidentiality claim pending]
⁶⁰⁴ [Confidentiality claim pending]
⁶⁰⁵ [Confidentiality claim pending]
⁶⁰⁶ [Confidentiality claim pending]
⁶⁰⁷ [Confidentiality claim pending]
⁶⁰⁸ [Confidentiality claim pending]
⁶⁰⁹ ID [...], nkt reply to SO of 3 November 2011.
⁶¹⁰ [Confidentiality claim pending]
⁶¹¹ [Confidentiality claim pending]
⁶¹² [Confidentiality claim pending]
⁶¹³ [Confidentiality claim pending]
⁶¹⁴ [Confidentiality claim pending]
⁶¹⁵ [Confidentiality claim pending]
⁶¹⁶ [Confidentiality claim pending]

- (347) [Confidentiality claim pending]⁶¹⁷ [Confidentiality claim pending]⁶¹⁸
- (348) [Confidentiality claim pending]⁶¹⁹ [Confidentiality claim pending]⁶²⁰
- (349) [Confidentiality claim pending]⁶²¹ [Confidentiality claim pending]⁶²² [Confidentiality claim pending]⁶²³
- (350) [Confidentiality claim pending]⁶²⁴ [Confidentiality claim pending]⁶²⁵ [Confidentiality claim pending]⁶²⁶
- (351) [Confidentiality claim pending]⁶²⁷
- (352) [Confidentiality claim pending]⁶²⁸
- (353) [Confidentiality claim pending]⁶²⁹ [Confidentiality claim pending]⁶³⁰ [Confidentiality claim pending]⁶³¹ [Confidentiality claim pending]⁶³² [Confidentiality claim pending]⁶³³ [Confidentiality claim pending]⁶³⁴
- (354) [company representative A1] (Nexans) qualified the above interpretation of the contractor rule by [company representative H1] (EXSYM) as "Incorrect" in his reply on 11 July 2005: [Confidentiality claim pending]

	[Confidentiality claim pending]		[Confidentiality claim pending]	
	[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]
[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]	[Confidentiality claim pending]
	[Confidentiality claim pending]			[Confidentiality claim pending]

[Confidentiality claim pending]⁶³⁵

⁶¹⁷ [Confidentiality claim pending]
⁶¹⁸ [Confidentiality claim pending]
⁶¹⁹ [Confidentiality claim pending]
⁶²⁰ [Confidentiality claim pending]
⁶²¹ [Confidentiality claim pending]
⁶²² [Confidentiality claim pending]
⁶²³ [Confidentiality claim pending]
⁶²⁴ [Confidentiality claim pending]
⁶²⁵ [Confidentiality claim pending]
⁶²⁶ [Confidentiality claim pending]
⁶²⁷ [Confidentiality claim pending]
⁶²⁸ [Confidentiality claim pending]
⁶²⁹ [Confidentiality claim pending]
⁶³⁰ [Confidentiality claim pending]
⁶³¹ [Confidentiality claim pending]
⁶³² [Confidentiality claim pending]
⁶³³ [Confidentiality claim pending]
⁶³⁴ [Confidentiality claim pending]

- (355) [Confidentiality claim pending]⁶³⁶ [Confidentiality claim pending]⁶³⁷
- (356) [Confidentiality claim pending]⁶³⁸
- (357) [Confidentiality claim pending]⁶³⁹
- (358) [Confidentiality claim pending]
[Confidentiality claim pending]⁶⁴⁰ [Confidentiality claim pending]⁶⁴¹ LS Cable and
Taihan were therefore still both seen as part of the cartel.
- (359) At some point in 2005, [company representative A2] (Nexans) also complained [...] about the fact that Taihan and LS Cable were bidding too aggressively on projects in the export territories. [...], [company representative A2] indicated [...] that he would approach one of the Korean companies and try to get it to bid at higher prices. Later [company representative A2] told [...] that the Korean producer had rejected his proposal.⁶⁴²
- (360) [Confidentiality claim pending]⁶⁴³ [Confidentiality claim pending]⁶⁴⁴ [Confidentiality claim pending]
- (361) [Confidentiality claim pending]⁶⁴⁵
- (362) [Confidentiality claim pending]⁶⁴⁶
- (363) On 15 September 2005 ABB, Nexans and Prysmian all participated in a meeting in Prague. [...] at this meeting the allocation of a number of projects inside the European home territory and in the export territories was discussed.⁶⁴⁷
- (364) [Confidentiality claim pending]⁶⁴⁸ [Confidentiality claim pending]⁶⁴⁹ [Confidentiality claim pending]⁶⁵⁰ [Confidentiality claim pending]⁶⁵¹
- (365) [Confidentiality claim pending]⁶⁵²
- (366) [Confidentiality claim pending]⁶⁵³
- (367) [Confidentiality claim pending]⁶⁵⁴ [Confidentiality claim pending]⁶⁵⁵ [Confidentiality claim pending]⁶⁵⁶

635 [Confidentiality claim pending]
636 [Confidentiality claim pending]
637 [Confidentiality claim pending]
638 [Confidentiality claim pending]
639 [Confidentiality claim pending]
640 [Confidentiality claim pending]
641 [Confidentiality claim pending]
642 [...]
643 [Confidentiality claim pending]
644 [Confidentiality claim pending]
645 [Confidentiality claim pending]
646 [Confidentiality claim pending]
647 [...]
648 [Confidentiality claim pending]
649 [Confidentiality claim pending]
650 [Confidentiality claim pending]
651 [Confidentiality claim pending]
652 [Confidentiality claim pending]
653 [Confidentiality claim pending]
654 [Confidentiality claim pending]

- (368) [Confidentiality claim pending]⁶⁵⁷
- (369) [Confidentiality claim pending]⁶⁵⁸[Confidentiality claim pending][...] meetings between JPS, Nexans, VISCAS and Prysmian indeed took place at the occasion of the ICF conference in Tokyo. On 20 October 2005, VISCAS hosted a dinner at the Mitsui Guest House, which was attended by JPS, Nexans and Prysmian. [...], at this meeting Nexans and Prysmian invited JPS and VISCAS to recommence the previous coordination arrangements.⁶⁵⁹ [Confidentiality claim pending]⁶⁶⁰
- (370) [Confidentiality claim pending]⁶⁶¹ [Confidentiality claim pending]⁶⁶² [Confidentiality claim pending]⁶⁶³
- (371) [Confidentiality claim pending]⁶⁶⁴ [Confidentiality claim pending]
- (372) In 2005, the email exchanges between the R companies increased significantly. The parties sent several hundred emails in which they requested or granted the allocation of projects inside the European home territory, gave guidance and discussed general issues relating to the cartel. Those projects included a wide range of voltages ranging between at least 110 kV and 400 kV for UG cables and above 66 kV for SM cables. A detailed overview is given in Annex I. A brief summary of the email exchanges is provided here.
- (a) [Confidentiality claim pending]⁶⁶⁵
 - (b) [Confidentiality claim pending]⁶⁶⁶
 - (c) [Confidentiality claim pending]⁶⁶⁷
 - (d) [Confidentiality claim pending]⁶⁶⁸
 - (e) [Confidentiality claim pending]⁶⁶⁹
 - (f) [Confidentiality claim pending]⁶⁷⁰
 - (g) [Confidentiality claim pending]⁶⁷¹
 - (h) [Confidentiality claim pending]⁶⁷²
 - (i) [Confidentiality claim pending]⁶⁷³

⁶⁵⁵ [Confidentiality claim pending]
⁶⁵⁶ [Confidentiality claim pending]
⁶⁵⁷ [Confidentiality claim pending]
⁶⁵⁸ [Confidentiality claim pending]
⁶⁵⁹ [...]
⁶⁶⁰ [Confidentiality claim pending]
⁶⁶¹ [Confidentiality claim pending]
⁶⁶² [Confidentiality claim pending]
⁶⁶³ [Confidentiality claim pending]
⁶⁶⁴ [Confidentiality claim pending]
⁶⁶⁵ [Confidentiality claim pending]
⁶⁶⁶ [Confidentiality claim pending]A full overview of the exchange is included in Annex I.
⁶⁶⁷ [Confidentiality claim pending]A full overview of the exchange is included in Annex I.
⁶⁶⁸ [Confidentiality claim pending]
⁶⁶⁹ [Confidentiality claim pending]See for the follow up of this email exchange Annex I.
⁶⁷⁰ [Confidentiality claim pending]A full overview of the exchange is included in Annex I.
⁶⁷¹ [Confidentiality claim pending]A full overview of the exchange is included in Annex I.
⁶⁷² [Confidentiality claim pending]
⁶⁷³ [Confidentiality claim pending]

- (j) [Confidentiality claim pending]⁶⁷⁴
- (k) [Confidentiality claim pending]⁶⁷⁵ [Confidentiality claim pending]⁶⁷⁶
- (l) [Confidentiality claim pending]⁶⁷⁷
- (m) [Confidentiality claim pending]⁶⁷⁸
- (n) [Confidentiality claim pending]⁶⁷⁹ [Confidentiality claim pending]
- (o) [Confidentiality claim pending]⁶⁸⁰
- (p) [Confidentiality claim pending]⁶⁸¹ [Confidentiality claim pending]⁶⁸²
- (q) [Confidentiality claim pending]⁶⁸³ [Confidentiality claim pending]⁶⁸⁴
[Confidentiality claim pending]⁶⁸⁵ [Confidentiality claim pending]⁶⁸⁶
[Confidentiality claim pending]⁶⁸⁷
- (r) [Confidentiality claim pending]⁶⁸⁸
- (s) [Confidentiality claim pending]⁶⁸⁹
- (t) [Confidentiality claim pending]⁶⁹⁰
- (u) [Confidentiality claim pending]⁶⁹¹
- (v) [Confidentiality claim pending]⁶⁹² [Confidentiality claim pending]⁶⁹³
[Confidentiality claim pending]⁶⁹⁴
- (w) [Confidentiality claim pending].⁶⁹⁵

2006

- (373) [Confidentiality claim pending]⁶⁹⁶ [Confidentiality claim pending]⁶⁹⁷
- (374) [Confidentiality claim pending]⁶⁹⁸ [Confidentiality claim pending]

⁶⁷⁴ [Confidentiality claim pending]For a full overview of the email exchange, see Annex I.

⁶⁷⁵ [Confidentiality claim pending]

⁶⁷⁶ [Confidentiality claim pending]For a full overview of the email exchange, see Annex I.

⁶⁷⁷ [Confidentiality claim pending]

⁶⁷⁸ [Confidentiality claim pending]

⁶⁷⁹ [Confidentiality claim pending]For a full overview of the email exchange, please see Annex I.

⁶⁸⁰ [Confidentiality claim pending]

⁶⁸¹ [Confidentiality claim pending]

⁶⁸² [Confidentiality claim pending]

⁶⁸³ [Confidentiality claim pending]

⁶⁸⁴ [Confidentiality claim pending]

⁶⁸⁵ [Confidentiality claim pending]

⁶⁸⁶ [Confidentiality claim pending]

⁶⁸⁷ [Confidentiality claim pending]The full exchange is included in Annex I.

⁶⁸⁸ [Confidentiality claim pending]

⁶⁸⁹ [Confidentiality claim pending]

⁶⁹⁰ [Confidentiality claim pending]

⁶⁹¹ [Confidentiality claim pending]A full overview of the email exchange is provided in Annex I.

⁶⁹² [Confidentiality claim pending]

⁶⁹³ [Confidentiality claim pending]

⁶⁹⁴ [Confidentiality claim pending]

⁶⁹⁵ [Confidentiality claim pending]

⁶⁹⁶ [Confidentiality claim pending]

⁶⁹⁷ [Confidentiality claim pending]

- [Confidentiality claim pending]]⁶⁹⁹
- (375) [Confidentiality claim pending]⁷⁰⁰
- (376) [Confidentiality claim pending]⁷⁰¹[Confidentiality claim pending]
- (377) [Confidentiality claim pending]⁷⁰² [Confidentiality claim pending]⁷⁰³
 [Confidentiality claim pending]⁷⁰⁴ [Confidentiality claim pending]⁷⁰⁵
 [Confidentiality claim pending]
 [Confidentiality claim pending]⁷⁰⁶
- (378) [Confidentiality claim pending]
- [Confidentiality claim pending]⁷⁰⁷
- (379) [Confidentiality claim pending]⁷⁰⁸[Confidentiality claim pending]⁷⁰⁹
- (380) The application of the home territory principle continued in 2006. [Confidentiality claim pending]⁷¹⁰ [Confidentiality claim pending]⁷¹¹
- (381) [Confidentiality claim pending]⁷¹²
- (382) [Confidentiality claim pending]
 [Confidentiality claim pending]⁷¹³
- (383) [Confidentiality claim pending]⁷¹⁴ [Confidentiality claim pending]⁷¹⁵
- (384) [Confidentiality claim pending]⁷¹⁶
- (385) [Confidentiality claim pending]⁷¹⁷
- (386) [Confidentiality claim pending]⁷¹⁸[Confidentiality claim pending]⁷¹⁹ [Confidentiality claim pending]⁷²⁰ [Confidentiality claim pending]⁷²¹ [Confidentiality claim pending]⁷²²

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- 698 [Confidentiality claim pending]
- 699 [Confidentiality claim pending]
- 700 [Confidentiality claim pending]
- 701 [Confidentiality claim pending]
- 702 [Confidentiality claim pending]
- 703 [Confidentiality claim pending]
- 704 [Confidentiality claim pending]
- 705 [Confidentiality claim pending]
- 706 [Confidentiality claim pending]
- 707 [Confidentiality claim pending]
- 708 [Confidentiality claim pending]
- 709 [Confidentiality claim pending]
- 710 [Confidentiality claim pending]
- 711 [Confidentiality claim pending]
- 712 [Confidentiality claim pending]
- 713 [Confidentiality claim pending]
- 714 [Confidentiality claim pending]
- 715 [Confidentiality claim pending]
- 716 [Confidentiality claim pending]
- 717 [Confidentiality claim pending]
- 718 [Confidentiality claim pending]
- 719 [Confidentiality claim pending]
- 720 [Confidentiality claim pending]

- (387) [Confidentiality claim pending]
[Confidentiality claim pending]⁷²³
- (388) [Confidentiality claim pending]
- (389) [Confidentiality claim pending]⁷²⁴ [Confidentiality claim pending]⁷²⁵
- (390) [Confidentiality claim pending]
[Confidentiality claim pending]⁷²⁶
- (391) [Confidentiality claim pending]⁷²⁷
- (392) [Confidentiality claim pending]⁷²⁸ [...] [company representative A2] (Nexans) informed [company representative I3] (ABB) about nkt's aggressive bid in Spain.⁷²⁹
- (393) [Confidentiality claim pending]⁷³⁰ [Confidentiality claim pending]⁷³¹
- (394) [Confidentiality claim pending]⁷³²
- (395) [...] [company representative I3] (ABB) met with [company representative A2] (Nexans) on 9 or 10 May 2006 at Zurich airport in order to discuss the allocation of the BritNed project. The project was allocated to ABB and the two companies agreed that Nexans would ensure that it would not meet the customer's delivery requirements in its offer. In exchange, ABB would subcontract a portion of the work to Nexans. [...] This agreement was made even though the details of the project were not yet clear.⁷³³
- (396) [Confidentiality claim pending]
[Confidentiality claim pending]⁷³⁴
- (397) [Confidentiality claim pending]⁷³⁵
- (398) [Confidentiality claim pending]⁷³⁶
- (399) [Confidentiality claim pending]⁷³⁷ [Confidentiality claim pending]⁷³⁸
- (400) [Confidentiality claim pending]
- (401) [Confidentiality claim pending]⁷³⁹

721 [Confidentiality claim pending]
722 [Confidentiality claim pending]
723 [Confidentiality claim pending]
724 [Confidentiality claim pending]
725 [Confidentiality claim pending]
726 [Confidentiality claim pending]
727 [Confidentiality claim pending]
728 [Confidentiality claim pending]
729 [...]
730 [Confidentiality claim pending]
731 [Confidentiality claim pending]
732 [Confidentiality claim pending]
733 [...]
734 [Confidentiality claim pending]
735 [Confidentiality claim pending]
736 [Confidentiality claim pending]
737 [Confidentiality claim pending]
738 [Confidentiality claim pending]

- (402) Also on 25 July 2006, Nexans announced that it had agreed to form a production joint venture dedicated to the manufacturing of SM high voltage power cables with VISCAS. The joint venture would be based in Japan. The establishment of the joint venture allowed Nexans to increase its capacity in the production of SM power cables. The joint venture would produce MI power cables only for Nexans while VISCAS could produce some OF power cables at the plant.⁷⁴⁰
- (403) [...] JPS saw the creation of the joint venture between Nexans and VISCAS as an intrusion of the Japanese market by Nexans.⁷⁴¹ [Confidentiality claim pending]⁷⁴²
- (404) In September 2006 Nexans also announced that its Halden factory in Norway would increase capacity for mass impregnated cables.[Confidentiality claim pending]⁷⁴³
- (405) [...] there was a common understanding among the European cable suppliers that there was excess production capacity for HV power cables. In the early 2000s, [company representative A2] (Nexans) had urged ABB and Prysmian to reduce their existing excess capacity.⁷⁴⁴
- (406) [...] During the period from 2001 onwards Prysmian, Nexans and ABB were in regular contacts to ensure the maximisation of their factory utilisation through the maintenance of price levels or the allocation of bids. This coordination centred on those projects that were large in value and on which Nexans, Prysmian and ABB could have competed against each other based on their factory capacity and other factors.⁷⁴⁵
- (407) [Confidentiality claim pending]⁷⁴⁶
- (408) In 2006, the parties also continued their practice of meeting at the fringes of the ICF conferences. ABB [...] was informed by [company representative A2] (Nexans) that meetings took place between Nexans and the Japanese and Korean cable producers at the ICF conference in October.⁷⁴⁷ VISCAS has confirmed that a short meeting took place during the conference but argues that the Korean producers were not present.⁷⁴⁸ LS Cable also denies participating in such a meeting.⁷⁴⁹
- (409) On 4 October 2006, [company representative B2] (Prysmian) emailed [company representative A1] (Nexans) using the email address: '[email address]' ⁷⁵⁰ In previous years, [company representative A1] (Nexans) had also used the address [email address].⁷⁵¹
- (410) Representatives of JPS, VISCAS, Prysmian and Nexans all attended an A/R meeting in Baveno, Italy on 6 October 2006. [...] at this meeting [company representative

⁷³⁹ [Confidentiality claim pending]

⁷⁴⁰ ID [...], Fujikura reply to SO of 24 October 2011; ID [...], Fujikura reply to SO of 17 February 2012.

⁷⁴¹ [...]

⁷⁴² [Confidentiality claim pending]

⁷⁴³ [Confidentiality claim pending]

⁷⁴⁴ [...]

⁷⁴⁵ [...]

⁷⁴⁶ [Confidentiality claim pending]

⁷⁴⁷ [...]

⁷⁴⁸ ID [...], Annex B to VISCAS reply to SO of 9 November 2011.

⁷⁴⁹ ID [...], LS Cable reply to SO of 9 February 2012.

⁷⁵⁰ ID [...], Nexans reply of 5 June 2009 to RFI of 20 March 2009.

⁷⁵¹ ID [...], Nexans reply of 5 June 2009 to RFI of 20 March 2009.

C1] informed the other participants that JPS would not participate in any further meetings.⁷⁵²

- (411) On 16 November 2006, [company representative J1] (Brugg), sent an email to [company representative L2] (Silec) with [company representative A1] (Nexans) in copy. [company representative J1] used the email address: [email address]. The email simply contains the heading "*Quote*" and the text: "*Please note that we need to receive instruction by today. If we do not receive anything we will quote as our convenience*". [company representative L2] replied on the same day: "*According to our phone conversation, I have noticed your agreement to receive instructions on Monday, November 20*".⁷⁵³ [Confidentiality claim pending]⁷⁵⁴
- (412) Already in 2002, [company representative J2] (Brugg) had communicated his web based email address [email address] and his mobile phone number to the other cartel participants.⁷⁵⁵ The informal manner in which [company representative J1] and [company representative L2] wrote suggests that this is not the first time they have communicated on projects.⁷⁵⁶ Moreover, they both seem to conform to the 'rule' of putting [company representative A1], as coordinator, in copy, so to keep him up to date about the agreements.
- (413) Finally, [...] [company representative C1] discussed projects located in the export territories by phone with the R side throughout 2006.⁷⁵⁷
- (414) The exchange of enquiry notifications, prices and other sensitive commercial information for projects located in the European home territory continued in 2006. A summary is provided here and a detailed overview is found in Annex I.
- (a) [Confidentiality claim pending]⁷⁵⁸
 - (b) [Confidentiality claim pending]⁷⁵⁹
 - (c) [Confidentiality claim pending]⁷⁶⁰
 - (d) [Confidentiality claim pending]⁷⁶¹
 - (e) [Confidentiality claim pending]⁷⁶²
 - (f) [Confidentiality claim pending]⁷⁶³
 - (g) [Confidentiality claim pending]⁷⁶⁴

⁷⁵² [...];[Confidentiality claim pending]

⁷⁵³ ID [...], Nexans reply of 5 June 2009 to RFI of 20 March 2009.

⁷⁵⁴ ID [...], Nexans reply of 5 June 2009 to RFI of 20 March 2009.

⁷⁵⁵ [Confidentiality claim pending]

⁷⁵⁶ This can be inferred from the fact that no explanation is given of the reasons why [company representative J1] is making use of this email account and the fact that no introduction is given on the exact details of the products.

⁷⁵⁷ [...]

⁷⁵⁸ [Confidentiality claim pending]

⁷⁵⁹ [Confidentiality claim pending]

⁷⁶⁰ [Confidentiality claim pending]

⁷⁶¹ [Confidentiality claim pending]

⁷⁶² [Confidentiality claim pending]

⁷⁶³ [Confidentiality claim pending]

⁷⁶⁴ [Confidentiality claim pending]

2007

- (415) In relation to ABB, [company representative A2] (Nexans) remained the main point of contact. [...] [company representative A2] indicated to [company representative I3] (ABB) in January 2007 that Nexans was fully loaded and therefore would not be bidding aggressively on a project in Norway called Gjöa.⁷⁶⁵
- (416) Similarly, during a phone conversation in early 2007, [company representative I3] (ABB) indicated to [company representative A2] (Nexans) that ABB did not intend to bid for a project in Germany called Alpha Ventus.⁷⁶⁶
- (417) [Confidentiality claim pending]⁷⁶⁷ [Confidentiality claim pending]
- (418) Prysmian has argued that this rule is the consequence of the common inclusion of warranty clauses for the period after the completion of a project. Prysmian has failed however to adduce evidence that the application of this rule in this case was indeed linked to the inclusion of such a clause.⁷⁶⁸
- (419) [...] When it was contacted by a customer to repair a cable installed by Nexans, ABB did not submit a quote to the customer. Instead, [company representative R] (ABB) contacted [company representative A2] (Nexans) to notify him that the customer was looking for urgent repair work.⁷⁶⁹
- (420) [Confidentiality claim pending]⁷⁷⁰
- (421) [Confidentiality claim pending]⁷⁷¹
- (422) [...] [company representative C1] (JPS) met with [company representative A1] (Nexans) in May 2007 in Paris in order to discuss the allocation of a project in the export territories⁷⁷² [Confidentiality claim pending]⁷⁷³ [Confidentiality claim pending]
- (423) Representatives of Nexans, EXSYM and JPS attended an A/R meeting in Tokyo on 27 or 28 June 2007, to discuss the allocation of another large UG power cable project in the export territories.⁷⁷⁴ [Confidentiality claim pending]⁷⁷⁵ [Confidentiality claim pending]⁷⁷⁶ [Confidentiality claim pending]
- (424) In a bilateral meeting between ABB and Nexans on 4 June 2007, [company representative A2] (Nexans) reproached [company representative I3] (ABB) for doing all the work for BritNed itself. [...] decided to refrain from bidding on the Fennoskan II project as a gesture of goodwill.⁷⁷⁷

⁷⁶⁵ [...]
⁷⁶⁶ [...]
⁷⁶⁷ [Confidentiality claim pending]
⁷⁶⁸ ID [...], Prysmian reply to SO of 24 October 2011.
⁷⁶⁹ [...]
⁷⁷⁰ [Confidentiality claim pending]
⁷⁷¹ [Confidentiality claim pending]
⁷⁷² [...]
⁷⁷³ [Confidentiality claim pending]
⁷⁷⁴ [...]
⁷⁷⁵ [Confidentiality claim pending]
⁷⁷⁶ [Confidentiality claim pending]
⁷⁷⁷ [...]

- (425) [...] during a meeting between [company representative I3] (ABB) and [company representative C1] (JPS) on 10 or 11 June 2007, the companies discussed the application of the home territory principle. [...] there was an understanding that JPS would not compete in Scandinavia and/or Europe and that ABB would not compete (aggressively) in Japan.⁷⁷⁸
- (426) [Confidentiality claim pending]⁷⁷⁹
- (427) [Confidentiality claim pending]⁷⁸⁰ [Confidentiality claim pending]⁷⁸¹ [Confidentiality claim pending]⁷⁸² [Confidentiality claim pending]⁷⁸³
- (428) [Confidentiality claim pending]⁷⁸⁴
- (429) [Confidentiality claim pending]⁷⁸⁵ [Confidentiality claim pending]⁷⁸⁶ [Confidentiality claim pending]⁷⁸⁷ [Confidentiality claim pending]⁷⁸⁸ [Confidentiality claim pending]⁷⁸⁹ [Confidentiality claim pending]⁷⁹⁰ [Confidentiality claim pending]⁷⁹¹ [Confidentiality claim pending]⁷⁹²
- (430) [Confidentiality claim pending]⁷⁹³ [...] [company representative I3] (ABB) communicated to Nexans that ABB was not interested in this project.⁷⁹⁴
- (431) [Confidentiality claim pending]⁷⁹⁵ [Confidentiality claim pending]⁷⁹⁶
- (432) [Confidentiality claim pending]⁷⁹⁷
- (433) In October 2007 [company representative I3] (ABB) and [company representative A2] (Nexans) held a further bilateral meeting at Copenhagen airport. At this meeting, the two representatives discussed the price range for the upcoming Fennoskan II project. Nexans would obtain this project in exchange for placing a higher bid on the Eirgrid project.⁷⁹⁸ In connection with this agreement, [company representative A2] told [company representative I3] that he would contact Prysmian.⁷⁹⁹
- (434) [Confidentiality claim pending]⁸⁰⁰ [Confidentiality claim pending]

778 [...]

779 [Confidentiality claim pending]

780 [Confidentiality claim pending]

781 [Confidentiality claim pending]

782 [Confidentiality claim pending]

783 [Confidentiality claim pending]

784 [Confidentiality claim pending]

785 [Confidentiality claim pending]

786 [Confidentiality claim pending]

787 [Confidentiality claim pending]

788 [Confidentiality claim pending]

789 [Confidentiality claim pending]

790 [Confidentiality claim pending]

791 [Confidentiality claim pending]

792 [Confidentiality claim pending]

793 [Confidentiality claim pending]

794 [...]

795 [Confidentiality claim pending]

796 [Confidentiality claim pending]

797 [Confidentiality claim pending]

798 [...]

799 [...]

800 [Confidentiality claim pending]

- (435) [Confidentiality claim pending]
- (a) [Confidentiality claim pending]⁸⁰¹
- (b) [Confidentiality claim pending]⁸⁰²
- (c) [Confidentiality claim pending]⁸⁰³
- (d) [Confidentiality claim pending]
- (e) [Confidentiality claim pending]⁸⁰⁴
- 2008
- (436) [Confidentiality claim pending]⁸⁰⁵ [Confidentiality claim pending]
- (437) The remaining parties still applied the home territory principle at this point in time.[Confidentiality claim pending]⁸⁰⁶
- (438) [company representative A1] and [company representative A2] (Nexans) visited JPS, EXSYM and VISCAS for a series of bilateral meetings in Tokyo on 9 and 10 April 2008.⁸⁰⁷ [...] at the meeting between JPS and Nexans [company representative C1] and [company representative D5] (JPS) told [company representative A1] and [company representative A2] to cease contacting JPS.⁸⁰⁸ JPS argues that it thereby ended its participation in the cartel.⁸⁰⁹
- (439) [Confidentiality claim pending]⁸¹⁰
- (440) [Confidentiality claim pending]⁸¹¹
- (441) The contacts between ABB and Nexans also continued during 2008. On 7 July 2008, [company representative I3] (ABB) met [company representative A2] (Nexans) in a hotel in Zurich. [...] has indicated that the purpose of this meeting was to discuss the allocation of the Eirgrid SM power cable project in Ireland. At this meeting, the parties agreed on the price level they would use for their respective bids.⁸¹² The project was allocated to ABB in exchange for Nexans obtaining the Fennoskan II project (see Recital (433)).
- (442) [...] and Nexans were also in contact about a wind farm project in Belgium in October 2008.⁸¹³ On 17 or 18 October 2008, [company representative A2] (Nexans) contacted [...] by phone and announced that Nexans would bid high for this project.⁸¹⁴

⁸⁰¹ [Confidentiality claim pending]

⁸⁰² [Confidentiality claim pending]

⁸⁰³ [Confidentiality claim pending]

⁸⁰⁴ [Confidentiality claim pending]

⁸⁰⁵ [Confidentiality claim pending]The project concerned is Cork Bay in Ireland.

⁸⁰⁶ [Confidentiality claim pending]

⁸⁰⁷ [Confidentiality claim pending]; [...]

⁸⁰⁸ [...]

⁸⁰⁹ This is the end date for JPS and its parent companies in the cartel, see Section 7.2.

⁸¹⁰ [Confidentiality claim pending]

⁸¹¹ [Confidentiality claim pending]

⁸¹² [...].

⁸¹³ [...]

⁸¹⁴ [...]

(443) [*Confidentiality claim pending*]⁸¹⁵

(444) [*Confidentiality claim pending*]⁸¹⁶

(445) [*Confidentiality claim pending*]⁸¹⁷

2009

(446) [*Confidentiality claim pending*]⁸¹⁸

3.5. Arguments of the parties regarding the reliability of the evidence

(447) nkt, LS Cable and Brugg have questioned the nature and reliability of the notes from the A/R(/K) and R meetings that the Commission found at Nexans.⁸¹⁹ Nexans and Prysmian have questioned the reliability of the leniency applicants' oral statements.⁸²⁰

(448) Brugg has complained that the SO did not allow it to establish with certainty the facts alleged against it. According to Brugg, the Commission does not meet the required standard of proof necessary to demonstrate a concrete infringement. In addition, Brugg claims that evidence with regard to other parties may not be used against Brugg, in particular when no reference is made to Brugg. Finally, Brugg argues that the inspection documents from Nexans and Prysmian cannot be used until the Court has decided whether they have been obtained legally.⁸²¹

(449) Annexed to their replies to the SO, several parties have submitted witness statements.⁸²² In addition, several parties have submitted economic reports specifically prepared for their defence.⁸²³

3.6. Discussion and findings regarding the evidence

(450) The evidence presented in Section 3 consists of documents supplied by the leniency applicants, documents found during the inspections at Nexans and Prysmian and replies to Requests for Information ("RFIs") and their annexes. Among these materials, there are several thousands of pages of direct evidence: contemporaneous emails, (handwritten) notes, position sheets and corporate statements from undertakings directly involved in the infringement. In addition, the file is composed of corroborating contemporaneous evidence, notably in the form of travel records, and diary entries.

⁸¹⁵ [*Confidentiality claim pending*]

⁸¹⁶ [...]

⁸¹⁷ [*Confidentiality claim pending*]

⁸¹⁸ [*Confidentiality claim pending*]

⁸¹⁹ ID [...], nkt reply to SO of 3 November 2011; ID [...], Brugg reply to SO of 24 October 2011; ID [...], LS Cable reply to SO of 31 October 2011.

⁸²⁰ ID [...], Nexans reply to SO of 26 October 2011, ID [...], Prysmian reply to SO of 24 October 2011.

⁸²¹ ID [...], Brugg reply to SO of 24 October 2011.

⁸²² See, for instance, ID [...], VISCAS reply to SO of 9 November 2011 (witness statement of [company representative EF1]); ID [...], VISCAS reply to SO of 9 November 2011 (witness statement of [company representative E3]); ID [...], LS Cable reply to SO of 9 November 2011 (witness statement of [company representative M3]). Nexans has submitted 85 witness statements as attachments to its reply; ID [...], Nexans reply to SO of 26 October 2011.

⁸²³ See for example, ID [...], CRA report prepared for VISCAS, 7 November 2011; ID [...], LECG Study prepared for Nexans, 8 October 2010.

- (451) In accordance with the generally applicable rules on evidence, the reliability and, therefore, the probative value of a document depends on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and the reputed and reliable nature of its content.⁸²⁴ In particular, great importance must be attached to the fact that a document has been drawn up in close connection with the events,⁸²⁵ or by a direct witness to these events.⁸²⁶
- (452) As explained in Recital (60), the General Court has considered that the Commission was correct to order an inspection concerning HV SM and UG power cables. With regard to Brugg's argument, the Commission is under no obligation to suspend its Decision until the Court of Justice rules in the appeal case brought by Nexans.⁸²⁷
- (453) The statements of ABB and Sumitomo, Hitachi and JPS implicate these undertakings in the infringement and therefore run counter to the interest of the undertakings. According to the Court, they have therefore a particularly high probative value.⁸²⁸ This is because providing inaccurate statements may jeopardise the leniency application and the admission of involvement entails considerable legal and economic risks such as private damages claims.⁸²⁹ In this Decision, the leniency statements are corroborated with contemporaneous evidence and by other means for example by other statements of that nature.⁸³⁰ The Commission has applied proper caution to the evidence voluntarily provided by ABB and Sumitomo, Hitachi and JPS. It is clear that ABB's position as a non-core player has prevented it from obtaining detailed information on the general application of the cartel. Similarly it is clear that JPS' oral statements, the first of which was made a day after information about the inspections of the Commission became public, have developed in clarity over time. In addition, JPS has in its oral statements contradicted itself at certain occasions. The Commission has therefore assessed the statements of JPS with

⁸²⁴ Case T-44/00 *Mannesmannröhren-Werke AG v Commission* [2004] ECR II-2223, paragraph 84; Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* ('Cement') [2000] ECR II-491, paragraph 1053.

⁸²⁵ Case T-157/94 *Empresa Nacional Siderúrgica SA (Ensidesa) v Commission* [1999] ECR II-707, paragraph 312 and Joined Cases T-5/00 and T-6/00 *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie v Commission* [2003] ECR II-5761, paragraph 181.

⁸²⁶ Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp., formerly NKK Corp. (T-67/00), Nippon Steel Corp. (T-68/00), JFE Steel Corp. (T-71/00) and Sumitomo Metal Industries, Ltd (T-78/00) v Commission* [2004] ECR II-2501, paragraph 207.

⁸²⁷ See in this sense, Case T-548/08 *Total SA v Commission* [2013] not yet reported, paragraph 172 and the AG's Opinion in case C-109/10 P *Solvay SA v Commission* [2011], ECR I-10329, paragraph 308

⁸²⁸ Case T-133/07 *Mitsubishi Electric v Commission* [2011] ECR II-4219, paragraphs 84-107; Joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* [2013] not yet reported, paragraphs 135-142.

⁸²⁹ Joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* [2013] not yet reported, paragraphs 138-141.

⁸³⁰ Case T-113/07 *Toshiba v Commission* [2011] ECR II-3989, paragraphs 90-91; Case T-133/07 *Mitsubishi Electric v Commission* [2011] ECR II-4219, paragraphs 84-85; Joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* [2013] not yet reported, paragraphs 189-191.

caution and accepted them only in so far as they were corroborated by other evidence.⁸³¹

- (454) [...] ⁸³² [...], at the meeting on 18 February 1999, the parties had reached no new agreement on the home territory principle. Nevertheless, [...] in practice the parties applied the home territory principle during this period.⁸³³ This last position is supported by the contemporaneous evidence (See Recitals (137), (145) and (147)). A close reading of the [...] statements and of the documentary evidence confirms that the parties did not reach an agreement on the *exact geographical scope* of the home territory principle (notably on the inclusion of [Japanese home territory], Sweden, Korea and the preferred territories) and on the *exact split* of the quota allocation for projects in the export territories (notably on whether this should be 70/30 or 60/40). However they did reach an agreement or at the very least established a concerted practice regarding the principle of home territory protection and export territory allocation.
- (455) [...]. However the documentary evidence demonstrates however that JPS remained involved in all aspects of the arrangements until 10 April 2008 (see for instance Recitals (309) and (312) and the analysis in Recital (944)).
- (456) [*Confidentiality claim pending*] ⁸³⁴ While most of the notes referred to in this Section originated from [company representative A1], [...]. Whenever the authors attended the same meetings, the notes may differ according to the personal interest of the author. However, in general whenever notes existed of the same meeting they are similar (see, for instance, Recitals (227) and (245)). The fact that the notes were not circulated amongst the parties does not reduce their reliability. The notes relate to meetings with an anti-competitive object in respect of which the author wanted to leave the least trace possible.⁸³⁵
- (457) nkt claims that it only saw the notes and documents when the Commission granted access to the case-file.⁸³⁶ However this statement is contradicted by the description nkt provides of the seminars. [...].⁸³⁷
- (458) Witness statements written by the employees of a company, drawn up under the supervision of that company and submitted by it in its defence in the administrative procedure by the Commission, cannot, in principle, be classified as evidence which is different from, and independent of, the statements made by that same company. In order to influence the course of the proceedings and the content of the Commission's decision, such witness statements need to be substantiated.⁸³⁸ This applies in particular to witness statements of employees that were not directly involved in the infringement and that have been made available only after the company was informed of the main allegations against it. The above applies to most of the witness statements submitted to the Commission.

⁸³¹ Case T-191/06 *FMC Foret, SA v Commission* [2011] ECR II-02959, paragraph 117.

⁸³² [...]

⁸³³ [...]

⁸³⁴ [*Confidentiality claim pending*]

⁸³⁵ Case T-11/89 *Shell International Chemical Company Ltd v Commission* [1992] ECR II-757, paragraph 86.

⁸³⁶ ID [...], nkt reply to SO of 3 November 2011.

⁸³⁷ ID [...], nkt reply to SO of 3 November 2011.

⁸³⁸ Case T-113/07 *Toshiba Corp. v Commission* [2011] ECR II-03989, paragraphs 58-61.

- (459) In addition, most of the economic reports submitted by the parties were elaborated *ex post*, for the specific needs of the parties' defence in the on-going investigation. The reports are drafted in general terms without reference to the specific facts of the case, and refer to a large extent to the statement of the party requesting it, which suggest that they do not constitute an independent source. It is therefore not possible to attach a level of credibility and a probative value to those reports beyond that of a mere statement from the party that supplied it.⁸³⁹
- (460) In conclusion, the Commission is of the opinion that it has properly assessed the available evidence and the arguments submitted by the parties.

4. APPLICATION OF ARTICLE 101(1) OF THE TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

4.1. Relationship between the Treaty and the EEA Agreement

- (461) The arrangements described in Section 3 above applied to most of the world, including the entire territory of the EEA. Therefore they were liable to affect competition in the whole of the internal market and the territory covered by the EEA Agreement.
- (462) Insofar as the arrangements affected competition in the internal market and trade between Union Member States, Article 101 of the Treaty is applicable. Article 53 of the EEA Agreement is applicable insofar as the arrangements affected competition in the territory covered by that Agreement and trade between the Contracting Parties to that Agreement.

4.2. Jurisdiction

- (463) The application by the Union of its competition rules is governed by the territoriality principle as a universally recognised principle of international law. In this respect, the Court of Justice established in the *Woodpulp* case that the decisive factor in the determination of the applicability of Article 101 of the Treaty in cases where the participants of a cartel are seated outside the Union is whether the agreement, decision or concerted practice was implemented within the Union.⁸⁴⁰ More specifically, the Court of Justice observed in that case that the producers were selling directly into the Union and were engaging in price competition in order to win orders from the customers, thereby constituting competition within the Union. Therefore, the Court of Justice stated that, where those producers concert on the prices to be charged to their customers in the Union and put that concertation into effect by selling at prices which are actually coordinated, they are taking part in a concertation which has the object and effect of restricting competition within the internal market within the meaning of Article 101 of the Treaty.⁸⁴¹ The Court of Justice also stated that an infringement of Article 101, such as the conclusion of an agreement which has had the effect of restricting competition within the internal market, consists of conduct made up of two elements: the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of the

⁸³⁹ Case T-110/07 *Siemens AG v Commission* [2011] ECR II-00477, paragraph 136.

⁸⁴⁰ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others v Commission* ('*Woodpulp*') [1988] ECR 5193.

⁸⁴¹ *Ibid.*, paragraph 13.

prohibitions laid down under Union competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where the agreement, decision or concerted practice is implemented.⁸⁴² Accordingly, the jurisdiction of the Union to apply its competition rules to such conduct is covered by the territoriality principle.⁸⁴³

- (464) Moreover, the General Court supplemented that test by establishing that the rules of Union competition law in Council Regulation (EEC) No 4064/89⁸⁴⁴ are also applicable if the conduct at issue has immediate, foreseeable and substantial effect in the Union.⁸⁴⁵

4.2.1. *Arguments of the parties*

- (465) Several parties have argued that the Commission has no competence to apply Article 101 of the Treaty to those meetings and contacts which concerned the export territories or the home territories Japan and Korea.⁸⁴⁶

4.2.2. *Discussion and findings*

- (466) The Commission's territorial jurisdiction, including the competence to sanction the infringement, is limited to those parts of the infringement that were implemented or had effects in the EEA.
- (467) This applies to both the home territory agreement, through which the Japanese and Korean producers undertook not to enter the EEA, and to the European cartel configuration. As explained below, in Section 4.3.3, both the home territory agreement and the European cartel configuration formed an integral part of the single and continuous infringement which included cartel contacts both in the EEA and Asia. The reciprocal counterpart of the commitment of the Asian cable producers not to compete in the European home territory was the agreement of the European producers not to enter the market in the Asian home territories. In view of the provisions of Article 56(1) of the EEA Agreement, the Commission in this case has jurisdiction to apply Article 53 of the EEA Agreement.
- (468) Moreover, the agreement regarding allocation of projects in places the parties considered to be "the export territories" also included Member States (see notably Recital (247)) and projects on the periphery of the EEA (see notably Recitals (81)-(82)).⁸⁴⁷ There is also some evidence in the file indicating that projects in the export territories were awarded as compensation for the protection of the European home territory (See, for instance, Recitals (193) and (375)).
- (469) The parties implemented their agreements relating to the EEA through their sales in the EEA, or through the application of the home territory principle in the territory of

⁸⁴² Ibid., paragraph 16.

⁸⁴³ Ibid., paragraph 18.

⁸⁴⁴ OJ L 395, 30.12.1989, p. 1.

⁸⁴⁵ Case T-102/96 *Gencor Ltd v Commission* [1999] ECR II-753, paragraph 90.

⁸⁴⁶ ID [...], nkt reply to SO of 3 November 2011; ID [...], Taihan reply to SO of 7 November 2011; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], Brugg reply to SO of 24 October 2011; ID [...], LS Cable reply to SO of 31 October 2011.

⁸⁴⁷ Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering v Commission* [2004] ECR II-2501, paragraphs 201-203, 370-374, 382-385 and 392-394.

the EEA.⁸⁴⁸ As a consequence, the cartel agreements concerned by this Decision were implemented in the Union. In addition, the cartel had immediate, foreseeable and substantial effects in the Union in the sense of the *Gencor* case.⁸⁴⁹ First, the infringement had an immediate effect on the EEA since the cartel arrangements directly influenced the supply of power cables in the EEA. Second, the effect on the EEA was foreseeable as the allocation of projects in and peripheral to the EEA would have evident consequences on the conditions of competition between the parties. Finally, the effects of the arrangements were substantial due to the seriousness of the infringement, the long duration and the position of the parties on the market for power cables.

- (470) In conclusion, the Commission is the competent authority to apply both Article 101 of the Treaty and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement, since the cartel affected competition between European and non-European producers for UG and SM power cable projects in the EEA and had an appreciable effect on trade between Member States (see Section 4.3.5).

4.3. Application of the competition rules in this case

4.3.1. Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

- (471) Article 101(1) of the Treaty 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.⁸⁵⁰

- (472) Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) of the Treaty) contains a similar prohibition. However the reference in Article 101(1) to trade "*between Member States*" is replaced by a reference to trade "*between contracting parties*" and the reference to competition "*within the internal market*" is replaced by a reference to competition "*within the territory covered by the ... [EEA] Agreement*".

4.3.2. Agreements and concerted practices

4.3.2.1. Principles

- (473) An *agreement* can 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 mutual action or abstention from action in the market. It does not have

⁸⁴⁸ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others v Commission* ('Woodpulp') [1988] ECR 5193 and Case T-102/96 *Gencor Ltd v Commission* [1999] ECR II-753, paragraph 87.

⁸⁴⁹ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others v Commission* ('Woodpulp') [1988] ECR 5193 and Case T-102/96 *Gencor Ltd v Commission* [1999] ECR II-753.

⁸⁵⁰ The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 of the Treaty applies equally to Article 53 of the EEA Agreement. See Recitals 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement and Case E-1/94 *Ravintoloitsijain Liiton Kustannus Oy Restamark* [1994-1995] EFTA Ct. Rep, p. 15, paragraphs 32-35. References in this Decision to Article 101 of the Treaty therefore apply also to Article 53 EEA.

to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties. Furthermore, it is not necessary, in order for there to be an infringement of Article 101(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of agreement in Article 101(1) of the Treaty would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.⁸⁵¹

- (474) In its judgment in the PVC II case, the General Court stated that “*it is well established in the case-law that for there to be an agreement within the meaning of Article 81 of the Treaty [now Article 101 of the Treaty] it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*”.⁸⁵²
- (475) Although Article 101(1) of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of “*concerted practices*” and “*agreements between undertakings*”, the object is to bring within the prohibition of these Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.⁸⁵³
- (476) The criteria of co-ordination and co-operation laid down by the case-law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the internal market.
- (477) 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 by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market.⁸⁵⁴
- (478) Thus, conduct may fall under Article 101(1) of the Treaty as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining

⁸⁵¹ Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission* [1999] ECR II-1487, paragraphs 196 and 207.

⁸⁵² Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV, DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries, plc, Hüls AG and Enichem SpA v Commission* (“PVC II”) [1999] ECR II-931, paragraph 715.

⁸⁵³ Case C-48/69 *Imperial Chemical Industries, Ltd. v Commission* [1972] ECR 619, paragraph 64.

⁸⁵⁴ Joined Cases C-40-48/73, C-50/73, 54-56/73, 111/73, 113/73 and 114/73 *Coöperatieve Vereniging “Suiker Unie” UA and others v Commission* [1975] ECR 1663, paragraphs 173-174 and Case C-8/08 *T-Mobile Netherlands and Others* [2009] ECR I-4529, paragraph 33.

their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour.⁸⁵⁵ Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice.

- (479) Although according to the terms of Article 101(1) of the Treaty, the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such a concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 101(1) of the Treaty even in the absence of anti-competitive effects on the market.⁸⁵⁶
- (480) In addition, it is established case-law that the exchange, between undertakings, in pursuance of a cartel falling under Article 101(1) of the Treaty, of information concerning their respective deliveries, which not only covers deliveries already made but is intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that Article.⁸⁵⁷
- (481) In the case of a *complex infringement* of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be both an agreement and a concerted practice at the same time. Article 101 of the Treaty lays down no specific category for a complex infringement of the type involved in the present case.⁸⁵⁸
- (482) In its *PVC II* judgment, the General Court stated that “[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the

⁸⁵⁵ Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraphs 255–261 and Case T-279/02 *Degussa AG v Commission* [2006] ECR II-897, paragraph 132.

⁸⁵⁶ Case C-199/92 P *Hüls v Commission* [1999] ECR I-4287, paragraphs 158-167.

⁸⁵⁷ Cases T-147/89 *Société Métallurgique de Normandie v Commission* [1995] ECR II-1057; T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063 and T-151/89 *Société des Treillis et Panneaux Soudés v Commission* [1995] ECR II-1191, paragraph 72.

⁸⁵⁸ Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 264.

*infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] of the Treaty”.*⁸⁵⁹

- (483) An agreement for the purposes of Article 101(1) of the Treaty does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term “agreement” can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose as well as to the measures designed to facilitate the implementation of price initiatives.⁸⁶⁰ As the Court of Justice has pointed out, it follows from the express terms of Article 101(1) of the Treaty that an agreement may consist not only in an isolated act but also in a series of acts or continuous conduct.⁸⁶¹
- (484) The organisation of meetings or providing services relating to anti-competitive arrangements⁸⁶² may also be prohibited under certain conditions according to the case law of the General Court. The General Court stated that “*it is sufficient for the Commission to show that the undertaking concerned attended meetings at which anticompetitive agreements were concluded*” and that “*the Commission must prove that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by the participants as a whole and that it was aware of the substantive conduct planned or implemented by other undertakings in pursuance of those objectives, or that it could reasonably have foreseen that conduct and that it was ready to accept the attendant risk*”.⁸⁶³
- (485) It is also well-established case-law that “*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*”.⁸⁶⁴ Such distancing should have taken the form of an announcement by the company, for example, that it would take no further part in the meetings and therefore did not wish to be invited to them.

4.3.2.2. Arguments of the parties

- (486) Some parties have claimed that the scope of the infringement was more limited than the Commission argued in the SO:

⁸⁵⁹ Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV, DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG and Enichem SpA v Commission* ('PVC II') [1999] ECR II-931, paragraph 696.

⁸⁶⁰ Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 256.

⁸⁶¹ Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraph 81.

⁸⁶² Such as checking deviations and monitoring compliance facilitating the implementation of the agreements.

⁸⁶³ Case T-99/04 *AC- Treuhand AG v Commission* [2008] ECR II-1501, paragraphs 122, 127 and 130.

⁸⁶⁴ Case T-334/94 *Sarrió SA v Commission* [1998] ECR II-1439, paragraph 118; Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791, paragraph 85; Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-01711, paragraph 232; Joined Cases T-25/95 and others *Cimenteries CBR and Others v Commission* ('Cement') [2000] ECR II-491, paragraph 1389; Case T-329/01 *Archer Daniels Midland Co. v Commission* [2006] ECR II-3255, paragraph 247 and Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2006] ECR II-4567, paragraphs 138–139.

- (a) Prysmian and Brugg argue that there was no home territory agreement. Prysmian submits that the allocations were limited to projects in the export territories.⁸⁶⁵ In addition, Prysmian claims that there is no evidence of customer allocation.⁸⁶⁶
 - (b) Prysmian and Nexans state that the arrangements did not concern price fixing.⁸⁶⁷ According to Nexans, the examples of "*floor price levels*" that were given in the SO only concern projects outside the Union.⁸⁶⁸ Prysmian also states that there is only evidence for a number of cover pricing activities.⁸⁶⁹
 - (c) In addition, Nexans argues that there existed no agreement on capacity.⁸⁷⁰
 - (d) Nexans, Prysmian and Brugg argue that there was no refusal to supply accessories.⁸⁷¹
 - (e) Nexans states that there was no monitoring of the implementation of the agreement within the EEA.⁸⁷²
 - (f) Prysmian also argues that there was no retaliation mechanism.⁸⁷³
- (487) In addition, both Nexans and Prysmian have argued that the Commission has failed to recognise that there were many legitimate reasons behind the contacts listed in Section 3.⁸⁷⁴
- (488) Several parties have argued that there was no agreement, understanding or concerted practice reached on the meeting of 18 February 1999.⁸⁷⁵
- (489) nkt⁸⁷⁶ and Nexans⁸⁷⁷ claim that only a small category of power cable sales were affected by the infringement. They are both of the opinion that only power cable sales over EUR 500.000 were concerned by the infringement.⁸⁷⁸ Nexans also points out that the power cable projects cited in the SO only covered a small percentage of its sales. According to Nexans this supports the conclusion that the infringement had an *ad hoc* nature. Nexans therefore argues that each HV power cable sale must be analysed individually in order to prove effective collusion.⁸⁷⁹ Brugg argues that the infringement did not cover the contractor relations Brugg had concluded prior to its entry in the cartel with two contractors in [non-EEA territory].⁸⁸⁰ Similarly, Prysmian

⁸⁶⁵ ID [...], Prysmian reply to SO of 24 October 2011, ID [...], Brugg reply to SO of 24 October 2011.

⁸⁶⁶ ID [...], Prysmian reply to SO of 24 October 2011.

⁸⁶⁷ ID [...], Prysmian reply to SO of 24 October 2011.

⁸⁶⁸ ID [...], Nexans reply to SO of 26 October 2011.

⁸⁶⁹ ID [...], Prysmian reply to SO of 24 October 2011.

⁸⁷⁰ ID [...], Nexans reply to SO of 26 October 2011.

⁸⁷¹ ID [...], Prysmian reply to SO of 24 October 2011, ID [...], Brugg reply to SO of 24 October 2011; ID [...], Nexans reply to SO of 26 October 2011.

⁸⁷² ID [...], Nexans reply to SO of 26 October 2011.

⁸⁷³ ID [...], Prysmian reply to SO of 24 October 2011.

⁸⁷⁴ ID [...], Prysmian reply to SO of 24 October 2011.

⁸⁷⁵ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Prysmian reply to SO of 24 November 2011; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], Nexans reply to SO of 26 October 2011.

⁸⁷⁶ ID [...], nkt reply to SO of 3 November 2011.

⁸⁷⁷ ID [...], Nexans reply to SO of 26 October 2011.

⁸⁷⁸ ID [...], nkt reply to SO of 3 November 2011.

⁸⁷⁹ ID [...], Nexans reply to SO of 26 October 2011.

⁸⁸⁰ ID [...], Brugg reply to SO of 24 October 2011.

states that, even assumed the evidence provided by the Commission were founded, the infringement would only refer to 1% of the market and therefore may not serve as evidence of an allocation scheme.⁸⁸¹ Fujikura claims that the scope of the cartel only saw to UG projects above 220 kV.⁸⁸² Finally, ABB has remarked that it believes that the agreements did not extend to accessories for UG power cables of less than 220 kV.⁸⁸³

4.3.2.3. Discussion and findings

- (490) The facts described in Section 3 of this Decision demonstrate that the parties were involved in collusive activities concerning SM and UG power cables.
- (491) As already indicated in Recital (66), the overall aim of their contacts was to restrict competition for SM and UG power cable projects in specific territories by agreeing on market and customer allocation and thereby to distort the normal competitive process.
- (492) The most important suppliers of these cables took part in the collusive activities and these applied to UG power cable projects involving voltages of 110 kV and above, and of SM power cable projects with voltages of 33 kV and above. In addition, although in certain limited cases, a cable producer may sell a given power cable – and only the cable – to another cable producer, the projects are normally "packages" that include not only the power cable itself but also the necessary additional equipment (for example, joints, other accessories) and services (such as installation works) The cartel therefore included the above mentioned cables, regardless of the type of cable considered, and including all products and services sold to the customer related to a sale of power cables when such sales are part of a power cable project.
- (493) In order to achieve their overall aim, the parties established a network of multilateral and bilateral meetings and contacts and participated in one or more of the following cartel activities:
- (a) All producers implicitly or explicitly entered into an agreement or concerted practice through which the European home territory was protected from competition by Japanese and Korean power cable suppliers and vice versa (see, for instance for Nexans: Recitals (214), (228), (231), (243), (245), (251), (258), (263), (264), (265), (268), (279), (291), (302), (306), (321), (329), (340), (343), (352), (353), (354), (355), (358), (374), (380), (384), (386), (393), (428) and (437); for Pirelli/Prysmian: Recitals (137), (141), (214), (228), (231), (245), (251), (263), (264), (302), (306), (321)(d), (340), (343), (353), (358), (374) and (386); for Sumitomo, Hitachi and JPS: Recitals (137), (141), (145), (147), (179), (185), (198), (214), (228), (231), (243), (245), (251), (263), (265), (268), (277), (279), (294), (302), (312), (321), (355), (374), (380), (386), (393) and (425); for Furukawa, Fujikura and VISCAS: Recitals (137), (141), (147), (185), (214), (228), (231), (245), (251), (264), (265), (268), (279), (294), (302), (321), (374), (428) and (437); for ABB: Recitals (198), (277), (294) and (425); for Showa, Mitsubishi and EXSYM: Recitals (181), (214), (228), (231)(g), (245), (251), (264), (265), (268), (302), (328), (353), (354), (358) and (384); for Brugg: Recitals (214), (275), (306), (329) and (346); for

⁸⁸¹ ID [...], Prysmian reply to SO of 24 October 2011.

⁸⁸² ID [...], Fujikura reply to SO of 24 October 2011.

⁸⁸³ ID [...].

Sagem/Safran/Silec: Recitals (185) and (275); for nkt: Recitals (275) and (346); for LS Cable: Recitals (228), (263) (268), (272), (279), (331), (343) and (352); and for Taihan: Recitals (228), (240), (243), (263), (268), (272), (279) and (302)).⁸⁸⁴

- (b) In addition, the European cartel members participated in the European cartel configuration; an agreement or concerted practice through which they allocated territories and customers within the EEA (see, for instance, for Nexans: Recitals (202), (234), (249), (274), (280), (296), (297), (298), (299), (303), (306), (310), (313), (322), (325), (335), (336), (344), (346), (348), (363), (370), (371), (372), (392), (395), (414), (415), (416), (433), (435), (439), (441), (442) and (444); for Pirelli/Prysmian: Recitals (180), (202), (234), (274), (280), (298), (299), (303), (306), (313), (315), (322), (325), (333), (335), (336), (344), (346), (348), (363), (372), (392), (414), (435) and (439); for ABB: Recitals: (152), (180), (202), (280), (297), (310), (363), (395), (415), (416), (433), (441), (442) and (444); for Brugg: (234), (249), (296), (298), (303), (315), (322), (344), (346), (370) and (372); for Sagem/Safran/Silec: Recitals (234), (249), (280)(d), (296), (298), (299), (303), (322), (325), (333), (335), (336), (341), (348), (371) and (372); and for nkt: Recitals (249), (296), (344), (346), (348), (372) and (392)).
- (c) All producers participated in the allocation of projects in the export territories (see, for instance, for Nexans: Recitals (178), (208), (225), (244), (296), (304), (319), (324), (328), (348), (349), (350), (353), (357), (363), (365), (366), (371), (374), (375), (377), (379), (394), (399), (423), (427), (429), (431) and (440); for Pirelli/Prysmian: Recitals (137), (141), (178), (208), (225), (242), (244), (285), (296), (304), (348), (349), (350), (357), (363), (374), (375), (377) and (394); for Sumitomo, Hitachi and JPS: Recitals (137), (141), (178), (200) (208), (225), (304), (349), (362), (366), (374), (375), (379), (394), (396), (422), (423) and (431); for Furukawa, Fujikura and VISCAS: Recitals (137), (141), (178), (208), (225), (350), (374), (375), (394), (429) and (440); for ABB: Recitals (200), (297), (304) and (363); for Mitsubishi, Showa and EXSYM: Recitals (159), (160), (167), (225), (244), (319), (328), (349), (353), (357), (362), (365), (377), (423), (427), (429), (431) and (440); for Brugg: Recitals (285), (296), (324) and (377); for Sagem/Safran/Silec: Recital (296), (338), (348) and (371); for nkt: Recitals (242), (296) and (348); for LS Cable: Recitals

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The home territory principle was discussed as one of the general rules of the cartel from the starting date of 18 February 1999. The principle then covered at least the territories in which the factories of the cartelists were located (Italy, UK, Norway and France versus Japan) (Recital (137)). Later on, the home territory principle was refined to cover also situations in which a foreign contractor was involved, but the project was located in one of the home territories, or alternatively, when a contractor came from the home territories and the project was located in one of the export territories (Recitals (214) and (245)). The size of the European home territory grew as the cartel developed. At the A/R/K meeting on 15 November 2002, LS Cable and Taihan were informed to respect entire Europe, while the European producers would respect Korea, Japan and [Japanese home territory] (Recital (228)). From that meeting onwards, the application of the home territory principle is visible mostly through the many enquiry notifications that were exchanged between the parties (see, for instance, Recitals (231), (279) and (321)) and the occasional infringements of the principle (see, for instance, Recitals (264) and (291)).

(244), (273), (320), (331) and (357) and for Taihan: Recital (244), (273) and (357)).⁸⁸⁵

- (d) Several parties agreed on the prices to be offered for SM and UG power cable projects by either the establishment of a floor price or the coordination of price levels. These agreements concerned both projects in the EEA as well as in the export territories (see, for instance, for Nexans: Recitals (159), (213), (232), (234), (239), (297), (331), (351), (372), (433), (441) and (444); for Pirelli/Prysmian: Recitals (159), (180), (213), (232), (239) and (351); for Sumitomo, Hitachi and JPS: Recitals (159), (213), (232) and (239); for Furukawa, Fujikura and VISCAS: Recitals (159), (213) and (239); for ABB: (180), (297), (433), (441) and (444); for EXSYM: Recitals (239) and (292); for Brugg: Recital (234); for Sagem/Safran/Silec: Recital (372) and for LS Cable: Recitals (331) and (351)).⁸⁸⁶
- (e) Several parties participated in the submission of cover bids in order to ensure the agreed allocation of SM and UG power cable projects. To this end, the parties exchanged prices and other sensitive commercial terms and conditions, required for the preparation of the cover bids. These agreements concerned both projects in the EEA as well as in the export territories. As indicated in Section 4.2.2, the Commission is the competent authority to deal with these agreements to the extent that they were implemented or had effects in the EEA (see, for instance, for Nexans: Recitals (168), (232), (234), (250), (280), (313), (322), (338), (367), (372), (414), (426), (435), (442) and (443); for Pirelli/Prysmian: Recitals (232), (234), (250), (280), (315), (316), (322), (338), (367), (372), (414), (426), (435) and (443); for Sumitomo, Hitachi and JPS: Recitals (168), (232) and (250); for Furukawa, Fujikura and VISCAS: Recitals (159), (250) and (321); for ABB: Recitals (313) and (442); for Brugg: Recitals (234)(i), (315), (316), (322) and (414); for Sagem/Safran/Silec: Recitals (280), (322), (338) and (372); for LS Cable: Recital (331) and for Taihan: Recital (243)).⁸⁸⁷
- (f) Several parties participated in the exchange of other sensitive commercial and strategic information such as their available capacity or interest in participating in specific tenders. These agreements concerned both projects in the EEA as well as in the export territories (see, for instance, for Nexans: Recitals (225), (232), (280), (404), (406), (407) and (430); for Pirelli/Prysmian: Recitals (225), (232), (404), (405), (406), (407), and (430); for Sumitomo, Hitachi and JPS: Recitals (225) and (232); for Furukawa, Fujikura and VISCAS: Recital (225); for ABB: Recitals: (405) and (406); for EXSYM: Recital (225); for Brugg: Recitals (234), (285), (315); for Sagem/Safran/Silec: Recitals (280) and (371) and for nkt: Recital (346)).⁸⁸⁸

⁸⁸⁵ As indicated in Section 4.2.2, the Commission is the competent authority to deal with this agreement and/or concerted practice to the extent that this allocation was implemented or had effects in the EEA.

⁸⁸⁶ As indicated in Section 4.2.2, the Commission is the competent authority to deal with this agreement and/or concerted practice to the extent that this allocation was implemented or had effects in the EEA.

⁸⁸⁷ As indicated in Section 4.2.2, the Commission is the competent authority to deal with these agreements and/or concerted practices to the extent that they were implemented or had effects in the EEA.

⁸⁸⁸ As indicated in Section 4.2.2, the Commission is the competent authority to deal with these agreements and/or concerted practices to the extent that they were implemented or had effects in the EEA.

- (g) Some parties participated in the implementation of practices to reinforce the cartel such as the collective refusal to supply accessories or technical assistance to certain competitors. (see, for instance, for Nexans: (171), (223) and (356); for Pirelli/Prysmian: Recitals (171), (223), (248) and (356); for Sumitomo, and JPS: Recitals (171), (223) and (248) for Furukawa, Fujikura and VISCAS: Recital (223)).⁸⁸⁹
- (h) Several parties were involved in the monitoring of the implementation of the allocation and price agreements through the exchange of position sheets, market information and the establishment of reporting obligations. These arrangements concerned both projects in the EEA as in the export territories (see for instance, for Nexans: Recitals (238), (276), (282), (296), (332), (347), and (399); for Pirelli/Prysmian: Recitals (137), (143), (282), (296), (332) (333), (341) and (399); for Sumitomo, Hitachi and JPS: Recitals (137), (143), (153) and (154); for Furukawa, Fujikura and VISCAS: Recitals (137) and (143); for Brugg: Recitals (238) and (296); for Sagem/Safran/Silec: Recitals (296), (333), (337) and (341); for nkt: Recital (296); for LS Cable: Recital (279); and for Taihan: Recital (279)).⁸⁹⁰
- (494) While some parties may claim that many contacts between power cable producers were held for legitimate reasons, they have failed to adduce any evidence that would establish this with regard to the evidence presented in Section 3.
- (495) Concerning the argument that the parties meeting on 18 February 1999 did not culminate in a joint intention to restrict competition, it is noted that in line with settled case law the Commission does not review the evidence for this meeting in isolation.⁸⁹¹ [information pre-dating the infringement period]. [information pre-dating the infringement period] ([...]). [information pre-dating the infringement period].⁸⁹²
- (496) Instead, subsequently, [non-addressee], Pirelli, Furukawa, Fujikura, Sumitomo and Hitachi all participated in a meeting on 18 February 1999 to discuss together the details of the new anti-competitive arrangement. From the evidence presented in Recital (137), it is clear that the parties discussed who may be additional participants in their anti-competitive arrangement, what should be the exact parameters of their new anti-competitive arrangement regarding the home territories, the quota and the monitoring of the agreement, and how often cartel meetings should take place.

⁸⁸⁹ As indicated in Section 4.2.2, the Commission is the competent authority to deal with these agreements and/or concerted practices to the extent that they were implemented or had effects in the EEA.

⁸⁹⁰ As indicated in Section 4.2.2, the Commission is the competent authority to deal with these agreements and/or concerted practices to the extent that they were implemented or had effects in the EEA.

⁸⁹¹ See the analysis of the Court of Justice in Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 55-57. See also Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I-8375, paragraphs 513 to 523; see also Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering, formerly NKK Corp. (T-67/00), Nippon Steel Corp. (T-68/00), JFE Steel Corp. (T-71/00) and Sumitomo Metal Industries, Ltd (T-78/00) v Commission* [2004] ECR- II-2501, paragraphs 179 and 180.

⁸⁹² Case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* [2012] not yet reported, paragraph 52.

- (497) Indeed, some of the issues discussed at the meeting on 18 February 1999 did not result in an agreement. Notably, the parties did not conclude on whether to apply a 60/40 or a 70/30 split for the export territories. Also, it appears not to have been decided whether the home territories should cover Sweden (ABBs factory basis), Korea and [Japanese home territory] as the references to these territories are followed by a question mark.
- (498) The decisive question is however whether the discussions on this meeting on 18 February 1999 led to a situation where the six companies, through their participation, eliminated or at the very least substantially reduced uncertainty as to the conduct expected from them on the market.⁸⁹³ In order to decide that question, the Commission is entitled to look at the whole body of evidence surrounding this meeting, including the conduct of the parties before the meeting and their conduct thereafter.⁸⁹⁴
- (499) [...], as pointed out in Recital (495), it is apparent that [information pre-dating the infringement period] the parties discussed [time period] the manner in which a [...] arrangement [...] could be established. [...], the parties warned each other that individual actions concerning projects in the *export territories* may "[...]" (see, Recital (129)). It is highly likely that individual actions concerning the *home territories* would have resulted in a breakdown of confidence between the parties.
- (500) Evidence would however suggest that such a breakdown of confidence did not take place, as after the meeting on 18 February 1999 the parties continued to meet each other on at least 8 more joint A/R meetings in 1999 (see, Recitals (139)-(143)) and 2000 (see, Recitals (146) and (154)). The contemporaneous notes of these meetings, the statements [...], and other contemporaneous evidence demonstrate that [non-addressee], Pirelli, Furukawa, Fujikura, Sumitomo and Hitachi in this period actively allocated projects in the export territories.⁸⁹⁵
- (501) In addition, the contemporaneous notes of these meetings after 18 February 1999 show that the parties used the meetings to refine the arrangement with regard to the potential additional participants, the inclusion of certain voltage levels in the allocation of projects in the export territories, the so-called preferred territories, and the appointment of regional coordinators (See notably Recitals (141) and (143)). Again, had there not been an agreement on the home territories at this time, it is highly unlikely that the parties would have continued their efforts to refine the arrangements.
- (502) The commitment of the Japanese (and later the Korean) producers not to enter the home market of the European producers was based on a simple concept, which could be implemented easily.⁸⁹⁶ The implementation of this commitment does not require, in principle, interaction between the undertakings concerned. Instead, the application of this part of the infringement required the Japanese (and later the Korean)

⁸⁹³ Case T-53/03 *BPB v Commission* [2008] ECR II-1333, paragraphs 153 and 182.

⁸⁹⁴ Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries, Ltd and Nippon Steel Corp. v Commission* ('Seamless steel tubes') [2007] ECR I-729, paragraphs 41-45; Case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* [2012] not yet reported, paragraph 188, Case T-439/07 *Coats Holdings Ltd v Commission* [2012] not yet reported, paragraph 60.

⁸⁹⁵ Furukawa, for instance, for itself admits that ad hoc arrangements were made; ID [...], Furukawa reply to SO of 11 November 2011.

⁸⁹⁶ Case T-113/07 *Toshiba Corp. v Commission* [2011] ECR II-3989, paragraph 123.

producers to refrain from acting. It is therefore natural that the evidence with regard to the existence and application of this principle remains limited. [...] the parties only had a need to contact each other concerning the home territory principle in a limited number of instances (described in Recitals (80)-(86)). In addition, the parties were acutely aware of the illegal nature of their activities (see, for instance, Recitals 0, (132), (137) and (189)) and put a number of organisational and technical precautions in place to prevent its discovery.

- (503) Nevertheless, as set out in Section 3, the Commission is in possession of evidence that points to the implementation of the home territory principle already at this point in time (see Recitals (141), (145), (147) and especially (179) where it is explicitly confirmed that [Japanese home territory] forms part of "*A's home territory*").
- (504) None of the parties have provided indicia that they in reality did not adhere to the home territory principle at this time, or that they openly distanced themselves from its application.
- (505) When [non-addressee], Pirelli, Furukawa, Fujikura, Hitachi and Sumitomo expanded the circle of participants in 2001 further contemporaneous evidence emerged of the existence of a home territory principle (see Recital (185)). At the same time, parties referred to their collusive activities as "*the scheme*" (see Recital (178)) or the "*basic scheme of regular table*" (Recital (179)). While the parties therefore deny that there existed a joint intention between them in 1999, there clearly was a cartel scheme in existence in 2001.
- (506) In view of (i) [...] [information pre-dating the infringement period] and (ii) the conduct thereafter when parties openly allocated projects in the export territories, respected their respective home territories and considered whether to invite others to "*the scheme*", the meeting on 18 February 1999 evidences the existence of a common intention at that time to allocate markets and customers and to distort the normal competitive process for both SM and UG power cable projects. From this date, at the very least, there was a concurrence of wills on the very principle of a restriction of competition amongst the participants. The parties therefore concluded an agreement or applied a concerted practice within the meaning of Article 101(1) of the Treaty even if some of the specific details of the cartel arrangement were still under discussion at that time.⁸⁹⁷
- (507) The Commission has not found any evidence that the application of the home territory principle and the allocation of projects in the EEA were limited to only a narrow category of sales, as Nexans, Brugg and nkt claim. Nexans, Brugg and nkt also fail to supply evidence to this effect. Instead, there is ample evidence that these practices were of general application, irrespective of the type of customer or the amount of sales (see, notably, Recitals (141), (214), (228), (258), (268), (269), (374)). This evidence also concerns a range of different customers and sales channels (see, for instance, Recitals (245), (315), (353)-(354)).
- (508) Moreover, there is no evidence that the application of the home territory principle was limited to specific categories of voltages. While the parties may have discussed initially to limit the allocation of projects in the export territories to cables of [...] kV and above (Recital (141)), such discussion never took place with regard to projects

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Case T-186/06 *Solvay SA v Commission* [2011] ECR II-2839, paragraph 86.

located in the home territories. All the evidence demonstrates that this principle was of general application. With regard to the export territories, the allocation of projects below [...] kV would take place "*as much as possible*" (Recitals (141) and (225)) so the allocation of projects below [...] kV was certainly not *per se* excluded.

- (509) The evidence provided in Section 3 indicates that the parties did not intend to exclude specific countries from the application of their agreement or concerted practice, except for the United States (See Recital (93)).
- (510) On the basis of the above considerations, the Commission considers that the complex of infringements in this case presents all the characteristics of an agreement and/or a concerted practice in the sense of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

4.3.3. *Single and continuous infringement*

4.3.3.1. Principles

- (511) A complex cartel may properly be viewed as a *single and continuous infringement* for the time frame in which it existed. The General Court pointed out, *inter alia*, in the *Cement* case that the concept of 'single agreement' or 'single infringement' presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.⁸⁹⁸ The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 101 of the Treaty.⁸⁹⁹
- (512) It would be artificial to split up such continuous conduct, characterised by a single objective, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively manifested itself in both agreements and concerted practices.⁹⁰⁰
- (513) The General Court has specified that in order for infringements to be treated as one it is required that they are complementary in nature and have a single objective. Different objectives implemented by dissimilar methods lead to the conclusion that infringements must be treated as separate infringements of Article 101 of the Treaty and not as a single and continuous infringement.⁹⁰¹
- (514) Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role. One or more participants may exercise a dominant role as ringleader(s). Internal conflicts, rivalries or even cheating may occur, but will not, however, prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 101 of the Treaty where there is a single common and continuing objective.

⁸⁹⁸ Joined Cases T-25/95 and others *Cimenteries CBR and Others v Commission* ('*Cement*') [2000] ECR II-491, paragraph 3699.

⁸⁹⁹ Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraph 81.

⁹⁰⁰ Case T-1/89 *Rhône-Poulenc SA v Commission* [1991] ECR II-867, paragraphs 125–126.

⁹⁰¹ Joined Cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission* [2007] ECR II-4949, paragraphs 179 and 209.

- (515) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen it and was nevertheless prepared to take the risk.⁹⁰²
- (516) Although Article 101 of the Treaty does not refer explicitly to the concept of single and continuous infringement, it is settled case law of the Court of Justice that "*an undertaking may be held responsible for an overall cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel*".⁹⁰³
- (517) The fact that the undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it of responsibility for the infringement of Article 101(1) of the Treaty. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed. Such a conclusion is not at odds with the principle that responsibility for such infringements is personal in nature, nor does it neglect individual analysis of the evidence adduced, in disregard of the applicable rules of evidence, or infringe the rights of defence of the undertakings involved.⁹⁰⁴
- (518) In fact, as the Court of Justice stated in its judgment in Case *Commission v Anic Partecipazioni*, the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows, as reiterated by the Court in *Cement*, that an infringement of Article 101 of the Treaty may result not only from an isolated act but also from a series of acts or from a continuous conduct. 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 and taken in isolation an infringement of Article 101 of the Treaty. When different actions form part of an 'overall plan', with the identical object to distort competition within the internal

⁹⁰² Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraph 83.

⁹⁰³ Cases T-295/94 *Buchmann GmbH v Commission* [1998] ECR II-869, paragraph 121; T-310/94 *Gruber + Weber GmbH v Commission* [1998] ECR II-1043, paragraph 140; T-311/94 *BPB de Eendracht NV, formerly Kartonfabriek de Eendracht v Commission* [1998] ECR II-1129, paragraph 237; T-334/94 *Sarrió SA v Commission* [1998] ECR II-01439, paragraph 169; T-348/94 *Enso Española v Commission* [1998] ECR II-1875, paragraph 223. See also Case T-9/99 *HFB Holding and Isoplus Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and Others v Commission* [2002] ECR II-1487, paragraph 231.

⁹⁰⁴ Joined Cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission* [2007] ECR II-4949, paragraph 60.

market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.⁹⁰⁵

- (519) An undertaking that has only taken part in some of the forms of anti-competitive conduct comprising a single and continuous infringement, but has not contributed to all the common objectives pursued by the other participants in the cartel or was not aware of or could reasonably have foreseen all the other offending conduct planned or put into effect by the other participants, cannot be relieved of its liability for the conduct in which it has undeniably taken part or for which it can undeniably be held responsible, if such conduct may in itself constitute an infringement of Article 101 of the Treaty.⁹⁰⁶

4.3.3.2. Arguments of the parties

- (520) Some parties have pointed to the differences between SM and UG power cables and the fact that not all parties are able to supply SM power cables. They argue that both cables form two separate markets and that the investigation should have focussed on two separate infringements.⁹⁰⁷
- (521) nkt and Brugg argue that they did not take part in many of the cartel activities described in Recital (493) and point to their passive role.⁹⁰⁸ Brugg also raises the fact that it is the smallest of all European cable producers.⁹⁰⁹ Furukawa and Fujikura state that they were not involved in the application of the home territory principle in the period before 11 June 2001 or 30 September 2001.⁹¹⁰ Showa and Mitsubishi both deny direct participation in the cartel arrangements.⁹¹¹
- (522) nkt claims that it was never informed about the home market rule.⁹¹² Brugg also claims that it was not aware of many aspects of the cartel, such as the home market rule, the contractors rule and the fact that SM power cables were also included.⁹¹³
- (523) Several parties also argue that the infringement ceased or was interrupted following a 9 June 2004 meeting in Tokyo, or following the establishment of the joint venture between Nexans and VISCAS in 2006.⁹¹⁴

⁹⁰⁵ Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 258. See also Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraphs 78-81, 83-85 and 203; Joined Cases T-101/05 and 111/05 *BASF AG and UCB SA v Commission* [2007] ECR II-4949, paragraphs 159-161; Case T-446/05 *Amann & Söhne GmbH & Co. KG and Cousin Filterie SAS v Commission* [2010] ECR II-01255, paragraphs 90, 91; Case T-11/05 *Wieland-Werke AG, Buntmetall Amstetten GmbH and Austria Buntmetall AG v Commission* [2010] ECR II-00086* Summ.pub.

⁹⁰⁶ C-441/11 *Commission v Verhuizingen Coppens NV* [2012] not yet reported, paragraphs 44-45.

⁹⁰⁷ ID [...], nkt reply to SO of 3 November 2011; ID [...], EXSYM reply to SO of 30 September 2011; ID [...], EXSYM reply to SO of 24 February 2012; ID [...], Prysmian reply to SO of 24 October 2011; ID [...], Brugg reply to SO of 24 October 2011.

⁹⁰⁸ ID [...], nkt reply to SO of 3 November 2011; ID [...], Brugg reply to SO of 24 October 2011.

⁹⁰⁹ ID [...], Brugg reply to SO of 30 June 2011.

⁹¹⁰ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], Fujikura reply to SO of 24 October 2011.

⁹¹¹ ID [...], Showa reply to SO of 30 September 2011; ID [...], Mitsubishi reply to SO of 20 September 2011.

⁹¹² ID [...], nkt reply to SO of 3 November 2011.

⁹¹³ ID [...], Brugg reply to SO of 24 October 2011.

4.3.3.3. Discussion and findings

- (524) The facts described in Section 3 of this Decision provide evidence of the existence of a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (525) This conclusion is based on the fact that (a) there existed an overall plan with the single aim to restrict competition for SM and UG power cable projects in specific territories by agreeing on market and customer allocation and thereby to distort the normal competitive process (b) all parties intentionally contributed in their own way to that single aim and (c) with very few exceptions, all parties were aware of the conduct planned or put into effect by the other undertakings in pursuit of that same single aim or could have reasonably foreseen it and were prepared to take the risk.⁹¹⁵
- (526) This conclusion is unaffected by the particular circumstances of this cartel:
- the cartel had two main configurations: the A/R cartel configuration and the European cartel configuration (see, Recital (73));
 - the cartel had different allocation methods: a home territory arrangement (see, Section 3.3.1.1) and an allocation arrangement for projects in the export territories (see, Section 3.3.1.2);
 - the cartel concerned two distinct products: SM power cables and UG power cables;
 - the cartel concerned two main groups of producers: the European group with Nexans, Prysmian, ABB, Sagem/Safran/Silec, Brugg and nkt and the Japanese/Korean group with Sumitomo, Hitachi and JPS, Furukawa and Fujikura and VISCAS, Mitsubishi, Showa and EXSYM, LS Cable and Taihan whose individual involvement in and contribution to the cartel differed.

a. The existence of an overall plan with a single aim

- (527) It is clear from the evidence presented in Section 3 that the parties participated in a series of acts which formed part of an overall plan. Section 3 contains evidence of numerous circumstances and actions which are complementary in nature as each of them was intended to restrict competition for SM and UG power cable projects in specific territories by agreeing on market and customer allocation and thereby to distort the normal competitive process. By interacting, these circumstances and actions contributed to the realisation of the set of anti-competitive effects intended by the parties, within the framework of the overall plan having a single aim.⁹¹⁶

i. The organisation of the cartel pursued the same single aim

⁹¹⁴ ID [...], Fujikura reply to SO of 24 October 2011; ID [...], EXSYM reply to SO of 30 September 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Prysmian reply to SO of 24 October 2011; ID [...], Nexans reply to SO of 26 October 2011.

⁹¹⁵ Case C-444/111 P *Team Relocations v Commission* [2013] not yet reported, paragraph 51. As concluded in Recitals (614)-(615), there is no evidence that Showa and Mitsubishi may have been aware of the European cartel configuration or that LS Cable and Taihan may have been aware of the SM power cable part.

⁹¹⁶ Joined Cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission* [2007] ECR II-4949, paragraphs 179 to 181.

- (528) From the first meetings between the participants in 1999, it was clear that the cartel should cover both SM and UG power cables, contain a home territory principle, a quota arrangement for projects in the export territories and involve at least the same core group of Japanese (Hitachi, Sumitomo and JPS, Furukawa, Fujikura and VISCAS) and European ([non-addressee]/Nexans and Pirelli/Prysmian) companies [...] (see, notably, Recitals (137)-(143)).⁹¹⁷
- (529) This core group set up a system of A/R meetings, rotating between Europe and Asia, in which a limited number of producers participated, to minimise the risk of detection. Initially, the parties aimed to hold these A/R meetings every two months in either Europe or South-East Asia (see Recital (137)). In practice, however, the facts described in Section 3 demonstrate that the meetings were held at more irregular intervals. In some years the parties organised up to seven meetings while in other years they held only two meetings.
- (530) The A/R meetings encompassed both the home territory agreement and the arrangement to allocate projects in the export territories. As the rules with regard to the home territory principle were clear between the parties, the A/R meetings were not generally required to enforce these rules. A/R meetings appear to have been mainly organised to allocate new projects in the export territories, when new participants had joined and/or new issues had come up, such as imbalances in the position sheets, or when threats to or infringements of the cartel's rules needed to be discussed (see Recitals (96)-(98)). In November 2002, for instance, an A/R/K meeting was organised to imprint the rules of the cartel in clear terms upon the Korean companies (see Recitals (224) and (227)).
- (531) At the A/R meetings both SM and UG power cables were discussed. On some occasions, the parties would discuss SM and UG power cables on consecutive meetings on the same day or on consecutive days, on other occasions both type of cables were discussed at the same meeting. The representatives of the companies that attended the meetings, as set out in Section 3 were also the same for both SM and UG power cables.⁹¹⁸ Only for Pirelli/Prysmian did different representatives attend the meetings (see Annex I and, for instance, Recitals (142), (157)-(162), (173)-(175), (186)-(187), (205)-(207)). The representatives of Nexans and Pirelli/Prysmian that attended the A/R meetings also attended the meetings of the European cartel configuration.
- (532) To minimise the risk of detection, the core group aimed to keep the number of parties involved in the actual negotiations as small as possible, while coordinators on each side (A and R) would inform the smaller cartel associates. The parties therefore all understood that it was the task of the coordinators to instruct the smaller producers who were not invited to the A/R meetings (see notably, Recitals (141) and (143)). It was known to all participants that the R coordinator, [company representative A1] (Nexans), negotiated on behalf of the R associates ABB, Sagem/Safran/Silec, Brugg and nkt (see for instance Recitals (195), (210), (229), (239), and (271)). The R coordinator had also the task of briefing the R companies not present at the A/R

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[...]

In line with the judgment of the General Court in Case T-410/09 *Almamet v Commission* [2012] not yet reported, at paragraph 169, the mere fact that separate meetings were held is not sufficient for the existence of a single and continuous infringement to be ruled out, particularly since the meetings relating to SM power cables took place immediately after those related to UG power cables.

meetings about recent developments. (see, for example, Recitals (249), (275)) and (295)). Similarly, if one of the Japanese companies could not attend the A/R meeting, the Japanese coordinator would inform that company of the proceedings (see, notably Recital (429)). In addition, the Japanese coordinator also acted on behalf of A-associates Mitsubishi, Showa, Taihan and LS Cable (see notably, Recitals (179), (229), (240), (243), (263), (279)(e), (302)).

- (533) The coordinators ensured the proper monitoring and enforcement of the cartel for both SM as UG cables and for both the home territory principle as well as the allocation of projects in the export territories. The parties forwarded enquiry notifications of customers located in another home territory to the coordinator. In addition, the coordinator received the notifications for upcoming projects in the export territories for which reporting rules existed. It was also the coordinator who was responsible for arranging guidance for the parties, which allowed the parties to keep the market prices above competitive levels (see, for example, Recitals (231), (266) and (279)). Through the coordinator, the parties exchanged position sheets for both SM as well as UG power cables (Recital (99)). Finally, it were the coordinators who would undertake action when one of the other companies had not respected agreed allocations (see, for example, Recitals (339), (349), (358) and (376)).
- (534) The European cartel configuration (as well as the allocation among the Asian companies) was subordinate to the almost global arrangement and gave effect to it. Indeed, at the European R meetings, the European coordinator would relay the discussions that took place at the A/R meeting (see Recitals (249), (275), (306)). To this end, the parties would often organise R meetings shortly after an A/R meeting (Recitals (188) and (216)). Moreover, at the R meetings, the parties expressed their interest in projects in the export territories that were to be discussed in the A/R meetings. Equally, the parties to the A/R meetings were also informed of the main discussions in the European cartel configuration (see Recitals (187), (188), (195), (229), (256), (287) and (349)). The European cartel configuration formed therefore an integral part of the overall plan.
- (535) Finally, on some occasions, the parties' actions implied that they did not differentiate between SM and UG power cables as far as the pursuit of the single aim was concerned. In Recital (277) a meeting is recorded in which JPS expressed its interest in a number of projects without distinguishing between UG and SM projects. In addition, in Recital (399) an example is given which shows that in case of imbalances it was irrelevant whether compensation was given in the form of the allocation of UG or SM projects.

ii. The cartel activities occurred at the same time

- (536) All the cartel activities occurred at the same time. [information pre-dating the infringement period] While the A/R meeting on 18 February 1999 concerned only SM power cables, it was followed within a month by a meeting concerning UG power cables (Recital (139)). [information pre-dating the infringement period] and, as (d) the first meeting on UG power cables took place so quickly upon the meeting of 18 February 1999; the Commission considers that it was always the intention of the parties to cover both UG and SM power cables in parallel in their arrangement. The establishment of the R meetings of the European cartel configuration only became relevant once additional European producers had joined the cartel and they served in part as a discussion forum for the subjects raised in the A/R meetings (Recital (188)). The home territory arrangement functioned in parallel to the

allocation of projects in the export territories and the European cartel configuration and this was also explained as such to newcomers to the cartel (Recitals (268) and (271)). Regardless of the particular circumstances of the cartel; all aspects operated in parallel.

iii. the same group of parties were involved

- (537) The core group of undertakings (Nexans, Pirelli/Prysmian, Furukawa, Fujikura and VISCAS, Sumitomo, Hitachi and JPS) was the same for both SM and UG power cables, and applied both the home territory principle and the arrangement for the allocation of projects in the export territories. While for obvious reasons the Japanese and Korean companies were not involved in the European cartel configuration, Nexans and Pirelli/Prysmian were active in both.
- (538) It was the core group of parties that urged the expansion of the cartel to include also the additional participants Showa, Mitsubishi and EXSYM, Sagem/Safran/Silec, ABB, nkt and Brugg (see for instance Recitals (137), (143), (157), (165), (166), (173), (178), (186) and (206)).
- (539) As the common elements outweigh the differences among the cartel arrangements, it would be artificial to split the investigation into different infringements.

b. All parties intentionally contributed in their own way to that single aim

- (540) It is sufficient for the Commission to show that the undertaking concerned attended meetings at which anticompetitive agreements were concluded, without manifesting its opposition to such meetings, to prove to the requisite legal standard that that undertaking participated in the cartel. In order to establish that an undertaking participated in a single agreement, made up of a series of unlawful acts over time, the Commission must prove that that undertaking intended, through its own conduct, to contribute to the common objectives pursued by the participants as a whole and that it was aware of the substantive conduct planned or implemented by other undertakings in pursuance of those objectives, or that it could reasonably have foreseen that conduct and that it was ready to accept the attendant risk. In that regard, where an undertaking tacitly approves an unlawful initiative, without publicly distancing itself from the content of that initiative or reporting it to the administrative authorities, the effect of its behaviour is to encourage the continuation of the infringement and to compromise its discovery. It thereby engages in a passive form of participation in the infringement which is therefore capable of rendering that undertaking liable in the context of a single agreement.⁹¹⁹
- (541) Moreover, the notion of publicly distancing oneself as a means of excluding liability must be interpreted narrowly. In order to disassociate itself effectively from anti-competitive discussions, it is for the undertaking concerned to indicate to its competitors that it does not in any way wish to be regarded as a member of the cartel and to participate in anti-competitive meetings. In any event, silence by an operator in a meeting during which an unlawful anti-competitive discussion takes place cannot be regarded as an expression of firm and unambiguous disapproval. A party which tacitly approves of an unlawful initiative, without publicly distancing itself

⁹¹⁹ Case T-99/04 *AC-Treuhand AG v Commission* [2008] ECR II-1501, paragraph 130. Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries, Ltd and Nippon Steel Corp. v Commission* ('Seamless steel tubes') [2007] ECR I-729, paragraphs 47 and 48.

from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery.⁹²⁰

- (542) As indicated in Recitals (515) and (517), as regards the determination of the individual liability of an undertaking whose participation in the cartel is not as extensive or intense as that of the other undertakings, it is apparent from the case law that, although the agreements and concerted practices referred to in Article 101(1) of the Treaty necessarily result from collaboration by several undertakings, all of whom are co-perpetrators of the infringement but whose participation can take different forms – according to, inter alia, the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged – the mere fact that each undertaking takes part in the infringement in ways particular to it does not suffice to rule out its liability for the entire infringement, including conduct put into effect by other participating undertakings but sharing the same anti-competitive object or effect.⁹²¹
- (543) Moreover, the fact that there is evidence in Section 3 which demonstrates that internal conflicts, rivalries and cheating occurred does not change that conclusion (see, notably Recitals (255), (256), (263), (291), (315), (334), (339), (350), (354), (355), (358), (370), (377), (384), (397), (404), (427) and (437)). As said in Recital (514) such instances did not prevent the parties from pursuing the common objective.
- (544) Finally, the fact that not all parties were able to produce both UG and SM power cables and that EXSYM remained outside of the discussion on SM power cables, does not necessarily mean that these companies cannot be held liable for an infringement covering both UG and SM power cables.⁹²² The Recitals below give for each party an individual analysis of its participation, awareness and therefore liability in light of the particular circumstances of the cartel as set out in Recital (526) (Recitals (545)-(619)).

Nexans, Pirelli/Prysmian, Furukawa, Fujikura and VISCAS, Sumitomo, Hitachi and JPS

- (545) Nexans, Pirelli/Prysmian, Sumitomo, Hitachi, and JPS, Furukawa, Fujikura and VISCAS, were involved in almost all of the cartel activities described in Recital (493)). They (or their predecessors) took part in the negotiations leading up to the cartel and they were involved from the beginning of the cartel. In addition, representatives of these participants were involved in most of the communications and meetings of the cartel despite the existence of coordinators on each side. Through their presence in the A/R meetings, all core group participants were able to set out the parameters of the cartel. With the exception of JPS, all participants also remained active in the cartel right to the end. Because of their key involvement in the establishment and implementation of the home territory principle and (for Nexans and Pirelli/Prysmian) their role in the European cartel configuration, these parties are considered as the core group.

⁹²⁰ Case T-303/02 *Westfalen Gassen Nederland NV v Commission* [2006] ECR I-4567, paragraphs 103 and 124 and Case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* [2012] not yet reported, paragraphs 52-65. .

⁹²¹ Case T-99/04 *AC-Treuhand AG v Commission* [2008], ECR II-1501, paragraph 131.

⁹²² Case T-99/04 *AC-Treuhand AG v Commission* [2008] ECR II-1501 and Case T-29/05 *Deltafina v Commission* [2010] ECR II-04077, paragraph 48.

- (546) Nexans does not deny its participation in the infringement but claims the collusion alleged in the SO was of an *ad hoc* nature, limited to specific sales and had limited effect on competition in the EEA.⁹²³
- (547) Nexans' employees attended a large number of bilateral and multilateral meetings with European and Asian competitors between November 2000 and January 2009 (see Section 3 and Annex I), and were deeply involved in the other anti-competitive contacts (see, for instance, Recitals (177), (191), (218), (231), (232), (234) and (279)). Nexans also played a key role in the cartel, since its employee [company representative A1] acted as the European coordinator within the cartel (see, for instance, Recitals (231), (234), (236), (279) and (372)).
- (548) Evidence shows that the anti-competitive meetings and other contacts between Nexans and the other parties concerned both UG and SM power cables (see Section 3 and Annex I). In the course of those contacts, Nexans participated actively in the allocation of UG and SM projects in the European cartel configuration through its presence at R meetings and through other meetings and contacts (see, for instance, Recitals (180), (252), (274), (280) and (333)-(335)). Nexans was also involved in the allocation of projects in the export territories concerning both UG and SM power cables (see, for instance, Recitals (178), (244), (245) and (362)). It is apparent from the evidence cited in Section 3 that Nexans actively applied the home territory principle (see, for instance, Recitals (214), (228), (231), and (258)).
- (549) Prysmian does not deny its participation in the infringement although it denies the duration thereof.⁹²⁴
- (550) Pirelli's/Prysmian's employees attended a large number of bilateral and multilateral meetings with European and Asian competitors between 18 February 1999 and January 2009 (see Section 3 and Annex I), and were deeply involved in the other anti-competitive contacts (see, for instance, Recitals (137), (177), (191), (220), (232), (234) and (279)).
- (551) Evidence shows that the anti-competitive meetings and other contacts between Pirelli/Prysmian and the other parties concerned both UG and SM power cables (see Section 3 and Annex I). In the course of those contacts, Pirelli/Prysmian participated actively in the allocation of UG and SM projects in the European cartel configuration through its presence at R meetings and through other meetings and contacts (see, for instance, Recitals (202), (274), (333), (363), (372), (435) and (436)). Prysmian was also involved in the allocation of projects in the export territories concerning both UG and SM power cables (see, for instance, Recitals (239), (358), (363) and (394)). It is apparent from the evidence cited in Section 3 that Prysmian actively applied the home territory principle (see, for instance, Recitals (137), (231), (263), (340), (374) and (394)).
- (552) [...].⁹²⁵
- (553) Sumitomo, Hitachi and JPS' employees attended a large number of bilateral and multilateral meetings with European and Asian competitors between 18 February 1999 and 10 April 2008 (see Section 3 and Annex I), and were deeply involved in

⁹²³ ID [...], Nexans reply to SO of 26 October 2011.

⁹²⁴ ID [...], Prysmian reply to SO of 24 October 2011.

⁹²⁵ ID [...], [...].

other anti-competitive contacts (see, for instance Recitals (198), (229), (231), (283), (284), (291) and (293)).

- (554) Evidence shows that the anti-competitive meetings and other contacts between Sumitomo, Hitachi and JPS and the other parties concerned both UG and SM power cables (see Section 3 and Annex I). In the course of those contacts, Sumitomo, Hitachi and JPS not only actively respected the European home territory (see, for instance, Recitals (137), (185), (198), (214), (221), (228), (231), (232) and (279)), but were also involved in the allocation of projects in the export territories concerning both UG and SM power cables (see, for instance, Recitals (144), (161), (208), (224), (349), (362) and (423)).
- (555) Furukawa and Fujikura each deny their participation in the infringement in so far as the home territory principle is concerned.⁹²⁶ [...] ⁹²⁷
- (556) [information pre-dating the infringement period] Both companies were present at the meeting on 18 February 1999 which is considered as the starting date for the cartel (see Recital (137)). Subsequently, Furukawa and Fujikura participated in respectively 7 and 9 additional anti-competitive meetings between 24 March 1999 and 1 October 2001 (see Section 3 and Annex I).
- (557) Evidence shows that the anti-competitive meetings and other contacts between Furukawa and Fujikura and the other parties concerned both UG and SM power cables (see, for instance, Recitals (137), (139), (140), (141) and (143)). In the course of those contacts, Furukawa and Fujikura participated in the discussions on the application of the European home territory (see, for instance, Recitals (137) and (147)) and were also involved in the allocation of projects in the export territories concerning both UG and SM power cables (see, for instance, Recitals (141), (143), (146) and (159)). Furukawa confirms that it indeed declined to bid for a project in the European home territory, but alleges that this decision was taken for technical reasons, not related to the application of the home territory principle.⁹²⁸ Furukawa fails however to provide documentary evidence in support of its claim.
- (558) The evidence referred to in Recital (503), combined with the complete absence of any indication that Furukawa and Fujikura distanced themselves from the discussions held during the A/R meetings they attended, combined with the fact that they continued their participation in the A/R meetings, and that they actively participated in the allocation of projects in the export territories, confirms their participation in the infringement.
- (559) In its reply, VISCAS [...] disputes the duration thereof and its effect on competition in the EEA.⁹²⁹
- (560) VISCAS's employees attended a large number of bilateral and multilateral meetings with European and Asian competitors between October 2001 and January 2009 (see Section 3 and Annex I), and were deeply involved in the other anti-competitive contacts (see, for instance, Recitals (191), (231), (279) and (321)).

⁹²⁶ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], Fujikura reply to SO of 24 October 2011.

⁹²⁷ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], Fujikura reply to SO of 24 October 2011.

⁹²⁸ ID [...], Furukawa reply to SO of 11 November 2011.

⁹²⁹ ID [...], VISCAS reply to SO of 9 November 2011.

- (561) Evidence shows that the anti-competitive meetings and other contacts between VISCAS and the other parties concerned both UG and SM power cables (see Section 3 and Annex I). In the course of those contacts, VISCAS not only actively respected the European home territory (see, for instance, Recitals (191), (214), (228), (231), (232), (245), (279), (294), (321) and (437)) but was also involved in the allocation of projects in the export territories concerning both UG and SM power cables (see, for instance, Recitals (239), (245), (375) and (394)).

ABB, EXSYM, Sagem/Safran/Silec and Brugg

- (562) EXSYM, ABB, Sagem/Safran/Silec and Brugg participated in several of the cartel activities set out in Recital (493). None of these companies was involved in the cartel from its start date and there is evidence that all companies joined on the instigation of the members of the core group (see Recital (538)). All four companies had a level of involvement in the cartel that distinguishes them from the core group but is insufficient to qualify them as "*fringe players*". Below, for each company the specifics of its participation in the single and continuous infringement are indicated.
- (563) As immunity applicant, ABB confirms that the SO reflected the information provided by ABB.⁹³⁰ Evidence shows that the anti-competitive meetings and other contacts between ABB and the other parties concerned both UG and SM power cables (see Section 3 and Annex I). In the course of those contacts, ABB participated actively in the allocation of UG and SM power cable project in the European cartel configuration through meetings and contacts (see, for instance, Recitals (202) and (280)). ABB was also involved in the allocation of projects in the export territories concerning both UG and SM power cables (see, for instance, Recitals (304) and (363)). It is apparent from the evidence cited in Section 3 that ABB actively applied the home territory principle (see, for instance, Recitals (277) and (294)). Because of its absence from the A/R meetings, ABB was not able to set out the parameters of the cartel. The level of participation of ABB is therefore lower than that of the core players. However, its deep involvement in many of the cartel activities as set out in Recital (493) and its participation in many contacts and meetings do not qualify ABB as a *fringe player*.
- (564) In its reply, EXSYM [...] disputes the duration thereof [*of the infringement*] and its effect on competition in the EEA.⁹³¹ EXSYM claims that it did not participate in the infringement as far as SM power cables are concerned as [...] (see Recital (219)).⁹³² [...].⁹³³
- (565) EXSYM was not involved in the establishment of the cartel but its employees attended a large number of bilateral and multilateral anti-competitive meetings with European and Asian competitors between June 2002 and January 2009 (see Section 3 and Annex I), and were deeply involved in the other anti-competitive contacts (see, for instance, Recitals (239), (264) and (319)). As a regular participant in the A/R meetings, EXSYM was able to set out the parameters of the cartel. As its participation remained limited to UG power cables, its influence was however lesser than that of the core players. Nevertheless, its deep involvement in many of the cartel

⁹³⁰ ID [...].

⁹³¹ ID [...], EXSYM reply to SO of 30 September 2011.

⁹³² ID [...], EXSYM reply to SO of 30 September 2011.

⁹³³ ID [...], EXSYM reply to SO of 30 September 2011.

activities as set out in Recital (493), its participation in the A/R meetings and its (temporary) role as a coordinator do not permit EXSYM to be qualified as a *fringe player*.

- (566) Evidence shows that the anti-competitive meetings and other contacts between EXSYM and the other parties concerned mainly UG power cables (See Section 3 and Annex I). In the course of those contacts, EXSYM not only actively respected the European home territory (see, for instance, Recitals (224)-(225), (353) and (357)) but was also involved in the allocation of UG projects in the export territories (see, for instance, Recitals (239), (244), (330), (423) and (431)).
- (567) On behalf of Sagem/Safran, Safran [...] disputes the duration thereof [*the infringement*].⁹³⁴
- (568) Sagem/Safran/Silec was not involved in the establishment of the cartel and did not attend any A/R meetings. Its employees attended at least 20 (mostly) multilateral anti-competitive meetings with (mostly) European competitors between 12 November 2001 and 16 November 2006, and were deeply involved in the other anti-competitive contacts such as phone calls and emails (see Section 3 and Annex I).
- (569) Evidence shows that the anti-competitive meetings and other contacts between Sagem/Safran/Silec and the other parties concerned mostly UG power cables (see Section 3 and Annex I). In the course of those contacts, Sagem/Safran/Silec participated actively in the allocation of UG projects in the European cartel configuration through its presence at R meetings and through other meetings and contacts (see, for instance, Recitals (249), (280), (296), (298), (299), (322), (348), (371)-(372)). Sagem/Silec/Safran was also involved in the allocation of UG projects in the export territories (see, for instance, Recitals (249), (296), (348) and (371)). It is apparent from the evidence cited in Section 3 that Sagem/Safran/Silec actively applied the home territory principle (see, for instance, Recital (185)).
- (570) As Sagem/Safran/Silec was absent from the establishment of the cartel and did not attend any A/R meetings, the level of its participation was lesser than that of the core players. Nevertheless, its deep involvement in many of the cartel activities as set out in Recital (493) and especially its active role in the allocations of several projects inside the European home territory as set out in, for instance, Recitals (108), (280), (298), (299), (306) and (347)) do not permit Sagem/Safran/Silec to be qualified as a *fringe player*.
- (571) Brugg denies its participation in many aspects of the infringement as set out in Recital (493).⁹³⁵ Brugg does not dispute its participation in the R meetings.⁹³⁶
- (572) Brugg was not involved in the establishment of the cartel and did not attend any A/R meetings. Its employees attended at least 17 (mostly) multilateral anti-competitive meetings with its European competitors between December 2001 and November 2006 and were deeply involved in the other anti-competitive contacts (see Section 3 and Annex I).
- (573) Evidence shows that the anti-competitive meetings and other contacts between Brugg and the other parties concerned mostly UG power cables (see Section 3 and Annex

⁹³⁴ ID [...], Safran reply to SO of 3 October 2011.

⁹³⁵ ID [...], Brugg reply to SO of 24 October 2011.

⁹³⁶ ID [...], Brugg reply to SO of 24 October 2011.

I). In the course of those contacts, Brugg participated actively in the allocation of UG projects in the European cartel configuration through its presence at R meetings and through other meetings and contacts (See, for instance, Recitals (234), (298), (315)-(316), and (322)). Brugg was also involved in the allocation of UG projects in the export territories (see, for instance, Recitals (161), (285) and (349)). It is apparent from the evidence cited in Section 3 that Brugg was involved in communications concerning the home territory principle (see, for instance Recital (329)).

(574) As indicated in Recital (485), the fact that Brugg may not have abided by the outcome of the meetings it attended does not relieve it of full responsibility for the fact that it participated in the cartel. In view of the evidence, Brugg's statement is also not credible as it declared *vis-à-vis* other cartel members that it "*didn't spoil the level*" (Recital (370)), confirmed the allocation of projects made during the meetings (Recital (316)) and gave instructions (Recital (372)). Brugg thus implemented the main rules of the cartel. In addition, it is clear from the evidence referred to in Recital (573) and Section 3 and Annex I that Brugg regularly indicated its "*interest*" in projects, inquired about the positions of other R members or asked to be given "*the forefront*". This contradicts Brugg's assertion that it had a passive role. Moreover, Brugg's alleged minor capacity does not diminish its ability to participate in anticompetitive agreements with major competitors.⁹³⁷ As the General Court held in *Enichem Anic*, the question is not whether *the applicant's individual participation was capable of restricting competition but whether the infringement in which it participated with others could have had that effect.*⁹³⁸

(575) Brugg has not provided any evidence that it expressed a firm and unambiguous disapproval of the practices taking place at the meetings and contacts in which it took part. It is therefore clear that Brugg has participated directly in the single and continuous infringement. As Brugg was absent from the establishment of the cartel and did not attend any A/R meetings, the level of its participation was lesser than that of the core players. Nevertheless, its deep involvement in many of the cartel activities as set out in Recital (493) and especially its active role in the allocations of several projects inside the European home territory as set out in Recitals (234), (298) and (315) do not permit Brugg to be qualified as a *fringe player*.

Mitsubishi, Showa, LS Cable, Taihan and nkt

(576) The third group of participants, Mitsubishi, Showa, LS Cable, Taihan and nkt all participated to a more limited extent in the cartel activities described in Recital (493). None of these companies was involved in the cartel from its start date and there is evidence that all companies joined on the instigation of the members of the core group (see Recital (538)). All four companies had a level of involvement in the cartel that distinguishes them from the core group and the middle group and which permits them to be qualified as *fringe players*. Below, for each company the specifics of its participation in the single and continuous infringement are indicated.

(577) While both Mitsubishi and Showa deny any direct participation, the evidence viewed as a whole demonstrates their adherence to the cartel.

⁹³⁷ Case C-441/11 P *Commission v Verhuizingen Coppens* [2012] not yet reported, paragraph 64.

⁹³⁸ Case T-6/89 *Enichem Anic v Commission* [1991] ECR II-1623, paragraph 216.

- (578) [information pre-dating the infringement period].⁹³⁹ [information pre-dating the infringement period]. While Showa and Mitsubishi did not participate in the meeting on 18 February 1999, the start date of the cartel, [non-addressee] and Pirelli argued for their inclusion in the arrangement (Recital (137)). In practice, Mitsubishi and Showa were included in *ad hoc* arrangements concerning the export territories from at least February 2001 onwards (see Recitals (159) (Mitsubishi), (160) and (167) (Showa) and (178) Mitsubishi and Showa).⁹⁴⁰
- (579) With regard to the specific features of the arrangements [information pre-dating the infringement period], the contacts with Mitsubishi and Showa took place through the coordinator or contact window on the Japanese side. The fact that there is limited evidence of contact between Mitsubishi and Showa and the other cartelists is therefore not surprising as all parties were aware that this was one of the rules (see, for instance, Recital (141)). In an email from July 2001, the Japanese contact person at that time reported that the Japanese ("A4") companies had contacted Mitsubishi and Showa to offer them regular membership of the cartel. Mitsubishi and Showa were to comment on the membership proposal by the middle or end of August 2001 (Recital (179)).⁹⁴¹ There is no reason to doubt the veracity of this statement. For the Korean companies, the email mentions: "*LG/TH (...) agreed to have meeting amongst R, A and K*". Such an A/R/K meeting indeed took place soon thereafter (See Recital (184)).
- (580) The notes of the A/R meeting on 5 September 2001 mention that Mitsubishi and Showa had indeed confirmed their intention to become members "*taking in mind they are not equal to majour 4*" (Recital (181)). The notes are detailed and in this case too there are no reasons to question their reliability.
- (581) There are some indications that Mitsubishi and Showa were involved in some of the cartel arrangements from at least the beginning of 2001 (Recitals (157)-(158), (159) (Mitsubishi), (160) (Showa), (165)). While Mitsubishi and Showa did not attend any meetings, their inclusion in these *ad hoc* arrangements makes it highly likely that, at least from September 2001 onwards, they eliminated or, at the very least, substantially reduced any remaining uncertainty about the conduct expected from them on the market.⁹⁴²
- (582) This position is supported by the fact that at the next meeting, in November 2001, the future joint venture of Mitsubishi and Showa was already explicitly invited to join (Recital (186)). In addition, when the notes of this November 2001 meeting refer to Showa, they refer to this company as an "*A associate*" (Recital (186)). In 2002, both Showa and Mitsubishi continued to be involved in the allocation of projects in the export territories (Recitals (186) and (210)). Both companies are also listed as "*A associates*" on position sheets dating from the year 2002 (Recital (211)). The notes of the meeting in January 2002 do not even mention the issue of Mitsubishi's and Showa's participation any more. This is particularly relevant since the participation of LS Cable, Taihan, Brugg, Sagem, ABB and NKT is explicitly discussed. Had there been any question about the membership of Mitsubishi and Showa, it is likely that the notes would have mentioned this (Recitals (205)-(206)). Immediately upon

⁹³⁹ [...]

⁹⁴⁰ [...]

⁹⁴¹ [...]

⁹⁴² Case T-53/03 *BPB v Commission* [2008] ECR II-1333, paragraph 182.

the announcement of the creation of the joint venture EXSYM, this company was invited to attend the A/R meetings (Recital (212)). Again, had there been any question about the commitment of Mitsubishi and Showa, obviously its joint venture would never have been allowed to join upon its creation.

- (583) Therefore, to all intents and purposes, Showa and Mitsubishi were participants in the cartel arrangements from September 2001 onwards. This conclusion is not only based on the notes of the meeting in September 2001, but on all the evidence relating to Showa's and Mitsubishi's participation and on the specific features of the cartel described in this Decision. Notably, this evidence includes Mitsubishi's and Showa's actions prior to September 2001 and the events after September 2001. As Mitsubishi and Showa were absent from the establishment of the cartel and did not attend any A/R meetings, the level of their participation was less than that of the core and middle players. As Mitsubishi and Showa were only to a very limited extent involved in the cartel activities as set out in Recital (493) and in view of the short duration of their direct participation, Mitsubishi and Showa qualify as *fringe players*.
- (584) Taihan and LS Cable participated in the A/R/K meetings on 15 November 2002 (Recitals (227)-(229)), 4 March 2003 (Recital (244)) and 17 October 2003 (Recitals (268)-(273)). In addition, LS Cable participated in further anti-competitive meetings on 17 December 2004 (Recital (320)), 8 March 2005 (Recital (343)) and 18 May 2005 (Recital (349)). Taihan and LS Cable also met Nexans on 29 January 2002 (Recital (204)). During these meetings, the application of the home territory principle was discussed and projects in the export territories were allocated.
- (585) During the cartel arrangement LS Cable and Taihan protested several times against infringements of their home territory (see, for instance, Recitals (240), (263), (302)). In addition, LS Cable and Taihan were involved in the allocation of UG projects in the export territories (see, for instance, Recitals (157), (159), (167) and (244)). LS Cable was also explicitly involved in the application of the home territory principle as it sent out an enquiry notification to the R coordinator (Recital (279)) and received guidance for a project in Spain (Recitals (331) and (351)). With regard to a project within the EEA Taihan cooperated on one occasion (Recital (243)). It is clear that LS Cable and Taihan, through their participation in meetings and other contacts gave at least the impression to the other participants that they would cooperate in the agreements. There is no evidence that Taihan and LS Cable indicated to their competitors that they participated in those meetings in a spirit that was different from theirs. Instead, contemporaneous notes show Taihan's and LS Cable's willingness, or at least perceived willingness, to cooperate. This willingness also flows from the fact that both companies attended several meetings and had several contacts with the other cartelists after they were informed of the main rules of the cartel.
- (586) It is equally clear however that notably LS Cable made a genuine effort to compete for projects in the EEA, going against the home territory principle (See, for example, Recitals (263), (278)). In addition, it is clear that the Japanese companies regarded LS Cable and Taihan for a long time as outsiders and difficult to control (See for example, Recitals (243) and (357)).
- (587) Taihan [...] disputes the duration thereof and its effect on competition in the EEA.⁹⁴³ According to Taihan, it entered the arrangements with a view to protect its home

⁹⁴³ ID [...], Taihan reply to SO of 7 November 2011.

territory from foreign intrusion. In addition, Taihan felt forced to participate [...].⁹⁴⁴
[...].⁹⁴⁵

- (588) LS Cable also admits that it had to maintain an open dialogue with R and A since it was dependent on them for the supply of accessories.⁹⁴⁶
- (589) However, alleging the existence of coercion cannot alter the reality and the gravity of the infringement committed by Taihan and LS Cable as they participated in the cartel. Indeed, if the existence of coercion was established, the companies could have reported the pressure and the refusals to supply to the competent authorities and lodged a complaint with the Commission rather than participate in the cartel.⁹⁴⁷ Moreover, as established in Recital (485), the fact that LS Cable did not always abide by the outcome of the anti-competitive meetings it attended, does not relieve it of full responsibility for the fact that it participated in the cartel.
- (590) As indicated in Recital (515), by taking part in actions which contributed to the realisation of the shared objective, Taihan and LS Cable are equally responsible, for the whole period of their adherence to the common scheme, for the acts of the other participants pursuant to the same infringement.⁹⁴⁸ As Taihan and LS Cable were absent from the establishment of the cartel and the evidence shows that at many times they disrespected the European home territory both companies are qualified as *fringe players*.
- (591) nkt in general denies its participation in the cartel [...].⁹⁴⁹ nkt admits that it attended the R meetings but claims that these merely concerned the exchange of general information.⁹⁵⁰
- (592) Employees of nkt participated in at least 14 anti-competitive meetings with the other R-participants of the cartel between 3 July 2002 and 17 February 2006.⁹⁵¹ nkt organised itself one of these meetings (Recital (241)) and its employees requested the other participants in the cartel to meet (Recitals (368) and (381)). While there is some evidence that nkt's involvement in the cartel was not entirely limited to its attendance of several R meetings (see, for instance, Recitals (173), (179), (186), (212), (218), (234), (297), (368), (372) and (381)), overall the evidence demonstrates that nkt's participation in the allocations mainly took place at R meetings. The evidence available from these meetings clearly identifies the anti-competitive scope and nature thereof. Through these meetings power cable projects inside and outside the European home territory were allocated, also by nkt (see, for instance, Recitals (315), (334), (346), (370)). The evidence against nkt consists of documents drafted at the time the various contacts between competitors took place, that is to say *in tempore non suspecto*.

⁹⁴⁴ ID [...], Taihan reply to SO of 7 November 2011.

⁹⁴⁵ ID [...], Taihan reply to SO of 7 November 2011.

⁹⁴⁶ ID [...], LS Cable reply to SO of 31 October 2011.

⁹⁴⁷ Case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* [2012] not yet reported, paragraph 62.

⁹⁴⁸ As further set out in Recital (615) there is no evidence that LS Cable and Taihan were aware of the SM part of the agreement.

⁹⁴⁹ ID [...], nkt reply to SO of 3 November 2011.

⁹⁵⁰ ID [...], nkt reply to SO of 3 November 2011.

⁹⁵¹ ID [...], reply nkt of 7 May 2010 to RFI of 31 March 2010.

(593) Despite nkt's first claims that its participation in the infringement was limited to the notification and discussion of projects,⁹⁵² it is clear from the evidence referred to in Recital (592) and from nkt's own admission that the parties would indicate their "interest" in projects during the R meetings nkt attended.⁹⁵³ As is explained in Recital (648), by indicating its interest in a certain project, nkt eliminated, or at the very least substantially reduced uncertainty as to the conduct to expect from it on the market. In line with the case law, Article 101 of the Treaty and Article 53 of the EEA Agreement apply to this conduct.⁹⁵⁴

(594) nkt has not provided any evidence that it expressed a firm and unambiguous disapproval of the practices taking place at the meetings and contacts it took part in. As nkt was absent from the establishment of the cartel and did not attend any A/R meetings, the level of its participation was less than that of the core and middle players. Furthermore, its limited involvement in many of the cartel activities as set out in Recital (493) and especially the absence of evidence regarding an active role in the allocation of projects inside the European home territory beyond its attendance of R meetings qualify nkt as a *fringe player*.

c. Parties were aware of the conduct planned or put into effect by the other undertakings in pursuit of that same single aim or could have reasonably foreseen it and were prepared to take the risk

(595) With two exceptions, all the participants in the cartel were aware, or should have been aware, of the single aim to restrict competition for SM and UG power cable projects in specific territories by agreeing on market and customer allocation and thereby to distort the normal competitive process.⁹⁵⁵ This awareness includes the particular circumstances of the cartel as set out in Recital (526). The Recitals below give for each party an individual analysis of its awareness, notably when this is not obvious on the basis of a party's individual contribution to the single aim as set out in Recitals (545)-(594).

Nexans, Pirelli/Prysmian, Furukawa, Fujikura and VISCAS, Sumitomo, Hitachi and JPS

(596) The core group of companies Nexans, Prysmian, JPS and VISCAS and their predecessors/parent companies were clearly aware of the single aim as they established together the cartel and refined its workings. They attended regular A/R meetings and were involved in almost all the cartel activities as set out in Recital (493).

(597) Due to its participation in meetings and other contacts with its European and Asian competitors Nexans was clearly aware of all of the main features of the cartel arrangements of the home territory principle and the allocation of UG and SM projects in the export territories (see Recital (548)).

⁹⁵² ID [...], nkt reply to SO of 3 November 2011.

⁹⁵³ ID [...], nkt reply to SO of 3 November 2011.

⁹⁵⁴ Case T-110/07 *Siemens AG v Commission* [2011] ECR II-00477, paragraph 131; Case T-53/03; *BPB plc v Commission* [2008] ECR II-01333, paragraph 182.

⁹⁵⁵ As set out in Recital (615), there is no evidence that LS Cable and Taihan may have been aware of the SM power cable part of the cartel. As set out in Recital (614), there is no evidence that Mitsubishi and Showa may have been aware of the European cartel configuration in the pre-joint venture period.

- (598) Nexans also took part in the European cartel configuration (see, for instance, Recitals (175), (326), (335), (363), (391) and (435)) which shows its awareness of this part of the cartel. Moreover, Nexans was aware of the Asian configuration of the cartel due to its participation in meetings and other contacts in which the A configuration was discussed directly (see, for instance, Recitals (178), (214), (228), (258) and (259)).
- (599) As a founding member of the cartel, Pirelli/Prysmian was clearly aware of the main features of the cartel arrangements. It was aware of the home territory principle and the allocation of UG and SM projects in the export territories (see, for instance, Recital (551)) through its participation in meetings and other contacts with its European and Asian competitors.
- (600) Pirelli/Prysmian also took part in the European cartel configuration (see, for instance, Recitals (325), (326), (363), (391) and (414)) which shows the awareness of this part of the cartel. Moreover, Pirelli/Prysmian was aware of the Asian configuration of the cartel due to its participation in meetings and other contacts in which the A configuration was discussed (see, for instance, Recitals (224)-(229)).
- (601) As founding members of the cartel, Sumitomo, Hitachi and (later) JPS were clearly aware of the main features of the cartel arrangements. They were aware of the home territory principle and the allocation of UG and SM projects in the export territories (see, for instance, Recital (554)) through their participation in meetings and other contacts with their European and Asian competitors.
- (602) Sumitomo, Hitachi and JPS were also aware of the European cartel configuration (see, for instance, Recitals (186), (211)-(212), (218) and (287)).
- (603) As founding members of the cartel, Furukawa, Fujikura and (later) VISCAS were clearly aware of the main features of the cartel arrangements. They were aware of the home territory principle and the allocation of UG and SM projects in the export territories (see, for instance, Recitals (137), (557) and (561)) through their participation in meetings and other contacts with their European and Asian competitors.
- (604) Furukawa, Fujikura and VISCAS were also aware of the European cartel configuration (see, for instance, Recitals (186), (211), (212) and (287)).
- ABB, EXSYM, Sagem/Safran/Silec, Brugg*
- (605) ABB, EXSYM, Sagem/Safran/Silec and Brugg were aware of the single aim through their participation in meetings and contacts with the core group of participants.
- (606) ABB was clearly aware of the main features of the cartel arrangements. Due to ABB's participation in meetings and other contacts with its European and Asian competitors, it was aware of the home territory principle and the allocation of UG and SM projects in the export territories (see, for instance, Recitals (144), (163), (405), (415) and (416)). ABB also took part in the European cartel configuration (see, for instance, Recitals (202) and (280)) which shows its awareness of this part of the cartel. Moreover, ABB attended part of an A/R meeting in 2002 (see Recital (220)) which indicates that it was also aware the A/R cartel configuration.
- (607) EXSYM was aware of the main features of the cartel arrangement. Through its participation in meetings and other contacts with its European and Asian competitors, it was aware of the home territory principle and the allocation of projects in the export territories (see Recital (565)).

- (608) Although EXSYM alleges that it did not participate in the arrangements involving SM power cables, it is clear that it was aware of the existence of these arrangements (see, for instance, Recitals (292) and (323)). In so far as EXSYM is claiming that as a late joiner it did not understand the nuances of the operational rules of the cartel,⁹⁵⁶ there is sufficient evidence to refute this claim (see Recitals (224)-(229) in which the meetings on 14 and 15 November 2002 are discussed). EXSYM attended both these meetings and has supplied notes of these meetings. From the notes of the meetings it is clear that the parties explained the operating rules to EXSYM as well as Taihan and LS Cable. EXSYM was also aware of the European cartel configuration (see, for instance, Recitals (229) and (287)).
- (609) Sagem/Safran/Silec was clearly aware of the main features of the cartel arrangement. Through its participation in meetings and other contacts with its European and Asian competitors it was aware of the home territory principle and the allocation of projects in the export territories (see, for instance, Recital (569)).
- (610) Sagem/Safran/Silec also took part in the European cartel configuration (see, for instance, Recitals (275), (280) and (296)) which shows the awareness of this part of the cartel. Moreover, Sagem/Safran/Silec would have been aware of the A/R configuration of the cartel as Nexans and Prysmian informed the R associates of the discussions in the A/R meetings (see, for instance, Recitals (249) and (275)). In addition, Sagem/Safran/Silec was aware of the SM part of the cartel as it referred to an SM project in its contacts with [company representative A1] (Nexans) (Recital (303)) and occasionally events relating to SM power cables were discussed at the R meetings (see, for instance, Recitals (303) and (344)).
- (611) Brugg was clearly aware of the main features of the cartel arrangement. Through its participation in meetings and other contacts with its European competitors, it was aware of the home territory principle and the allocation of projects in the export territories (See, for instance, Recital (573)).
- (612) Brugg also took part in the European cartel configuration (see, for instance, Recitals (275), (280) and (296)) which shows the awareness of this part of the cartel. Moreover, Brugg would have been aware of the A/R configuration of the cartel as Nexans and Prysmian would inform the R associates Brugg, nkt and Sagem of the discussions in the A/R meetings (see, for instance, Recitals (249), (275), (306)). Brugg was also informed of the rules of the cartel through its direct (email) contacts with [company representative A1] (Nexans) (see, for instance, Recitals (214), (238), (329), (370), and (378)). In addition, Brugg was aware of the SM part of the cartel as it referred to an SM project in its contacts with [company representative A1] (Nexans) (Recital (324)). Brugg argues that their interest in this project was solely stemming from the possibility of applying UG power cable technology to it.⁹⁵⁷ The fact that Brugg enquired with [company representative A1] about the allocation of this project does nevertheless prove its awareness of the SM power cable arrangements. Moreover, occasionally events relating to SM power cables were discussed at the R meetings (see, for instance, Recitals (303) and (344)).

Mitsubishi, Showa, LS Cable, Taihan and nkt

⁹⁵⁶ ID [...], EXSYM reply to SO of 30 September 2011.

⁹⁵⁷ ID [...], Brugg reply to SO of 24 October 2011.

- (613) The third group of participants; Mitsubishi, Showa, LS Cable, Taihan and nkt were aware of the single aim through their participation in meetings and contacts with the core group of participants.
- (614) As explained in Recitals (578)-(583), through their involvement [information pre-dating the infringement period] and [...] concerning the cartel, Mitsubishi and Showa were or should have been aware of the main features of the cartel, including the home territory principle and the allocation of UG and SM projects in the export territories (see, for instance, Recitals (126), (131), (158), (160) and (179)). [...].⁹⁵⁸ There is however no evidence that Showa and Mitsubishi may have been aware of the European configuration of the cartel during their participation in the pre-joint venture period.
- (615) LS Cable and Taihan were informed of the main aspects and participants in the cartel, during the A/R/K meetings on 15 November 2002 and 17 October 2003. At these meetings, the home territory rule was spelled out and the two Korean companies were informed of the participation of the smaller R associates in the European cartel configuration. In addition, at these meetings, projects in the export territories were allocated (Recitals (227)-(229) and (271)). There is however no evidence that LS Cable and Taihan may have been aware of the SM power cable part of the cartel.
- (616) While LS Cable claims that it was not aware of the main aspects of the anti-competitive arrangements, this is contradicted by the evidence. LS Cable alleges for instance that it was never informed of the 60/40 quota arrangement, even though it received an email explicitly referring to this agreement (Recital (320)). Similarly, LS Cable claims that it was not informed about the collusion of Nexans and Prysmian with other European producers. The notes of the meetings on 15 November 2002 and 17 October 2003 prove differently (Recitals (229) and (271)).
- (617) Concerning nkt's claim that it was not aware of the conduct planned or put into effect by the other undertakings or could have reasonably foreseen it and was prepared to take the risk, the Commission considers the following:
- (a) nkt attended at least 13 of the R meetings of the European cartel configuration. As indicated, at these meetings Nexans and Prysmian regularly briefed the other participants on the outcome of the A/R meetings and also discussed infringements of the home territory rule (see notably Recitals (249) and (275)). The other R associates, Brugg and Sagem/Safran/Silec, were also clearly aware of these rules (see, for instance, Recitals (185) and (329)). It is highly implausible that nkt would be the only participant sitting in on 13 anti-competitive meetings over the course of almost 4 years with the same individuals and still have no knowledge of the wider activities of the other parties.
 - (b) [...],⁹⁵⁹ ,⁹⁶⁰ ,⁹⁶¹ ,⁹⁶²

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[...]

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ID [...], nkt reply to SO of 3 November 2011.

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ID [...], nkt reply to SO of 3 November 2011.

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ID [...], nkt reply to SO of 3 November 2011.

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ID [...], nkt reply to SO of 3 November 2011.

- (c) [information pre-dating the infringement period].⁹⁶³ [information pre-dating the infringement period]. Moreover, occasionally events relating to SM power cables were discussed at the R meetings (see, for instance, Recitals (303) and (344)).
- (618) Moreover, nkt was clearly aware of the attempts of the parties to conceal the existence of the cartel (see notably Recital (392)). The fact that the recollection by nkt employees of their involvement in the cartel is flawed may bear witness to these attempts at concealment. In its reply to the Commission's request for information dated 31 March 2010, nkt failed to provide information regarding the R meeting it had organised itself in 2003 (see Recital (241)). nkt failed to remember the names of the participants, [Confidentiality claim pending]⁹⁶⁴ While nkt claims in its reply to the Commission's request for information dated 31 March 2010 that "*nkt cables employees were only invited to and only participated in "one day seminars"*", it is clear from the evidence provided in Recital (241) that nkt itself even organised a seminar preceded by a dinner the day before. The invitations to the meetings as referred to in Annex I also demonstrate that nkt was invited for similar two-day events (See, for instance, Annex I, point 108).
- (619) nkt was 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. If nkt was unaware then it could reasonably have foreseen that conduct and was prepared to take the risk.⁹⁶⁵ nkt's claims are therefore rejected.

Continuous infringement

- (620) According to the evidence, the parties pursued the single aim of the cartel uninterrupted from 18 February 1999 until the 29 January 2009. Consequently, all the different elements of the agreement, whether concerning projects in home territories or export territories or whether relating to SM or UG power cables, are part of one single infringement. Accordingly, the parties' approach, which consists of separating the existence of an agreement relating to export territories from an agreement relating to the home territories cannot be accepted. This conclusion is not affected by the fact that the Commission's territorial jurisdiction is limited to those parts of the infringement that were implemented or had effects in the EEA.
- (621) The conclusion concerning the continuous nature of the cartel is not altered by the fact that from mid-2004 onwards, an increased fear of detection had effects for the way in which the companies participated in the cartel. Due to highly publicised cartel investigations of the European Commission in other sectors, there was an increased awareness of the risks of an anti-trust investigation, which led to a decrease in contacts. The parties have also expressly referred to this in their contacts (see, for instance, Recitals (286), (304), (330), (342), (350), (392), (398), (420)).
- (622) In contemporaneous evidence quoted in Section 3, the parties referred to the period from Mid-2004 until 2006 as the "*no show*" period (see Recital (311); a period of "*technical interruption*" (see Recital (319)); a period of "*temporary suspension, more*

⁹⁶³ Under the name [non-addressee]; ID [...], nkt reply to SO of 3 November 2011. Two of nkt's employees that attended R meetings were employed by [non-addressee] before, see Annex II.

⁹⁶⁴ [Confidentiality claim pending]

⁹⁶⁵ Case C-441/11 P *Commission v Verhuzingen Coppens* [2012] not yet reported, paragraph 43.

on the written communication side" (see Recital (324), see also: Recitals (353), (357), (358), (362) and (384)) and as the "standby period" (see Recital (353)).

- (623) Nevertheless, the Commission does not consider that the period after Mid-2004 formed indeed a period of temporary suspension in the sense of the case law of the Court.⁹⁶⁶ There is a clear distinction between the events in the present case and those in, for instance the *Pre-Insulated Pipe Cartel*.⁹⁶⁷ In the latter case, the Commission considered that the cartel had been temporarily suspended as there had been a real "*'breakdown in confidence' which effectively ended the attempts to seek a comprehensive settlement of the [market at issue]*" and which materialised in a violent '*price war*' inducing heavy losses for all the cartel participants.⁹⁶⁸ As shown by the evidence described in Section 3 of this Decision, such events did not occur in this case. Neither is the situation comparable to that of some parties in the *Marine Hose* cartel, where the participants during a period of crisis significantly altered the way in which the cartel was operated and loosened the relations between the members of the cartel.⁹⁶⁹ The changes in the intensity and means of communication between the addressees of this Decision was not the result of a significantly altered operation but the result of changed modalities in the communication in order to avoid detection.
- (624) For the whole duration of the cartel, the parties were in regular contact with one another. In order to minimise the risk of detection, from 2005 onwards, certain parties amended or limited their e-mail communications and participations in meetings. Other means of communication were used instead, such as fax and telephone (Recital (283)). In addition, the parties sought other opportunities to meet each other in person, such as the ICF meetings (see Recitals (308), (330)).
- (625) Below, a number of objective and consistent indicia are listed (Recitals (626)-(634)), which demonstrate that the cartel participants continued with the actions which form part of the framework of their single and continuous infringement.
- (626) The home territory principle required a failure to act on the side of the Japanese and Korean producers. It is therefore inherently difficult to prove that this part of the agreement was respected continuously. Nevertheless, regarding this aspect the Decision contains sufficient evidence to prove that the principle remained firmly in place for the duration of the cartel (see, for instance, Recitals (306), (329), (353), (355), (357), (358), (380), (384), (386), (393), (428) and (437)). The evidence quoted in these Recitals demonstrates that the Asian producers continued to inform their European competitors of enquiries from European customers and that the European producers continued to expect the respect of the home territory principle.
- (627) In view of this evidence, JPS' statement that the "*discussions*" that took place after July 2004 never involved a home territory arrangement has to be dismissed.

⁹⁶⁶ Case T-279/02 *Degussa AG v Commission* [2006] ECR II-897, paragraph 178.

⁹⁶⁷ Commission Decision 1999/60/EC in Case No IV/35.691 - *Pre-insulated pipe cartel*, OJ L 24/1, 30.1.1999, see notably paragraphs 52 and 170.

⁹⁶⁸ *Ibid.*, paragraph 52.

⁹⁶⁹ Joined Cases T-147/09 and 148/09 *Trelleborg Industrie SAS and Trelleborg AB v Commission* [2013] not yet reported, paragraphs 65-68.

- (628) Some parties have claimed that the creation of the Nexans/VISCAS joint venture proves the end of the application of the home territory principle.⁹⁷⁰ The evidence provided in Section 3 establishes however that while the joint venture may have worried some of the participants it did not end the application of the home territory principle. Nexans had concluded the joint venture with the express restriction that the MI cables that were to be produced there, were only for sale in [...] by Nexans.⁹⁷¹ The establishment of the joint venture formed thereby no infringement of the home territory principle. As is mentioned in Recital (626), the parties firmly defended the application of the principle after the formation of the joint venture.
- (629) Moreover, the fact that there is evidence that the allocation of projects in the export territories continued up until the end of the cartel (See below, Recital (631)) also constitutes a relevant indication that the home territory principle continued to be implemented in this period.⁹⁷² Given the factual characteristics of the cartel, it is highly likely that the termination of the home territory principle would have compromised the functioning of the agreements concerning the export territories.
- (630) The parties' argument⁹⁷³ that evidence relating to the home territory principle after 2004 must be looked at in isolation goes against the directions given by the European Courts. Those directions entail that often the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, *taken together*, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.⁹⁷⁴ The explanations that VISCAS provides for the evidence concerning the application of the home territory principle after mid-2004 are not plausible.⁹⁷⁵ In this case, as argued in Recital (626), there is sufficient evidence supporting the continued application of the home territory principle. There is therefore no need to examine further whether there is a plausible alternative explanation for the collusive actions of the parties.⁹⁷⁶
- (631) Concerning the allocation of projects in the export territories, the parties abandoned their position sheets sometime after November 2004. Instead, the parties implemented the allocations already agreed upon and sought new, easier allocation methods to avoid detection. The parties resorted to the allocation by means of rotation schemes or by fax or telephone or direct meetings (see notably Recitals (330), (350), (357), (358), (362), (365), (366), (413), (420), (423), (427)).
- (632) In addition, the European cartel configuration continued for the full duration of the cartel. There are clear indications that from 2006 onwards, the European participants increased their security measures and reverted to the use of web-based email accounts (see Recitals (387), (388), (392) and (398)). Despite these measures to

⁹⁷⁰ ID [...], VISCAS reply to SO of 9 November 2011.

⁹⁷¹ ID [...], Fujikura reply to SO of 24 October 2011.

⁹⁷² VISCAS for itself has also admitted to this, ID [...], VISCAS reply to SO of 9 November 2011.

⁹⁷³ ID [...], VISCAS reply to SO of 9 November 2011.

⁹⁷⁴ Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 55-57.

⁹⁷⁵ ID [...], VISCAS reply to SO of 9 November 2011. VISCAS points for instance to the fact that its employee, [company representative F3], does not recall discussing a home territory rule. Section 3 of this Decision contains several references to communications on the application of this rule in which [company representative F3] was involved, see, for instance, Recitals (185) and (223)).

⁹⁷⁶ Joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens v Commission* [2013] not yet reported, paragraphs 220-225.

conceal the allocation, Section 3 contains evidence that the European cartel configuration continued until the end of the cartel arrangements (See for instance Recitals (415), (424), (426), (430), (435), (439) and (443)).

- (633) In the last full year of the cartel, the remaining parties became even more careful but had no intention to bring the cartel arrangements to a definitive end. This follows from the statement of EXSYM's representative on 9 December 2008, as quoted in Recital (445): "*we back out from the scheme except the cases we already committed. Please be noted that we are not intending to collapse the market situation*". The statement demonstrates that while the company intended to *limit* its participation in new project allocations, there was no intention to completely *discontinue* the implementation of the cartel agreements.
- (634) The words used by EXSYM in its email of 9 December 2008 (see Recitals (445) and (633)) cannot indicate that the company formally distanced itself from the arrangements. It is clear from the wording of EXSYM's communication that EXSYM intended for the effects of the cartel to continue beyond the date of this last contact. In addition, neither VISCAS, nor Nexans or Prysmian have conclusively proved that they have formally distanced themselves from the home territory principle and the allocations agreed upon during the Tokyo meeting in June 2007. The nature of the projects involved entails that the effects of the agreement could be felt for several years to come.

4.3.4. *Restriction of competition*

4.3.4.1. Principles

- (635) Article 101(1) of the Treaty and Article 53 (1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which:⁹⁷⁷
- (a) directly or indirectly fix selling prices or any other trading conditions;
 - (b) limit or control production, markets or technical development;
 - (c) share markets or sources of supply.
- (636) As Article 101 of the Treaty applies only to sectors open to competition, the General Court has established that the examination of conditions of competition must be based not only on existing competition between undertakings already present on the relevant market but also on potential competition, in order to ascertain whether, in the light of the structure of the market and the economic and legal contexts within which it functions, there are real concrete possibilities for the undertakings concerned to compete among themselves or for a new competitor to enter the relevant market and compete with established undertakings. If there is no competition in a given market, that competition cannot be prevented and consequently trade between Member States could not be affected.⁹⁷⁸
- (637) In addition, the Court of Justice has also clarified that under the terms of Article 101 of the Treaty, the only points to be determined for the purposes of applying the prohibition laid down in that provision are whether the agreement in which the undertaking participated alongside other undertakings had as its object or effect the restriction of competition and whether it was capable of affecting trade between

⁹⁷⁷ The list is not exhaustive.

⁹⁷⁸ Case T-360/09 *E.ON Ruhrgas and E.ON v Commission* [2012] not yet reported, paragraphs 84-85, 156.

Member States. The question of whether the individual participation of an undertaking in such an agreement could, by itself, restrict competition or affect trade between Member States, taking account of the undertaking's weak position on the market concerned, is irrelevant when it comes to ascertaining whether there is an infringement.⁹⁷⁹

4.3.4.2. Arguments of the parties

- (638) Prysmian and Nexans have argued that the arrangements between the parties could not have had anti-competitive effects.⁹⁸⁰ In that regard, Prysmian highlights the specific nature of the SM power cable sector, which is characterised by limited production and engineering capacity, and at the necessity to exchange strategic information.⁹⁸¹ Nexans and nkt have pointed to the fact that agreements concerning certain projects were not always implemented.⁹⁸² Safran, on behalf of Sagem/Safran, argues that while it may have requested the allocation of several projects, its requests were not always honoured.⁹⁸³ Brugg claims that its participation in the meetings and contacts had no influence on Brugg's future market behaviour.⁹⁸⁴
- (639) Prysmian has explicitly admitted that a knowledge of the market, such as knowing which companies are expected to be seen as competitors for a particular project, helps guide the overall pricing level.⁹⁸⁵ In addition, Prysmian has admitted that indeed an allottee of a project in the export territories sometimes forwarded its prices to competitors. Prysmian claims however that this never followed after a discussion and/or an agreement on the original price and that the price was always autonomously set by the allottee. Moreover, Prysmian has indicated that prices were exchanged so that other suppliers could submit an offer even when they were not interested in winning the tender and therefore had decided not to present a competitive bid. Prysmian argues that this is done in order to maintain good relationships with the customers and minimise any reputational risk associated with not presenting any offers and/or bidding an artificially high price.⁹⁸⁶ Nexans has also alleged that the use of cover bids did not cause harmful effects to European customers.⁹⁸⁷
- (640) Prysmian, nkt and Furukawa have argued that the Commission should have defined the relevant product and geographic markets for power cables.⁹⁸⁸ Prysmian claims that the Commission has failed to perform a serious analysis of the economic context of the power cables industry.⁹⁸⁹

⁹⁷⁹ Case C-441/11 P *European Commission v Verhuizingen Coppens* [2012], not yet reported, paragraph 64.

⁹⁸⁰ ID [...], Prysmian reply to SO of 24 October 2011; ID [...], Nexans reply to SO of 26 October 2011.

⁹⁸¹ ID [...], Prysmian reply to SO of 24 October 2011.

⁹⁸² ID [...], nkt reply to SO of 3 November 2011; ID [...], Nexans reply to SO of 26 October 2011.

⁹⁸³ ID [...], Safran reply to SO of 3 October 2011.

⁹⁸⁴ ID [...], Brugg reply to SO of 24 October 2011.

⁹⁸⁵ ID [...], Prysmian reply to SO of 24 October 2011.

⁹⁸⁶ ID [...], Prysmian reply to SO of 24 October 2011.

⁹⁸⁷ ID [...], Nexans reply to SO of 26 October 2011.

⁹⁸⁸ ID [...], Prysmian reply to SO of 24 October 2011; ID [...], nkt reply to SO of 3 November 2011; ID [...], Furukawa reply to SO of 11 November 2011.

⁹⁸⁹ ID [...], Prysmian reply to SO of 24 October 2011.

(641) [...] ⁹⁹⁰ and [...] ⁹⁹¹ LS Cable [...] denies that the protection of the Korean market formed the reason for its participation. ⁹⁹² Moreover, other parties argue that they did not attempt to compete in the EEA as a result of their unilateral business decisions to focus on other markets. ⁹⁹³

(642) Several parties argue that the Japanese and Korean producers should not be regarded as actual or potential competitors to the European companies as they faced the following obstacles on the Union markets: ⁹⁹⁴

Regarding SM power cable projects:

- (a) Parties have argued that the Japanese domestic market is noted for short distances and shallow waters. Japanese producers therefore focused on OF AC XLPE power cables designed for short lengths and shallow waters. The circumstances in Europe required MI power cables and three-core AC XLPE power cables. In addition, the Japanese producers did not own cable laying vessels;

Regarding both SM and UG power cable projects

- (b) the parties claim that the Japanese and Korean companies lacked relationships with local engineering companies and customers, and encountered other barriers, such as high manufacturing costs, import duties, transport costs and the inability to meet required delivery dates, the existence of strong local competition, the lack of a track record, the existence of pre-qualification test certifications, often based on the standards from the International Electrotechnical Commission, the lack of invitations from European customers, and language and cultural barriers.

4.3.4.3. Discussion and findings

(643) The anti-competitive behaviour in this Decision has to be considered as a whole and in the light of the overall circumstances, despite the fact that each of the aspects (or parts thereof) in themselves and taken in isolation constitute an infringement of Article 101 of the Treaty. As indicated in Recital (493), the principal activities of the complex of agreements and concerted practices in this case, which have as their object the restriction of competition within the EEA, were as follows:

- (a) the allocation of territories and customers such as utilities, contractors and repeat customers,
- (b) the agreement on the prices to be offered for SM and UG power cable projects respectively by either the establishment of a floor price or the coordination of price levels,

⁹⁹⁰ ID [...], Taihan reply to SO of 7 November 2011.

⁹⁹¹ ID [...], Taihan reply to SO of 7 November 2011.

⁹⁹² ID [...], LS Cable reply to SO of 31 October 2011.

⁹⁹³ ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Furukawa reply to SO of 11 November 2009.

⁹⁹⁴ ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Furukawa reply to SO of 11 November 2011; ID [...], Taihan reply to SO of 7 November 2011; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], EXSYM reply to SO of 30 September 2011; ID [...], Showa reply to SO of 30 September 2011; ID [...], Prysmian reply to SO of 24 October 2011; ID [...], Nexans reply to SO of 26 October 2011 and ID [...], [...].

- (c) the submission of cover bids in order to ensure the agreed allocation of SM and UG power cable projects,
 - (d) the exchange of prices and other sensitive commercial terms and conditions, required for the preparation of cover bids,
 - (e) the exchange of other sensitive commercial and strategic information such as their available capacity or interest in participation in specific tenders,
 - (f) the implementation of practices to reinforce the cartel such as the collective refusal to supply accessories or technical assistance to certain competitors,
 - (g) the monitoring of the implementation of the allocation and price agreements through the exchange of position sheets, market information and the establishment of reporting obligations.
- (644) This complex of agreements and concerted practices as well as its individual parts has as its **object** the restriction of competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (645) It is settled case-law that for the purpose of application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the internal market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved.⁹⁹⁵ In this Decision, the Commission nevertheless notes that the evidence in Section 3 clearly shows that the anti-competitive cartel arrangements were implemented. The fact that an agreement having an anti-competitive object is implemented, even if only in part, is sufficient to preclude the possibility that the agreement had no effect on the market.⁹⁹⁶
- (646) As regards the claim that some of the projects which were allocated amongst the parties were never implemented, it is noted that this does not preclude the application of Article 101 of the Treaty and Article 53 of the EEA agreement to undertakings which allocated those projects in the context of a cartel.⁹⁹⁷
- (647) As part of the claim that there was no effective implementation, Nexans has performed an "*individual sales analysis*" of a number of projects, among which is the Corfu SM project in Greece. According to Nexans, EXSYM competed aggressively on this project and even sued the customer in an attempt to be named the winner. Nexans feels that this should confirm that any competitor contacts had no effects.⁹⁹⁸ Nexans however fails to mention that this project had been discussed at three previous A/R meetings and was allocated to "R" (see Recitals (247), (288) and (301)). It was mentioned on position sheets and Nexans had provided guidance to JPS (Recital (247)). Nexans' own witness provides with regard to the project: "*the*

⁹⁹⁵ Case T-142/89 *Boël v Commission* [1995] ECR II-867, paragraph 89; Case T-152/89 *ILRO v Commission* [1995] ECR II-1197, paragraph 32; Case T-25/95 and others *Cimenteries CBR and Others v Commission* ('Cement') [2000] ECR II-491, paragraph 1531; Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178; Case T-202/98 *Tate & Lyle v Commission* [2001] ECR II-2035, paragraphs 72-74; Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, paragraph 150; Case C-226/11 *Expedia* [2012] not yet reported, paragraph 35.

⁹⁹⁶ Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, paragraph 148.

⁹⁹⁷ Case T-110/07 *Siemens v Commission* [2011] ECR II 477, paragraph 122.

⁹⁹⁸ ID [...], Nexans reply to SO of 26 October 2011.

viable competitors for the Corfu project included Pirelli, J/Power, VISCAS and EXSYM".⁹⁹⁹ The allocation of this project entailed that the viable competitors JPS and VISCAS were therefore already taken out of competition. When it became clear that EXSYM, which was not part of the SM arrangements, did not want to comply with the allocation, Nexans urged JPS to contact EXSYM to convince them "*to behave properly*" (Recital (284)). When such contacts had no success, JPS supplied Nexans with a list of points which could disqualify EXSYM's bid for the project (Recital (293)).

- (648) The evidence in Section 3 shows that parties would often discuss upcoming projects and declare their "*interest*" in certain projects. Even if the infringement was limited to a notification and discussion of projects in the EEA and the parties did not proceed to making a formal allocation, it is still likely to affect competition. After all, through these discussions and declarations of "*interest*" a party would be in a position to know whether there would be any other bidders (or at least, whether there would be bids from the other parties), which would allow it, for example, to fix higher prices for its bids. Moreover, in cases where there was only one undertaking interested in a certain bid, a specific allocation would serve no purpose since only the interested undertaking would be certain of obtaining the project.¹⁰⁰⁰
- (649) Moreover, even though some of the information about offers which the parties shared during meetings with other members of the cartel may have already been released to potential customers, the regular information exchange about pending projects as described in this Decision may affect competition on the market, since it increases the likelihood of coordination in the future on other pending projects which were also discussed in the A/R and R meetings and other contacts. Furthermore, a regular exchange of prices recently offered to customers may make the already existing cooperation between the cartel members more robust and increases the agreements' reliability. Such exchanges on the terms of the offers and on the business contacts with customers goes far beyond the concept of independent determination of commercial policy that each economic operator has to respect according to the provisions of the Treaty, because it is likely to influence the future behaviour of informed competitors. All parties were involved in the anti-competitive meetings and contacts for long periods, from 4 to almost 10 years. It is therefore highly unlikely that they conducted themselves independently on the market without any influence of the arrangements agreed upon and that they did not benefit from the information received during the meetings and contacts.¹⁰⁰¹
- (650) Prysmian's arguments with regard to the beneficial effects of cover pricing and necessity of information exchange readily ignore the reality of the underlying allocation agreements that preceded such practices. Section 3 contains several examples of instances where parties exchanged prices and information after requests for "*guidance*" from their competitors (see, for instance, Recitals (84), (231), (234) and (316)). From these examples it is clear that the exchange of prices and other sensitive information occurred with regard to the preparation of cover bids, in order to implement the home territory principle or the agreed allocation of EEA projects.

⁹⁹⁹ ID [...], Nexans reply to SO of 26 October 2011.

¹⁰⁰⁰ Case T-110/07 *Siemens AG v Commission* [2011] ECR II-00477, paragraph 131.

¹⁰⁰¹ See Case T-83/08 *Denki Kagaku Kabushiki Kaisha v Commission* [2012] not yet reported, paragraph 247.

In addition, there is some evidence that this exchange of prices led in certain cases to an increase of the price that was finally offered (see, for instance, Recital (316)). It is clear that the normal competitive process, which is explicitly pursued by the customers when they request offers from different suppliers, is disturbed by these exchanges. This conclusion applies all the more considering that the parties to these arrangements are the largest suppliers of HV SM and UG power cables. In addition, the exchanges allow the suppliers themselves to obtain valuable information regarding the pricing and competitive strategy of their competitors.

- (651) As regards the scope of the infringement, it is not required in a cartel case to define the relevant market in the same manner as in a merger procedure or when assessing an abuse of a dominant position. There is an obligation to define the relevant market(s) only where it is impossible, without such a definition, to determine whether the agreement is liable to affect trade between Member States and has as its object or effect the prevention, restriction or distortion of competition within the internal market.¹⁰⁰²
- (652) The consistent case law of the General Court¹⁰⁰³ makes it clear that in cartel cases, the product scope of the cartel is defined by the scope of the participants' discussions. In this respect the General Court stated in *Tokai* that: “*It is not the Commission which arbitrarily chose the relevant market but the members of the cartel in which [the Applicant] participated who deliberately concentrated their anti-competitive conduct on [the identified] products.*”¹⁰⁰⁴
- (653) Concerning the argument that the Japanese and Korean producers had no rational economic motive to conclude the agreements or establish the concerted practices, it suffices to point to the abundant evidence that supports the conclusion that the parties concluded and implemented an agreement of an anti-competitive nature. There is therefore no need to examine the question of whether the parties had a commercial interest in the agreement.¹⁰⁰⁵
- (654) Furthermore, LS Cable's argument according to which the Korean companies would have no interest in protecting their home territory through a cartel arrangement¹⁰⁰⁶ is not convincing. More specifically, LS Cable's claim that the Korean market was “*practically insulated from competition by foreign manufacturers*”¹⁰⁰⁷ is hard to reconcile with the numerous examples contained in Section 3 of R activity on the latter market, which was repeatedly complained about by the Korean companies (see

¹⁰⁰² Case T-29/92 *SPO and Others v Commission* [1995] ECR II-289, paragraph 74; Joined Cases T-25/95 and others *Cimenteries CBR and Others v. Commission* ('Cement') [2000] ECR II-491, paragraph 1093; Case T-213/00 *CMA CGM and Others v Commission* [2003] ECR II-913, paragraph 206 ; Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 230; Case T-44/00 *Mannesmannröhren-Werke v Commission* [2004] ECR II-2223, paragraph 132. See also paragraph 25 of Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ 2004 C 101, p. 81.

¹⁰⁰³ See for example Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, paragraph 99 and Case T-48/02 *Brouwerij Haacht NV v Commission* [2005] ECR II-5259, paragraph 58 and the case law cited in these paragraphs.

¹⁰⁰⁴ Joined Cases T-71/03, T-74/03, T-87/03 and T-93/03 *Tokai Carbon and others v Commission* [2005] ECR II-10, paragraph 90.

¹⁰⁰⁵ Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries, Ltd and Nippon Steel Corp. v Commission et al.* ('Seamless steel tubes') ECR [2007] I-729, paragraph 46.

¹⁰⁰⁶ ID [...], LS Cable reply to SO of 31 October 2011.

¹⁰⁰⁷ ID [...], LS Cable reply to SO of 31 October 2011.

notably Recitals (194), (240), (263), and (331)). The Commission also notes that LS Cable's claim is not in line with Taihan's position. Indeed, Taihan argues that, despite the fact that the Korean public market was protected from foreign competitors,¹⁰⁰⁸ there was a fierce competition from the latter on the private market which could potentially lead to important losses for Korean companies.¹⁰⁰⁹

- (655) Section 1 of this Decision contains a description of the products affected by the cartel and the supply and demand of these products. The evidence presented in Section 1 demonstrates that the cartel agreements covered at least UG power cable projects of 110 kV and above and SM power cable projects of 33 kV and above. In addition, it is clear from the evidence that, on several occasions, the parties to the cartel agreement have determined the boundaries of competition between themselves (See, for instance, Recitals (141), (143), (225), (258)-(260)).
- (656) In so far as the arguments of the parties see to the alleged ineffectiveness of the agreements, it suffices to state that Article 101 of the Treaty prohibits agreements between undertakings which have an anti-competitive object, regardless of their effect. The evidence set out in Section 3 of this Decision demonstrates that the object of the arrangements described in this Decision was to restrict competition. It is equally established that the cartel may have affected trade between Member States (Section 4.3.5). Therefore, by its nature, and independently of any concrete effect that it may have, the cartel constitutes an appreciable restriction on competition.¹⁰¹⁰
- (657) Section 3 contains evidence that the parties explained and refined the application of the home territory principle on several occasions (see, notably, Recitals (141), (258), (265), (268)-(269)). If, as claimed by the parties, the Japanese and Korean producers were not perceived as credible competitors in the EEA because of the existence of insurmountable barriers to entry, an understanding relating to the EEA would not have served any purpose. In such a situation, the European producers, aware of that fact as a result of their privileged position in the EEA, would have no reason to establish such an understanding or to refine it.¹⁰¹¹ However, it is apparent from the evidence that the home territories agreement between the parties eventually concerned the entire EEA and some additional privileged territories.
- (658) It should also be taken into account that the above agreement and/or concerted practices were implemented by the parties and were in effect for the duration of the infringement. Adherence to the agreement was regularly confirmed (see, for instance Recitals (259), (267), (271) and (353)), the parties notified invitations to bid from each other's territories (see, for instance, Recitals (231), (279) and (321)) and the Japanese and Korean producers subsequently refrained from selling power cable projects in the EEA. This evidence constitutes a serious indicator that the Japanese and Korean producers were perceived by the European producers as potential

¹⁰⁰⁸ The sales of UG power cables to the [...] were not open to competition from foreign suppliers and only those producers manufacturing power cables in Korea were allowed to participate in the tenders. See in this respect Recitals (985) et seqq.

¹⁰⁰⁹ ID [...], Taihan reply to SO of 7 November 2011. To illustrate the fierce competition of foreign companies on the Korean private market, Taihan provided a list of 35 projects in which Prysmian was involved between 2001 and 2009 (Exhibit 12).

¹⁰¹⁰ Case C-226/11 *Expedia* [2012] not yet reported, paragraph 37.

¹⁰¹¹ Case T-112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission* [2011] ECR II-03871, paragraph 188.

credible competitors in the EEA. If the EEA was actually impenetrable for the Japanese and Korean producers because of the barriers to entry, there would have been no need to notify the enquiries the Japanese and Korean producers received from European customers. The European producers could then just have assumed that the Japanese and Koreans would not be able to participate in any case.

- (659) As established by the General Court, the conformity of conduct with Article 101 of the Treaty must be assessed in its economic context. Even if the arguments of the parties are well founded, they do not prove that the economic context excluded any possibility of effective competition. Moreover, the inherently anti-competitive object which characterises the conclusion of the home territory agreement, an agreement expressly prohibited under Article 101(1)(c) of the Treaty, cannot be altered by an analysis of the economic context in which the agreement is situated. An economic analysis cannot override the inescapable reality of the documentary evidence supplied in Section 3 of this Decision.¹⁰¹²
- (660) In addition, there is evidence in the Commission's file that, contrary to the parties' statements, the alleged market entry barriers are not insurmountable.¹⁰¹³ It is clear from several documents that the European firms considered the sales of Japanese and Korean cables in the EEA as a genuine threat. In Recital (223) Nexans complains about LS Cable who had "*disturbed many cases including taking orders in Europe*". In Recital (291), Nexans complains about EXSYM's presence in Europe: "*we believe agressing us in Europe will really not help improving the overall scheme*".
- (661) Parties have also pointed to the occasional sales made in Europe by Korean and Japanese producers.¹⁰¹⁴ Arguments alleging the need to establish a presence in Europe to ensure the sale and the services and maintenance infrastructures and also the additional transport costs and delivery times can therefore not be upheld.
- (662) Moreover, the Japanese and Korean companies were able to supply power cables to almost all other parts of the world and they have not submitted convincing evidence that suggests that the barriers in other countries differ from the barriers to the EEA to such extent that there would be no real concrete possibilities to enter and to compete in the EEA.
- (663) With regard to the power cable projects covered by this Decision, several parties have pointed to the fact that these projects are custom-built, made-to-measure projects and that agreements with customers are often only concluded after extensive rounds of negotiations.¹⁰¹⁵ The fact that Section 3 contains dozens of references to European customers inviting the Japanese and Korean producers to make an offer bears witness of the interest that the EEA customers had in obtaining offers from the Japanese companies (See, for instance, Recitals (231) and (279)). When the EEA customers were faced with lack of interest from the Japanese or Korean producers or with an unattractive offer, it is clear that no relationships were built.

¹⁰¹² Joined Cases T-25/95 and others *Cimenteries CBR and Others v Commission* ('Cement') [2000] ECR II-491, paragraph 1088.

¹⁰¹³ This is also specifically admitted by Prysmian with regard to SM power cables, in ID [...], Prysmian reply to SO of 24 October 2011.

¹⁰¹⁴ ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Taihan reply to SO of 7 November 2011; ID [...], Prysmian reply to SO of 24 October 2011; ID [...], Prysmian reply to SO of 24 October 2011, ID [...], LS Cable submission of 5 July 2010.

¹⁰¹⁵ ID [...], Prysmian presentation OH, ID [...], Nexans presentation OH.

- (664) Furthermore, while it may be true that some cables, and in particular MI SM power cables, were specifically requested by European customers, it is also clear that [information pre-dating the infringement period] the Japanese companies did not make the necessary investments to become actual firm competitors within the EEA.¹⁰¹⁶ In any event, the investigation has shown that there was room for competition to be exercised between different types of SM cables, including between MI and other types of SM cables produced by the Japanese companies. Nexans has confirmed that external factors can leave the customer with the choice of the type of cable to be used, for example a SM connection requiring an HV AC cable of 60 km length which could use either an XLPE or an OF cable.¹⁰¹⁷ Nexans even mentions some examples of these alternative solutions, including alternatives to MI cables.¹⁰¹⁸ As Nexans explains,¹⁰¹⁹ the choice of the customer of one or the other solution can exclude certain potential producers from competing for the project. There is evidence showing that in certain cases power cable producers tried to influence the customer to use the technology that was more favourable to that producer and that would leave other competitors out of the tender. For example, the notes taken during an A/R meeting held in Paris show the interest of the European producers in ensuring that the cable used for a given SM project was a MI cable, while the Japanese were interested in an XLPE cable.¹⁰²⁰ The notes of another A/R meeting held in 2003 also show the interest of ABB in using the XLPE and not the OF technology (applied by the Japanese) for a cable in [non-EEA territory].¹⁰²¹ [Confidentiality claim pending]¹⁰²²
- (665) With regard to the argument that the Commission, in Case COMP/M.1882 Pirelli/BICC, noted that the domestic cable suppliers in the Union still hold high market shares, it suffices to say that the Commission, at the time of that merger case, was unaware of the existence of the infringement described in this Decision, and that the Commission did also note that "*competitive pressure is nevertheless exerted by foreign suppliers, because utilities would face no obstacles in switching to foreign suppliers if local prices rose above competitive levels.*"¹⁰²³
- (666) The arguments advanced by the parties can also not be accepted for the following reasons:

¹⁰¹⁶ ID [...], VISCAS reply to SO of 9 November 2011, VISCAS explains that instead of investing in the development of MI SM power cables, the company developed an alternative cable for long distance SM power cable projects, the DC XLPE cable.

¹⁰¹⁷ See ID [...], Nexans submission of 3 August 2010.

¹⁰¹⁸ (i) The Cometa (Spain-Mallorca) interconnector, in which the customer had originally chosen an AC connection but subsequently changed to a DC connection (see ID [...], Nexans submission of 3 August 2010; (ii) The Valhall project (not an interconnection but an offshore oil & gas platform) where a cable of 150 kV and 290 km was needed, and for which the customer considered both the MI DC cable offered by Nexans and the XLPE DC cable offered by ABB as viable alternative solutions (see ID [...], Nexans submission of 3 August 2010).

¹⁰¹⁹ ID [...], Nexans submission of 3 August 2010.

¹⁰²⁰ [Confidentiality claim pending]

¹⁰²¹ "ABB want to put competitive bid in XLPE. ABB not interested in OF" (see [...]).

¹⁰²² [Confidentiality claim pending]

¹⁰²³ Commission Decision 2003/176/EC in Case No COMP/M.1882 - Pirelli/BICC, OJ L 70, 14.3.2003, p. 35-49.

- (a) Several sources witness the long-time existence of structural overcapacity in the sector.¹⁰²⁴ In that situation it is not likely that producers opted to forego on a potential growing market.
- (b) The alleged high transport costs involved did not appear to deter Nexans from establishing a production facility in Japan in a joint venture with VISCAS. The MI SM power cables that are produced in this facility are intended for sale [region].¹⁰²⁵
- (c) Potential suppliers to the EEA indeed have to comply with certain standards, pass conformity tests and obtain certificates. The fact that several of the Japanese and Korean producers were able to make occasional sales in the EEA (see Recital (661)) demonstrates that these requirements were not a deterrent. Moreover, the Japanese and Korean producers were also selling in other territories in which similar requirements apply. A similar argument can be made for the alleged longer delivery times.
- (d) In addition, customers in certain Member States may impose additional technical requirements and usages. In so far as they are based in Member States other than the country where the factory of the power cable producer is based, such requirements apply to all potential suppliers, whether European or Japanese.
- (e) Regarding the alleged preference for national products, it is apparent that there were several Member States where there were no credible national suppliers. In such Member States, all potential suppliers, whether European or Japanese and Korean were in the same position. Such reasoning applies *a fortiori* to the alleged preference for the supplier of equipment already installed. A pre-existing satisfactory relationship with a supplier tends to disadvantage all other suppliers, irrespective of whether they are European or Japanese or Korean.
- (f) The very strong position of the European producers on their national markets, demonstrates in the Commission's view that the home territory arrangement was respected rather than being an obstacle for the Japanese producers' exports to Europe;
- (g) The public procurement rules in the EEA did not make it impossible for the Japanese firms to conclude contracts;
- (h) Since the Commission's investigation began, several Japanese and Korean parties have undertaken steps to enter the EEA. VISCAS for instance opened a London office in February 2011.¹⁰²⁶
- (i) Nexans and Prysmian are the only two suppliers with their own dedicated cable laying vessel. ABB also has to hire a vessel for the installation of its cables. There are a number of special cable laying vessels available for hire on the market.

¹⁰²⁴ ID [...], Prysmian reply to SO of 24 October 2011; ID [...], LS Cable submission of 5 July 2010; Commission Decision 2003/176/EC in Case COMP./M.1882 - *Pirelli/BICC*, OJ L 70, 14.3. 2003, p. 35-49.

¹⁰²⁵ ID [...], VISCAS reply to SO of 9 November 2011.

¹⁰²⁶ ID [...], VISCAS reply to SO of 9 November 2011.

- (667) It is therefore concluded that none of the trade barriers alleged by the Japanese and Korean applicants ever constituted an absolute obstacle to the import of Japanese and Korean power cables into the Union or EEA.
- (668) In addition, the possible lack of commercial interest for the Japanese and Korean producers in entering the EEA at a given point in time does not render the home territory principle devoid of purpose. As recognised by the General Court, such a rule may serve, first of all, to eliminate the residual risk of a future entry on to the markets concerned in the event that competition changes and thereby to ensure long-term security for the three groups of producers by stabilising their respective privileged positions. Second, this rule may form the basis of mutual trust between three groups.¹⁰²⁷ In this Decision, it is likely that the continued existence of the home territory principle formed the basis of the parties' continued willingness to agree to the allocation of projects in the export territories.
- (669) Furthermore, the fact that the Japanese and Korean producers encountered certain obstacles in the EEA may well have contributed to their commitment not to enter this market. Thus, rather than rendering the existence of the home territory agreement pointless, the barriers to entry on that market constitute a factor which led to the conclusion of this agreement. According to the General Court, such a finding is not paradoxical since it is natural for producers, when markets are being divided as described in this Decision, to leave to its competitors the markets in which its own position is weak.¹⁰²⁸
- (670) In this regard it is important to point out that in exchange for abstaining from the European home territory, the Japanese and Korean producers obtained protection for their own home markets and some additional territories. In this Decision this is an important consideration as it is clear from the evidence that at the time the agreement was concluded, the European producers had a stronger position on the world market (hence the conclusion of the 60:40 quota agreement, instead of a 50:50 arrangement). Section 3 contains several references to instances where the Japanese and Korean producers relied on this part of the agreement (see, Recitals (240), (263) and (355)), which demonstrates that they perceived the potential presence of their European competitors on their home market as a genuine threat.
- (671) The Commission is not required to prove the commercial interest of the Japanese and Korean companies in concluding the home territory agreement. In any event, as explained in Recitals (668)-(670), the conclusion of the home territory agreement likely conferred certain advantages on all the parties and was thus not without purpose, notwithstanding the existence of barriers to entry to the EEA market and the possible lack of immediate commercial interest in entering that market.
- (672) Finally, the prolonged existence of the home territory agreement, [information pre-dating the infringement period] and consequently, the absence of the Japanese and

¹⁰²⁷ Case T-112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission* [2011] ECR II-03871, paragraph 158.

¹⁰²⁸ Case T-112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission* [2011] ECR II-03871, paragraph 110.

Korean producers in the EEA, is likely to reinforce artificially some of the barriers to entry referred to by the parties.¹⁰²⁹

- (673) Therefore it is concluded that the parties' arguments are unfounded and that the evidence available is sufficient to confirm that the cartel arrangements had the restriction of competition as their object and that the agreement and/or concerted practice was implemented in practice.

4.3.5. *Effect upon trade between Member States and between the EEA contracting parties*

4.3.5.1. Principles

- (674) Article 101(1) of the Treaty is aimed at agreements which might harm the attainment of a single market between Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.

- (675) The Court of Justice and the General Court have consistently held that, "*in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States*".¹⁰³⁰ In any event, whilst Article 101 of the Treaty "*does not require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect*".¹⁰³¹

- (676) The application of Articles 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the members' sales that actually involve the transfer of goods from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.¹⁰³²

- (677) The Commission Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty [now Articles 101 and 102] (the "Notice on the effect on trade"),¹⁰³³ stipulate that agreements between undertakings in two or more Member States that concern imports and exports as well as cartel agreements such as those

¹⁰²⁹ Case T-112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission* [2011] ECR II-03871, paragraph 327.

¹⁰³⁰ Case C-56/65 *Société Technique Minière (L.T.M.) v Maschinenbau Ulm GmbH ('M.B.U.')* [1966] ECR 337, paragraph 7; Case C-42/84 *Remia BV and others v Commission* [1985] ECR 2545, paragraph 22 and Joined Cases T-25/95 and others *Cimenteries CBR and Others v Commission ('Cement')* [2002] ECR II-491.

¹⁰³¹ Case C-219/95 *P Ferriere Nord SpA v Commission* [1997] ECR I-4411, paragraph 19; Case C-306/96 *Javico International and Javico AG v Yves Saint Laurent Perfums SA (YSLP)* [1998] ECR I-1983, paragraphs 16 and 17; Case T-374/94 *European Night Services Ltd (ENS), Eurostar (UK) Ltd, formerly European Passenger Services Ltd (EPS), Union internationale des chemins de fer (UIC), NV Nederlandse Spoorwegen (NS) and Société nationale des chemins de fer français (SNCF) v Commission* [1998] ECR II-3141, paragraph 136; Cases C-215/96 and C-216/96 *Bagnasco and Others v Banca Popolare di Novara soc. Coop.arl. (BNP)* (C-215/96) and *Cassa di Risparmio di Genova e Imperia SpA (Carige)* (C-216/96) [1999] ECR I-135, paragraph 48.

¹⁰³² See Case T-13/89 *Imperial Chemical Industries (ICI) v Commission* [1992] ECR II-1021, paragraph 304.

¹⁰³³ Commission Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.04.2004, p. 81-96.

involving price fixing and market sharing covering several Member States are by their very nature capable of affecting trade between Member States.¹⁰³⁴ It is sufficient that an agreement or practice involving third countries or undertakings located in third countries is capable of affecting cross-border economic activity inside the Union. Import into one Member State may be sufficient to trigger effects of this nature. Imports can affect the conditions of competition in the importing Member State, which in turn can have an impact on exports and imports of competing products to and from other Member States.¹⁰³⁵

- (678) As the General Court has stated, an understanding which seeks to respect the traditional positions of parties to the cartel on the European and Japanese markets respectively, would constitute in itself, a cartel having effects on the internal market, inasmuch as it suppresses the potential competition which Japanese producers would have provided in the internal market.¹⁰³⁶

4.3.5.2. Arguments of the parties

- (679) Several parties have argued that the conduct described in the Decision could not have any effect on competition in the EEA.¹⁰³⁷

- (680) As set out in Section 4.3.3 above, the conduct described in this Decision was a single and continuous infringement concerning almost worldwide sales of power cables including sales of power cables destined for projects within the Union or EEA. Some of the sales concerned by the infringement fall outside the scope of the Treaty, but this does not affect the Commission's jurisdiction to deal with the infringement as such.

4.3.5.3. Discussion and findings

- (681) Insofar as the activities of the cartel related to sales in countries that are not members of the Union or the EEA and had no impact on trade in the Union or the EEA, they are outside the scope of this Decision.
- (682) It is not contested that, as indicated in Section 1.2 above, some of the main worldwide power cable producers are based in different Union Member States or Contracting Parties to the EEA Agreement and that these producers exported power cables to other Union Member States or Contracting Parties to the EEA Agreement (see Recital (46)).
- (683) Evidence on file shows that power cable projects within the Union or EEA, for which power cable producers based in other Union Member States or Contracting Parties to the EEA Agreement did submit or could have submitted offers, were subject to allocation within the cartel. (see Recitals (107) to (115)). In view of these facts it is proven that the infringement had an appreciable effect on trade between Union Member States and between Contracting Parties of the EEA Agreement.
- (684) The UG and SM power cable sector is characterised by a substantial volume of trade between Member States. There is also a considerable volume of trade between the

¹⁰³⁴ Ibid., paragraphs 62 and 64.

¹⁰³⁵ Ibid., paragraph 101.

¹⁰³⁶ Case T-110/07 *Siemens AG v Commission* [2011] ECR II-477, paragraph 60; Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering v Commission* [2004] ECR II-2501, paragraphs 392-394.

¹⁰³⁷ ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Prysmian reply to SO of 24 October 2011.

Union Member States and EFTA countries belonging to the EEA.¹⁰³⁸ The major participants in the sector have their headquarters, sales offices and/or production facilities in Europe and their operations are developed throughout the EEA. In addition, the parties are the major companies active worldwide in the supply of UG and SM power cables.

- (685) In this Decision, the cartel arrangements covered most of the world, including the entire territory of the EEA. The facts described in Section 3 of this Decision must have resulted, or were likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed.¹⁰³⁹
- (686) This obviously applies to the allocations under the European cartel configuration. In addition, as set out in Recital (468), the application of the home territory principle and, to some extent, the allocation of projects in the export territories must also have resulted in such a diversion of trade patterns.
- (687) The agreements and concerted practices therefore directly restricted the competition for power cable projects between the Member States and had an appreciable effect upon trade between Union Member States and between Contracting Parties to the EEA Agreement.

4.3.6. Application of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

- (688) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable under Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement in the case of an agreement or concerted practice which contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- (689) Nexans has argued that some of the behaviour cited in the SO qualifies for exemption under Article 101(3) of the Treaty.¹⁰⁴⁰ However, the examples that Nexans describes do not form part of the behaviour cited in the SO but refer to legitimate consortia agreements. Nexans has not provided any arguments which would demonstrate that the home territory principle, the allocation of projects within the European cartel configuration and the allocation of projects in the export territories as described in this Decision would qualify for exemption under Article 101(3) of the Treaty or Article 53(3) of the EEA Agreement.
- (690) On the basis of the facts before the Commission, there are therefore no indications suggesting that the conditions of Article 101(3) of the Treaty or Article 53(3) of the EEA Agreement could be fulfilled in this Decision.

¹⁰³⁸ See Section 1.4.

¹⁰³⁹ Joined Cases 209 to 215 and 218/78 *Heintz van Van Landewyck SARL and Others v Commission* [1980] ECR 3125, paragraph 170.

¹⁰⁴⁰ ID [...], Nexans reply to SO of 26 October 2011.

4.3.7. *Provisions of competition rules applicable to Iceland, Liechtenstein and Norway, and to the 2004 and 2007 enlargement of the Union*

(691) After the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia on 1 May 2004, Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement became applicable to the cartel insofar as it affected those Member States. After the accession of Bulgaria and Romania on 1 January 2007, Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement became applicable to the cartel insofar as it affected those Member States.

5. ADDRESSEES

5.1. Principles

(692) In order to identify the addressees of this Decision, it is necessary to determine the legal entities to which responsibility for the infringement should be attributed.

(693) The subjects of Union competition rules are undertakings, a concept which is not identical with that of corporate legal personality for the purposes of national commercial or fiscal law. The undertaking that participated in the infringement is therefore not necessarily identical with the precise legal entity within the group of companies whose representatives actually took part in the cartel meetings. The term 'undertaking' is not defined in the Treaty. The case law has confirmed that Article 101 of the Treaty 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 provision.¹⁰⁴¹

(694) Despite the fact that Article 101 of the Treaty is applicable to undertakings and that the concept of undertaking is of an economic nature, only entities with legal personality can be held liable for infringements.¹⁰⁴²

(695) Concerning the principle of personal liability, Article 101 of the Treaty 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.

(696) Accordingly it is necessary to define the undertaking(s) that will be held accountable for the infringement of Article 101 of the Treaty by identifying one or more legal persons to represent the undertaking. In accordance with case law, Union competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 101 and 102 of the Treaty if the companies concerned do not determine

¹⁰⁴¹ Case T-11/89 *Shell International Chemical Company Ltd v Commission* [1992] ECR II-757, paragraph 311 and Case T-352/94 *Mo Och Domsjö v Commission* [1998] ECR II-1989, paragraphs 87-96.

¹⁰⁴² Although an 'undertaking' within the meaning of Article 81 (now Article 101 of the Treaty) is not necessarily the same as a company having legal personality, it is necessary for the purposes of applying and enforcing decisions to identify an entity possessing legal personality to be the addressee of the measure, Case T-305/94 *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV, DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG and Enichem SpA v Commission ('PVC II')* [1999] ECR II-931, paragraph 978.

independently their own conduct on the market.¹⁰⁴³ 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)¹⁰⁴⁴ forms a single economic entity with the subsidiary and thus may be held liable in a non-discriminatory way for an infringement on the grounds that it forms part of the same undertaking (so-called parental liability).

- (697) According to settled case-law of the Court of Justice and of the General Court, a parent company that owns 100% (or almost 100%) of a subsidiary has the ability to exercise decisive control over such subsidiary. In such a case, there exists a rebuttable presumption that the parent also in fact exercises that control without the need for the Commission to adduce further evidence on the actual exercise of control (the parental liability presumption).¹⁰⁴⁵ When the Commission relies on the parental liability presumption and declares its intention to hold a parent company liable for an infringement committed by its wholly owned subsidiary in the SO, it is for that parent company, when it considers that - despite the shareholding - the subsidiary determines its conduct independently on the market, to rebut the presumption by adducing sufficient evidence in this regard during the administrative procedure.¹⁰⁴⁶
- (698) Where such exercise of decisive influence cannot be presumed, it has to be demonstrated on the basis of factual evidence, including in particular the management powers that the parent companies have on the subsidiary.¹⁰⁴⁷ The European Courts have established that such powers can be, not only directly concluded from the parent's specific instructions, guidelines or rights of co-determination on the commercial policy given to their subsidiary, but also indirectly inferred from the totality of the economic, organisational and legal links between the parent company and its subsidiary¹⁰⁴⁸ influencing it in aspects such as corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters, even if each of those indicia taken in isolation does not have sufficient probative value.¹⁰⁴⁹ Among these indicia, the European Courts have considered, for example, the implementation of the applicable statutory provisions/agreements between the parent companies in relation to the management of their common subsidiary, the presence in leading positions of the subsidiary of many individuals who occupy simultaneously (or even consecutive)¹⁰⁵⁰

¹⁰⁴³ See Case T-203/01 *Manufacture française des pneumatiques Michelin v Commission* [2003] ECR II-4071, paragraph 290.

¹⁰⁴⁴ Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, paragraph 37.

¹⁰⁴⁵ Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-08237, paragraphs 60-61; C-521/09 P *Elf Aquitaine v. Commission* [2011] ECR I-08947, paragraphs 56-57; C-201/09 P *ArcelorMittal Luxembourg v Commission* and C-216/09 P *Commission v ArcelorMittal Luxembourg and Others* [2011] ECR I-02239, paragraphs 97-100; Case C-90/09 P *General Química v Commission* [2011] ECR I-00001, paragraphs 39-42; Case C-654/11 P *Transcatlab v Commission* [2012] not yet reported, paragraphs 30-31.

¹⁰⁴⁶ Case T-330/01 *Akzo Nobel NV v Commission* [2006] ECR II-3389, paragraph 83; Case T-91/03 *Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission* [2005] ECR II-10, paragraph 61; Case T-30/05 *Prym and Prym Consumer v Commission* [2007] ECR II-107*, Summ.pub., paragraphs 146-147.

¹⁰⁴⁷ Case T-77/08 *The Dow Chemical Company v Commission* [2012] not yet reported, paragraph 76.

¹⁰⁴⁸ Case T-77/08 *The Dow Chemical Company v Commission* [2012] not yet reported, paragraph 77.

¹⁰⁴⁹ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 183.

¹⁰⁵⁰ Case T-76/08 *El du Pont de Nemours and Company, DuPont Performance Elastomers LLC and DuPont Performance Elastomers SA v Commission* [2012] not yet reported paragraphs 70, 74.

managerial posts within the parent company,¹⁰⁵¹ or the business relationships that they have with each other (for example, where a parent company is also the supplier or customer of its subsidiary).¹⁰⁵²

- (699) The question of decisive influence relates to the level of autonomy of the subsidiary with regard to its overall commercial policy and not to the awareness of the parent company with respect to the infringing behaviour of the subsidiary. Attribution of liability to a parent company flows from the fact that the two entities constitute a single undertaking for the purposes of the Union rules on competition and not from proof of the parent's participation in or awareness of the infringement, including its organisation.¹⁰⁵³
- (700) Where a parent company has the ability to exercise control over its subsidiary (or over a joint venture) and is aware of the infringement and does not stop it, it will be held liable for its infringement.¹⁰⁵⁴ In such a case, the actual exercise or non-exercise of control by the parent is irrelevant for its liability. According to *Agroexpansión*,¹⁰⁵⁵ when a parent company is aware of the involvement of its wholly-owned subsidiary in an infringement and it does not oppose this involvement, the Commission can deduce that the parent company tacitly approves the participation in the infringement and this circumstance represents additional indicia supporting the presumption.
- (701) The actual exercise of management power by the parent company or parent companies over their subsidiary may be capable of being inferred directly from the implementation of the applicable statutory provisions or from an agreement between the parent companies, entered into under those statutory provisions, in relation to the management of their common subsidiary.¹⁰⁵⁶ The extent of the parent company's involvement in the management of its subsidiary may also be proved by the presence, in leading positions of the subsidiary, of many individuals who occupy managerial posts within the parent company. The involvement of the parent company or companies in the management of the subsidiary may follow from the business relationship which they have with each other.¹⁰⁵⁷
- (702) The decisive influence of the parent company does not necessarily have to result from specific instructions, guidelines or rights of co-determination in terms of pricing, production and sales activities or similar aspects essential to market conduct. Such instructions are merely a particularly clear indication of the existence of the parent company's decisive influence over its subsidiary's commercial policy. However, autonomy of the subsidiary cannot necessarily be inferred from their absence. A parent company may exercise decisive influence over its subsidiaries

¹⁰⁵¹ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 184.

¹⁰⁵² Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 184.

¹⁰⁵³ Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission* [2005] ECR II-10, paragraph 54.

¹⁰⁵⁴ Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich AG v Commission* [2006] ECR II-05169, paragraph 330.

¹⁰⁵⁵ Case T-38/05 *Agroexpansión, SA v Commission* [2011] ECR II-07005, paragraphs 146 and 157. See also Case T-41/05 *Alliance One International, Inc. v Commission* [2011] ECR II-07101, paragraph 136.

¹⁰⁵⁶ Case T-314/01 *Coöperatieve Verkoop- en Productievereniging van Aardappelmeel en Derivaten Avebe BA v Commission* [2006] ECR II-03085, paragraphs 137 to 139.

¹⁰⁵⁷ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 184. See also Opinion of Advocate General Mischo in Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-09925, paragraphs 50 and 51.

even when it does not make use of any actual rights of co-determination and refrains from giving any specific instructions or guidelines on individual elements of commercial policy. Thus, a single commercial policy within a group may also be inferred indirectly from the totality of the economic, legal and organisational links between the parent company and its subsidiaries.¹⁰⁵⁸ Moreover, the Court has stated that with respect to a joint venture it is not necessary for the parent company to have sole control of its subsidiary and that both parent companies can exercise decisive influence over the joint venture.¹⁰⁵⁹

- (703) Concerning a full-function joint venture, the Court has found that “*although a full-function joint venture, for the purposes of Regulation (EEC) No 4064/89, is deemed to perform on a lasting basis all the functions of an autonomous economic entity, and is, therefore, economically autonomous from an operational viewpoint, that autonomy does not mean, as the Commission made clear in paragraph 93 of its Consolidated Jurisdictional Notice under Regulation (EC) No 139/2004, that the joint venture enjoys autonomy as regards the adoption of its strategic decisions and that it is not therefore under the decisive influence exercised by its parent companies for the purposes of the application of Article 81 EC*”.¹⁰⁶⁰ The fact that a joint venture has its own legal personality is not sufficient to exclude the possibility of imputing its conduct to one of its parent companies.¹⁰⁶¹
- (704) When an undertaking that has committed an infringement of Article 101 of the Treaty subsequently disposes of the assets which contributed to the infringement and withdraws from the market in question, it continues to be answerable for the infringement if it has not ceased to exist.¹⁰⁶² If the undertaking which has acquired

¹⁰⁵⁸ Case C-97/08 *Akzo Nobel and Others v Commission* [2009] ECR I-08237, paragraph 73, referring to the Opinion of Advocate General Kokott in that case, paragraphs 87 to 94.; Case T-76/08 *EI du Pont de Nemours and Company, DuPont Performance Elastomers LLC and DuPont Performance Elastomers SA v Commission* [2012] not yet reported, paragraph 62, as confirmed in Case C-172/12P *EI du Pont de Nemours and Company v Commission* [2013] not yet reported.

¹⁰⁵⁹ Case T-24/05 *Alliance One International, Inc., formerly Standard Commercial Corp. and Others v Commission* [2010] ECR II-05329, paragraph 164. See also Case T-132/07 *Fuji Electric Co. Ltd. v Commission* [2011] ECR II-04091, paragraphs 181 and 202 and Case T-76/08 *EI du Pont de Nemours and Company, DuPont Performance Elastomers LLC and DuPont Performance Elastomers SA v Commission* [2012] not yet reported, paragraph 74, as confirmed in Case C-172/12 P *EI du Pont de Nemours and Company v Commission* [2013] not yet reported.

¹⁰⁶⁰ Case T-76/08 *EI du Pont de Nemours and Company, DuPont Performance Elastomers LLC and DuPont Performance Elastomers SA v Commission* [2012] not yet reported, paragraph 78.

¹⁰⁶¹ Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-04125, paragraph 145, Case C-279/98 P *Cascades SA v Commission* [2002] ECR I-9693, paragraph 78; Case C-280/06 *Autorità Garante della Concorrenza e del Mercato v Ente tabacchi italiani - ETI SpA and Others and Philip Morris Products SA and Others v Autorità Garante della Concorrenza e del Mercato and Others* [2007] ECR I-10893, paragraph 39; Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-00123, paragraph 60; Joined Cases C-322/07 P, C-327/07 P and C-338/07 P *Papierfabrik August Koehler AG and Others v Commission* [2009] ECR I-07191, paragraph 38; Case 6/72 *Europemballage Corporation and Continental Can v Commission* [1973] ECR 215, paragraph 15; Case C-97/08 *Akzo Nobel and Others v Commission* [2009] ECR I-08237, paragraphs 56 to 59.; Case T-76/08 *EI du Pont de Nemours and Company, DuPont Performance Elastomers LLC and DuPont Performance Elastomers SA v Commission* [2012] not yet reported, paragraph 78.

¹⁰⁶² Case T-6/89 *Enichem Anic v Commission ('Polypropylene')* [1991] ECR II 1623; Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I 4125, paragraphs 47-49; Case T-314/01 *Coöperatieve Verkoop- en Productievereniging van Aardappelmeel en Derivaten Avebe BA v Commission* [2006] ECR II-3085, paragraphs 135-140.

the assets continues the violation of Article 101 of the Treaty, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period in which it participated through these assets in the cartel. However, if the legal person initially answerable for the infringement ceases to exist, for example by being purely and simply absorbed by another legal entity, that latter entity must be held accountable for the entire duration of the infringement and is thus liable for the activity of the entity that was absorbed.¹⁰⁶³ The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow it to escape liability.¹⁰⁶⁴ Liability for a fine may thus pass to a successor where the (corporate) legal entity which committed the violation has ceased to exist in law.

- (705) A different conclusion can, however, be reached when a business is transferred from one company to another, in cases where transferor and transferee are linked by economic links, that is to say, when they belong to the same undertaking. In such cases, in virtue of the economic continuity criterion, liability for past behaviour of the transferor may transfer to the transferee, notwithstanding the fact that the transferor remains in existence.¹⁰⁶⁵
- (706) The same principles hold true, *mutatis mutandis*, for the purposes of the application of Article 53 of the EEA Agreement.

5.2. Application to this case

- (707) Applying the above principles, this Decision should be addressed to those legal entities whose representatives participated in cartel meetings and other forms of anti-competitive contacts with competitors. In addition, this Decision should be addressed to the parent companies of those legal entities in as far as it is presumed or shown that they exercised decisive influence over the commercial policy of their wholly owned subsidiaries. This Decision should also be addressed to those parent companies that, in addition to their own direct participation, subsequently continued their involvement through joint ventures and jointly exercised decisive influence over the commercial policy of these joint ventures. Together, those legal entities should be held liable for the infringement of Article 101 of the Treaty and of Article 53 of the EEA Agreement.
- (708) The names and the employment records of individuals relevant for this Decision are provided in Annex II to this Decision.¹⁰⁶⁶

¹⁰⁶³ See Case C-279/98 P *Cascades v Commission* [2000] ECR I-9693, paragraphs 78-79; Joined Cases T-122/07 *Siemens AG Österreich and VA Tech Transmission & Distribution v Commission* [2011] ECR II-00793, paragraph 139.

¹⁰⁶⁴ Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV, DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG and Enichem SpA v Commission* ('PVC II') [1999] ECR II-931, paragraph 953.

¹⁰⁶⁵ Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 354-360; Case T-43/02 *Jungbunzlauer v Commission* [2006] ECR II-3435, paragraphs 132-133; Joined Cases T-117/07 and T-121/07 *Areva and Others and Alstom v Commission* [2011] ECR II-00633, paragraphs 66-69.

¹⁰⁶⁶ Some of the individuals listed in Annex II may not have been involved in anti-competitive contacts with competitors for all of the periods specified.

5.2.1. Nexans

- (709) Nexans SA has its origins in the power cable activities of the [...]. [...] carried out its power cables activities through various subsidiaries. During the period 18 November 1999 until 13 November 2000, the UG power cable activities were mainly carried out by [...], while the SM power cable activities were mainly carried out by [...].¹⁰⁶⁷ Pursuant to an asset contribution agreement, on 13 November 2000 [...] contributed most of its UG power cable activities to a wholly-owned subsidiary named “Vivalec” which changed its name to “Nexans France SAS”.¹⁰⁶⁸ This asset contribution also included the transfer of key employees, such as [company representative A3], [company representative A2], and [company representative A1]. In addition, in late 2000 and early 2001 [...] contributed the rest of its power cable activities, including Nexans Norway A/S and other subsidiaries, to another wholly-owned subsidiary called Nexans Participations. Prior to 12 June 2001, Nexans France SAS and Nexans Participations were sold to the newly created company Nexans SA.¹⁰⁶⁹ On 12 June 2001 Nexans SA became autonomous of [...] through an Initial Public Offering ("IPO") whereby [...] sold approximately 80% of the shares of Nexans SA, which therefore became the ultimate parent company of the Nexans Group. Currently, [...] is no longer a shareholder of Nexans SA.
- (710) The evidence demonstrates that employees of [...], later known as [...] and Nexans France SAS (within [...]) and finally Nexans France SAS (within the Nexans group), participated directly in the infringement from 18 February 1999 to 28 January 2009 with regards to both UG and SM cable projects.
- (711) As mentioned in Recital (705), it is settled case-law that, where assets that were involved in committing an infringement are transferred, the legal entity previously responsible for those assets continues to be liable, as long as it remains in existence. The Commission notes that the entity formerly called [...] remains an existing entity at the date of this Decision but was not an addressee of the SO.¹⁰⁷⁰ Without taking position on whether or not it would be possible to hold Nexans France SAS liable for the period prior to 13 November 2000 as a successor of [...], the Commission will in this case only hold Nexans France SAS liable for the period during which it (including under the name [...]) directly participated in the infringement.
- (712) The Commission therefore holds Nexans France SAS liable for its direct participation in the infringement pertaining to UG as well as SM power cables for the period from 13 November 2000 until 28 January 2009.
- (713) Nexans France SAS is a wholly-owned subsidiary of Nexans SA. Nexans has argued that Nexans SA should not be presumed to have exercised decisive influence over its subsidiary Nexans France SAS as Nexans SA was not made aware of the anti-competitive behaviour through the Nexans Group Tender Review Committee structure through which the Nexans group reviews large value sales.¹⁰⁷¹ As is indicated in Recital (697), since Nexans SA owns 100% of Nexans France SAS,

¹⁰⁶⁷ Nexans Norway A/S still exists as a legal entity under the RCS number 393525993 and was renamed Draka Comteq France.

¹⁰⁶⁸ ID [...], Nexans Annex I of reply to RFI of 20 October 2009, p. 11.

¹⁰⁶⁹ See Recitals (15)-(16).

¹⁰⁷⁰ ID [...], Nexans reply to SO of 26 October 2011.

¹⁰⁷¹ ID [...], Nexans reply to SO of 26 October 2011.

there exists a rebuttable presumption that Nexans SA also in fact exercised that control without the need for the Commission to adduce further evidence on the actual exercise of control. The claim that Nexans SA was not aware of the anti-competitive behaviour is not sufficient to rebut this presumption. Nexans has provided ample indications that Nexans SA was actively involved in managing its subsidiaries.¹⁰⁷² The claim that Nexans SA was not made aware of the anti-competitive behaviour through the Tender Review Committee is not an element that is of itself capable of rebutting the presumption.

- (714) In line with the above mentioned case-law,¹⁰⁷³ the Commission presumes the exercise of decisive influence by Nexans SA over the conduct on the market of Nexans France SAS. Nexans SA has not demonstrated that Nexans France SAS determined its own commercial policy in such a way that they and their parent company did not constitute a single economic entity and, therefore, a single undertaking for the purposes of article 101 of the Treaty. The Commission therefore holds Nexans SA jointly and severally liable with Nexans France SAS for the infringement from 12 June 2001 until 28 January 2009.
- (715) Moreover, it is apparent from the organisation of the HV SM and UG power cable business within the Nexans Group that Nexans France SAS operated in the cartel also on behalf of other wholly-owned Nexans SA subsidiaries. Therefore, the Commission stated in the SO that it intended to take into consideration the relevant sales of the Nexans Group, and not only the sales of Nexans France SAS.¹⁰⁷⁴
- (716) Nexans claims that its subsidiaries, such as Nexans Norway A/S, prepared their bids and executed cable sales and deliveries independently from Nexans France SAS. In addition, Nexans points to the fact that the collusive agreements were never discussed in the Nexans Group Tender Review Committee. It therefore argues that these subsidiaries cannot be considered to have implemented agreements of Nexans France SAS. In addition, Nexans claims that Nexans France SAS cannot be accused of implementing anti-competitive agreements on behalf of Nexans Norway A/S.¹⁰⁷⁵
- (717) However, the following objective factors, such as (a) the decision making structure in the Nexans Group, (b) the reporting lines in place between Nexans France SAS and other Nexans SA subsidiaries, such as Nexans Iberia SL and Nexans Norway A/S and (c) the factual implementation of the cartel, demonstrate that the anti-competitive behaviour of Nexans France SAS directly encompassed HV power cable sales produced and supplied by other Nexans SA subsidiaries.

The decision making structure in the Nexans HV power cables division

- (718) During the infringement period, Nexans SA carried out its HV UG and SM power cable activities in Europe through various subsidiaries. While Nexans France SAS was directly wholly-owned by Nexans SA, other subsidiaries, such as Nexans Iberia SL and Nexans Norway A/S, are wholly-owned by Nexans Participations, which is in turn wholly-owned by Nexans SA.¹⁰⁷⁶ Key European production sites for HV

¹⁰⁷² See [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009.

¹⁰⁷³ See Recitals (697) et seqq.

¹⁰⁷⁴ SO, Recitals 784-785. See Section 7.3.2 of this Decision.

¹⁰⁷⁵ ID [...], Nexans reply to SO of 26 October 2011.

¹⁰⁷⁶ ID [...], Nexans reply to RFI of 20 October 2009.

power cables are located in Norway (SM), Germany, Switzerland and Belgium (UG).¹⁰⁷⁷

- (719) Within the Nexans Group, the responsibility for operational means and results for HV SM and UG power cables lay with the HV and HV Accessories Business Group.¹⁰⁷⁸ It was the [function] that was responsible for the worldwide management of the HV SM and UG business.¹⁰⁷⁹ Nexans SA subsidiaries in, among others, Belgium, Germany, Norway and Spain all formed part of this Business Group. The [function] reported directly to Nexans SA.¹⁰⁸⁰
- (720) Throughout the infringement period, it was the senior management of Nexans France SAS that headed the HV and HV Accessories Business Group. [company representative A3] was its [function] while [company representative A2] held the position of [function].¹⁰⁸¹
- (721) On 1 October 2008, Nexans SA split the HV and HV Accessories Business Group into two. From that date onwards, the Submarine Business Unit within the Nexans Group was responsible for engineering, sales, production and related activities of HV SM power cables while the Land Business Unit performed similar tasks for HV UG power cables. Both Business Units were still headed by the [function], [company representative A3]. [company representative A2] remained the [function] and also became [function].¹⁰⁸²
- (722) Therefore, even though Nexans France SAS was formally a sister company of Nexans SA's subsidiaries in, among others, Norway and Spain, the organisational structure established by Nexans SA entailed that the senior management of Nexans France SAS directly headed all HV SM and UG power cable activities of the group.¹⁰⁸³ From an organisational point of view, Nexans France SAS therefore held a key position in the decision-making structure of Nexans SA's HV and HV Accessories Business Group.

The reporting lines in place between Nexans France SAS and other Nexans SA subsidiaries

- (723) As a direct consequence of its decision-making model, the senior management of Nexans SA's subsidiaries active in the HV power cable business such as Nexans Iberia SL or Nexans Norway A/S were supervised by the same senior management of Nexans France SAS. Therefore, senior managers in these sister companies reported directly to senior managers of Nexans France SAS.¹⁰⁸⁴
- (724) For instance, the [function] from 30 April 2002 to 31 July 2008, reported directly to [company representative A3] from Nexans France SAS. In addition, an employee of Nexans Iberia SL [company representative A5] who was involved in the collusive

¹⁰⁷⁷ ID [...], Nexans submission of 29 June 2010.

¹⁰⁷⁸ ID [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009.

¹⁰⁷⁹ ID [...], Nexans reply to RFI of 20 October 2009.

¹⁰⁸⁰ ID [...], Nexans reply to RFI of 20 October 2009.

¹⁰⁸¹ ID [...] and ID [...], Nexans reply to RFI of 20 October 2009.

¹⁰⁸² ID [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009.

¹⁰⁸³ See, in addition, ID [...], ID [...], ID [...], ID [...], ID [...], ID [...], ID [...], ID [...], ID [...] and ID [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009.

¹⁰⁸⁴ ID [...], ID [...] and ID [...], Nexans reply of 30 November 2009 to RFI of 20 October 2009.

contacts, reported directly to the senior management from Nexans France SAS in relation to these contacts (see, for instance, Recitals (234) (b) and (280) (a)).

Nexans France SAS responsible for the implementation of the cartel also on behalf of its sister companies

- (725) The fact that Nexans France SAS was responsible for the involvement of other Nexans SA subsidiaries, such as Nexans Iberia SL or Nexans Norway A/S, in the cartel is demonstrated by the evidence provided in Section 3. On several occasions, representatives of Nexans France SAS (mainly [company representative A2] and [company representative A1]) were involved in collusive contacts regarding projects located in Norway and Spain (see, for instance, recitals (175), (280) (c) and (322) (h)) or related to HV SM power cables, produced by Nexans Norway A/S but not by Nexans France SAS, as indicated in Recital (718). From the facts presented in Section 3, it is clear that the collusive activities of Nexans France SAS included HV SM power cables. The decision-making structure within Nexans SA's HV and HV Accessories Business Group is therefore reflected in the anti-competitive activities of the management of this group. This management stems from Nexans France SAS.
- (726) This organisational structure of linking key senior management employees from Nexans France SAS to other Nexans SA subsidiaries, is also reflected in Nexans France SAS' functional role in the infringement. While Nexans has argued that local subsidiaries independently competed for HV SM and UG power cable projects, the evidence indicates that Nexans France SAS' employees have allocated projects on behalf of other Nexans Group subsidiaries, regardless of the type of cable involved. From this evidence it is clear that employees of Nexans France SAS not only allocated projects concerning the UG power cables it itself produced, but also participated in the allocation of SM power cable projects that were produced by Nexans Norway A/S.
- (727) For example, Section 3 contains evidence of Nexans France SAS' direct participation in the allocation of the Corfu cable project to Nexans.¹⁰⁸⁵ This project was subsequently taken up by Nexans Norway.¹⁰⁸⁶ Further evidence shows that [company representative A3] and [company representative A2] from Nexans France SAS participated in an Internal Project Review meeting regarding that project.¹⁰⁸⁷ Similarly, Section 3 contains evidence of JPS declining an invitation to offer for a German windmill project as it was in the European home territory. [company representative CD1] (JPS) informed [company representative A1] (Nexans France SAS) thereof.¹⁰⁸⁸ This project was also subsequently taken up by Nexans Norway.¹⁰⁸⁹
- (728) Accordingly, although this Decision is only addressed to Nexans France SAS and Nexans SA, the Commission concludes that Nexans France SAS operated in the cartel on behalf of the other subsidiaries active in HV SM and UG power cables within the Nexans Group.¹⁰⁹⁰

¹⁰⁸⁵ See, for instance, Recitals (288), (290)-(293), (301)).

¹⁰⁸⁶ ID [...], Nexans reply to SO of 26 October 2011.

¹⁰⁸⁷ ID [...], Nexans reply to SO of 26 October 2011.

¹⁰⁸⁸ Recital (279)(a).

¹⁰⁸⁹ ID [...], Nexans reply to SO of 26 October 2011.

¹⁰⁹⁰ See Section 7.3.2.

5.2.2. *Pirelli/Prysmian/Goldman Sachs*

- (729) The evidence described in this Decision shows that employees of Pirelli Cavi e Sistemi S.p.A., then Pirelli Cavi e Sistemi Energia S.p.A. and finally Prysmian Cavi e Sistemi Energia S.r.l. (now Prysmian Cavi e Sistemi S.r.l.) participated directly in the infringement between 18 February 1999 and 28 January 2009. Prysmian Cavi e Sistemi S.r.l. should therefore be held liable for its participation in the infringement.
- (730) The Pirelli group was active in the SM and UG power cable business at least between 18 February 1999 and 28 July 2005. Until 1 July 2001, the power cable activities were performed by Pirelli Cavi e Sistemi S.p.A. On 1 July 2001, Pirelli Cavi e Sistemi S.p.A. transferred its operating activities in the power cable business to its subsidiary Pirelli Cavi e Sistemi Energia Italia S.p.A. On 27 November 2001, Pirelli Cavi e Sistemi S.p.A. was (partially) demerged in two sector holdings. From that date onwards, Pirelli Cavi e Sistemi Energia S.p.A. became the legal¹⁰⁹¹ and economic¹⁰⁹² successor of Pirelli Cavi e Sistemi S.p.A. in charge of the UG and SM power cable business. In May 2002 Pirelli Cavi e Sistemi S.p.A. was merged into its sole shareholder Pirelli S.p.A.
- (731) Pirelli S.p.A. and Pirelli Finance S.A. owned 98.75% and 1.25% of Pirelli Cavi e Sistemi S.p.A. and then of Pirelli Cavi e Sistemi Energia S.p.A. respectively. Effective from 4 August 2003, Pirelli S.p.A. was merged into Pirelli & C. S.p.A.
- (732) Prysmian Cavi e Sistemi S.r.l. and Prysmian S.p.A. have claimed that Prysmian Cavi e Sistemi S.r.l. may not be held liable as a successor of Pirelli Cavi e Sistemi Energia S.p.A. for the period from 18 February 1999 to 28 July 2005, since during this time the infringement has been solely committed by Pirelli Cavi e Sistemi Energia S.p.A. under the direction of Pirelli & C. S.p.A. According to Prysmian Cavi e Sistemi S.r.l. and Prysmian S.p.A., holding Prysmian Cavi e Sistemi S.r.l. liable as a successor would constitute a breach of the principle of personal liability. At least in case of a joint liability with Pirelli Cavi e Sistemi Energia S.p.A., Prysmian Cavi e Sistemi S.r.l. should not be held liable primarily.¹⁰⁹³
- (733) As indicated above, the principle of personal liability is a well-established principle of Union competition law. However, holding Prysmian Cavi e Sistemi S.r.l. liable for the infringement period from 18 February 1999 to 28 July 2005 does not constitute a breach of this principle for the following reasons. Prysmian Cavi e Sistemi S.r.l. represents Pirelli & C. S.p.A.'s former power cable business as it existed as a unit within Pirelli Cavi e Sistemi S.p.A. and later as subsidiary named Pirelli Cavi e Sistemi Energia S.p.A. Upon its demerging, Pirelli Cavi e Sistemi Energia S.p.A. ceased to exist and Prysmian Cavi e Sistemi S.r.l. continued its economic business from 28 July 2005 onwards within the same legal entity. The fact that the ownership of Pirelli Cavi e Sistemi Energia S.p.A. passed on from Pirelli Group to Goldman Sachs through GSCP Athena Energia S.r.l. on 28 July 2005 does not affect the

¹⁰⁹¹ Case C-448/11 P *SNIA SpA v Commission* [2013] not yet reported, paragraphs 28-29 - In the context of Pirelli Cavi e Sistemi S.p.A.'s demerger the complete power cables and systems business, including corporate participations, real estate, the cable laying ship G. Verne, agreements, R&D activities and personnel, was transferred to Pirelli Cavi e Sistemi Energia S.p.A., ID [...], Prysmian reply to RFI of 20 October 2009.

¹⁰⁹² Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 354-360.

¹⁰⁹³ ID [...], Prysmian reply to SO of 24 October 2011.

liability of Pirelli Cavi e Sistemi Energia S.p.A., later Prysmian Cavi e Sistemi Energia S.r.l., now Prysmian Cavi e Sistemi S.r.l. as legal entity and direct infringer itself,¹⁰⁹⁴ nor does any renaming of a legal entity lead to a release as far as liability for the infringement of competition rules is concerned.¹⁰⁹⁵ Furthermore and contrary to Prysmian Cavi e Sistemi S.r.l. and Prysmian S.p.A.'s second argument regarding their utmost liability in the second degree, it is settled case-law, that the Commission is "*not obliged first to verify whether the conditions were fulfilled for attribution of the infringement to the parent company of the undertaking that committed the infringement (...), even if the latter has undergone changes regarding its status as a legal entity.*"¹⁰⁹⁶ Therefore Prysmian Cavi e Sistemi S.r.l. can be held liable as direct infringer notwithstanding a parental liability of its former or current parent undertakings.

- (734) Prysmian Cavi e Sistemi S.r.l. and Prysmian S.p.A. have argued that the level of responsibility of the individuals involved in the collusion was incompatible with the scope and the duration of the allegations contained in the SO. Prysmian Cavi e Sistemi S.r.l. and Prysmian S.p.A. have not substantiated this argument and the list of people involved on behalf of Prysmian Cavi e Sistemi S.r.l. and Prysmian S.p.A. (as reproduced in Annex II) does not provide indications supporting this claim. Moreover, Section 3 contains references which indicate that knowledge about the infringements was not limited to the people directly involved in communications and meetings (see, for instance, Recitals (263) and (369)).
- (735) Pirelli Cavi e Sistemi Energia S.p.A. (formerly Pirelli Cavi e Sistemi S.p.A.) was owned almost 100% by Pirelli & C. S.p.A. (formerly Pirelli S.p.A.) from 18 February 1999 to 28 July 2005.
- (736) Pirelli & C. S.p.A. claimed that it was not aware of the anti-competitive practices enacted by its subsidiary and that it had issued a code of ethics to ensure compliance with the applicable anti-trust legislation.¹⁰⁹⁷ Pirelli & C. S.p.A. further argued that the Commission acted in violation of its rights of defence and of the principle of legal certainty, by establishing parental liability on the basis of an excessively arbitrary and ultimately non-rebuttable presumption.¹⁰⁹⁸ Finally, Pirelli & C. S.p.A. argued that, following the divestment of its power cables business, it did not have access to the documentary evidence necessary to challenge the Commission's claims.¹⁰⁹⁹
- (737) The Commission considers that Pirelli & C. S.p.A. has failed to rebut the presumption that it is liable for the infringements committed by Pirelli Cavi e Sistemi Energia S.r.l. Furthermore, while the Commission welcomes measures taken by undertakings to avoid the recurrence of cartel infringements and to report infringements to the competent authorities, such measures cannot change the reality

¹⁰⁹⁴ Case C-279/98 P *Cascades SA v Commission* [2000] ECR I-9693, paragraph 79.

¹⁰⁹⁵ Case C-29/83 *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission* [1984] ECR 1679, paragraph 9.

¹⁰⁹⁶ Joined Cases C-125/07 P, 133/07 P, 135/07 P, 137/07 P *Erste Group Bank v Commission* [2009] ECR I-08681, paragraph 82.

¹⁰⁹⁷ ID [...], Pirelli reply to SO of 23 September 2011.

¹⁰⁹⁸ ID [...], Pirelli reply to SO of 23 September 2011.

¹⁰⁹⁹ ID [...], Pirelli reply to SO of 23 September 2011.

that infringements occur and need to be sanctioned.¹¹⁰⁰ Pirelli & C. S.p.A. has not demonstrated that Pirelli Cavi e Sistemi Energia S.r.l. determined its own commercial policy in such a way that they and their parent company did not constitute a single economic entity and, therefore, a single undertaking for the purposes of article 101 of the Treaty. Regarding the alleged violation of rights of defence and of the principle of legal certainty, the Commission observes that the lawfulness of the presumption of parental liability has been consistently upheld by the case-law of the Court of Justice.¹¹⁰¹

- (738) The Commission therefore intends to hold Pirelli & C. S.p.A. liable as a parent company, also as legal successor of the former parent company Pirelli S.p.A., for the anti-competitive behaviour of its former subsidiary between 18 February 1999 and 28 July 2005.
- (739) On 28 July 2005, Pirelli & C. S.p.A. and Pirelli Finance S.A. sold their participations in Pirelli Cavi e Sistemi Energia S.p.A. to a subsidiary of the Goldman Sachs Group Inc., GSCP Athena Energia S.r.l.,¹¹⁰² hence, GSCP Athena Energia S.r.l. became the 100% shareholder of Pirelli Cavi e Sistemi Energia S.p.A.
- (740) GSCP Athena Energia S.r.l., later renamed Prysmian S.r.l. and then Prysmian S.p.A., was at the time wholly owned by GSCP Athena S.r.l.¹¹⁰³ (which was in turn indirectly wholly owned¹¹⁰⁴ by four of Goldman Sachs funds, the GS Capital Partners V Funds ("GSCP V")).¹¹⁰⁵ The GSCP V Funds were indirectly wholly owned by Goldman Sachs which through several interposed companies solely and fully controlled the investment decisions of the GSCP V funds.¹¹⁰⁶

¹¹⁰⁰ See Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-242/01 *Tokai Carbon Co. Ltd and Others v Commission* [2004] ECR II-1181, paragraph 343 and Case T-501/11 *Schindler Holding Ltd and others v Commission* [2013] not yet reported, paragraph 113.

¹¹⁰¹ See Case C-447/11 P *Commission v Portielje* [2013], not yet reported, paragraph 72.

¹¹⁰² GSCP Athena Energia S.r.l. was incorporated on 11 May 2005. On the day of incorporation four directors were nominated to the BoD, [company representative], [company representative], [company representative] and [company representative]. This Board met for the first time on 28 July 2005, the date of the acquisition of Pirelli Cavi e Sistemi Energia S.p.A., and remained in place until the nomination of the new Board on [date], ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁰³ GSCP Athena S.r.l. was incorporated on 9 May 2005. On the day of incorporation four directors were nominated to the BoD, [company representative], [company representative], [company representative] and [company representative]. This Board remained in place until the nomination of the new Board of then Prysmian S.p.A. on [date], ID [...] and ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁰⁴ At the time of the acquisition, the shares of GSCP Athena S.r.l. were directly held by a holding company established for the purposes of the acquisition, GSCP Athena (Lux) S.a.r.l. Subsequently a second holding company, GSCP Athena (Lux) II S.a.r.l. was established and on 28 October 2005 GSCP Athena S.r.l. was renamed Prysmian s.r.l. The shares of Prysmian s.r.l. were transferred to GSCP Athena (Lux) II S.a.r.l., ID [...], Prysmian reply of 17 November 2009 to RFI of 20 October 2009.

¹¹⁰⁵ The GS Capital Partners V Funds that purchased the entire share capital of Pirelli Cavi e Sistemi Energia S.p.A. are: 1) GS Capital Partners V Fund, L.P. (acquiring [...] % stake in Pirelli Cavi e Sistemi Energia S.p.A.), 2) GS Capital Partners V Offshore Fund, L.P. (acquiring [...] % stake in Pirelli Cavi e Sistemi Energia S.p.A.), 3) GS Capital Partners V Institutional L.P. (acquiring [...] % stake in Pirelli Cavi e Sistemi Energia S.p.A.) and 4) GS Capital Partners V GmbH & Co KG (acquiring [...] % stake in Pirelli Cavi e Sistemi Energia S.p.A.), ID [...], Goldman Sachs reply to the SO of 11 October 2011.

¹¹⁰⁶ See, in this regard, the footnote of GS' official IPO prospectus for Prysmian S.p.A., ID [...], Prysmian reply to RFI of 30 August 2012, showing that the GSCP V Funds were managed through other Goldman Sachs subsidiaries acting as "Managing General Partner" or "General Partner" or "Managing Limited Partner" explaining that the General Partner or Managing Limited Partner of an investment fund controls entirely the investment decisions taken by the fund.

- (741) On 7 September 2005 Pirelli Cavi e Sistemi Energia S.p.A. was renamed into Prysmian Cavi e Sistemi Energia s.r.l. (now Prysmian Cavi e Sistemi S.r.l.)¹¹⁰⁷ and on 28 November 2005 GSCP Athena Energia S.r.l. was incorporated into Prysmian Cavi e Sistemi S.r.l.¹¹⁰⁸ On 16 January 2007 Prysmian Cavi e Sistemi S.r.l.'s sole shareholder Prysmian S.r.l changed name into Prysmian S.p.A.¹¹⁰⁹
- (742) Also on 7 September 2005 the GSCP V funds sold 8.89% of their shares in Prysmian S.p.A.'s holding company, GSCP Athena (Lux) S.a.r.l., to funds managed by the Apollo Investment Corporation ("Apollo"). For the purpose of the investment, the GSCP V funds established a new partnership, GS Prysmian Co-Invest L.P.¹¹¹⁰
- (743) Subsequently, on 21 July 2006, GSCP V sold 8.12% of the shares in GSCP Athena (Lux) S.a.r.l. as part of a management incentive plan to the management team of Prysmian S.p.A.¹¹¹¹ On 3 April 2007 GSCP V sold a further [...] % of GSCP Athena (Lux) S.a.r.l. shares to another subsidiary of the The Goldman Sachs Group, Inc., Goldman Sachs International.¹¹¹²
- (744) On 3 May 2007 46% of Prysmian S.p.A.'s shares were floated through an IPO on the Milan Stock exchange. In a second disposal on 6 November 2007 a further 12.3% of Prysmian S.p.A.'s shares were sold to the market and on 12 November 2007 an additional 9.9% was sold to Taihan. In a third disposal on 10 November 2009 a further 14.36% of Prysmian S.p.A.'s shares were sold to the market.¹¹¹³
- (745) As Prysmian Cavi e Sistemi S.r.l. was wholly-owned by Prysmian S.p.A from 29 July 2005 until 28 January 2009, the Commission presumes the exercise of decisive influence by Prysmian S.p.A. over the conduct on the market of Prysmian Cavi e Sistemi S.r.l.
- (746) From 29 July 2005 to 3 May 2007 The Goldman Sachs Group, Inc. held indirectly 100% of the voting rights in Prysmian S.p.A. Therefore, and in line with the above mentioned case-law, the Commission presumes the exercise of decisive influence by The Goldman Sachs Group, Inc. over the conduct on the market of Prysmian S.p.A. during this period.
- (747) In addition, taking the arguments introduced by The Goldman Sachs Group, Inc. and considering that both periods before and after the IPO are closely linked into account, the Commission will also rely on evidence showing that The Goldman Sachs Group, Inc. indeed exercised decisive influence over Prysmian S.p.A. during

¹¹⁰⁷ On 1 December 2011 Prysmian Cavi e Sistemi Energia S.r.l changed name into Prysmian Cavi e Sistemi S.r.l., ID [...], Prysmian comments on Pirelli and Goldman Sachs reply to SO of 21 March 2012.

¹¹⁰⁸ ID [...] and ID [...], Prysmian reply to RFI of 30 August 2012. This reverse merger was approved by GSCP Athena Energia S r.l.'s shareholder meeting on 24 October 2005, ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁰⁹ ID [...], Prysmian reply of 17 November 2009 to RFI of 20 October 2009.

¹¹¹⁰ Apollo made a capital contribution to GS Prysmian Co-Invest L.P. and became sole limited partner, ID [...], Goldman Sachs reply to the SO of 11 October 2011. In addition Goldman Sachs set up a company called GS Prysmian Co-Invest, GP Limited which became the "General Partner" of GS Prysmian Co-Invest L.P. ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹¹¹ ID [...], Goldman Sachs reply to the SO of 11 October 2011.

¹¹¹² ID [...], Goldman Sachs reply to the SO of 11 October 2011.

¹¹¹³ ID [...], Goldman Sachs reply to the SO of 11 October 2011.

the whole period of its investment and until the end of the infringement, from 29 July 2005 until 28 January 2009.

- 100% control of voting rights from 29 July 2005 to 3 May 2007
- (748) In its reply to the SO The Goldman Sachs Group, Inc. has claimed that it only indirectly owned 100% of Prysmian S.p.A. from 29 July 2005 until 7 September 2005 and that [...].
- (749) In particular, The Goldman Sachs Group, Inc. has argued that the sales of 8.89% of its shares in Prysmian S.p.A. on 7 September 2005 to Apollo, of 8.12% of its shares to the management team of Prysmian S.p.A. on 21 July 2006 and of [...] % of its shares to Goldman Sachs International on 3 April 2007 would show that The Goldman Sachs Group, Inc.'s ownership of 100% was only of very short duration (see Recital (742) and (743)). The Goldman Sachs Group, Inc. concluded that the Commission cannot rely on the presumption for wholly-owned subsidiaries for this period.
- (750) However, the Commission's investigation has shown that The Goldman Sachs Group, Inc. controlled 100% of the voting rights in Prysmian S.p.A. throughout the whole period before the IPO, from 29 July 2005 to 3 May 2007.
- (751) First, the sale of 8.89% of Prysmian S.p.A.'s shares to the investment company Apollo on 7 September 2005 was organised in a way to ensure that the new investor, Apollo, would engage as a purely passive investor without any possibility to make use of its potential shareholder rights. As explained in Recital (742) above, prior to and in preparation of Apollo's investment, the GSCP V funds established a new partnership, GS Prysmian Co-Invest L.P. This company had one general partner and one limited partner. The general partner of GS Prysmian Co-Invest L.P. was GS Prysmian Co-Invest, GP Limited, a subsidiary of The Goldman Sachs Group, Inc., fully controlled and managed by The Goldman Sachs Group, Inc. through the GSCP V funds.¹¹¹⁴ On 7 September 2005 Apollo made a capital contribution to GS Prysmian Co-Invest L.P. and became sole limited partner. As such, Apollo was a pure passive co-investor, [...].¹¹¹⁵ [...].¹¹¹⁶ [...].¹¹¹⁷ This shows very clearly that GS Prysmian Co-Invest L.P. acted through its general partner GS Prysmian Co-Invest G.P. Limited and was in the same position as the other GSCP V funds, fully

¹¹¹⁴ See ID [...], Goldman Sachs reply to the SO of 11 October 2011; ID [...], Apollo reply to RFI of 30 August 2012; ID [...], Prysmian reply to RFI of 30 August 2012. See also footnote 1 of Prysmian's IPO prospectus (ID [...], Prysmian reply to RFI of 30 August 2012) explaining that "GS Prysmian Co-invest GP Limited is indirectly controlled by The Goldman Sachs Group, Inc. via the Goldman Sachs Capital Partners funds." (emphasis added)

[...].

¹¹¹⁵ See ID [...] et seqq, Apollo reply to RFI of 30 August 2012, clause [...] of this sales and purchase agreement states on voting arrangements: "[...]." (emphasis added)

This agreement was signed by two Goldman Sachs employees, [company representative] representing the four GSCP V funds and [company representative] representing [GS entities].

¹¹¹⁶ For the Management Rights Letter see ID [...], Goldman Sachs reply to RFI of 9 October 2012.

¹¹¹⁷ ID [...], Apollo reply to RFI of 30 August 2012 and letter to GS Capital Partners V Institutional, L.P. dated 7 September 2005, ID [...], Apollo reply to RFI of 30 August 2012 - this letter was signed by two Goldman Sachs employees, [company representative] representing the GS Capital Partners V Institutional, L.P fund and [company representative] acting for [GS entities].

The letter reads: "[...]"

[...]." (emphasis added)

controlled by The Goldman Sachs Group, Inc. Accordingly, Apollo has confirmed that "[...]."¹¹¹⁸

Consequently all rights, and in particular voting rights, linked to the shares acquired by Apollo remained with the GSCP V funds.

- (752) Second, the sale of 8.12% of Prysmian S.p.A.'s shares to the management team of Prysmian S.p.A. on 21 July 2006 was organised in a way to ensure that the management holding the shares would be purely passive shareholders without the possibility to make use of their shareholder rights and in particular voting rights. When acquiring those shares the investing management had to accept certain conditions for their investment in two contracts:

(i) a co-investment contract and

(ii) a fiduciary agreement with Fortis Banque Luxembourg SA.¹¹¹⁹

Through these contracts the managers accepted that their respective shares were acquired and held though the fiduciary, Fortis Banque Luxembourg SA.

The agreements stipulate further that: "[...].
[...]."¹¹²⁰

Consequently all rights, and in particular voting rights, linked to the shares acquired by the management remained with the GSCP V funds.

- (753) Third, the sale of [] % of Prysmian S.p.A.'s shares to Goldman Sachs International on 3 April 2007 did not change anything in The Goldman Sachs Group, Inc.'s possibility to control 100% of the voting rights in Prysmian S.p.A., as Goldman Sachs International was just another wholly owned subsidiary of The Goldman Sachs Group, Inc.
- (754) Consequently, The Goldman Sachs Group, Inc. throughout the period from 29 July 2005 to 3 May 2007 controlled 100% of the voting rights in Prysmian S.p.A.¹¹²¹ This

¹¹¹⁸ See ID [...], Apollo reply to RFI of 30 August 2012. Accordingly, Apollo is not even mentioned as shareholder in Prysmian's IPO prospectus that shows the various shareholdings in Prysmian and explains that GS Prysmian Co-Invest, GP Limited was indirectly controlled by Goldman Sachs through the GSCP V funds and that GS Prysmian Co-Invest G.P. Limited controlled as General Partner all decisions of GS Prysmian Co-Invest, LP - ID [...], Prysmian reply to RFI of 30 August 2012. This is also confirmed by Goldman Sachs in its reply to RFI of date 30 August 2012, where it states that "[...]", ID [...].

¹¹¹⁹ See ID [...], Goldman Sachs reply to RFI of 30 August 2012 and ID [...], Prysmian reply to RFI of 30 August 2012, these contracts were signed on 29 June 2006.

¹¹²⁰ See ID [...], Goldman Sachs reply to RFI of 30 August 2012, clauses [...] of the Fiduciary agreement – accordingly it is stated in the Consob commercial register extracts submitted by Prysmian that "the rights to vote relating to the shares held by the trustee on behalf of the co-investing managers is reserved to the trustee, considering that these [voting rights] can be exercised only where the Parties GS [meaning the GSCP V Funds] have given previous written instructions to vote to the trustee." (emphasis added) See ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹²¹ The fact that Goldman Sachs was seen as a shareholder also of the shares in which Apollo and the management team had invested is also clear from the official minutes of Prysmian's shareholder meeting of 15 April 2008, ID [...], Prysmian reply to RFI of 30 August 2012. This was a shareholder meeting after the IPO, when the GSCP V funds owned 25.2% of Prysmian's shares, Apollo through GS Prysmian Co-Invest, LP 2.5%, Prysmian's management through the fiduciary 2.4% and Goldman Sachs International [...]%. The minutes of the shareholder meeting, referring to the shareholders extracts, state that Goldman Sachs at this point in time held 30.23% of Prysmian's shares (through Prysmian (Lux) II

situation is identical to the situation in which a company holds 100% of the shares, which is the classical situation in which the presumption of wholly-owned subsidiaries applies. Also a common 100% shareholder will often have external finance stemming from banks or investors (comparable to the situation of the investors in the GSCP V funds or the purely passive investments by Apollo and Prysmian S.p.A.'s management team) without giving any management or voting rights to the respective creditors. Therefore, Prysmian S.p.A.'s situation should not be assessed any differently to a case of a normal wholly owned company, as all voting rights remained with one shareholder which was ultimately The Goldman Sachs Group, Inc.¹¹²² In view of the above, the Commission relies on the presumption for wholly-owned subsidiaries for the period from 29 July 2005 to 3 May 2007. The Goldman Sachs Group, Inc. has not been able to rebut this presumption of exercise of decisive influence for the above period.

- Exercise of decisive influence from 9 July 2005 to 28 January 2009
- (755) Aside from the presumption of exercise of decisive influence, the Commission also demonstrates that The Goldman Sachs Group, Inc actually exercised decisive influence over Prysmian in light of all the organisational, economic and legal links between them which of itself is sufficient to support The Goldman Sachs Group, Inc liability for Prysmian's conduct. The evidence in the possession of the Commission shows that The Goldman Sachs Group, Inc. indeed exercised decisive influence over Prysmian S.p.A. from the acquisition of 100% of Prysmian S.p.A.'s shares on 29 July 2005 until the end of the infringement on 28 January 2009.
- (756) The Goldman Sachs Group, Inc. has raised a number of arguments, claiming that it did not exercise any decisive influence over Prysmian S.p.A. and was not even in a position to do so. In particular, The Goldman Sachs Group, Inc. has explained the following: (i) it was a pure financial investor and was only involved in high-level, non-operational matters not concerning the conduct of Prysmian S.p.A. (ii) [essential elements of the commercial position of the Goldman Sachs Group regarding its investment in Prysmian] and did not have the expertise and the resources to determine the conduct of Prysmian S.p.A. (iii) [essential elements of the commercial position of the Goldman Sachs Group regarding its investment in Prysmian] (iv) the members of the board that were employees of The Goldman Sachs Group, Inc. did not make up the qualified majority needed to pass board resolutions regarding Prysmian S.p.A. and resolutions regarding the market conduct of its subsidiary, Prysmian Cavi e Sistemi S.r.l.
- (757) The Goldman Sachs Group, Inc.'s arguments are contradicted by the elements in the Commission's file which show clearly that The Goldman Sachs Group, Inc. has exercised decisive influence over Prysmian S.p.A. during the entire period from 29

S.a.r.l) and [...] through Goldman Sachs International, adding in total to 31.69% of the shares. This confirms that Goldman Sachs was in the position to act as shareholder also in regard of the shares invested into by Apollo and the management team.

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This conclusion is further supported by the wording of Prysmian's IPO prospectus, which explains that (i) the investment made by Apollo is managed by Goldman Sachs in the same way as the other four GSCP V funds, (ii) the votes of the shares held by the management are subject to written approval from the GSCP V funds and that consequently (iii) Prysmian at the time of the IPO was indirectly fully controlled by Goldman Sachs, ID [...], Annex 1 to Prysmian's observations on Goldman Sachs reply to the Commission RFI of 30 August 2012, dated 25 January 2013.

July 2005 until 28 January 2009. This conclusion is based on objective factors, having regard to the economic, organisational and legal links between the two entities, as described in the following Recitals.

(a) Appointment of the Board of Directors

- (758) Throughout the relevant period, The Goldman Sachs Group, Inc. had the power to appoint the respective Boards of Directors through its wholly controlled subsidiaries. The various Boards of Directors were given "*the widest powers to decide on any ordinary and extraordinary business*", with the exception of any decisions legally reserved for the shareholders.¹¹²³
- (759) As mentioned in footnotes 1102 and 1103, The Goldman Sachs Group, Inc. incorporated two companies, GSCP Athena S.r.l and GSCP Athena Energia S.r.l. on 9 and 11 May 2005, in preparation of the acquisition of Pirelli & C. S.p.A.'s cable business. The Goldman Sachs Group, Inc. nominated as directors of GSCP Athena S.r.l [company representative], [company representative], [company representative] and [company representative]. [company representative] was nominated president of the Board of Directors ("BoD") on 28 July 2005.¹¹²⁴ GSCP Athena S.r.l's BoD remained in place until the nomination of the new BoD of then Prysmian S.p.A. on [date].¹¹²⁵

On [date] The Goldman Sachs Group, Inc. nominated, through its fully controlled subsidiary GSCP Athena (Lux) II S.a.r.l.¹¹²⁶ as sole shareholder, Prysmian S.p.A.'s new board of seven directors. The Goldman Sachs Group, Inc. nominated [company representative], [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative] to the BoD. [company representative] was elected chairman of the BoD.¹¹²⁷

On [date] The Goldman Sachs Group, Inc. nominated through its fully controlled subsidiary Prysmian Lux (II) S.a.r.l. as sole shareholder¹¹²⁸ Prysmian S.p.A.'s new board of ten directors in preparation of the upcoming IPO in May 2007. The Goldman Sachs Group, Inc. nominated [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative] to the BoD.

¹¹²³ See Prysmian S.p.A.'s by-laws, ID [...], Goldman Sachs reply to RFI of 13 March 2013.

¹¹²⁴ ID [...], Prysmian reply to RFI of 30 August 2012: [...].

¹¹²⁵ ID [...], ID [...] and ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹²⁶ Represented by [company representative] (GSCP Athena (Lux) II S.a.r.l.), ID [...], Prysmian reply to RFI of 30 August 2012. For Prysmian's first BoD meeting see ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹²⁷ It is clear from Prysmian's Corporate Governance Report that the newly appointed board also kept its extensive powers as regards the management of the company and that the chairman held a casting vote as of 28 February 2007, ID [...], Prysmian reply of 17 November 2009 to RFI of 20 October 2009 and Prysmian S.p.A. Corporate Governance Report of 7 March 2008, p. 11-19, available via http://media.corporate-ir.net/media_files/irol/21/211070/pryscorp.gov2008.pdf. The only director that was previously employed by the Pirelli group was [company representative], see ID [...], Goldman Sachs reply of 27 March 2013 to RFI of 13 March 2013.

¹¹²⁸ Represented by [company representative] (Prysmian Lux (II) S.a.r.l.), ID [...], Prysmian reply to RFI of 30 August 2012.

This BoD was originally nominated for a period until [date], with [company representative] as chairman of the BoD.

During an ordinary shareholders' meeting on 9 April 2009, after the end of the infringement and at a time that The Goldman Sachs Group, Inc. held through Prysmian (Lux) II S.a.r.l. and Goldman Sachs International 31.69% of Prysmian S.p.A.'s shares – see footnote 1121, The Goldman Sachs Group, Inc. revoked, using its majority shareholding through Prysmian Lux (II) S.a.r.l., the mandate given to the Directors at the shareholders' meeting on 28 February 2007.¹¹²⁹ Prysmian S.p.A.'s new board of twelve directors was nominated solely on the basis of a list of candidates proposed by The Goldman Sachs Group, Inc. through its fully controlled subsidiary Prysmian (Lux) II S.a.r.l.¹¹³⁰ The Goldman Sachs Group, Inc. nominated [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative], [company representative] and [company representative] to the BoD.

(b) Power to call for shareholder meeting and to propose to revoke Directors

- (760) Throughout the relevant period, The Goldman Sachs Group, Inc. had, through its wholly controlled subsidiaries, the power to call for a shareholder meeting¹¹³¹ and to propose the revocation Directors or the entire BoD.¹¹³² Indeed, on 9 April 2009, after the end of the infringement, The Goldman Sachs Group, Inc. made use of this power and revoked, through its wholly controlled subsidiaries Prysmian (Lux) II S.a.r.l. and Goldman Sachs International, Prysmian's BoD and nominated 12 out of 12 new directors (at that time holding a combined 31.69% of Prysmian S.p.A.'s shares).

(c) Representation on Prysmian S.p.A.'s BoD

- (761) The Goldman Sachs Group, Inc. made sure to be directly represented on each of Prysmian S.p.A.'s BoDs with a number of representatives. Two out of four BoD members of GSCP Athena S.r.l, nominated on 9 May 2005, [company representative] and [company representative], were at the same time employees of The Goldman Sachs Group, Inc.¹¹³³ Three out of seven BoD members of Prysmian S.p.A.'s BoD nominated on 15 December 2005, [company representative], [company representative] and [company

¹¹²⁹ See ID [...], Annex 6 to Prysmian reply to RFI of 22 March 2013.

¹¹³⁰ No other shareholder presented a list of candidates, therefore the 12 directors proposed by Prysmian (Lux) II S.a.r.l. were appointed to the Board, see Prysmian's report on corporate governance and ownership structures of 3 March 2010, p. 11-15, available via <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzY2NzJ8Q2hpbGRJRD0tMXxUeXBIPTM=&t=1>.

¹¹³¹ During the relevant period Goldman Sachs had (as only shareholder), through its sole or majority shareholding in Prysmian, at any time the possibility to call for an extraordinary shareholder meeting. See ID [...], Prysmian reply to RFI of 22 March 2013.

¹¹³² Until November 2007 Goldman Sachs had, through its sole or majority shareholding in Prysmian, at any time the possibility to revoke Prysmian's BoD or certain directors thereof, ID [...], Goldman Sachs reply of 27 March 2013 to RFI of 13 March 2013. After that date, Goldman Sachs remained with more than 30% the largest shareholder and was *de facto* the only shareholder in a position to call for an extraordinary shareholder meeting at any time in order to propose the dismissal and the new nomination of a BoD, see ID [...], Prysmian reply to RFI of 22 March 2013. According to Art 2383 of the Italian civil code, the shareholder meeting can revoke the directors or the BoD at any time.

¹¹³³ [...].

representative] were also employees of The Goldman Sachs Group, Inc at the same time,¹¹³⁴ a fourth director also had [essential elements of the Goldman Sachs Group's internal policy].¹¹³⁵

Three out of ten BoD members of Prysmian S.p.A.'s BoD nominated on 28 February 2007, [company representative], [company representative] and [company representative] were also employees of The Goldman Sachs Group, Inc. at the same time.¹¹³⁶ In addition two directors had also [essential elements of the Goldman Sachs Group's internal policy].¹¹³⁷

Finally four out of twelve board members of Prysmian S.p.A.'s BoD nominated on 9 April 2009, after the end of the infringement and at a time that The Goldman Sachs Group, Inc. held through Prysmian (Lux) II S.a.r.l. and Goldman Sachs International 31.69% of Prysmian S.p.A.'s shares, [company representative], [company representative], [company representative] and [company representative] were also employees of The Goldman Sachs Group, Inc. at the same time.¹¹³⁸ In addition two other directors [essential elements of the Goldman Sachs Group's internal policy] and one director had [essential elements of the Goldman Sachs Group's internal policy] (see footnotes 1135 and 1137).

- (762) Looking at the composition of Prysmian S.p.A.'s BoDs from May 2005 until April 2009 it is clear that the directors directly employed by The Goldman Sachs Group, Inc. or otherwise linked to The Goldman Sachs Group, Inc. through [essential elements of the Goldman Sachs Group's internal policy] in other The Goldman Sachs Group, Inc.'s controlled entities always represented 50% or more of the BoD members, for example 3 out of 4 on the first BoD, 4 out of 7 on the second BoD, 5 out of 10 on the third BoD and 7 out of 12 on the fourth BoD.¹¹³⁹ In addition, decisions of the BoD that was in place until 28 February 2007 (the second BoD), needed a positive vote of five out of seven of the directors.¹¹⁴⁰ Any decision not reaching this majority was mandatorily to be taken by the shareholders during an extraordinary shareholder meeting convened on the request of the chairman or any managing director, which was until 28 February 2007 The Goldman Sachs Group, Inc. through its subsidiary Prysmian (Lux) II S.a.r.l.. As of 28 February 2007 (the third BoD) BoD decisions were taken by simple majority and one The Goldman Sachs Group, Inc. employee, [company representative], held a casting vote as chairman of the Board. Consequently The Goldman Sachs Group, Inc. was not even obliged to revoke the BoD and nominate a new one but could rather rely on the approval of its decisions by the BoD (or the shareholders) throughout the whole period.¹¹⁴¹

(d) Management powers for representatives in BoD

¹¹³⁴ [...].

¹¹³⁵ [Essential elements of the Goldman Sachs Group's internal policy] ID [...], Goldman Sachs reply of 27 March 2013 to RFI of 13 March 2013. [...].

¹¹³⁶ [...], ID [...], Goldman Sachs reply to RFI of 30 August 2012.

¹¹³⁷ [Essential elements of the Goldman Sachs Group's internal policy] ID [...], Goldman Sachs reply of 27 March 2013 to RFI of 13 March 2013. These two directors were also nominated to several other Boards of companies acquired by Goldman Sachs.

¹¹³⁸ [...], ID [...], Goldman Sachs reply to RFI of 30 August 2012.

¹¹³⁹ [...], see ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁴⁰ Art 19 of Prysmian's by-laws of December 2005, ID [...], Prysmian reply to RFI of 22 March 2013.

¹¹⁴¹ Art 18 of Prysmian's by-laws of February 2007, ID [...], Goldman Sachs reply to RFI of 13 March 2013.

(763) The Goldman Sachs Group, Inc. made sure that its representatives on the BoD were vested with the broadest possible powers of management. On 15 December 2005 the BoD decided in its first meeting to delegate special powers to a number of directors in order to guarantee a more efficient management of the company. Consequently the board nominated four "Managing Directors", namely [company representative], [company representative], [company representative] (as previously explained all of whom were The Goldman Sachs Group, Inc. employees) and the CEO [company representative] granting those directors ample management powers.¹¹⁴² The powers conferred to those directors included extensive powers related to the ordinary management of Prysmian S.p.A. and its subsidiaries.¹¹⁴³ The Goldman Sachs Group, Inc. employees acting as managing directors during this period signed regularly acts connected to the daily management of Prysmian S.p.A.'s business in their function as managing directors.¹¹⁴⁴ In addition, there are several BoD minutes that evidence that for special projects additional powers were given to the Prysmian S.p.A.'s directors employed by The Goldman Sachs Group, Inc.¹¹⁴⁵

In view of the upcoming IPO in May 2007 and in order to comply with the provisions of the Regulatory Code of the Italian Stock Exchange for Listed Companies Prysmian S.p.A. had to revoke the special management powers granted to the managing directors. As a result of the BoD's decision of 16 January 2007 The Goldman Sachs Group, Inc.'s employees were no longer managing directors and all delegated powers were granted exclusively to Prysmian S.p.A.'s CEO, [company representative].¹¹⁴⁶ However, during the same meeting the BoD decided to create a "Strategic Committee", composed of three directors. Two of the three members of this committee were simultaneously employees of The Goldman Sachs Group, Inc., namely [company representative] (president of the committee) and [company representative], the third one being Prysmian S.p.A.'s CEO [company representative].¹¹⁴⁷ The Regulatory Code of the Italian Stock Exchange for Listed Companies does not require the existence of any committee such as the Strategic Committee.

Although it had no voting or veto powers, the Strategic Committee had a central role in supporting the BoD in relation to key strategic and business matters of Prysmian S.p.A. and therefore to intervene at an early stage of Prysmian S.p.A.'s decision making process. Most notably the duties of the Strategic Committee were as follows:¹¹⁴⁸

¹¹⁴² The minutes of the meeting read: "[...] "[...]", see ID [...], Prysmian reply to RFI of 30 August 2012. The minutes read further: "... [...]", see ID [...], Prysmian reply to RFI of 30 August 2012 (emphasis added).

¹¹⁴³ [...]. See also ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁴⁴ [...], ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁴⁵ [...], ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁴⁶ See minutes BoD, ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁴⁷ On 28 February 2007 the members of the Strategic Committee were newly appointed, two of three members being Goldman Sachs employees ([company representative] and [company representative]), ID [...], Prysmian reply to RFI of 30 August 2012. At the same time [company representative] and [company representative] renounced any rights of remuneration for their position as Prysmian's directors, ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁴⁸ See minutes BoD, ID [...], Prysmian reply to RFI of 30 August 2012.

- (i) it examined the strategic, business and financial plans of the company and of the group, the annual budget and year-to-year forecasts prior to examination by the BoD;
- (ii) it examined particularly important investment and divestment projects, the obtaining of loans and the granting of guarantees which may have a significant effect on the financial, economic and equity position of the company and of the group prior to examination by the BoD; and
- (iii) it analysed the most important problems connected with the performance of the company and of the group.

Its role was, [...]. It is clear from the evidence in the Commission's file that the topics discussed during the meetings of the strategic committee were related to the daily business of Prysmian S.p.A. and Prysmian Cavi e Sistemi S.r.l.¹¹⁴⁹ and that the presence of [company representative], [company representative] and [company representative] was perceived internally as the presence of The Goldman Sachs Group, Inc.¹¹⁵⁰ Prysmian S.p.A. has submitted that the CEO, [company representative] had regular, at least weekly, contacts with the other members of the strategic committee and that the relationship between [company representative] and the The Goldman Sachs Group, Inc. employees who were members of the Strategic Committee was wide ranging (including the group main strategic choices and results), and mostly held by phone.¹¹⁵¹ Prysmian S.p.A. has also submitted a number of emails showing that The Goldman Sachs Group, Inc. employees were consulted prior to the potential acquisition of certain cable business and provided guidance as to the price to pay and other aspects of the target's business.¹¹⁵²

It should also be noted that the strategic committee was dissolved in May 2010, just after The Goldman Sachs Group, Inc. complete disposal of its shareholding in Prysmian S.p.A.¹¹⁵³

(e) Important role on other committees established by Prysmian GS

- (764) The Goldman Sachs Group, Inc. employees also had an important role on the other committees established by Prysmian GS on 15 December 2005. These committees were the compensation committee dealing amongst other with questions of remuneration (two out of the three members of the committee until 28 February 2007 were The Goldman Sachs Group, Inc. managers – [company representative] and [company representative]), and the internal control committee dealing amongst others with questions of compliance (one of the two members of the committee until

¹¹⁴⁹ ID [...], Prysmian reply to RFI of 30 August 2012, [...], ID [...], Prysmian comments on Pirelli and Goldman Sachs reply to SO of 21 March 2012.

¹¹⁵⁰ See an internal Prysmian email of 14 July 2008, ID [...], Prysmian reply to RFI of 30 August 2012, [...].

¹¹⁵¹ ID [...], Prysmian reply to RFI of 30 August 2012 and ID [...], Prysmian reply to RFI of 22 March 2013. See also ID [...] Annex to Prysmian reply to RFI of 22 March 2013, email by [company representative] dated 20 August 2007 verifying with [company representative]'s volume, pricing and profitability and email by [company representative] of 11.09.2007 asking [company representative] for the latest version of Prysmian's 3 year business plan.

¹¹⁵² ID [...], Annex to Prysmian reply to RFI of 22 March 2013, email by [company representative] dated 29 June 2007, emails by [company representative] dated 23 April 2008, 21 September 2007 and 17 April 2007.

¹¹⁵³ [...], ID [...], to Prysmian reply to SO of 24 October 2011.

28 February 2007 was a The Goldman Sachs Group, Inc. manager – [company representative]).¹¹⁵⁴ Due to the expected listing of Prysmian S.p.A.'s shares on the Milan Stock Exchange, the composition of those committees changed according to the provisions of the Self-Regulatory Code for listed companies, which requires at least two out of three members to be independent. On 28 February 2007 the members of both committees were reappointed.¹¹⁵⁵ Evidence in the file shows that [company representative] intervened actively in the pre-discussion on 20 February on which Directors should be appointed to the various committees, explaining to [company representative] that he would prefer [company representative] to be on the compensation committee rather than [company representative].¹¹⁵⁶ After that date The Goldman Sachs Group, Inc. maintained the only non-independent member sitting on the compensation committee (one out of three members was The Goldman Sachs Group, Inc. manager – [company representative]).

(f) Receipt of regular updates and monthly reports

- (765) All directors including the employees of The Goldman Sachs Group, Inc. were updated on each of the group's sector areas and on operations at monthly meetings and received monthly reports informing on each of the group's sector areas throughout the relevant period.¹¹⁵⁷ Prysmian S.p.A. has submitted that prior to the IPO on 3 May 2007 other The Goldman Sachs Group, Inc. managers also participated in the monthly meetings¹¹⁵⁸ and that only after the IPO was Prysmian S.p.A. advised to limit the attendance to those The Goldman Sachs Group, Inc. managers who were also Prysmian S.p.A. BoD members.¹¹⁵⁹

(g) Measures to ensure continuation of decisive control after the IPO

- (766) The Goldman Sachs Group, Inc. took measures in order to guarantee that even after the IPO it would be in a position to exercise decisive control over Prysmian S.p.A.:

New BoD

- (767) As mentioned above (see Recital (758)), The Goldman Sachs Group, Inc. nominated through its fully controlled subsidiary Prysmian Lux (II) S.a.r.l as sole shareholder in February 2007 the BoD that governed Prysmian S.p.A.'s until 9 April 2009, originally its mandate was until 31 December 2009. This meant that The Goldman Sachs Group, Inc. could avoid a new BoD being installed directly after the IPO in May 2007.

Slate system

¹¹⁵⁴ See minutes BoD, ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁵⁵ See minutes BoD, ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁵⁶ ID [...], Annex to Prysmian reply to RFI of 22 March 2013, email by [company representative] dated 20 and 21 February 2007.

¹¹⁵⁷ See for cover sheets of monthly reports ID [...], Prysmian reply to RFI of 30 August 2012 and as an example of monthly reports, ID [...], Prysmian comments on Pirelli and Goldman Sachs reply to SO of 21 March 2012. [...].

¹¹⁵⁸ For example [company representative] and [company representative], who later became also member of Prysmian's BoD, see monthly report dated 25 October 2006, ID [...], Prysmian comments on Pirelli and Goldman Sachs reply to SO of 21 March 2012.

¹¹⁵⁹ Prysmian submits that this was done in order to avoid that disclosure of potential price sensitive information to persons outside of the company's organization triggers an obligation to inform the market, ID [...], Prysmian comments on Pirelli and Goldman Sachs reply to SO of 21 March 2012.

- (768) In preparation of the IPO The Goldman Sachs Group, Inc. changed during Prysmian S.p.A.'s shareholder meeting of 16 January 2007¹¹⁶⁰ through its fully controlled subsidiary Prysmian Lux (II) S.a.r.l. as sole shareholder Prysmian S.p.A.'s by-laws, introducing amongst others a slate system for the nomination and appointment of new BoDs.¹¹⁶¹ Through this system The Goldman Sachs Group, Inc. could with lower shareholding make sure to be in a position to nominate at least five of the six directors in the future and to keep control over Prysmian S.p.A.

Taihan voting

- (769) During the second disposal on 12 November 2007, 9.9% of Prysmian S.p.A.'s shares were sold to Taihan (see Recital (744)).¹¹⁶² In a letter dated 6 November 2007 Taihan committed the following to Prysmian S.p.A.: (i) not to hold an investment of more than 10% overall in Prysmian S.p.A.'s share capital (ii) not to exercise voting rights in Prysmian S.p.A. shareholders' meetings, including through other companies in the Taihan Group, for more than 10% of share capital with voting rights and (iii) not to propose any candidate for appointment to the position of director or statutory auditor of Prysmian S.p.A.¹¹⁶³ Again this commitment guaranteed The Goldman Sachs Group, Inc. that the second biggest shareholder, Taihan, would not be able to present a slate or nominate any representatives to Prysmian S.p.A.'s BoD.

Express references to controlling interest after IPO

¹¹⁶⁰ ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁶¹ ID [...], Goldman Sachs reply of 27 March 2013 to RFI of 13 March 2013. See also Prysmian's report on corporate governance and ownership structures of 3 March 2010, p. 9-10, available via <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzY2NzJ8Q2hpbGRJRjRD0tMXxUeXB1PTM=&t=1> quoting Art 14 of Prysmian's by-laws: "... *The Board of Directors shall be appointed on the basis of slates presented by shareholders in accordance with the following paragraphs. [...] The only shareholders entitled to present or contribute to the presentation of slates are those who, alone or together with other shareholders, represent at least 2% (two per cent) of the ordinary share capital with voting rights at the ordinary Shareholders' Meeting, [...]. The following procedure must be observed for the election of the Board of Directors: (a) five-sixths of the directors to be elected shall be chosen from the slate that obtains the majority of the votes cast by the shareholders, in the order in which they are listed on the slate; if five-sixths represents a fractional number, it shall be rounded down to the nearest whole number; (b) the remaining directors shall be taken from the other slates; [...]*" (emphasis added). As mentioned above in footnote 1130 this led in April 2009 to the situation that Goldman Sachs could nominate 12 out of 12 directors, as it was (via its subsidiary Prysmian (Lux) II S.a.r.l) the only shareholder presenting a slate.

¹¹⁶² In an Italian newspaper article submitted by Goldman Sachs [company representative], Prysmian's [...], is quoted stating that the only setback during the period of Goldman Sachs' ownership was when "*Goldman Sachs sold 10% to our competitors of Taihan who, however, never had any say in terms of management [of Prysmian], also because the OK to their shareholding was only given in agreement that they would not claim a seat in the Board of Directors*" [*Goldman Sachs ha ceduto il 10% ai nostri concorrenti coreani della Taihan che, però non hanno mai avuto voce in capitolo sulla gestione, anche perché era stato dato l'ok al loro ingresso a patto che non prendessero un posto nel cda*] (emphasis added), ID [...], Goldman Sachs reply to SO of 23 March 2012. This shows very clearly that Goldman Sachs was solely in charge of decisions regarding the shareholding in the Prysmian companies and secondly that even [company representative] considered that being present on the BoD (even with one seat) gave decisive influence over Prysmian's management.

¹¹⁶³ Prysmian S.p.A. Corporate Governance Report of 7 March 2008, p. 6, available via http://media.corporate-ir.net/media_files/irol/21/211070/pryscorpgov2008.pdf. ID [...], Goldman Sachs reply to RFI of 30 August 2012. See also Prysmian S.p.A. Corporate Governance Report of 4 March 2009, p. 7.

- (770) It is clear that The Goldman Sachs Group, Inc. considered itself to be controlling Prysmian S.p.A. even after the IPO on 3 May 2007. Minutes of a BoD meeting on 19 December 2007 (at a time that The Goldman Sachs Group, Inc. held through Prysmian (Lux) II S.a.r.l. and Goldman Sachs International 31.69% of Prysmian S.p.A.'s shares) show a discussion at the BoD about a possible further cooperation with [...]. [...].¹¹⁶⁴
- (h) Acting as an industrial owner
- (771) Finally, it is clear from the evidence that even at the end of 2007 (at a time that The Goldman Sachs Group, Inc. held through Prysmian (Lux) II S.a.r.l. and Goldman Sachs International 31.69% of Prysmian S.p.A.'s shares) The Goldman Sachs Group, Inc. favoured, just like an industrial owner, cross-selling between Prysmian S.p.A. and other The Goldman Sachs Group, Inc.'s subsidiaries. [company representative] encouraged [company representative] to tie business relations with a company recently acquired by The Goldman Sachs Group, Inc., provided contact details and requested a follow-up on the outcome of these contacts.¹¹⁶⁵
- (772) From the above it is evident that, despite the IPO on 5 May 2007 and the share sales on 12 November 2007, the Commission has evidence that The Goldman Sachs Group, Inc. has exercised decisive influence over Prysmian S.p.A. during the entire period from 29 July 2005 until 28 January 2009. The change of corporate status and the listing on the stock exchange did not change anything in The Goldman Sachs Group, Inc.'s position as it remained the most important shareholder with key employees on Prysmian S.p.A.'s board and committees.
- (773) The claims made by The Goldman Sachs Group, Inc. are contradicted by the facts. In particular the explanations given by The Goldman Sachs Group, Inc. that the presence of The Goldman Sachs Group, Inc. representatives on the BoD and in the committees was [...] and not to exercise decisive influence are flawed, the level of participation of the The Goldman Sachs Group, Inc. representatives as "managing directors" and in all of the Committees and in particular in the strategic committee can not be reconciled with a pure supervisory function. Despite its claim of not having sufficient resources to determine Prysmian S.p.A.'s conduct, a number of The Goldman Sachs Group, Inc. managers were present at all decision-making levels of Prysmian S.p.A. There is no reason why The Goldman Sachs Group, Inc. would need to be present with three to four of its own employees on the BoD and in all the committees in order to [...]. The Goldman Sachs Group, Inc. was not able to explain why its employees active on Prysmian S.p.A.'s BoD were nominated managing directors (in contrary to other independent directors of the board) if the only purpose of their presence was to passively [...].¹¹⁶⁶ Also regarding the strategic committee, it

¹¹⁶⁴ See minutes BoD, ID [...], Prysmian reply to RFI of 30 August 2012.

¹¹⁶⁵ ID [...], Annex to Prysmian reply to RFI of 22 March 2013, email exchange between [company representative] and [company representative] on 20 December 2007, [company representative]'s email of 2 January 2008 and [company representative]'s email of 30 January 2008.

¹¹⁶⁶ Regarding the quote of Prysmian's CEO [company representative] stating in an article of Panorama Economy, "Ecco l'Italia che pensa globale" of 4 August 2010, ID [...], Goldman Sachs reply to SO of 23 March 2012, that *"from a main shareholder who was also manager of the company, we switched to a pure financial shareholder which, besides financially, did not guide the choices, it only observed. The management made all decisions concerning industry and business"* [*"da un socio che era anche gestire della società, siamo passati a un'azionista finanziario puro che, finanza a parte, non ha guidato le scelte, ha guardato. Sull'industria e sul business abbiamo gestito tutto noi manager"*] it is firstly clear

is not plausible that on a three person committee dealing with detailed strategic questions The Goldman Sachs Group, Inc. would need two persons to [...]. That would mean in reality that one person, [company representative], would have done all the work conferred to the strategic committee and two persons would simply have monitored his strategic positions. Such a monitoring could have been adequately implemented by other means (for example periodical financial reports or other formal or informal reporting mechanisms), without the need of having The Goldman Sachs Group, Inc.'s employees as members of the BoD.

- (774) Regarding The Goldman Sachs Group, Inc.' argument that it could not effectively control Prysmian S.p.A.'s BoD, as only three out of seven or three out of ten members (before and after the IPO) were The Goldman Sachs Group, Inc. employees, it should be noted first that it was nevertheless The Goldman Sachs Group, Inc. who had the power to determine the top management of the Company at any time and that it used that power to appoint the BoD. Furthermore it is clear from the above that The Goldman Sachs Group, Inc. own employees and other directors having contractual relationships with The Goldman Sachs Group, Inc. represented at least 50% of the votes on each BoD (including the casting vote since 27 February 2007 and before that date a referral of decisions to the shareholder meeting – see Recital (762)).
- (775) Regarding The Goldman Sachs Group, Inc.'s claims that Prysmian S.p.A.'s BoD was only involved in high-level, non-operational matters not concerning the conduct of Prysmian Cavi e Sistemi S.r.l. and that there is no indication that The Goldman Sachs Group, Inc. or its representatives played any role in key transactions, approved limits, offers, bidding, or any other matters at issue as its employees functioned as outside board members, not management, it is clear that the claims cannot be reconciled with the evidence. First there is an abundance of evidence to show that operational matters were discussed at all levels and in the presence of The Goldman Sachs Group, Inc. employees.¹¹⁶⁷ Second there are various examples showing formal approvals of The Goldman Sachs Group, Inc. employees in their functions as managing directors, see footnotes 1144 and 1145).
- (776) While it is true that The Goldman Sachs Group, Inc.'s employees were no longer managing directors as of 16 January 2007 and that all delegated powers were granted exclusively to Prysmian S.p.A.'s CEO, [company representative], it is also clear, from the same meeting that this decision was taken mainly in order to comply with the requirements of listing Prysmian S.p.A. on the stock exchange. However The Goldman Sachs Group, Inc. made sure, as explained above in Recital (763), not to lose its control and influence by creating the strategic committee, two of the three committee members being The Goldman Sachs Group, Inc. employees.

that most of these managers were, as described at length, linked to the Goldman Sachs group. Secondly in the same article [company representative] is quoted saying that the only setback during the period of Goldman Sachs' ownership was when *"Goldman Sachs sold 10% to our competitors of Taihan who, however, never had any say in terms of management [of Prysmian], also because the OK to their shareholding was only given in agreement that they would not claim a seat in the Board of Directors"* [*"Goldman Sachs ha ceduto il 10% ai nostri concorrenti coreani della Taihan che, però non hanno mai avuto voce in capitolo sulla gestione, anche perché era stato dato l'ok al loro ingresso a patto ce non prendessero un posto nel cda"*] (see footnote 1162).

¹¹⁶⁷ In particular during the monthly meetings and the monthly reports operational matters were discussed in great detail, see Recital (765) above. [...].

- (777) The Goldman Sachs Group, Inc. states that none of the committees were capable of exercising any decisive influence over Prysmian S.p.A., as each of them primarily performed advisory functions within Prysmian S.p.A.'s corporate governance structure. According to The Goldman Sachs Group, Inc., certain The Goldman Sachs Group, Inc.'s employee directors participated in those board committees as part of their ordinary duties as directors of Prysmian S.p.A.. The Goldman Sachs Group, Inc. explains that the strategic committee was not an executive committee with executive powers but was set up to be an advisory body with no voting or veto powers on matters relating to the administration of the Prysmian S.p.A. group.
- (778) The Commission rejects the view expressed by The Goldman Sachs Group, Inc. that the remit of the various committees were not such as to ensure that The Goldman Sachs Group, Inc. retained decisive influence over Prysmian S.p.A.. Tasks of the internal control committee covered also central audit functions, such as the control and the verification of the internal accounting documents and the assistance in drawing up the balance sheets. Through its presence on the compensation and the internal control committee The Goldman Sachs Group, Inc. had further means to control directly the compliance policies of the group as well as indirectly the human resource policies through remuneration decisions for Prysmian S.p.A. and its subsidiaries.¹¹⁶⁸ Regarding the strategic committee it is clear from the available agenda and presentations that the committee dealt with highly detailed questions of Prysmian S.p.A.'s and Prysmian Cavi e Sistemi S.r.l.'s day to day business. The committee met regularly before the meetings of the BoD discussing a broad range of topics covering questions of investment and divestment projects and strategic, business and financial plans of the company and of the group (see Recital (763)). In this regard it is important to note that the concept of exercise of decisive influence is not an abstract company law concept but an overall assessment of the combined existence of structural, personal and organisational links.¹¹⁶⁹
- (779) The Goldman Sachs Group, Inc. portrays itself as a pure financial investor that in 2005 made a temporary financial investment in Prysmian S.p.A. It claims that it should be seen as a professional shareholder rather than a manager or strategist and explains that a large part of the capital of its investments was raised from third party investors. However, the Commission considers that the exercise of voting rights regarding strategic decisions for the business conduct of the subsidiary - such as, for

¹¹⁶⁸ Prysmian had to approve Goldman Sachs' policies regarding, among other, export control, economic sanctions, anti-bribery, gifts and entertainment, ID [...], Prysmian reply to SO of 24 October 2011; ID [...], Annexes E.01-E.44 to Prysmian reply to SO of 24 October 2011.

¹¹⁶⁹ See Case T-395/09 *Gigaset AG v Commission* [2014] not yet reported, paragraph 82, where the General Court finds that in order to find the exercise of decisive influence it is not necessary that a parent company can give binding instructions to its subsidiaries. See in this regard also Case C-440/11 P *Commission v Stichting Administratiekantoort Portielje and Gosselin* [2013] not yet reported, paragraphs 65-67 and Opinion of Advocate General Kokott in the same case, paragraphs 71 and 76: *"The question whether a subsidiary can determine its conduct on the market autonomously or is exposed to the decisive influence of its parent company cannot be assessed solely on the basis of the relevant company law. Otherwise, it would be easy for the parent companies concerned to evade responsibility for infringements of the cartel rules committed by their wholly owned subsidiaries by relying on events falling entirely under company law."* *"It would, however, have been of decisive importance, leaving aside all the formal deliberations on company law, to examine the actual effects of the personal links between Portielje and Gosselin on everyday business activities and to assess purely on the basis of the facts whether Gosselin – contrary to the 100% presumption – really determined its commercial policy independently."* (emphasis added)

instance, the appointment of top management and the approval of business and management plans - amount to a clear exercise of decisive influence. The Goldman Sachs Group, Inc.'s influence regarding strategic decision, such as Prysmian S.p.A.'s potential divestment of factories in the energy sector to its competitors was even known on the market and to Prysmian S.p.A.'s direct competitors.¹¹⁷⁰ In any event, it is artificial to separate operational and strategic decision-making in a given company. Even more so if the legal consequence would be that a parent company is only held liable for the illegal behaviour of its subsidiary if it influenced operational decisions but not if it determined the strategic decision of the company on the market. The concept of the single economic unit cannot be reconciled with such an academic categorisation of business activities on the market place. This approach is also at odds with reality in the sense that strategic decisions determine the very essence of the behaviour of the company on the market. Strategic decisions concern the general development of the subsidiary, whether it shall survive on the market or not, whether its business activities shall be expanded or will be down-sized, whether investments or acquisitions shall be made and whether it shall be sold and for what price. In addition, The Goldman Sachs Group, Inc. has drawn significant economic advantage from its investment in Prysmian S.p.A. and Prysmian Cavi e Sistemi S.r.l. and capitalised such an advantage by both listing Prysmian S.p.A. on the stock exchange and by subsequently selling its stake in the company's share capital to third parties.¹¹⁷¹ All the measures taken by The Goldman Sachs Group, Inc. during the infringement period as described above are identical to the involvement of any other industrial group holding company and clearly more than what a passive investor would do. The Goldman Sachs Group, Inc. did certainly not behave like a pure financial investor, described by the General Court in *I.garantovana a.s.* as an investor refraining from any management and control.¹¹⁷² In this regard, the source of the capital invested is irrelevant for the finding of exercise of decisive influence. The evidence in the Commission's file shows that The Goldman Sachs Group, Inc.'s main aim was to structure Prysmian S.p.A.'s management in a way that would enable it to exercise decisive influence immediately in case of any risk to its investment in this company. Although the examples of exertion of decisive evidence listed above are in itself sufficient to prove the exertion of such influence, it is also clear that The Goldman Sachs Group, Inc. would not have had any reason to make even more use of its influence, because its investment turned out to be profitable and the management team proved to be reliable.

- (780) In this context it is worth noting that Regulation (EC) No 139/2004 considers a temporary financial investment as an investment by a credit institution or other financial institution or insurance companies which "*hold on a temporary basis*

¹¹⁷⁰ [...], ID [...], Prysmian comments on Pirelli and Goldman Sachs reply to SO of 21 March 2012.

¹¹⁷¹ See also Case T-395/09 *Gigaset AG v Commission* [2014] not yet reported, paragraph 38, where the General Court finds that it is difficult to imagine how an investor that acquires a company in order to restructure it and to resell it with a profit could do so without exercising a decisive influence over it.

¹¹⁷² Case T-392/09 *I. garantovaná a.s. v Commission* [2012] not yet reported, paragraph 52: "*The reference in the Opinion of Advocate General Kokott in Case C-97/08 P Akzo Nobel and Others v Commission, cited in paragraph 50 above, to a 'pure financial investor' must therefore be understood as referring to the case of an investor who holds shares in a company in order to make a profit, but who refrains from any involvement in its management and in its control. That is evidently not so in the applicant's case [...]*" (emphasis added) See also Opinion of Advocate General Sharpston in Case C-50/12 P *Kendrion NV v Commission* [2013] not yet reported, paragraphs 53-5.

securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition."¹¹⁷³

- (781) Finally, and in contrary to The Goldman Sachs Group, Inc.'s claims, the only director of Prysmian S.p.A. that was employed by Pirelli & C. S.p.A before the acquisition was Prysmian S.p.A.'s[function] [company representative].¹¹⁷⁴

- Conclusion

- (782) In line with the case-law referred to in Recitals (697)-(702) and in addition to the liability of Pirelli & C. S.p.A., Prysmian S.p.A. and Prysmian Cavi e Sistemi S.r.l. for the period 18 February 1999 and 28 July 2005 (see Recital (738)), the Commission presumes that Prysmian S.p.A. has exercised decisive influence over the conduct of Prysmian Cavi e Sistemi S.r.l. on the market at least between 29 July 2005 and 28 January 2009, and that The Goldman Sachs Group, Inc. has exercised decisive influence over the conduct of both Prysmian S.p.A. and Prysmian Cavi e Sistemi S.r.l. on the market at least between 29 July 2005 and 3 May 2007 (see Recitals (739) to (754)).
- (783) In addition, and on the basis of the facts assessed in Recitals (755) to (781) it is concluded that The Goldman Sachs Group, Inc. has exercised decisive influence over the conduct on the market of both Prysmian S.p.A. and Prysmian Cavi e Sistemi S.r.l. at least between 29 July 2005 and 28 January 2009. This conclusion is based on the analysis of The Goldman Sachs Group, Inc. organisational, economic and legal links with its subsidiaries Prysmian S.p.A. and Prysmian Cavi e Sistemi S.r.l. and leaving aside its formal role as a financial investor. Although there can be cases of "pure financial investors" (see Recital (779)) in which no decisive influence can be established it is clear from the case-law that any such finding of a pure financial investor can only be made on a case-by-case basis and without relying on categories of exempted undertakings.
- (784) For these reasons, Prysmian S.p.A. and The Goldman Sachs Group, Inc. are jointly and severally liable with Prysmian Cavi e Sistemi S.r.l. for the infringement described in this Decision as they form part of the undertaking that committed the infringement in the period from 29 July 2005 until 28 January 2009.
- (785) Accordingly, this Decision is addressed to Prysmian Cavi e Sistemi S.r.l., Prysmian S.p.A., The Goldman Sachs Group, Inc. and Pirelli & C. S.p.A.

5.2.3. *Sumitomo and Hitachi.*

- (786) Two periods must be distinguished in the attribution of liability to Sumitomo and Hitachi:

Sumitomo's and Hitachi's involvement prior to the transfer of power cable activities to JPS

¹¹⁷³ Art 3(5)(a).

¹¹⁷⁴ ID [...], Goldman Sachs reply of 27 March 2013 to RFI of 13 March 2013.

(787) As described in Section 3, Sumitomo and Hitachi participated directly in the infringement at least from 18 February 1999 to 30 September 2001. The individuals representing Sumitomo and Hitachi in the cartel arrangement and who are relevant for the purposes of this Decision are listed in Annex II to this Decision.¹¹⁷⁵ In view of this, the Commission holds Sumitomo and Hitachi liable for their direct participation in the infringement.

(788) Hitachi Cable, Ltd. ceased to exist in law on 1 July 2013 due to its merger with Hitachi Metals, Ltd. According to the case-law referred to in Recital (704)), the Commission holds Hitachi Metals, Ltd., being the legal successor of Hitachi Cable, Ltd., liable for the direct participation of Hitachi Cable, Ltd. in the infringement.¹¹⁷⁶

(789) Accordingly, this Decision is addressed to Sumitomo and Hitachi.

Liability for JPS' involvement

(790) For the reasons explained in Recitals (792) to (809) below, the Commission holds Sumitomo, Hitachi and JPS jointly and severally liable for the involvement of JPS in the infringement from 1 October 2001 to 10 April 2008.

5.2.4. JPS

(791) JPS was incorporated on a 50%/50% basis by Sumitomo and Hitachi by means of a joint venture agreement signed on 26 March 2001 ("the JVA") followed by the articles of incorporation signed on 14 June 2001 ("the AoI").¹¹⁷⁷ JPS started its operations on 1 October 2001.¹¹⁷⁸ Sumitomo and Hitachi transferred to JPS all their power cables activities with the exception of the sales of power cables to the Japanese market (power utilities and other customers). The sales activities in Japan to power utilities were transferred to JPS on October 2004.¹¹⁷⁹

(792) The evidence described in Section 3 shows that JPS participated directly in the infringement at least from the start of its business operations on 1 October 2001 until 10 April 2008, which is considered to be the end of JPS' participation in the cartel. The individuals representing JPS in the cartel arrangement and who are relevant for the purposes of this Decision are listed in Annex II to this Decision. JPS should therefore be held liable for its participation in the infringement.

(793) During that entire period, Sumitomo and Hitachi each held a 50% shareholding in JPS.

(794) By transferring their power cable interests to JPS, Sumitomo and Hitachi were in effect using JPS as a vehicle to continue their involvement in the cartel. One individual that was previously involved either in the cartel or [information pre-dating

¹¹⁷⁵ Some of the individuals listed in Annex II may not have been involved in anti-competitive contacts with competitors for all of the periods specified.

¹¹⁷⁶ ID [...], [...]: Hitachi has on 11 December 2013 confirmed that they agree with the Commission's assessment of Hitachi Metal Ltd being the successor of Hitachi Cable Ltd.

¹¹⁷⁷ ID [...], [...].

¹¹⁷⁸ Article 11 of the JVA and Article 13 of the AoI.

¹¹⁷⁹ ID [...], ID [...], ID [...], [...]. Sumitomo and Hitachi however retained sales to certain customers in Japan[...].

the infringement period] on behalf of Sumitomo continued the cartel activities on behalf of JPS. This was the case for [company representative C2], [...].¹¹⁸⁰

- (795) Although all cartel contacts as from 1 October 2001 were carried out by JPS and there is no evidence indicating the direct involvement of either Sumitomo or Hitachi, these contacts also concerned the protection of the home territories and therefore included the protection of the sales made by Sumitomo and Hitachi for their reserved customers. It is therefore highly unlikely, also in view of the evidence described below, that the parent companies have not been aware of the continuation of the cartel and of JPS's role therein beyond the period of their own direct participation.
- (796) Since the parent companies' respective shareholdings does not on its own allow the Commission to presume that they exercised a decisive influence over JPS's commercial activities, the Commission has relied on additional evidence showing that the parent companies were both able to and have actually jointly exercised decisive influence over JPS during the whole period of its involvement in the infringement.¹¹⁸¹
- (797) [...].
- (798) As regards the legal links, the provisions in the JVA and AoI required the agreement of both Sumitomo and Hitachi in order to pass any resolution at the general shareholders meetings, which gave both parent companies the possibility to block any resolution.¹¹⁸²
- (799) The BoD of JPS was responsible for adopting all decisions concerning commercial, financial and other policy matters, including the approval of the business plan and the budget.¹¹⁸³ Each parent company had the power to appoint an equal number of directors to JPS' BoD, which consisted of [...]. [...].¹¹⁸⁴ JPS had [...] Representative Directors, [...], each of whom was to be appointed in turn by Hitachi and Sumitomo respectively. By providing that the same number of Directors was appointed by Sumitomo and Hitachi, the balance of their influence in JPS was maintained throughout the relevant period. The resolutions at JPS' BoD were adopted by a majority vote of the Directors present, provided the attendance of a majority of the total number of Directors. The provisions therefore gave both parent companies the possibility to block any resolution at the level of the BoD.¹¹⁸⁵
- (800) In addition, for sixteen specific matters a majority vote of [...] of the Directors present were needed, provided the attendance of [...] of Directors. These matters included several with particular relevance for the strategic and commercial conduct of JPS.¹¹⁸⁶

¹¹⁸⁰ ID [...], [...]. See also Annex II. See for example Recitals (137), (141), (143) for his participation while being an employee of Sumitomo, and Recitals (239) and (244) for his participation while being an employee of JPS.

¹¹⁸¹ Case T-77/08 *The Dow Chemical Company v Commission* [2012] not yet reported, paragraph 75.

¹¹⁸² Article [...] of the JVA.

¹¹⁸³ ID [...], [...].

¹¹⁸⁴ Article [...] of the AoI.

¹¹⁸⁵ ID [...].

¹¹⁸⁶ Article [...] of the JVA. [...].

- (801) Consultation and support of Sumitomo and Hitachi was also required for a series of functions listed in the JVA, such as [...].¹¹⁸⁷
- (802) In addition, there are also a number of factors related to the personnel and organisational links between JPS and its parent companies supporting the conclusion that they exercised a decisive influence on JPS.
- (803) First, a number of JPS' Directors held simultaneous positions in the parent companies. The existence of such simultaneous positions occurred during the entire infringement period.¹¹⁸⁸
- (804) The parent companies also transferred employees required for the management of JPS, including through secondments ("on loan").¹¹⁸⁹ The details including the posts and number of personnel needed had to be agreed upon between the parties. This provision clearly implied a significant influence of the parent companies on JPS' human resources policy.
- (805) Moreover, certain of the employees that had been either seconded or transferred from the parent companies took part in the cartel activities on behalf of JPS. This was the case for [company representative CD1], who had been transferred from Sumitomo and was involved in cartel contacts and communications as a manager of JPS International Business Division [...].¹¹⁹⁰
- (806) [company representative D3], participated as a manager of JPS International Business division during the time when he was seconded from Hitachi [...] and continued after he had been permanently transferred to JPS [...].¹¹⁹¹
- (807) In addition, there were a number of economic links between the parties. This included notably the fact that the parent companies were at least until 2004 buying the power cables that they needed for their reserved customers in Japan from JPS. It would therefore be unlikely and commercially implausible that the parent companies would have lost interest in aspects such as JPS's prices and commercial conditions, particularly since they had the means to find it out.
- (808) [...] Sumitomo and Hitachi exercised a decisive influence over JPS during the infringement period. This is also confirmed by the manner in which these parties have jointly participated in all stages of the administrative procedure, [...]. As confirmed by the Courts,¹¹⁹² this can be used as further indicia supporting the

¹¹⁸⁷ ID [...], [...]: Joint venture agreement between Sumitomo and Hitachi articles [...].

¹¹⁸⁸ Of those Directors nominated by Hitachi, the following held simultaneous positions at Hitachi during the indicated period: [company representative] [...], [company representative] [...], [company representative] [...], [company representative] [...], [company representative] [...] and [company representative] [...]. Of those nominated by Sumitomo, the following held simultaneous positions at Sumitomo during the indicated period: [company representative] [...], [company representative] [...]. See ID [...], ID [...] and ID [...], [...].

¹¹⁸⁹ Article [...] of the JVA. See for example ID [...], [...] which shows several employees of JPS having been seconded from Hitachi: [company representative D4], [company representative] and [company representative D3], seconded in the period [...], afterwards becoming permanent employees, and [company representative] and [company representative], seconded as of [...].

¹¹⁹⁰ ID [...], [...]. See for instance Recitals (186) and (219).

¹¹⁹¹ ID [...], [...]. See for instance Recitals (223) and (279).

¹¹⁹² Case T-354/94 *Stora Kopparbergs Bergslags v Commission* [1998] ECR II-2111, paragraph 85; Case C-286/98 P *Stora Kopparbergs Bergslags v Commission* [2000] ECR I 9925, paragraphs 28 and 29; Joined Cases T-204/08 and T-212/08 *Team Relocations and Others v Commission* [2011] ECR II-3569,

conclusion that the parent companies exercised decisive influence over JPS. Lastly, as stated in Recital (700)), case-law has confirmed that a parent company that has the ability to exercise decisive influence over a subsidiary and is aware of the infringement committed by such subsidiary, can be held liable for the acts of the subsidiary if it did not bring the infringement to an end.¹¹⁹³ In view of the above, and notably of the prior involvement of Sumitomo and Hitachi in the cartel, the simultaneous positions held by some of their employees in JPS and the extent of the interdependence between them and JPS, it can be concluded that Sumitomo and Hitachi were or should have been aware of the continuation of the infringement by JPS. Given that they did not bring the infringement to an end despite having the means to do so, they must be held liable for JPS' conduct.

Conclusion

- (809) From the considerations set out in Recitals (794)-(808), it is concluded that Hitachi and Sumitomo jointly exercised decisive influence over JPS as of the start of its operations until at least 10 April 2008. J-Power Systems Corporation, Sumitomo Electric Industries, Ltd. and Hitachi Metals, Ltd. are held jointly and severally liable for JPS' participation in the infringement from 1 October 2001 until 10 April 2008.

5.2.5. Furukawa and Fujikura

- (810) Two periods must be distinguished in the attribution of liability to Furukawa and Fujikura.

Furukawa and Fujikura's involvement prior to the transfer of power cable activities to VISCAS

- (811) As described in Section 3, Furukawa and Fujikura participated directly in the infringement from 18 February 1999 to 30 September 2001. The individuals representing Furukawa and Fujikura in the cartel arrangement and who are relevant for the purposes of this Decision are listed in Annex II to this Decision.¹¹⁹⁴ In view of this, the Commission holds Furukawa and Fujikura liable for their direct participation in the infringement.
- (812) Accordingly, this Decision is addressed to Furukawa and Fujikura.

Liability for VISCAS's involvement

- (813) For the reasons explained in Recitals (815) to (852) below, the Commission holds Furukawa, Fujikura and VISCAS jointly and severally liable for the involvement of VISCAS in the infringement from 1 October 2001 to 28 January 2009.

paragraph 151; Case T-12/03 *Itochu v Commission* [2009] ECR II-909, paragraph 50; Case T-69/04 *Schunk and Schunk Kohlenstoff-Technik v Commission* [2008] ECR II-2567, paragraph 57; Case T-38/05 *Agroexpansión v Commission* [2011] ECR II-7005, paragraph 107; Case T-39/06, *Transcatab v Commission* [2011] ECR II-6831, paragraph 96; Case T-25/06 *Alliance One International v Commission* [2011] ECR II-5741, paragraph 88; Joined Cases T-141/07, T-142/07, T-145/07 and T-146/07 *General Technic-Otis and Others v Commission* [2011] ECR II-4977, paragraph 73; Case T-343/06 *Shell Petroleum and Others v Commission* [2012] not yet reported, paragraph 41; Case T-348/06 *Total Nederland v Commission* [2012] not yet reported, paragraph 103.

¹¹⁹³ See also Cases T-309/94 *NV Koninklijke KNP BT v Commission* [1998] ECR II-01007, paragraphs 41-48; C-248/98 P *KNP BT v Commission* [2000] ECR I-09641, paragraph 73.

¹¹⁹⁴ Some of the individuals listed in Annex II may not have been involved in anti-competitive contacts with competitors for all of the periods specified.

5.2.6. VISCAS

- (814) VISCAS was incorporated by Furukawa and Fujikura by means of a joint venture agreement signed on [...] 2001 (the "2001 JVA") followed by the articles of incorporation, signed on [...] 2001 (the "2001 AoI"), and two service agreements signed on [...] 2001 (the "Service Agreements").¹¹⁹⁵ VISCAS started its business operations on [...] 2001 and a further integration of the parent companies' respective power cable businesses took place on 1 January 2005, following an amendment of the original JVA (the "2004 JVA").¹¹⁹⁶
- (815) The evidence described in Section 3 shows that VISCAS participated directly in the infringement at least from the start of its business operation on 1 October 2001 until 28 January 2009.¹¹⁹⁷ The list of key employees directly engaged in the cartel contacts is provided in Annex II. VISCAS should therefore be held liable for its participation in the infringement.
- (816) During that entire period, Furukawa and Fujikura each held a 50% shareholding in VISCAS.¹¹⁹⁸
- (817) By transferring their power cable interests to VISCAS, Fujikura and Furukawa were in effect using VISCAS as a vehicle to continue their involvement in the cartel. Several individuals that took part in the cartel activities on behalf of VISCAS were seconded from or were previous employees of Furukawa and Fujikura. There is evidence showing that at least one of those individuals was previously involved in the cartel on behalf of Fujikura and thereafter continued the cartel activities on behalf of VISCAS.¹¹⁹⁹
- (818) Moreover, although all cartel contacts that took place as from 1 October 2001 were carried out by VISCAS and there is no evidence in the file demonstrating the direct involvement of either Furukawa or Fujikura, these contacts also concerned the protection of the home territories and therefore included protection of the sales made by Furukawa and Fujikura to their reserved customers. It is therefore highly unlikely that the parent companies have not been aware of the continuation of the cartel and VISCAS' role therein beyond the period of their own direct participation.
- (819) Since the parent companies' respective shareholding does not on its own allow the Commission to presume that they exercised decisive influence on VISCAS' commercial activities, the Commission has relied on evidence showing that Fujikura and Furukawa were both able to and have actually jointly exercised decisive

¹¹⁹⁵ ID [...], VISCAS reply to RFI of 22 October 2012; ID [...] (the 2001 JVA), VISCAS reply to RFI of 22 October 2012; ID [...] (the 2001 AoI), VISCAS reply to RFI of 22 October; ID [...] and [...] (the Service Agreements), VISCAS reply to RFI of 20 October 2009.

¹¹⁹⁶ ID [...] (the 2004 JVA), ID [...] and ID [...] (2004 Basic Agreement concerning business integration), VISCAS reply to RFI of 20 October 2009. The 2001 AoI were also amended at six occasions; ID [...], ID [...] to ID [...], VISCAS reply to RFI of 22 October 2012.

¹¹⁹⁷ VISCAS started its business operations on 1 October 2001 (ID [...], VISCAS reply to RFI of 22 October 2012).

¹¹⁹⁸ ID [...], VISCAS reply to RFI of 22 October 2012.

¹¹⁹⁹ [company representative F3] attended the A/R meeting on 5 September 2001 (Recital (181)) as general manager of Fujikura and continued to participate in the cartel arrangement following his transfer to VISCAS on 1 October 2001 (see Section 3), ID [...], Fujikura reply to RFI of 22 October 2012. Fujikura has claimed that [company representative F3] was transitioning from Fujikura to VISCAS and attended the meeting on 5 September 2001 in his capacity as future VISCAS' representative, ID [...], Fujikura reply to SO of 24 October 2011.

influence over VISCAS during the whole period of its involvement in the infringement.

Arguments of the parties

- (820) In their replies to the SO, the three companies have however contested that conclusion.
- (821) Furukawa has claimed that, although it could be concluded from the legal provisions that it had the ability to exercise decisive influence over VISCAS, the Commission has not shown any actual exercise of such influence.¹²⁰⁰ Fujikura has argued that its nominated full-time directors did not have as their mandate to represent the parent companies. It further asserted that the part-time directors which during the second period also held simultaneous positions in Fujikura dealt with business areas different from those of VISCAS.¹²⁰¹ Fujikura has also stated that the seconded employees were de facto permanently moved to VISCAS and were from a functional point of view only answerable to VISCAS and that VISCAS' BoD kept the decision making powers over key matters as of 1 January 2005.¹²⁰²
- (822) Both Furukawa and Fujikura have argued that the supervision of VISCAS (including the reporting obligations) was limited to financial information or to extraordinary events aimed at protecting the investments of the shareholders.¹²⁰³
- (823) Finally, VISCAS has argued that the absence of any economic, organisational and legal links between the three entities shows that VISCAS acted autonomously in the market. In support of that position, VISCAS has underlined that a subsidiary of Furukawa was competing with VISCAS in [...].¹²⁰⁴

Discussion and findings

- (824) Additional evidence gathered during the investigation in response to the parties' contestation of the findings of the SO has confirmed that Furukawa and Fujikura jointly exercised decisive influence over VISCAS. This conclusion is based on objective factors, having regard to the legal, organisational and economic links between the entities, as described in the Recitals (825) to (847).
- (825) From 1 October 2001 to 31 December 2004, Furukawa and Fujikura transferred to VISCAS only their respective sales of UG and SM power cables outside [country, covered by the home territory principle] to [...] companies, together with related activities.¹²⁰⁵ The manufacturing facilities and the sales activities in [country, covered by the home territory principle] as well as to [...] companies outside

¹²⁰⁰ ID [...], Furukawa reply to SO of 11 November 2011.

¹²⁰¹ ID [...], Fujikura reply to SO of 24 October 2011.

¹²⁰² ID [...], Fujikura reply to SO of 24 October 2011; ID [...], Fujikura presentation in the Oral Hearing on 15 June 2012.

¹²⁰³ ID [...], Fujikura reply to SO of 24 October 2011; ID [...], Furukawa reply to SO of 11 November 2011.

¹²⁰⁴ ID [...], VISCAS reply to SO of 9 November 2011; ID [...], VISCAS submission of 18 January 2012.

¹²⁰⁵ Although both the 2001 JVA and the Service Agreements refer only to UG power cables, the transfer also concerned SM power cables; ID [...], VISCAS reply to RFI of 20 October 2009; ID [...], VISCAS submission of 18 January 2013; and ID [...], 10, Fujikura reply to RFI of 22 October 2012. According to Article 4 of the 2001 JVA, the transfer included design, construction work and some research and development activities. ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Fujikura reply to RFI of 22 October 2012; ID [...], Furukawa reply to RFI of 22 October 2012.

[country, covered by the home territory principle] were during this period retained by the parent companies.¹²⁰⁶ Evidence in the file clearly shows that VISCAS was during this period acting as a sales agent for its parent companies rather than as a company with an independent market presence.

- (826) This conclusion can be drawn from the Service Agreements themselves, [...].¹²⁰⁷ In addition, Fujikura has not contested the finding of the SO concerning this first period and has clarified during the administrative procedure that as of 1 January 2005, it "(...) *no longer exercised decisive influence over VISCAS*", thereby implicitly recognising that such decisive influence had been exercised in the previous period.¹²⁰⁸ Furukawa has contested its parental liability for this period, but also indicated that VISCAS was at that time merely a business unit integrated within Furukawa.¹²⁰⁹
- (827) Recitals (825) to (826) show that VISCAS was during this period not more than the commercial arm of Furukawa and Fujikura outside [country, covered by the home territory principle] and that it was not in a position to act autonomously in the market. Such lack of autonomy as well as the joint exercise of decisive influence over VISCAS by its parent companies is further supported by the additional evidence set out in Recitals (828) to (852).
- (828) Following the JVA of 2004, the scope of VISCAS's activities was expanded to the manufacture and all sales of power cables with the exception of sales to [...] companies other than [...] power companies, which were retained by the parent companies.¹²¹⁰
- (829) As regards legal links, statutory provisions in both the 2001 and 2004 JVAs and AoI required the agreement of both Furukawa and Fujikura in order to pass any resolution at the general shareholders' meetings.¹²¹¹
- (830) Each parent had the power to appoint half of the [...] directors of VISCAS' BoD that were thereafter elected at the shareholders' meeting.¹²¹² The shareholders also decided on [...].¹²¹³ The 2001 and 2004 JVAs foresaw that the parent companies should exercise their respective voting rights in a manner that ensured that the directors nominated by the other shareholder were elected.¹²¹⁴ As shown by the

¹²⁰⁶ ID [...], VISCAS reply to RFI of 22 October 2012.

¹²⁰⁷ ID [...] and ID [...], VISCAS reply to RFI of 20 October 2009.

¹²⁰⁸ ID [...], Fujikura presentation in the Oral Hearing on 15 June 2012. See further ID [...], Fujikura reply to RFI of 22 October 2012 and ID [...], Fujikura reply to SO of 24 October 2011.

¹²⁰⁹ ID [...], Furukawa reply to SO of 11 November 2011.

¹²¹⁰ ID [...], VISCAS reply to RFI of 20 October 2009; ID [...], VISCAS reply to RFI of 22 October 2012 (the [...] power companies whose sales were transferred to VISCAS are listed in point 4 of ID [...]).

¹²¹¹ Article 12 of the 2001 JVA and Article 12 of the 2001 (and subsequent) AoI; ID [...] and ID [...], VISCAS reply to RFI of 22 October 2012; Article 6 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2009. See also: ID [...], VISCAS reply to RFI of 2 October 2012.

¹²¹² Article 13 of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012 and Article 7 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2009. The number of appointed Directors increased to eight on 24 December 2004, ID [...], VISCAS reply to RFI of 22 October 2012.

¹²¹³ Article 20 of the 2001 (and subsequent) AoI, ID [...], VISCAS reply to RFI of 22 October 2012.

¹²¹⁴ Article 13(2) of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012 and Article 7 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2009.

agendas of the shareholders meeting, decisions adopted by the meeting related to [...] but also to other matters such as [...].¹²¹⁵

- (831) The BoD was responsible for the management of VISCAS' business and affairs. As shown by the agendas of the BoD meetings, decisions adopted by the BoD related not only to financial matters, but also to a wide range of other matters including [...].¹²¹⁶ Resolutions in the BoD were to be adopted by a majority vote of the directors present, provided the attendance of a majority of the directors entitled to vote.¹²¹⁷
- (832) Both parent companies had throughout this period the same influence and the power to block the adoption of resolutions to be adopted both at the shareholders meeting and by the BoD. Contrary to Furukawa's claim, the fact that all resolutions adopted during this period, both at the shareholders meetings and by VISCAS' BoD, were unanimously adopted¹²¹⁸ is evidence that the joint exercise of voting rights and the prior consultation procedure were actually implemented or at least that Furukawa and Fujikura *de facto* agreed on the matters resolved in such meetings.¹²¹⁹
- (833) In addition, the 2001 JVA also established nine matters of relevance for VISCAS' strategic and commercial conduct that required prior consultation between Furukawa and Fujikura before the matter could be put before the BoD. This included decisions regarding [...] and any decision regarding a material matter that would influence the operation or management of VISCAS.¹²²⁰ This prior consultation requirement enabled the parent companies to directly retain a significant influence over VISCAS' strategic and commercial conduct.
- (834) With the 2004 JVA, the prior consultation requirement was abandoned. Decisions on [...] matters still required a majority vote (provided that a majority of directors were present). This therefore *de facto* still required an agreement by the directors nominated by both Fujikura and Furukawa in order to pass a resolution by the BoD on those matters.¹²²¹
- (835) In addition to the reporting mechanisms under the Service Agreements,¹²²² the 2004 JVA introduced a reporting mechanism between VISCAS and its parent companies which included an obligation to report on [...].¹²²³ VISCAS, Furukawa and Fujikura have confirmed the existence of monthly reports provided by the President of VISCAS to the presidents and directors of divisions and other persons of Furukawa and Fujikura on matters such as the [...] and, according to Furukawa, on other financial information related to [...].¹²²⁴ Furukawa acknowledged that reporting

¹²¹⁵ ID [...], VISCAS reply to RFI of 20 October 2009.

¹²¹⁶ ID [...], VISCAS reply to RFI of 22 October 2012.

¹²¹⁷ Article 19 of the 2001 AoI and Article 14(1) of the 2001 JVA; ID [...] and ID [...], VISCAS reply to RFI of 22 October 2012.

¹²¹⁸ ID [...], ID [...] and ID [...], VISCAS reply to RFI of 22 October 2012.

¹²¹⁹ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 194.

¹²²⁰ Article 14(2) of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012.

¹²²¹ Article 9 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2009.

¹²²² Article 4 of the Service agreements, ID [...] and ID [...], VISCAS reply to RFI of 20 October 2009.

¹²²³ Article 10 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2009.

¹²²⁴ ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Fujikura reply to RFI of 22 October 2012; ID [...], Furukawa reply to RFI of 22 October 2012. Furukawa confirmed that the reports were as of January 2005 submitted to Furukawa's Chairman, the President and Head of the Energy and Industrial Products Group and the General Manager of the Energy Business division.

obligations such as the ones established by Article [...] of the JVA of 2004 were already fulfilled through the attendance at VISCAS BoD's meetings of the part-time director nominated by Furukawa.¹²²⁵ Fujikura explained the reporting obligations to VISCAS in two letters sent in 2007. In these letters, Fujikura gave specific instructions identifying issues considered important, the persons to whom they are important and when VISCAS had to inform Fujikura. Fujikura has indicated that the reporting took place normally twice a year.¹²²⁶ Although evidence on similar communications is not available for Furukawa, it is likely that such right of supervision also existed for Furukawa.

- (836) In addition, VISCAS' directors also reported to Furukawa and Fujikura on an *ad hoc* basis upon request. Matters covered by such *ad hoc* reporting included, for example, the [...].¹²²⁷
- (837) Furukawa and Fujikura furthermore reserved the right to inspect VISCAS' businesses and the status of its assets whenever they considered such inspections necessary, as well as the right to inspect [...].¹²²⁸ The parties have claimed that inspections according to these provisions were never conducted.¹²²⁹ However, given that it has not been claimed that VISCAS was not governed according to the clauses of the 2004 JVA, whether or not inspections were actually conducted is of no relevance. What is relevant is that, pursuant to these provisions, Furukawa and Fujikura exercised a significant influence on VISCAS' conduct.
- (838) Moreover, VISCAS was subject to scrutiny by auditors of both Furukawa and Fujikura. Furukawa's corporate auditors conducted an inspection on 8 February 2006 as a result of which Furukawa's auditors gave advice to VISCAS on various aspects, including the company's current administrative system or the control of the working hours.¹²³⁰ Fujikura did not conduct any inspections, but meetings between its auditors and VISCAS' auditors took place from time to time in order to obtain a "*high-level overview*" of VISCAS' operating results, management issues and potential risk factors. These discussions included matters such as quality problems in certain projects, VISCAS' view on measures – including the withdrawal - regarding a business in [non-EEA territory] and quality problems and production delays in a given production facility.¹²³¹
- (839) As regards organisational links, VISCAS' BoD was composed of [...] directors. During the first term [...] ([...] nominated by Furukawa and [...] nominated by Fujikura) out of the [...] directors were at the same time holding relevant managerial positions in Furukawa and Fujikura. During the second term, at least [...] directors, [...] nominated by Furukawa and [...] nominated by Fujikura, were at the same time

¹²²⁵ ID [...], Furukawa reply to RFI of 22 October 2012.

¹²²⁶ ID [...] and ID [...], Fujikura reply to RFI of 22 October 2012.

¹²²⁷ ID [...], VISCAS reply to RFI of 22 October 2012.

¹²²⁸ See articles 10(2) and 16(3) of the 2004 JVA.

¹²²⁹ ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Furukawa reply to RFI of 22 October 2012; ID [...], Fujikura reply to RFI of 22 October 2012.

¹²³⁰ ID [...], VISCAS reply to RFI of 22 October 2012. The inspections were foreseen under the "Basic Policy for the establishment and development of Internal Control Systems" in the Business Reports from 2006 until 2008, ID [...], VISCAS reply to RFI of 20 October 2009, ID [...], Furukawa reply to RFI of 22 October 2012.

¹²³¹ ID [...], Fujikura reply to RFI of 22 October 2012 and minutes of the meeting held on 11 December 2008 in appendix to question 11 of this reply, ID [...].

occupying relevant managerial positions at Furukawa and Fujikura. The simultaneous positions in the parent companies included positions such as [...].¹²³²

- (840) Several of VISCAS' directors, managers and other employees in more senior positions were not permanent employees of VISCAS but seconded from Furukawa and Fujikura, many of them during the entire period of the infringement.¹²³³ Moreover, some of the seconded managers held simultaneously management positions in the parent companies.¹²³⁴ The salaries of the seconded employees were paid by Fujikura and Furukawa (although the costs were later reimbursed by VISCAS) [...].¹²³⁵ Among these seconded employees at least [company representative F3] and [company representative E3] took part in the cartel activities on VISCAS's behalf.¹²³⁶ At least two employees seconded by Fujikura also held simultaneous management positions at Fujikura.¹²³⁷
- (841) The number of managers and directors who were either seconded from (and thereby formally employed by) and/or were simultaneously holding managerial positions in the parent companies necessarily placed the parent companies in a position where they had decisive influence over VISCAS' market conduct, since it enabled the parent companies to check whether the conduct of VISCAS on the market was consistent with the parent companies' aim and strategy for their JV.¹²³⁸ It is in that respect irrelevant whether or not the full-time directors (who were nevertheless in a minority during this period) had as their mandate to represent the parent companies that had nominated and appointed them.
- (842) Both the 2001 and 2004 JVAs granted Fujikura and Furukawa significant power over other aspects of VISCAS' staff and human resources policy. Under both agreements, VISCAS required the approval of both parent companies before hiring any employees.¹²³⁹ Under the 2001 JVA, the working conditions at VISCAS were established upon consultation between VISCAS, Furukawa and Fujikura.¹²⁴⁰ Under the 2004 JVA, this last right was entirely determined by Furukawa and Fujikura.¹²⁴¹

¹²³² Only for two months during the first term of six directors (27 October 2004 – 24 December 2004), only one of the directors nominated by Fujikura held a simultaneous position at Fujikura. ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Furukawa reply to RFI of 22 October 2012; ID [...], Fujikura reply to RFI of 22 October 2012.

¹²³³ For example, out of the around sixty five employees that VISCAS had in 2002 and 2003 (see ID [...], VISCAS reply to RFI of 20 October 2009), about twenty two were seconded from Fujikura (ID [...], Fujikura reply to RFI of 22 October 2012). During the period after 2005, 127 employees, many of them managers or employees of a higher position, were seconded to VISCAS (many of them during the entire period) from Fujikura. Moreover, Furukawa has reported that twenty-nine managers of these were appointed by VISCAS' BoD to managing positions. All of them were during a certain period of time (and many of them for the entire period) seconded from Furukawa (ID [...], Furukawa reply to RFI of 22 October 2012).

¹²³⁴ ID [...], Fujikura reply to RFI of 22 October 2012; ID [...], Furukawa reply to RFI of 22 October 2012.

¹²³⁵ Article 20 of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Fujikura reply to RFI of 22 October 2012; ID [...], Annex 2 of Fujikura reply to SO of 24 October 2011; ID [...] and ID [...], Furukawa reply to RFI of 22 October 2012.

¹²³⁶ Section 3 and ID [...], VISCAS reply to RFI of 20 October 2009

¹²³⁷ ID [...], Fujikura reply to RFI of 22 October 2012.

¹²³⁸ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 184.

¹²³⁹ Article 20(1) of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012.

¹²⁴⁰ Article 20(2) of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012.

¹²⁴¹ See Articles 11.1 and 11.5 of the JVA of 2004, ID [...], VISCAS reply to RFI of 20 October 2009. VISCAS stated in its 2006 business report (ID [...], Annex 11.C. to VISCAS reply to RFI of 20

- (843) Fujikura has not provided any evidence to support its argument that seconded employees were in reality permanently transferred to and only answerable to VISCAS. The above facts, including the direct payment of the salaries to the seconded employees by the parent companies and their supervisory role, clearly indicate the opposite.
- (844) There is also clear evidence of economic links which show that VISCAS had to rely on its parent companies in order to be a viable market player. [...].¹²⁴²
- (845) In addition, VISCAS procured significant amounts of [...] from Furukawa and Fujikura, including [...].¹²⁴³ Furthermore, following the transfer of the manufacturing facilities, Furukawa and Fujikura became customers of VISCAS who produced the power cables that were sold by the parent companies to their reserved customers in Japan.¹²⁴⁴
- (846) Finally, from the financial point of view, Furukawa and Fujikura exercised significant influence over VISCAS by [...].¹²⁴⁵
- (847) From all of the considerations outlined in Recitals (824) to (846), it is evident that the parent companies jointly exercised decisive influence over VISCAS and that the claims made by its parent companies Furukawa and Fujikura are contradicted by the facts.
- (848) VISCAS reliance on competition between itself and another subsidiary of Furukawa in [non-EEA territory] and [non-EEA territory] is irrelevant, since it is unrelated to the legal, organisational and economic links between VISCAS and its parent companies which are the relevant criteria to determine the existence of decisive influence.
- (849) Lastly, the negotiation process preceding the setting up of the production joint venture between VISCAS and Nexans shows the joint decision-making role exercised by VISCAS parent companies in strategic decisions relating to VISCAS business and market presence. The fact that Nexans immediately contacted the parent companies and involved them throughout the process clearly shows that this role and these powers were also well understood by the other market players. A document from Fujikura dated 29 May 2006 explains the process as follows [...].¹²⁴⁶

October 2009) that it would begin to undertake employees recruitment activities "as VISCAS" as of the financial year 2007 after consulting with and receiving advice from Furukawa and Fujikura.
¹²⁴² Article 18 of the 2001 JVA, ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Appendix F to Furukawa reply to RFI of 22 October 2012.

¹²⁴³ Article 16.1 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2012; ID [...], Furukawa reply to RFI of 22 October 2012 and ID [...], VISCAS reply to RFI of 20 October 2009. In order to give an indication of the relative importance of such purchases of materials from the parent companies, it is noted that in the financial year 2006 such purchases amounted to around 33.8 billion yen (see ID [...], VISCAS reply to RFI of 20 October 2009) which represented 44% of the total "cost of sales" reported in VISCAS' profit and loss statement (see ID [...], VISCAS reply to RFI of 20 October 2009).
¹²⁴⁴ ID [...] and ID [...], VISCAS reply to RFI of 20 October 2009 and ID [...], VISCAS reply to RFI of 22 October 2012.

¹²⁴⁵ Article 12.2 of the 2004 JVA, ID [...], VISCAS reply to RFI of 20 October 2009; ID [...] and ID [...], VISCAS reply to RFI of 22 October 2012; ID [...], Fujikura submission of 18 January 2013.

¹²⁴⁶ ID [...], Fujikura reply to SO of 24 October 2011. See also other documents of Fujikura's reply to the SO confirming the involvement of Fujikura and Furukawa: "As pointed out in a report of 29 May 2006 concerning the establishment of the Nexans/Viscas manufacturing joint venture, which was discussed at one of Fujikura's management meetings [...]", ID [...], and: "There was an offer made (Oct 2005) by

- (850) From all of the above, it is evident that, despite the changes introduced by the JVA of 2004, Furukawa and Fujikura continued to jointly exercise a decisive influence over VISCAS. Concerning Fujikura's allegation that the BoD retained decision-making powers over key matters, it suffices to point to the prior consultation requirements as well as the fact that the directors were appointed by VISCAS' parent companies and several of those directors continued to hold simultaneous management positions with the parent companies. Fujikura's argument that the simultaneous positions held in the parent companies by some of VISCAS's directors during this period were in business areas other than power cables is of no relevance to the influence and the reporting that such overlapping positions and presence at the BoD guaranteed. Neither is this situation particularly surprising given that all the research and manufacturing activities had at that time been transferred from the parent companies to VISCAS.
- (851) Moreover, it is clear that the additional supervisory measures that were introduced with the 2004 JVA (including notably the reporting obligations, power to inspect and involvement of the VISCAS parent companies' auditors) went clearly beyond what would have been needed to merely protect the shareholders' investment and in reality allowed Furukawa and Fujikura to be fully aware of and if necessary influence VISCAS' commercial conduct.
- (852) Taking into account the parent companies' customer relationship with their JV, it would also be unlikely and commercially unreasonable that the parent companies would have lost interest in aspects such as VISCAS's prices and commercial conditions, particularly since they had the means to find it out. Their client relationship necessarily gave them a specific additional commercial interest in actually exercising a decisive influence over the market conduct of their JV.¹²⁴⁷ Lastly, as stated at Recital (700), case-law has confirmed that a parent company that has the ability to exercise decisive influence over a subsidiary and is aware of the infringement committed by such subsidiary, can be held liable for the acts of the subsidiary if it did not bring the infringement to an end.¹²⁴⁸ In view of the above, and notably of the prior involvement of Furukawa and Fujikura in the cartel, the simultaneous positions held by some of their employees in VISCAS, and the reporting obligations and interdependence between them and VISCAS, it can be concluded that Furukawa and Fujikura were or should have been aware of the continuation of the infringement by VISCAS and, since they did not bring it to an end despite having the means to do so, they must be held liable for VISCAS' conduct.

Conclusion

- (853) From the aforementioned, it is concluded that Furukawa and Fujikura jointly exercised decisive influence over VISCAS as of the start of VISCAS operations until at least 28 January 2009. Therefore, VISCAS Corporation, Furukawa Electric Co. Ltd. and Fujikura Ltd. are held jointly and severally liable for VISCAS Corporation's participation in the infringement from 1 October 2001 until 28 January 2009.

France's Nexans to VISCAS for a joint venture for the manufacture of MIND cables (high-viscosity, oil-paper-insulated, direct-current undersea cables). This enterprise which allows for the utilization of the Futtsu plant has been considered by Nexans, VISCAS, Fujikura and Furukawa." (ID [...])

¹²⁴⁷ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraphs 200-201.

¹²⁴⁸ See also Cases T-309/94 *NV Koninklijke KNP BT v Commission* [1998] ECR II-01007 paragraphs 41-48 and C-248/98 P *KNP BT v Commission* [2000] ECR I-09641, paragraph 73.

5.2.7. *ABB*

- (854) The power cable operations in ABB in Karlskrona have undergone repeated restructuring since 1995, with numerous changes occurring in the legal entity directly and indirectly responsible for its activities. Between 1 January 1995 and 1 June 2001, Karlskrona was operated by ABB High Voltage Cables AB. ABB High Voltage Cables AB was a directly wholly-owned subsidiary of Asea Brown Boveri AB. This parent entity changed its name from Asea Brown Boveri AB to ABB AB on 26 July 1999. Then, on 2 June 2001, ownership of ABB High Voltage Cables AB vested downwards from ABB AB to its directly wholly-owned subsidiary ABB Power Technology Products AB. Subsequently, on 1 October 2001, ABB High Voltage Cables AB was merged into ABB Power Technology Products AB. With effect from 10 July 2003, the shares of ABB Power Technology Products AB were transferred to ABB Power Technologies AB. ABB Power Technologies AB was also a directly wholly-owned subsidiary of ABB AB. Later, on 2 January 2004, ABB Power Technology Products AB was merged into ABB Power Technologies AB. Finally, on 2 May 2007 ABB Power Technologies AB was merged into its parent ABB AB. Hence, the Karlskrona power cable operations are now owned by ABB AB.¹²⁴⁹
- (855) The evidence described in this Decision shows that employees of ABB High Voltage Cables AB, then ABB Power Technology Products AB, later ABB Power Technologies AB and finally ABB AB participated directly or via subsidiaries in the infringement between 1 April 2000 and 17 October 2008. ABB AB should therefore be held liable for its participation in the infringement.
- (856) In view of this, the Commission holds ABB AB liable for its direct participation in the infringement between 2 May 2007 and 17 October 2008. Moreover, in line with the case-law referred to in Recital (704), the Commission considers that ABB AB is liable for the infringement for the period from 1 April 2000 until 1 May 2007 as the successor of the legal entities that directly participated in the infringement during that period.¹²⁵⁰
- (857) ABB Ltd was the ultimate parent company of ABB AB and its predecessors during the entire period of the infringement. The Commission therefore holds ABB Ltd, together with ABB AB, jointly and severally liable for the infringement described in this Decision for the period from 1 April 2000 to 17 October 2008.
- (858) Accordingly, this Decision is addressed to ABB AB and ABB Ltd.

5.2.8. *Brugg*

- (859) The evidence described in this Decision shows that employees of Brugg Kabel AG participated directly in the infringement from 14 December 2001 to 16 November 2006. Brugg Kabel AG should therefore be held liable for its participation in the infringement.
- (860) During the entire period of the infringement, Brugg Kabel AG was a [90-100%] subsidiary of Kabelwerke Brugg AG Holding.¹²⁵¹ In line with the case-law referred to in Recital (697), the Commission considers Kabelwerke Brugg AG Holding to exercise decisive influence over the conduct on the market of Brugg Kabel AG. The

¹²⁴⁹ ID [...].

¹²⁵⁰ See Section 1.2. of this Decision.

¹²⁵¹ ID [...], Brugg reply of 16 November 2009 to RFI of 20 October 2009.

Commission therefore holds Kabelwerke Brugg AG Holding, together with Brugg Kabel AG, jointly and severally liable for the infringement described in this Decision for the period from 14 December 2001 to 16 November 2006.

- (861) Accordingly, this Decision is addressed to Brugg Kabel AG and Kabelwerke Brugg AG Holding.

5.2.9. *Sagem/Safran/Silec*

- (862) The evidence described in this Decision shows that Safran (formerly Sagem) and then Silec, while a subsidiary of Safran, directly participated in the infringement from 12 November 2001 to 21 December 2005.

- (863) Between 20 May 1998 and 11 May 2005 the power cable business was operated as a business unit of Sagem.¹²⁵² Safran was formed as a result of a merger between Sagem and the Snecma Group on 11 May 2005.¹²⁵³ As a result of the merger, Sagem acquired control over Snecma SA, became the holding company of the new group and was renamed on that same day as Safran. On the same date, the power cable business unit was transferred, together with other activities, to Safran's wholly-owned subsidiary Sagem Communications SA.¹²⁵⁴ Due to internal restructuring within the Safran group, the power cable business unit of that group was transferred to Silec on 30 November 2005, and on 22 December 2005 Silec was sold to General Cable.

- (864) Safran has argued that the individuals involved in the collusion occupied posts of a low level in the organisation. The list of people involved on behalf of Sagem (as reproduced in Annex II) does not provide indications supporting this position. In view of this, the Commission holds Safran and Silec liable for their own participation in the infringement described in this Decision for the periods from 12 November 2001 to 29 November 2005, from 30 November 2005 to 21 December 2005 respectively.

- (865) General Cable argues that Safran should be held directly liable for the infringement committed by Silec in the period from 30 November 2005 to 21 December 2005. Such argument goes however against the principle of personal responsibility which dictates that an economic entity that infringes the rules of competition should be accountable for that infringement.¹²⁵⁵ Moreover, from 30 November 2005, Silec, and not Safran, was in possession of all the information with regard to the power cable activities.¹²⁵⁶

- (866) During the period 30 November 2005 to 21 December 2005, Silec was indirectly wholly-owned by Safran. In line with the case-law referred to in Recital (697), the Commission presumes the exercise of decisive influence by Safran over the conduct on the market of Silec. In view of this, the Commission holds Safran, together with

¹²⁵² ID [...], Safran reply of 16 November 2009 to RFI of 20 October 2009.

¹²⁵³ ID [...], Safran reply of 16 November 2009 to RFI of 20 October 2009.

¹²⁵⁴ ID [...], Safran reply of 16 November 2009 to RFI of 20 October 2009.

¹²⁵⁵ Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, paragraph 145; Case C-280/06 *Autorità Garante della Concorrenza e del Mercato v Ente tabacchi italiani - ETI SpA and Others and Philip Morris Products SA and Others v Autorità Garante della Concorrenza e del Mercato and Others* [2007] ECR I-10893, paragraph 39.

¹²⁵⁶ ID [...], Safran reply to SO of 3 October 2011.

Silec, jointly and severally liable for the infringement described in this Decision for the period from 30 November 2005 to 21 December 2005.

(867) Accordingly, this Decision is addressed to Safran SA and to Silec Cable, SAS.

5.2.10. *Silec/General Cable*

(868) The evidence described in this Decision shows that Silec continued its direct participation in the infringement as of 22 December 2005 until 16 November 2006. In view of this, the Commission holds Silec liable for its direct participation in the infringement also for this period.

(869) As explained in Section 1.2 of this Decision, Silec is an indirectly wholly-owned subsidiary of General Cable Corporation since 22 December 2005. In line with the case-law referred to in Recital (697), the Commission presumes the exercise of decisive influence by General Cable Corporation over the conduct on the market of Silec. The Commission therefore holds General Cable Corporation, together with Silec, jointly and severally liable for the infringement described in this Decision for the period from 22 December 2005 to 16 November 2006.

(870) Accordingly, this Decision is addressed to Silec Cable, SAS and General Cable Corporation.

5.2.11. *Showa and Mitsubishi*

(871) Two periods must be distinguished in the attribution of liability to Showa and Mitsubishi.

Showa and Mitsubishi's involvement prior to the transfer of power cable activities to EXSYM

(872) As described in Section 3, Showa and Mitsubishi participated directly in the infringement from 5 September 2001 to 30 June 2002. The individuals representing Showa and Mitsubishi in the cartel arrangement and who are relevant for the purposes of this Decision are listed in Annex II to this Decision.¹²⁵⁷ In view of this, the Commission holds Showa and Mitsubishi liable for their own direct participation in the infringement.

(873) Accordingly, this Decision is addressed to Showa and Mitsubishi

Liability for EXSYM's involvement

(874) For the reasons explained in Recitals (877) to (897) below, the Commission holds Showa, Mitsubishi and EXSYM jointly and severally liable for the involvement of EXSYM in the infringement from 1 July 2002 to 28 January 2009.

5.2.12. *EXSYM Corporation*

(875) EXSYM was established on 1 April 2002 pursuant to a JVA and articles of incorporation entered into between Showa and Mitsubishi on 7 March 2002 ("the 2002 JVA" and the "2002 AoI")¹²⁵⁸ by which these companies transferred their power cable businesses to EXSYM with the exception of the sales to domestic

¹²⁵⁷ Some of the individuals listed in Annex II may not have been involved in anti-competitive contacts with competitors for all of the periods specified.

¹²⁵⁸ ID [...], ID [...], EXSYM submissions of 11 February 2013 and ID [...], Mitsubishi submission of 3 March 2011.

(Japanese) companies other than power companies, which were retained by them. EXSYM started its operations on 1 July 2002.¹²⁵⁹

- (876) On 30 September 2005, Showa and Mitsubishi changed their 50%/50% contribution ratio and voting rights in EXSYM to 60% for Showa and 40% for Mitsubishi and signed a revised joint venture agreement (the "2005 JVA").¹²⁶⁰
- (877) The evidence described in Section 3 shows that EXSYM Corporation participated directly in the infringement at least from the start of its business operations on 1 July 2002 until 28 January 2009. The individuals representing EXSYM in the cartel arrangement and who are relevant for the purposes of this Decision are listed in Annex II.
- (878) By transferring their power cable interests to EXSYM, Showa and Mitsubishi were in effect using EXSYM as a vehicle to continue their involvement in the cartel. Some individuals that were previously involved either in the cartel or in the discussions that took place between the breakdown of the earlier arrangements and the start date of this infringement on behalf of Showa or Mitsubishi continued the cartel activities on behalf of EXSYM. This is the case for [company representative G1] (Showa) and [company representative H1] (Mitsubishi).¹²⁶¹ These individuals were later seconded to or employed by EXSYM (see Recital (889)).
- (879) Moreover, although all cartel contacts that took place as of 1 July 2002 were carried out by EXSYM and there is no evidence in the file showing the direct involvement of either Mitsubishi or Showa, these contacts also concerned the protection of the home territories and therefore included protection of the sales made by Showa and Mitsubishi to the customers that they had retained in Japan (see Recital (875)). It is therefore highly unlikely that the parent companies would not have been aware of the continuation of the cartel and EXSYM's role therein beyond the period of their own direct participation.
- (880) Since the respective shareholding of Showa and Mitsubishi does not, on its own, allow the Commission to presume that they exercised decisive influence on EXSYM's commercial activities, the Commission has relied on evidence showing that the parent companies were both able to and have actually jointly exercised a decisive influence over EXSYM during the whole period of its involvement in the infringement, despite the asymmetry in the ownership after 29 September 2005.
- (a) Arguments of the parties
- (881) In their replies to the SO, the three companies have however contested this conclusion.
- (882) Mitsubishi has mainly claimed that the following aspects show that it did not exercise a decisive influence over EXSYM: (i) Showa and EXSYM had a very close cooperation during the administrative procedure, responded jointly to Commission's requests for information and have stated that only Showa, and not Mitsubishi, should be considered as "connected undertakings"; (ii) through the formation of EXSYM,

¹²⁵⁹ See Articles 2 and 4 of the 2002 JVA. See also ID [...], EXSYM reply to RFI of 20 October 2009 and ID [...], Mitsubishi reply to RFI of 22 October 2012.

¹²⁶⁰ ID [...], EXSYM/Showa submission of 11 February 2013; ID [...], Mitsubishi submission of 3 March 2011; ID [...], EXSYM reply to RFI of 20 October 2009.

¹²⁶¹ [...]

Mitsubishi in effect withdrew from the market while Showa retained its business; (iii) after the change of the ownership ratio the accounts of EXSYM were consolidated in the accounts of Showa; (iv) there is no evidence in the SO showing the existence of simultaneous positions held by EXSYM's Directors at Mitsubishi, (v) the SO also lacked evidence showing consultations between Mitsubishi and Showa under the prior consultation procedure; the relevant provisions in this respect expressed the desire to reach an agreement and not a binding requirement to reach an agreement, (vi) the matters on which Showa and Mitsubishi consulted each other were essentially confined to matters potentially affecting their financial resources, such as [...], and not on the matters subject to the prior consultation procedure, and (vii) it was established that the prior consultation should in any case "*not interfere with the independence of the management for EXSYM*".¹²⁶² In reply to the Commission's Letter of Facts Mitsubishi has argued that the elements advanced by the Commission are at most able to show that Mitsubishi had the ability to exercise decisive influence but not the actual exercise thereof.¹²⁶³

- (883) Showa and EXSYM have, in line with Mitsubishi's last argument, also claimed that the day-to-day operation of the business was carried out by EXSYM independently from Showa as it retained the final decision making rights, and that Showa had no knowledge of the cartel.¹²⁶⁴

(b) Discussion and findings

- (884) The assessment of the additional evidence gathered during the investigation in response to the parties' contestation of the findings of the SO has confirmed that Showa and Mitsubishi jointly exercised decisive influence over EXSYM. This conclusion is based on objective factors and having regard to the legal, organisational and economic links between the entities, as described in Recitals (885) to (897).
- (885) According to Article 1 of the 2002 JVA, EXSYM was formed on the basis of equal powers and full cooperation between both parent companies.¹²⁶⁵ The purpose of the 2005 amendment to the investment ratio was two-fold. Firstly, the independent management of EXSYM was furthered by [...]. Secondly, the new investment ratio reflected the more substantial involvement of Showa in terms of [...].¹²⁶⁶ The 2005 JVA explicitly provided for Showa to respect the opinion of Mitsubishi in light of the purpose of the (2002) JVA and to use reasonable efforts to reach an agreement between Showa and Mitsubishi.¹²⁶⁷

¹²⁶² ID [...], Mitsubishi reply to SO of 20 September 2011; ID [...], Mitsubishi complementary reply to the SO of 30 May 2012; ID [...], Mitsubishi presentation at the Oral Hearing; ID [...], Mitsubishi comments on EXSYM/Showa reply to RFI of 22 October 2012; ID [...], Mitsubishi reply to RFI of 22 October 2012; ID [...], Mitsubishi reply to LoF. Provision in Article 5 of the 2005 JVA, ID [...], Mitsubishi submission of 3 March 2011.

¹²⁶³ ID [...], Mitsubishi reply to LoF.

¹²⁶⁴ ID [...], Showa reply to SO of 30 September 2011; ID [...], EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁶⁵ ID [...], EXSYM submission of 11 February 2013. Article [...] reads "[...]". Joint press releases of 2002 also confirm this position: ID [...], Showa reply to SO of 30 September 2011. Considering this equal standing Mitsubishi's claim that it had other objectives when entering into the JV than Showa must be rejected as irrelevant, ID [...], Mitsubishi reply to LoF.

¹²⁶⁶ Article[...] 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013.

¹²⁶⁷ Article [...] (Role of Shareholders and Joint Venture) of 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013. The spirit of cooperation between Showa and Mitsubishi was also

(886) In line with this position, between 2002 and 2009, Mitsubishi and Showa implemented the following statutory provisions:

- (a) Article 12 of the 2002 AoI on the majorities required to pass resolutions at the shareholders' meetings implied that the agreement of both Showa and Mitsubishi was necessary to pass any resolution at the general shareholders' meeting.¹²⁶⁸ The change of investment ratio meant that Mitsubishi, holding 40% of the voting rights, could no longer block resolutions at the shareholders meetings. Showa and EXSYM have however confirmed that all matters resolved in the general shareholders' meetings were approved unanimously by representatives of both Showa and Mitsubishi.¹²⁶⁹ As shown by the agendas of the shareholders meeting, decisions adopted by the meeting related to, among others, [...] Representatives from both Showa and Mitsubishi attended every shareholders' meeting.¹²⁷⁰
- (b) Article 16(3) of the 2002 JVA established that each parent had the power to appoint half of the [...] directors of EXSYM that were elected [...] at the shareholders meeting.¹²⁷¹ Under the 2002 JVA, the appointment of the directors was subject to prior mutual consultation of Mitsubishi and Showa.¹²⁷² Resolutions of the BoD were adopted by majority vote which meant that both Showa and Mitsubishi could legally block any resolution.¹²⁷³ Through the 2005 JVA, the number of directors at the BoD was increased to [...], [...] to be nominated by Showa while Mitsubishi retained its [...] directors.¹²⁷⁴ This change meant that Mitsubishi could no longer legally block any resolution. Showa and EXSYM have however confirmed that all matters resolved in the BoD meetings were approved unanimously.¹²⁷⁵ Representatives from both Showa and Mitsubishi attended every BoD meeting. As shown by the agendas of the BOD meeting, decisions adopted by the meeting related not only to financial matters but also to the [...].¹²⁷⁶ From 2002 to March 2004, Mitsubishi appointed the president of the BoD with Showa appointing the vice-president. Since then, Showa has appointed the president of the BoD while Mitsubishi appointed the vice-president.¹²⁷⁷

clearly reflected in Article 11 of the 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013.

¹²⁶⁸ ID [...], EXSYM submission of 11 February 2013.

¹²⁶⁹ ID [...], EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁷⁰ ID [...], Appendix 3 to EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁷¹ ID [...], EXSYM submission of 11 February 2013. [...]: ID [...], EXSYM submissions of 11 February 2013 (Amendment of the AoI).

¹²⁷² Article 16(2) of the 2002 JVA. ID [...], EXSYM/Showa reply to RFI of 22 October 2012. With the 2005 JVA, the prior consultation on the Directors nominated by each parent was abolished. EXSYM and Showa have stated that the parent companies continued to provide each other with prior explanations concerning their respective nominated Directors. Mitsubishi has contested this and claimed that such prior consultations did not take place during this period, ID [...], Mitsubishi's comments on EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁷³ Article [...] of the 2002 AoI, EXSYM/Showa submission of 11 February 2013.

¹²⁷⁴ Article [...] of the 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013.

¹²⁷⁵ ID [...], EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁷⁶ ID [...], Appendix 4 to EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁷⁷ ID [...], Appendix 4 to EXSYM/Showa reply to RFI of 22 October 2012.

- (c) Article 17 of the 2002 JVA and the records of the BoD meetings held between 29 March 2002 and 28 January 2009 demonstrate that the BoD was responsible for the management of EXSYM's business affairs including matters such as approval of [...].¹²⁷⁸
- (d) In addition, Article 17 of the 2002 JVA established [...] matters that required a prior consultation of Mitsubishi and Showa before the matter could be put before the BoD. The matters include [...]. As the wording of the provision is expressed broadly, several of these matters clearly affected the strategic and commercial behaviour of EXSYM. Examples include [...]. The prior consultation procedure was not subject to any specific formal procedure and the 2002 JVA did not explicitly require that the parties had to reach an agreement on these matters.¹²⁷⁹ Several matters subject to the prior consultation procedure were subsequently brought before the BOD and there adopted unanimously.¹²⁸⁰
- (887) After the change in investment ratio, on the insistence of Mitsubishi, the prior consultation procedure between the parent companies was kept for [...] matters.¹²⁸¹ These matters included notably [...].¹²⁸² Several matters subject to the prior consultation procedure were subsequently brought before the BoD and adopted unanimously.¹²⁸³ It is clear that, given the nature of the matters on which the prior consultation procedure was to be applied, the rights attributed also to Mitsubishi clearly went beyond those necessary for the mere protection of the rights of minority shareholders.¹²⁸⁴ While Mitsubishi had lost its ability to veto resolutions at the shareholders' meetings, it retained other rights that ensured a continued joint exercise of decisive influence. This gave both parent companies the same influence and the power to direct EXSYM's conduct on key elements of its commercial policy:

¹²⁷⁸ Article 17 of the 2002 JVA, ID [...], EXSYM submission of 11 February 2013 and EXSYM ID [...] EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁷⁹ Article 17 of the 2002 JVA, ID [...], EXSYM submission of 11 February 2013.

¹²⁸⁰ ID [...], Appendix 4 to EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁸¹ Article 5 of the 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013. ID [...] (Annex 10b-4), EXSYM/Showa reply to RFI of 22 October 2012. On the designation of directors, Mitsubishi's view was that "...we would like to keep the provision that prior consultation of the parties is required to [...]". On the resolutions by EXSYM's BoD, Mitsubishi proposed that, in case of derogation of the prior consultation, the approval of the matters listed in Art. 17 should require the participation and unanimous consent of all the incumbent directors, meaning in practice that Mitsubishi would have the ability to block any resolution on these matters even having fewer directors than Showa.

¹²⁸² Article 5 of the 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013. See also the confirmation of the need of this prior agreement by EXSYM and Showa in ID [...], EXSYM/Showa reply to RFI of 22 October 2012. Other matters included [...].

¹²⁸³ ID [...], Appendix 4 to EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁸⁴ See the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraphs 66 and 67: "... This normal protection of the rights of minority shareholders is related to decisions on the essence of the joint venture, such as changes in the statute, an increase or decrease in the capital or liquidation. A veto right, for example, which prevents the sale or winding-up of the joint venture does not confer joint control on the minority shareholder concerned. (67) In contrast, veto rights which confer joint control typically include decisions on issues such as the budget, the business plan, major investments or the appointment of senior management".

- (a) Unlike the situation under the 2002 JVA, the 2005 JVA explicitly required prior agreement between Mitsubishi and Showa on the [...] matters subject to prior consultation before the matter was resolved by the BoD.¹²⁸⁵
 - (b) In a letter of 1 September 2005, Mitsubishi advanced that the obligation of prior consultation on the [...] items concerned very significant matters and had not led to any delay in the decision-making of EXSYM. It also assumed that the management of EXSYM would not change after the change in investment ratio.¹²⁸⁶
 - (c) Showa has confirmed that Showa and Mitsubishi mutually consulted each other as necessary through direct discussions in order to reach an agreement on the matters for prior consultation.¹²⁸⁷ Even though there was no formalised procedure, Showa has provided several indications to support those consultations between Mitsubishi and Showa did take place. This includes a letter from Mitsubishi and Showa's [...] ¹²⁸⁸ Mitsubishi also confirmed the existence of prior consultations with respect to [...].¹²⁸⁹
 - (d) Regardless of Mitsubishi's statements to the opposite, there is therefore clear evidence that Mitsubishi and Showa took part in prior consultations as foreseen by both the 2002 and 2005 JVAs. In addition, the fact that all resolutions, both at the shareholders' meetings and by EXSYM's BoD, were [...] adopted is evidence that prior consultations were actually implemented or at least that Showa and Mitsubishi *de facto* agreed on the matters resolved in shareholders' and BoD meetings.¹²⁹⁰
 - (e) Article 18 and article 21 of the 2002 JVA contained reporting mechanisms that ensured the supervisory role of Showa and Mitsubishi over EXSYM.¹²⁹¹ In addition, Showa and Mitsubishi have also confirmed that the top level management of EXSYM regularly reported informally to their corresponding parent companies on EXSYM's matters such as [...].¹²⁹² The 2005 JVA did not alter these mechanisms.
- (888) None of the parties have claimed or provided evidence to support that the provisions of the 2002 or 2005 JVA were not applicable.
- (889) As regards the organisational links, the decisive influence of Showa and Mitsubishi on EXSYM's market conduct was ensured by the fact that:

¹²⁸⁵ Article 5 of the 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013.

¹²⁸⁶ ID [...] (Annex 10b-4), EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁸⁷ ID [...], EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁸⁸ ID [...] (Annex 10b-3), EXSYM/Showa reply to RFI of 22 October 2012, which also designates the persons within Showa and Mitsubishi who will be in charge of future consultations. See further, ID [...] (Annex 10b-2), EXSYM/Showa reply to RFI of 22 October 2012, which is a letter sent by Mitsubishi's [function title] to Showa's [function title] (copy to EXSYM) of 23 March 2004 concerning plans [...]. Additional examples are described in ID [...], ID [...] and ID [...] (Annex 10b-5), EXSYM/Showa reply to RFI of 22 October 2012.

¹²⁸⁹ ID [...], Mitsubishi reply to RFI of 22 October 2012 and ID [...], [...] and [...], Annex Q.7(b) to this reply.

¹²⁹⁰ Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraph 194.

¹²⁹¹ ID [...], EXSYM submission of 11 February 2013.

¹²⁹² ID [...], EXSYM/Showa comments on Mitsubishi reply to RFI of 22 October 2012; ID [...], Mitsubishi reply to RFI of 22 October 2012.

- (a) EXSYM's BoD was formed at different moments in time by [...] (only for few months), [...] or [...] directors. During almost the entire infringement period, at least [...] directors, [...] nominated by Showa and [...] nominated by Mitsubishi were at the same time occupying relevant managerial positions at Showa and Mitsubishi, including positions as members of the BoD of these companies.¹²⁹³
 - (b) Showa and Mitsubishi retained a significant influence on the human resources policy of EXSYM given the powers they had on many employees, even with managing positions, that were seconded to EXSYM. These powers included [...].¹²⁹⁴ The vast majority of the managers that had been appointed by EXSYM's BoD and previously held management positions with Showa or Mitsubishi were (at least during certain periods) seconded from Showa or Mitsubishi.¹²⁹⁵ Among these seconded managers, at least [company representative G1] and [company representative H1] were also involved in the cartel contacts during this period (See Section 3).¹²⁹⁶
 - (c) The number of managers and directors who were either seconded from (and thereby formally employed by) and/or were simultaneously holding managerial positions in the parent companies (see footnotes 1293 and 1295) necessarily placed the parent companies in a position where they could influence EXSYM's market conduct, since it enabled them to check whether EXSYM's course of action on the market was consistent with the parent companies' aim and strategy for it.¹²⁹⁷
- (890) Showa and Mitsubishi were also exercising a significant influence on EXSYM through the strong economic links that existed between them:
- (a) Between Showa and Mitsubishi on the one hand and EXSYM on the other, there existed a mutual customer-supplier relationship. As Mitsubishi and Showa had retained the sales of power cables to certain domestic (Japanese)

¹²⁹³ Only for a few months at the beginning of the period, from [...], none of the directors nominated by Showa held a simultaneous position in Showa. For some periods, even [...] of the directors nominated by Showa occupied managerial positions at Showa [...]. The directors nominated by Showa who were also members of Showa's BoD were: [company representative G2] [...], [company representative] [...] and [company representative] [...]. The directors nominated by Mitsubishi who were also members of Mitsubishi's BoD were: [company representative] [...], [company representative] [...], [company representative] [...] and [company representative] [...]. See ID [...], EXSYM reply to RFI of 20 October 2009; ID [...], Showa/EXSYM reply to RFI of 22 October 2012; ID [...], Showa/EXSYM reply to RFI of 11 February 2013; ID [...], Mitsubishi reply to RFI of 22 October 2012; and ID [...], Mitsubishi reply to RFI of 4 February 2013.

¹²⁹⁴ Article 30 of the 2002 JVA, ID [...], EXSYM submission of 11 February 2013 and Article 10 of the 2005 JVA, ID [...], EXSYM/Showa submission of 11 February 2013. See further: ID [...] and ID [...], EXSYM/Showa reply to RFI of 22 October 2012; ID [...] and ID [...], Mitsubishi reply to RFI of 22 October 2012; and ID [...], Mitsubishi reply to RFI of 4 February 2013.

¹²⁹⁵ At least [...] out of the [...] managers reported that were appointed by EXSYM's BoD and originating from Showa were at some point during this period employees seconded from Showa, ID [...], EXSYM/Showa reply to RFI of 22 October 2012. At least [...] out of the [...] managers reported that were appointed by EXSYM's BoD and originating from Mitsubishi were at some point during this period employees seconded from Mitsubishi, ID [...], Mitsubishi reply to RFI of 22 October 2012.

¹²⁹⁶ [company representative G1] was seconded from Showa between [...] and [...] (when [...] became a permanent employee of EXSYM). [company representative H1] was seconded from Mitsubishi between [...] until [...] (when [...] became a permanent employee of EXSYM).

¹²⁹⁷ Case T-132/07 *Fuji Electric Co. Ltd v. Commission* [2011] ECR II-04091, paragraph 184.

companies, [...].¹²⁹⁸ During the entire infringement period EXSYM [...].¹²⁹⁹ Moreover, EXSYM purchased most of [...] from its parent companies, including [...].¹³⁰⁰

- (b) In addition, from the financial point of view, Mitsubishi and Showa held a significant influence over EXSYM, either by [...], by [...]. Furthermore, when EXSYM acted as a subcontractor for overseas projects, EXSYM's parent companies were often required to offer joint and several written performance guarantees, which had to be agreed by the BoD of each parent company.¹³⁰¹
- (891) Finally, as regards the other claims raised by Mitsubishi (see Recital (882) items (i), (iii), and (vii)),¹³⁰² these must be rejected. First, for the purpose of establishing parental liability, the relevant test is not that of "connected undertaking" but that of "exercise of decisive influence".¹³⁰³ Second, the consolidation of accounts merely based on the level of shareholding held by a parent company in a subsidiary,¹³⁰⁴ is not considered as a valid criterion to exclude that a different company is also exercising decisive influence on a subsidiary. Last, it should be noted that the lack of involvement of the parent companies in the day to day operation of the business of their subsidiary is not a relevant criterion.¹³⁰⁵
- (892) From all of the above, it can be concluded that the parent companies jointly exercised decisive influence over EXSYM during its whole infringement period and that the claims made by the parent companies are contradicted by the above facts. The parties' claims that the parent companies lacked knowledge of the cartel are, for the reasons explained in Recitals (889) to (890), not convincing. Even if they were to be accepted, they are in any case not relevant for determining the existence of exercise of (joint) decisive influence.¹³⁰⁶ The same applies to the claims that the parties did

¹²⁹⁸ Article 27 of the 2002 JVA, [...], EXSYM submission of 11 February 2013 and Article 9 of the 2005 JVA, [...], EXSYM/Showa submission of 11 February 2013; ID [...] and ID [...], EXSYM/Showa reply to RFI of 22 October 2012; ID [...], EXSYM reply to RFI of 20 October 2009.

¹²⁹⁹ ID [...], Mitsubishi reply to RFI of 22 October 2012.

¹³⁰⁰ Article 28 of the 2002 JVA, ID [...], EXSYM submission of 11 February 2013; ID [...] and ID [...], EXSYM/Showa reply to RFI of 22 October 2012; ID [...], ID [...] and ID [...], Mitsubishi reply to RFI of 22 October 2012.

¹³⁰¹ ID [...], EXSYM/Showa reply to RFI of 22 October 2012; ID [...], ID [...] (Appendix 15(b)) and ID [...] (Appendix 15(c)), Mitsubishi reply to RFI of 22 October 2012; ID [...], EXSYM/Showa submission of 29 January 2013.

¹³⁰² Claims (ii), (iv) (v) and (vi) have been respectively dealt with in Recitals (885); (889) and (886)-(887).

¹³⁰³ The concept of "connected undertaking", defined in Point 12(2) of the Commission's Notice on agreements of minor importance, relies upon three basic principles related to the powers of the parent company, namely: "(i) power to exercise more than half of the voting rights, or (ii) power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or (iii) right to manage the undertaking's affairs." The possibility of exercising decisive influence, however, also exists in situations in which none of the above three principles is met, for example in joint ventures in which a minority shareholder has powers that go beyond those necessary for the protection of its financial interest and extend to decisions affecting strategic business decisions. See in this respect the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraphs 62 to 73.

¹³⁰⁴ ID [...], Mitsubishi reply to RFI of 22 October 2012; ID [...], EXSYM/Showa reply to RFI of 22 October 2012.

¹³⁰⁵ See for example Case C-179/12 P *The Dow Chemical Company v Commission* [2013] not yet reported, paragraph 64; Case T-376/06 *Legris Industries SA v Commission* [2011] ECR II-00061, paragraph 53.

¹³⁰⁶ Case T-77/08 *The Dow Chemical Company v Commission* [2012] not yet reported, paragraph 106.

not interfere in EXSYM's day-to-day operations or the independence of the management, which are partly rejected in view of the evidence described in Recitals (886) to (890) and in any case not relevant.¹³⁰⁷ Despite the changes introduced by the 2005 JVA as a result of the change in the ownership ratio, both parent companies continued to jointly exercise decisive influence over EXSYM.¹³⁰⁸

-Other claims raised by Mitsubishi and Showa

- (893) Mitsubishi's claims regarding EXSYM and Showa's cooperation during the administrative procedure and EXSYM's reluctance to provide information on the investigation (Recital (882)) cannot change the above conclusion concerning Mitsubishi's joint exercise of decisive influence.
- (894) Firstly, the relevant test is not whether the parent is a "connected undertaking", a concept that serves a different purpose,¹³⁰⁹ but whether it did exercise decisive influence on the subsidiary. The above evidence shows that this was the case.
- (895) Secondly, the refusal to provide information to one of the parent companies on legal or administrative matters relating to on-going investigations does not in itself show lack of exercise of decisive influence over EXSYM. Neither is the qualification or perception of Mitsubishi as a minority shareholder of relevance for the liability issue as long as it has been shown that such shareholder exercised (jointly) a decisive influence.
- (896) As regards the alleged consolidation of accounts, it is merely based on accountancy principles and the level of shareholding held by Showa (60%) in EXSYM,¹³¹⁰ but it is not a criterion to conclude on whether or not a company is exercising decisive influence on another company.
- (897) Lastly, as stated above (See Recital (700)), case-law has confirmed that a parent company that has the ability to exercise decisive influence over a subsidiary and is aware of the infringement committed by such subsidiary, can be held liable for the acts of the subsidiary if it did not bring the infringement to an end.¹³¹¹ In view of the above, and notably of the prior involvement of Showa and Mitsubishi in the cartel, the simultaneous positions held by some of their employees in EXSYM, and the reporting obligations and interdependence between them and EXSYM, it can be concluded that Showa and Mitsubishi were or should have been aware of the continuation of the infringement by EXSYM and, since they did not bring it to an end despite having the means to do so, they can be held liable for EXSYM's conduct.

Conclusion

¹³⁰⁷ Ibid, paragraphs 95 and 107.

¹³⁰⁸ The General Court has previously accepted that two out of the three parents holding asymmetrical shareholdings in a joint venture (30%, 50% and 20%) did exercise decisive influence on the joint venture (Case T-132/07 *Fuji Electric Co. Ltd v Commission* [2011] ECR II-04091, paragraphs 176 - 203).

¹³⁰⁹ The concept of "connected undertaking" is defined in Point 12 (2) of the Commission's Notice on agreements of minor importance, and relies upon three basic principles related to the powers of the parent company. The possibility of exercising decisive influence, however, also exists in situations in which none of the above three principles is met.

¹³¹⁰ ID [...], Mitsubishi reply to RFI of 22 October 2012; ID [...], EXSYM/Showa reply to RFI of 22 October 2012.

¹³¹¹ See also Case T-309/94 *NV Koninklijke KNP BT v Commission* [1998] ECR II-01007, paragraphs 41-48 and Case C-248/98 P *KNP BT v Commission* [2000] ECR I-09641, paragraph 73.

(898) From the considerations expressed in Recitals (885) to (897), it is concluded that Showa and Mitsubishi jointly exercised decisive influence over EXSYM as of the start of its business activities until at least 28 January 2009. Therefore, EXSYM Corporation, SWCC SHOWA HOLDINGS CO., LTD. and Mitsubishi Cable Industries, Ltd. are held jointly and severally liable for EXSYM Corporation's participation in the infringement from 1 July 2002 until 28 January 2009.

5.2.13. *nkt*

(899) The evidence in this Decision shows that employees of nkt cables GmbH (formerly [...]) participated directly in the infringement from 3 July 2002 to 17 February 2006. nkt cables GmbH should therefore be held liable for its participation in the infringement.

(900) During the entire period of the infringement, nkt cables GmbH was indirectly wholly-owned by NKT Holding A/S. In line with the case-law referred to in Recital (697), the Commission presumes the exercise of decisive influence by NKT Holding A/S over the conduct on the market of nkt cables GmbH.

(901) NKT Holding A/S has claimed that it does not engage in economic activity and in addition that it did not exercise decisive influence over nkt cables GmbH.¹³¹² First, NKT Holding A/S points at the different tasks NKT Holding A/S exercises compared to the activities of the other NKT companies. Second, NKT Holding A/S points at the strong decentralised structure in place between nkt cables GmbH and NKT Holding A/S. Third, NKT Holding A/S states that [...].

(902) The Commission considers that NKT Holding A/S has failed to rebut the presumption that it is liable for the infringements committed by nkt cables GmbH because of the following reasons:

- (a) As a holding company it is logical that NKT Holding A/S' tasks are different from the NKT group companies. The Court has established that a holding company is a company which seeks to regroup shareholdings in various companies and whose function it is to ensure that they are run as one.¹³¹³
- (b) NKT Holding A/S has not substantiated its claims that nkt cables GmbH acted fully autonomously on the market.¹³¹⁴ NKT Holding A/S has merely enumerated a few factors without any corroboration thereof.¹³¹⁵ At the same time NKT Holding A/S admits that there exist certain ties between NKT Holding A/S and nkt cables GmbH, concerning [...].¹³¹⁶
- (c) NKT Holding A/S' claim is contradicted by nkt cables GmbH's earlier reply to a request for information in which it indicated that the management of NKT Holding A/S approves the annual budget of nkt cables GmbH.¹³¹⁷ According to nkt cables GmbH: "[...]."

¹³¹² ID [...], NKT Holding reply to SO of 3 November 2011.

¹³¹³ Case T-69/04 *Schunk GmbH and Schunk Kohlenstoff-Technik GmbH v Commission* [2008] ECR II-2567, paragraph 63.

¹³¹⁴ Joined Cases T-141/07, T-142/07, T-145/07 and T-146/07 *General Technic-Otis Sàrl and Others v Commission* [2011] ECR II-04977, paragraph 88.

¹³¹⁵ ID [...], NKT Holding A/S reply to SO of 3 November 2011.

¹³¹⁶ ID [...], NKT Holding A/S reply to SO of 3 November 2011.

¹³¹⁷ ID [...], nkt of 4 November 2009 to RFI of 20 October 2009.

(d) NKT Holding A/S' claim is furthermore contradicted by the statements made in its annual reports. The annual report of 2004 reads: *"As the owner of the NKT Group's operating companies, NKT Holding A/S ensures that the individual business units are operated and developed according to principles that maximise long-term value for our shareholders. The active form of ownership that characterises NKT is exercised through close interaction between the NKT Group Management and the individual managements of the Group's subsidiaries, and through the professional competences made available to the Group's companies by NKT Holding."*¹³¹⁸ The annual report of 2005 adds: *"NKT Holding actively supports the Group companies in their efforts: › to combine technological and market potentials › to establish partnerships with other players › to adapt readily to change › to effectively protect and expand their commercial interests › to position themselves as competitive players"* and *"NKT Holding also provides a range of external services on behalf of all Group companies, particularly in relation to shareholders and investors. In 2005, the staff of NKT Holding played a part in effecting the acquisitions and divestments undertaken by the Group companies. They also assisted in property transactions inside and outside Denmark, IPR planning and management, employment and contractual issues, insurance, tax, cash management and hedging of currency risks. In addition to the Group management, NKT Holding consists of 11 professionals and ancillary administrative personnel."*¹³¹⁹

(903) The Commission therefore holds NKT Holding A/S, together with nkt cables GmbH, jointly and severally liable for the infringement described in this Decision for the period from 3 July 2002 to 17 February 2006.

(904) Accordingly, this Decision is addressed to nkt cables GmbH and NKT Holding A/S.

5.2.14. LS Cable

(905) As described in Section 3, LS Cable participated directly in the infringement from 15 November 2002 to 26 August 2005. In view of this, the Commission holds LS Cable liable for its direct participation in the infringement.

(906) Accordingly, this Decision is addressed to LS Cable & System Ltd.

5.2.15. Taihan

(907) As described in Section 3, Taihan participated directly in the infringement from 15 November 2002 to 26 August 2005. In view of this, the Commission holds Taihan liable for its direct participation in the infringement.

(908) Accordingly, this Decision is addressed to Taihan Electric Wire Co., Ltd.

6. DURATION OF THE INFRINGEMENT

6.1. Starting date for each undertaking

(909) In establishing the starting date of each addressee's participation in the infringement, the Commission has taken the specific features of the cartel into account, in

¹³¹⁸ ID [...], nkt reply to RFI of 20 October 2009.

¹³¹⁹ ID [...], nkt reply to RFI of 20 October 2009.

particular the participation in meetings and prior contacts of the addressees. For most of the addressees the starting date of their participation coincides with the date they first attended a cartel meeting. Moreover, as set out in Section 3, for almost all parties there is evidence that they were involved in activities related to the cartel prior to their starting date. Regarding parent companies, the starting date is the date that they became jointly and severally liable with their subsidiary/joint venture, as set out in Section 5. Regarding joint ventures, the starting date is the date on which operations were assigned to them by their respective parent companies.

- (910) 18 February 1999 is held as the starting date for Prysmian, Furukawa, Fujikura, Hitachi and Sumitomo, who all attended the A/R meeting on that date. The parent companies of Prysmian bear parental liability as follows: Pirelli & C. S.p.A. from 18 February 1999 until 28 July 2005, and both Prysmian S.p.A. and The Goldman Sachs Group, Inc. as of 29 July 2005.
- (911) ABB participated in the cartel arrangements from 1 April 2000. [...] either on or shortly after this day [company representative I4] (ABB) discussed up-coming projects with [company representative X] (Nexans) in Copenhagen (See Recital (149)). ABB Ltd bears parental liability for ABB's conduct also from 1 April 2000.
- (912) Nexans is held liable for its participation in the infringement as of 13 November 2000. Nexans SA bears parental liability for Nexans' conduct as of 12 June 2001.
- (913) Mitsubishi and Showa participated in the cartel arrangements from at least 5 September 2001 (see Recitals (577)-(583)).
- (914) JPS and VISCAS participated in the cartel arrangements as of 1 October 2001, the day on which operations were assigned to them by their respective parent companies Hitachi, Sumitomo, Furukawa and Fujikura, who bear parental liability for the conduct of JPS and VISCAS also from 1 October 2001.
- (915) VISCAS has argued that the Commission violates the principle of equal treatment by taking 1 October 2001 as the starting date, instead of 12 November 2001, the day on which its representatives first attended a meeting. According to VISCAS, the general approach of the Commission is to take the date on which an undertaking attended its first meeting with competitors.¹³²⁰
- (916) In that regard, it should be reminded that the principle of equal treatment is breached only where comparable situations are treated differently or different situations are treated in the same way, unless such treatment is objectively justified.¹³²¹
- (917) As explained in Section 5, the Japanese producers Furukawa and Fujikura continued their participation in the cartel, which started on 18 February 1999, through their joint venture VISCAS. VISCAS is therefore not in the same position as certain other undertakings addressed by this Decision, and there is no infringement of the principle of equal treatment. The meeting on 12 November 2001 was attended by [company representative F3] on behalf of VISCAS. [company representative F3] had earlier attended a cartel meeting on 5 September 2001 on behalf of VISCAS' future joint venture parent company Fujikura (see Recital (181)). VISCAS took over the power

¹³²⁰ ID [...], VISCAS reply to SO of 9 November 2011.

¹³²¹ Case C-76/06 P *Britannia Alloys & Chemicals v Commission* [2007] ECR I-4405, paragraph 40 and Case T-311/94 *BPB de Eendracht NV, formerly Kartonfabriek de Eendracht NV v Commission* [1998] ECR II-1129, paragraph 309.

cable activities of its shareholders Fujikura and Furukawa. It can be considered that it had the same knowledge as those shareholders in relation to the allocation of power cable projects.¹³²²

- (918) Safran, previously Sagem, participated in the cartel arrangements from 12 November 2001. On this day [company representative L2] and [company representative L1] attended a meeting with [company representative C2] (JPS) and [company representative F3] (VISCAS) (see Recital (185)). Silec Cable, SAS, as economic successor of Safran, bears liability for its own participation in the infringement from 30 November 2005. The parent companies of Silec Cable, SAS bear parental liability for Silec Cable, SAS' conduct as follows: Safran from 30 November 2005 until 21 December 2005, and General Cable from 22 December 2005.
- (919) Safran, on behalf of Sagem/Safran, [...] denies the anti-competitive character thereof [*the meeting on 12 November 2001*].¹³²³ [...] At the meeting, Sagem [...] merely acknowledged that the Japanese producers were dominant in [Japanese home territory].¹³²⁴ The detailed contemporaneous notes that exist from the meeting on 12 November 2001 show that the discussion did concern anti-competitive arrangements. Notably, the notes mention Sagem's agreement with the allocation of several projects in the export territories and their absence of intention to reduce the prices (Recital (185)).¹³²⁵ Safran has not demonstrated that Sagem had indicated to JPS and VISCAS that it was participating in the meeting in a spirit that was different from theirs. In fact, the impression that Sagem had given was positive, as it was reported at the A/R meeting one day later that while Sagem was "*difficult*"; "*talks*" with Sagem were possible (Recital (186)).
- (920) From the evidence presented in Section 3 [...]. Sagem's positive stance towards the cartel also flows from the steps Sagem undertook after the meeting on 12 November 2001. Even though Sagem claims that there is insufficient evidence to prove its participation in the R meeting of 14 December 2001, contemporaneous evidence establishes that Sagem did participate in a meeting in Divonne at some point before 18 February 2002 (Recital (197)). At the A/R meeting on 30 January 2002, Nexans and Pirelli informed the other participants that "*Brugg and Sagem [were] invited in the meeting*" and "*will continue*" (Recital (206)). The notes from the A/R meeting on 5 April 2002, report a "*gradually growing cooperative atmosphere with Brugg, Sagem and [...]*" (Recital (212)). Sagem was also involved in the discussions concerning the allocation scheme for [non-EEA territory] that took place in January 2002 (Recital (210)). In September 2002, [company representative A1] (Nexans) reported with regard to Sagem: "*we have now on regular basis contacts with NK, SIL, BC*" (Recital (218)). While Sagem could not attend the R meeting held in September 2002, it was quick to assure its fellow participants that its absence was not a "*diplomatic unavailability*" (Recital (222)). All these elements point at the involvement of Sagem in the anti-competitive agreements.
- (921) Brugg participated in the cartel arrangements from 14 December 2001. On this day [company representative J2] (Brugg) attended an R meeting in Divonne (see Recital

¹³²² Case T-112/07 *Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission* [2011] ECR II-03871, paragraph 295.

¹³²³ ID [...], Safran reply to SO of 3 October 2011.

¹³²⁴ ID [...], Safran reply to SO of 3 October 2011.

¹³²⁵ ID [...].

(197)). Kabelwerke Brugg AG Holding bears parental liability for Brugg's conduct also from 14 December 2001. Brugg disputes this starting date as it claims that the meeting of 14 December 2001 had no anti-competitive character and Brugg refused to cooperate on that day.¹³²⁶

- (922) [...]. While the purpose of the meeting on 14 December 2001 may well have been to convince Brugg to join the cartel, this does not diminish its anti-competitive character. Nexans and Prysmian had announced at the A/R meeting on 13 November 2001 that they would organise regular R meetings, and they fulfilled their promise through the meeting of 14 December 2001 (Recital (188)). The European cartel participants allocated projects in the EEA and the export territories at the R meetings (see, for instance, Recital (315)). There is no evidence that Brugg announced at that meeting that it would not participate in the arrangement. In fact, there is evidence that Nexans and Prysmian succeeded in their attempts as, Nexans and Pirelli informed the other participants that "*Brugg and Sagem [were] invited in the meeting*" and "*will continue*" at the A/R meeting of 30 January 2002 (Recital (206)). At the A/R meeting on 5 April 2002, the notes report a "*gradually growing cooperative atmosphere with Brugg, Sagem and [...]*" (Recital (212)). Subsequently, in April 2002, Brugg planned to organise an R meeting itself. Although this meeting was cancelled, a second meeting organised by Brugg took place on 3 July 2002 (Recital (217)). It is highly unlikely that Brugg would plan to organise a cartel meeting in April 2002 when it was not yet a member of the cartel.
- (923) EXSYM participated in the cartel arrangements from 1 July 2002, the day on which operations were assigned to it by its parent companies Showa and Mitsubishi. EXSYM's parent companies Showa and Mitsubishi bear parental liability for EXSYM's conduct also from 1 July 2002.
- (924) EXSYM argues that its starting date should be 3 September 2002; the day on which JPS confirmed that EXSYM was joining the club (see Recital (219)). There are however several indications that EXSYM had already participated in the cartel arrangements prior to that event. [company representative G1] and [company representative H1], who participated on behalf of EXSYM in the cartel, had been previous participants in the cartel as employees of respectively Showa and Mitsubishi.¹³²⁷ EXSYM took over the power cable activities of its shareholders Showa and Mitsubishi. It can therefore be considered that it had the same knowledge as those shareholders in relation to the allocation of power cable projects.¹³²⁸ Prior to the formation of EXSYM, the company was already expressly welcomed to attend the cartel meetings (Recital (186)). Such invitations continued upon the formation of EXSYM (Recitals (212), (215) and (218)). Even though EXSYM did not physically join the meetings, there was no doubt about the conduct that was expected from EXSYM on the market.¹³²⁹
- (925) nkt participated in the cartel arrangements from 3 July 2002 when representatives of nkt attended a meeting at Château de Habsbourg with Nexans, Pirelli and Brugg see

¹³²⁶ ID [...], Brugg reply to SO of 24 October 2011.

¹³²⁷ [...]

¹³²⁸ Case T-112/07, *Hitachi and Others Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v. Commission* [2011] ECR II-03871, paragraph 295.

¹³²⁹ Case T-53/03 *BPB plc v Commission* [2008] ECR II-1333, paragraph 182.

Recital (217)). NKT Holding A/S bears parental liability for nkt's conduct also from 3 July 2002.

- (926) LS and Taihan participated in the cartel arrangements as of 15 November 2002 when the companies attended the A/K/R meeting in Tokyo. As indicated in Recital (485), the fact that LS and Taihan may not have fully abided by the outcome of the anti-competitive meeting they attended, does not relieve them of their full responsibility. Neither of them has attributed any evidence which shows that they were opposed to the outcome of the meeting. Moreover, prior to attending the meeting on 15 November 2002, both companies were already involved in the allocation of projects in the export territories (see, Recitals (157), (159), (169) and (223)) and attended anti-competitive meetings on 7 September 2001 (Taihan) and 29 January 2002 (see, Recitals (184) and (204)).

6.2. End date for each undertaking

- (927) In establishing the end dates of each addressee's participation in the infringement, the Commission has taken the specific features of the cartel into account, in particular as concerns the participation in meetings and bilateral contacts of the addressees and the absence of any proof or evidence capable of being interpreted as a declared intention from the parties to distance themselves from the object of the agreement.
- (928) Regarding parent companies, the duration taken into account is the period during which the parent exercised decisive influence over the subsidiary while the subsidiary was directly participating in the infringement. As established in Section 5, the joint venture parent companies Furukawa and Fujikura, Sumitomo and Hitachi Metals, Ltd., and Showa and Mitsubishi should be held to be jointly and severally liable for the involvement of their respective joint ventures in the infringement. Their end date therefore matches the end date of the joint venture.
- (929) Regarding Taihan the end date of participation in the infringement has been set at 26 August 2005. The last piece of evidence which stems directly from Taihan is dated 1 July 2004. However, there is evidence that Taihan was still regarded as a member to the arrangements on 26 August 2005 (Recital (357)-(358)), as on that date [company representative A1] (Nexans) explicitly confirmed that Taihan was still regarded as part of the A side of the cartel. [company representative A1] had made a similar remark on 24 June 2005 (See Recital (353)).
- (930) The fact that there is no evidence stemming from Taihan for the period between 1 July 2004 and 26 August 2005 can be explained by the specific characteristics of the cartel and Taihan's participation therein. [...], its role in the cartel was limited to a few meetings and contacts.¹³³⁰ From the start of Taihan's participation, it was clear that the cartel operated through coordinators or contact points on each side. In practice, Taihan also communicated through the Japanese contact points (see, Recitals (229), (240), (243), (263), (302) and (358)). Furthermore, the nature of the home territory agreement did not require regular contact between Taihan and the other participants as it imposed a negative obligation on Taihan to stay out of the EEA market. In practice, as seen from the evidence in Section 3, Taihan was only involved in communications when there were alleged infringements of the home

¹³³⁰

ID [...].

territory principle or when it concerned the occasional allocation of projects in the export territories. Taihan's lack of contact between 1 July 2004 and 24 August 2005 therefore did not have to indicate to the other participants that Taihan had withdrawn from the cartel. In addition, Taihan has not adduced any proof or evidence that indicates that it distanced itself from the agreements.

- (931) Regarding LS Cable the end date of participation in the infringement has been set at 26 August 2005. The last piece of evidence which stems directly from LS Cable is dated 1 July 2005 (Recital (352)). However, LS Cable was still regarded as a member to the arrangements until 26 August 2005, as on that date [company representative A1] (Nexans) explicitly confirmed this to [company representative H1] (EXSYM) and [company representative B2] (Prysmian) (Recitals (357)-(358)). LS Cable has not adduced any proof or evidence that indicates that it distanced itself from the agreements.
- (932) From the start of LS Cable's participation, it was clear that the cartel operated through coordinators or contacts points on each side. [...], its role in the cartel was limited to a few meetings and contacts.¹³³¹ In practice, there is evidence for LS Cable's regular participation, either directly or via the coordinator, between 15 November 2002 and 26 August 2005 (see notably Recitals (227), (244), (263), (268), (279), (320), (331), (343) and (358)).
- (933) There is some evidence that LS Cable continued to be regarded as a party to the cartel arrangements after 26 August 2005, as on 5 September 2007 LS Cable is mentioned with regard to the allocation of a project in the export territories (Recital (431)). However, there is no convincing evidence of LS Cable's involvement between 26 August 2005 and 7 September 2007. In view of the characteristics of the cartel and LS Cable's previous involvement therein (see also Recitals (930)-(932)), the period between these dates is too long to conclude that LS Cable continued its participation.¹³³²
- (934) Regarding Safran, the end date of participation in the infringement has been set at 29 November 2005, when the power cable business unit was transferred to the subsidiary Silec Cable, SAS.
- (935) For nkt the end date of participation in the infringement has been set at 17 February 2006 as there is no evidence on the file that nkt continued its involvement in the cartel beyond that date. The parental liability of NKT Holding A/S for nkt's conduct ends also on 17 February 2006.
- (936) In so far as nkt aims to claim that it ceased its participation in the cartel between 10 February and 10 December 2004, it has adduced no evidence to that effect.
- (937) nkt's alleged interruption should be examined in the context of the functioning of the cartel and the specific method of nkt's participation therein.¹³³³ nkt indeed did not attend two and possibly three R meetings during this period, but from the overview provided in Section 3 and Annex I it is clear that it was not uncommon for cartel participants to miss certain meetings. [...] its role in the cartel was one of sporadic

¹³³¹ ID [...], LS Cable reply to SO.

¹³³² Case T-382/06 *Tomkins plc v Commission* [2011] ECR II-1157, paragraphs 49-53.

¹³³³ Case T-18/05 *IMI plc, IMI Kynoch Ltd and Yorkshire Copper Tube v Commission* [2010] ECR II-01769, paragraph 89.

attendance at meetings and limited contacts.¹³³⁴ In years before and after 2004, there are several similar periods where evidence of nkt's active participation remained limited. Its absence from two or three cartel meetings therefore does not mean that nkt distanced itself formally from the cartel in the sense of the case law.¹³³⁵ nkt also fails to supply any evidence that it notified the other cartel participants of its withdrawal. The fact that a disagreement at the meeting on 10 February 2004 may have caused nkt's representative to walk out of the meeting is not uncommon in light of the functioning of the cartel. Section 3 lists several examples of arguments among the parties. Moreover, in Section 3 evidence is provided that nkt kept in contact with the other parties during this period (see Recitals (297), (303) and (307)).^[Confidentiality claim pending]¹³³⁶ Finally, in its reply to the Commission's request for information dated 31 March 2010, nkt failed to provide information regarding this alleged break, [...].¹³³⁷

- (938) Regarding Brugg and Silec, the end date of participation in the infringement has been set at 16 November 2006. There is no evidence on the file that Brugg and Silec Cable, SAS continued their involvement in the cartel beyond that date. The parental liability of Kabelwerke Brugg AG Holding and General Cable for the respective conducts of Brugg and Silec ends also on 16 November 2006.
- (939) General Cable has pointed to the fact that it announced its Code of Ethics and Compliance guidelines immediately upon the acquisition of ownership of Silec. It claims that the staff of Silec promptly followed these policies and thus participation in the infringement ceased.¹³³⁸
- (940) While the Commission welcomes measures taken by undertakings to avoid cartel infringements in the future, such measures cannot change the reality of the infringement. The specific characteristics of the cartel at issue, and the role that Sagem/Silec played therein, do not support the conclusion that Silec had withdrawn from the cartel upon its acquisition by General Cable.¹³³⁹ The fact that Silec did not attend the R meeting on 17 February 2006 cannot be adduced as proof or evidence that indicates that Silec distanced itself from the agreements. As is seen in Section 3, it was not uncommon for participants to miss some of the R meetings. The notes of that R meeting mention that Silec is "*excused*" (Recital (392)). While the notes are quite detailed and mention the fact that Brugg has a new organisation, nothing is recorded with regard to an alleged withdrawal of Silec. Similarly, at the A/R meeting on 13 January 2006, the notes fail to mention anything with regard to Silec, even though information about other manufacturers is given (Recital (374)). Further, the evidence shows that the other cartel participants continued to see Silec as a fellow cartel member and that Silec also behaved as such. The fact that [company representative L2] (Silec), forwards a list of projects Silec would like to have allocated to it on 21 December 2005 (Recital (371)), does not appear to be a "*clean break from the alleged cartel*" as is claimed by General Cable.¹³⁴⁰ Also the references to [company

¹³³⁴ ID [...], nkt reply to SO of 3 November 2011.

¹³³⁵ See, for instance, Case T-83/08 *Denki Kagaku Kogyo and Denka Chemicals v Commission* [2012] not yet reported, paragraphs 52-53 and 64.

¹³³⁶ *[Confidentiality claim pending]*

¹³³⁷ ID [...], nkt reply of 7 May 2010 to RFI of 31 March 2010.

¹³³⁸ ID [...], General Cable reply to SO of 28 October 2011.

¹³³⁹ Case T-382/06 *Tomkins plc v Commission* [2011] ECR II-1157, paragraphs 49-53.

¹³⁴⁰ ID [...], General Cable reply to SO of 17 June 2013.

representative L2] (Silec) in later contacts (Recitals (411) and (414)) provide an indication of continued involvement, especially as it is clear that [company representative A1] (Nexans) and [company representative L2] "*always communicate verbally*" (Recital (364)). General Cable has adduced no evidence demonstrating that Silec withdrew itself from the arrangements. It is clear that Silec's employees did not comply with the compliance guidelines that General Cable had imposed upon the acquisition. Even though Silec's employees were involved in an infringement prior to the acquisition by General Cable in clear violation of the compliance guidelines they failed to inform General Cable thereof.¹³⁴¹

- (941) Moreover, while General Cable describes the email of 16 November 2006 by [company representative L2] to [company representative J1] (Brugg) as an indication of Silec's "*change of posture, evasive behaviour and lack of cooperation*";¹³⁴² the literal text of the email reveals quite the opposite (Recital (411)). [company representative J1] asks for instructions and threatens that Brugg will quote to its "*convenience*" if such instructions are not received the same day. In his reply, [company representative L2] refers to an agreement reached in a telephone conversation with [company representative J1] that such instructions will follow in a few days' time. [company representative L2] has put [company representative A1] (Nexans) in copy which is consistent with the role of [company representative A1] as coordinator or contact window. In fact, the email points to attempts by [company representative L2] to cover up their illegal contacts by using telephone calls instead of explicit emails to pursue their arrangements.
- (942) Regarding JPS, the end date of participation in the infringement has been set at 10 April 2008, the date on which [company representative C1] and [company representative D4] (JPS) requested [company representative A2] and [company representative A1], the European secretary to the cartel (Nexans), to cease contacting JPS because of compliance reasons (see Recital (438)) and there is no evidence on the file that JPS continued its involvement in the cartel beyond that date. The end date for Sumitomo's and Hitachi's own participation in the cartel is set at 30 September 2001 when they continued their participation through their joint venture JPS, while the end date of their parental liability for the conduct of JPS is set at 10 April 2008.
- (943) JPS has given differing accounts concerning the definitive end date of its participation in the cartel. JPS has argued that [...].¹³⁴³ *Ad hoc* contacts continued however and in October 2005, JPS attended the meeting in the Mitsui Guest House (see Recital (369)). In October 2006, at the Baveno A/R meeting (see Recital (410)), JPS claims to have informed the other participants that it would not participate in any further meetings[...].¹³⁴⁴ [...] at a meeting with Nexans in 2007, JPS would then

¹³⁴¹ ID [...], General Cable reply to SO of 28 October 2011 and ID [...], ID [...], annexes to the reply: [company representative L2] and [company representative L1] only signed their agreement with the compliance guidelines on 22 June 2006.

¹³⁴² ID [...], General Cable reply to SO of 28 October 2011.

¹³⁴³ [...]

¹³⁴⁴ [...]

have made clear that [...].¹³⁴⁵ [...], JPS claims that this meeting took place on 10 April 2008 (see Recital (438)).¹³⁴⁶ [...].¹³⁴⁷

- (944) The available evidence, as presented in Section 3, demonstrates that JPS continued to participate in meetings and other contacts concerning the cartel until 10 April 2008 (see, for instance Recitals (355), (374), (380), (386), (396), (423) and (431)). According to JPS, those contacts did not concern the home territory arrangement or they relate only to *ad hoc* contacts concerning the allocation of projects in the export territories.¹³⁴⁸ It is clear however that JPS, through its continued participation in meetings and contacts until 10 April 2008 did not relieve itself of its liability through a complete and open dissociation from the whole cartel as required by the case law.¹³⁴⁹ While the contacts between some of the parties may have taken a different shape from Mid-2004 onwards, there is no evidence that JPS expressed a genuine will to dissociate itself from the cartel. Any change in its actions would appear to stem from an increase in measures to hide the most dangerous aspects of the cartel from discovery by the antitrust authorities. The fact that, according to JPS, the 2007 evidence relates to allocation of projects in the export territories is not sufficient to conclude that it had withdrawn from the cartel. By its nature, the home territory arrangement did not require continuous contacts and JPS has not pointed to any evidence that it communicated its withdrawal from this part of the single and continuous arrangement. Moreover, while JPS claims that it attempted to obtain projects in the EEA in 2007, it is clear that the other participants still assumed that JPS would respect the home territories agreement as can be seen from Recital (437)).
- (945) Regarding ABB, the end date of participation in the infringement has been set at 17 October 2008, the date on which ABB applied for immunity from fines under the Leniency Notice. The parental liability of ABB Ltd on the conduct of ABB ends also on 17 October 2008.
- (946) 28 January 2009 has been set as end date of participation in the infringement for Nexans and Prysmian, as the effects of previous collusive behaviour continued until at least the day of the inspections by the Commission (see Recital (445)). The parental liabilities for the conduct of these companies borne by Nexans SA, Prysmian S.p.A. and The Goldman Sachs Group, Inc. end on the same date.
- (947) For the same reasons, 28 January 2009 has also been set as the end date of participation in the infringement for EXSYM and VISCAS (see Recital (445)). The end date for EXSYM's parent companies Showa and Mitsubishi for their own participation in the cartel is set at 30 June 2002 when they continued their participation through their joint venture EXSYM, while the end date of their parental liability is set at 28 January 2009. The end date for VISCAS's parent companies Furukawa and Fujikura for their own participation in the cartel is set at 30 September 2001 when they continued their participation through their joint venture VISCAS, while the end date of their parental liability is set at 28 January 2009.

¹³⁴⁵ [...]

¹³⁴⁶ [...]

¹³⁴⁷ ID [...], [...].

¹³⁴⁸ ID [...], [...].

¹³⁴⁹ See, for instance, Case T-83/08 *Denki Kagaku Kogyo and Denka Chemicals v Commission* [2012] not yet reported, paragraphs 52-53 and 64.

- (948) [...].¹³⁵⁰ As explained in Recitals (620)-(634) there is sufficient evidence to show that, while the contacts between the parties may have taken a different shape from Mid-2004 onwards, the parties still adhered to the main pillars of the cartel, including the home territory principle. VISCAS and EXSYM also fail to provide any conclusive evidence which would indicate that they publicly distanced themselves from the cartel. On the contrary, there is evidence that VISCAS and EXSYM continued to give the other participants the impression that they remained members of the cartel for its full duration (see, notably Recitals (349), (353), (374), (394), (401), (410), (428), (434), (438) and (445)).
- (949) The explanations that VISCAS provides for this evidence are far less plausible than the explanation that VISCAS continued its participation in a more covert manner due to its fear of antitrust investigation. VISCAS's claim is even contradicted by the witness statement delivered by [company representative EF1] (VISCAS), who stated that he "*advised VISCAS' competitors that VISCAS would not even meet with them any longer*" only on 9 April 2008.¹³⁵¹
- (950) Alternatively, VISCAS claims that the end date should be the date of 9 April 2008, the date of the last anti-competitive meeting in which it participated or 9 June 2008 the date of the last anti-competitive email sent by VISCAS.¹³⁵² The specific characteristics of the cartel imply that VISCAS' lack of communications between 9 June 2008 and 28 January 2009 (the date of the inspections) did not mean that it had withdrawn from the cartel. First, as indicated before, the home territory principle did not require frequent communications. Second, the bilateral and multilateral contacts concerning projects in the export territories took place at irregular intervals when there was a need to allocate the projects. It is clear that up until the end of the infringement the parties adhered to the allocations made at the Tokyo meeting in June 2007 (Recital (423)). Third, it was not VISCAS, but EXSYM who acted as main coordinator on the A side for the allocation of these projects (Recital (423)). Therefore, it is logical that there is less direct evidence about VISCAS. Finally, from the evidence it is clear that VISCAS limited its direct participation in the later years and relied on EXSYM as coordinator out of fear of an anti-trust investigation (Recital (427)).
- (951) [...]. EXSYM did not adduce any evidence to substantiate this position.
- (952) By establishing VISCAS and EXSYM's end date on 28 January 2009, the Commission does not discriminate *vis-à-vis* other suppliers for whom the date of the "*last definitive piece of evidence on the file*" is used.¹³⁵³ In accordance with the case-law of the General Court, a distinction should be made between the different undertakings on the basis of the amount of time which has lapsed between the last evidence of anti-competitive contact or activity and the date on which the cartel is found to have ceased.¹³⁵⁴ It is only when this period is "*sufficiently long*" that the

¹³⁵⁰ ID [...], VISCAS reply to SO of 9 November 2011; ID [...], EXSYM reply to SO of 30 September 2011.

¹³⁵¹ ID [...], Attachment C to VISCAS reply to SO of 9 November 2011.

¹³⁵² ID [...], VISCAS reply to SO of 9 November 2011. Fujikura makes a similar argument, ID [...], Fujikura reply to SO of 24 October 2011.

¹³⁵³ JPS has made a similar argument, ID [...], [...].

¹³⁵⁴ Case T-382/06 Tomkins plc v Commission [2011] ECR II-1157, paragraph 49 et seqq.

Commission cannot presume the participation of an undertaking from its absence of public distancing from the cartel.

- (953) In this respect, the Commission observes, on the one hand, that the period between the last definitive piece of evidence on file for certain other suppliers and the end of the cartel ranges from 16 months for LS Cable, up to 35 months for nkt, allowing it to conclude that the later undertakings had withdrawn from the cartel. On the other hand, as described in Section 3 of the present decision and contrary to what is claimed by Fujikura, there is evidence that on 9 June 2008 VISCAS was still involved in the collusion (see Recital (440)) which was being implemented until at least 9 December 2008 (see Recital (445)). Given the duration of the cartel, the (reduced) frequency of contacts between participants during the last years of the cartel and their particularly cautious attitude towards potentially incriminating evidence, the Commission considers that the period between the last piece of incriminating evidence against VISCAS and EXSYM and the date on which the cartel is found to have ceased cannot be qualified as "*sufficiently long*" within the meaning of the General Court's case-law.
- (954) Consequently, in the absence of any proof or evidence capable of being interpreted as a declared intention of VISCAS and EXSYM to distance themselves from the object of the agreement, the Commission is entitled to conclude that there is adequate evidence that their participation in the cartel continued until the date on which it carried out unannounced inspections.¹³⁵⁵
- (955) The duration taken into account for each respective legal person involved is therefore as follows:

Nexans France SAS: 13 November 2000 to 28 January 2009

Nexans SA: 12 June 2001 to 28 January 2009

Prysmian Cavi e Sistemi S.r.l.: 18 February 1999 to 28 January 2009

Pirelli & C. S.p.A.: 18 February 1999 to 28 July 2005

Prysmian S.p.A.: 29 July 2005 to 28 January 2009

The Goldman Sachs Group, Inc.: 29 July 2005 to 28 January 2009

Sumitomo Electric Industries, Ltd.: 18 February 1999 to 30 September 2001 and 1 October 2001 to 10 April 2008

Hitachi Metals, Ltd.: 18 February 1999 to 30 September 2001 and 1 October 2001 to 10 April 2008

J-Power Systems Corporation: 1 October 2001 to 10 April 2008

Furukawa Electric Co. Ltd.: 18 February 1999 to 30 September 2001 and 1 October 2001 to 28 January 2009

Fujikura Ltd.: 18 February 1999 to 30 September 2001 and 1 October 2001 to 28 January 2009

VISCAS Corporation: 1 October 2001 to 28 January 2009

ABB AB: 1 April 2000 to 17 October 2008

¹³⁵⁵

Ibid., paragraphs 49-53.

ABB Ltd: 1 April 2000 to 17 October 2008

EXSYM Corporation: 1 July 2002 to 28 January 2009

Brugg Kabel AG: 14 December 2001 to 16 November 2006

Kabelwerke Brugg AG Holding: 14 December 2001 to 16 November 2006

Safran SA (previously Sagem SA): 12 November 2001 to 29 November 2005

Silec Cable, SAS: 30 November 2005 to 16 November 2006

Safran SA (as parent of Silec Cable, SAS): 30 November 2005 to 21 December 2005

General Cable Corporation: 22 December 2005 to 16 November 2006

SWCC SHOWA HOLDINGS CO., LTD.: 5 September 2001 to 30 June 2002 and 1 July 2002 to 28 January 2009

Mitsubishi Cable Industries, Ltd.: 5 September 2001 to 30 June 2002 and 1 July 2002 to 28 January 2009

nkt cables GmbH: 3 July 2002 to 17 February 2006

NKT Holding A/S: 3 July 2002 to 17 February 2006

LS Cable & System Ltd.: 15 November 2002 to 26 August 2005

Taihan Electric Wire Co., Ltd.: 15 November 2002 to 26 August 2005

7. REMEDIES

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

(956) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement it may require the undertakings concerned to bring such infringement to an end in accordance with Article 7(1) of Regulation (EC) No 1/2003.

(957) Given the secrecy in which the cartel arrangements were carried out, it is not possible to determine with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement and/or concerted practice or decision which might have the same or a similar object or effect.

7.2. Article 23(2) of Regulation (EC) No 1/2003¹³⁵⁶

(958) Under Article 23(2) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17, the Commission may by decision impose upon undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement.

(959) The Commission considers that, based on the facts described in this Decision, the infringement has been committed intentionally. This is not the least concluded from

¹³⁵⁶ Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area (OJ L 305, 30.11.1994, p. 6) “the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply mutatis mutandis.”

the facts referred to in Section 3 that the parties to the infringement took precautions to conceal their arrangement and to avoid its detection. In any event, the parties in this case acted at least negligently. The Commission therefore intends to impose fines on the undertakings to whom this Decision is addressed.

- (960) Pursuant to Article 23(3) of Regulation (EC) No 1/2003 and Article 15(2) of Regulation No 17, the Commission shall, in fixing the amount of the fines, have regard to all relevant circumstances, particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in those Regulations. In doing so, the Commission will set the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement will be assessed on an individual basis. The Commission will reflect in the fines imposed any aggravating or mitigating circumstances pertaining to each undertaking.
- (961) In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (“the Guidelines on fines”).¹³⁵⁷ Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice.

7.3. Basic amount of the fine

7.3.1. Methodology for setting the fine

- (962) In applying the Guidelines on fines, the basic amounts for each party result from the sum of a variable amount and an additional amount ("entry fee"). The variable amount results from a proportion of the value of sales multiplied by the number of years of the undertaking's participation in the infringement. The entry fee is calculated as a proportion of the value of sales of goods or services to which the infringement relates in a given year. The resulting basic amount can then either be increased or reduced for each undertaking, depending on aggravating or mitigating circumstances. The fine may not exceed 10% of the worldwide turnover of an undertaking concerned pursuant to Article 23 of Regulation (EC) No 1/2003. The fine may be reduced in application of the 2006 Leniency Notice, where applicable.

7.3.2. The value of sales

- (963) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales, that is to say, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area within the EEA.¹³⁵⁸
- (964) In this case, the sales of power cables to which the infringement directly or indirectly relates include at least all types of UG power cables with voltages of 110 kV and above and SM power cables with voltages of 33 kV and above, including all products, works and services, for example accessories, installation, tests or construction work, sold to the customer or related to a sale of power cables when such sales are part of a power cable project.¹³⁵⁹ As explained in Section 4.3.2.3, contrary to the allegations made by some of the parties, the infringement was not limited to certain categories of sales or customers, sales channels or amounts of sales.

¹³⁵⁷ OJ C 210/2, 1.9.2006.

¹³⁵⁸ Point 13 of the Guidelines on fines.

¹³⁵⁹ See Recitals (11)-(13) of this Decision.

However, in order to avoid potential double-counting issues, the sales figures used by the Commission exclude intra-group sales¹³⁶⁰ and sales to other addressees.

- (965) The Commission will normally use the sales made by the undertaking during the last full business year of its participation in the infringement. However, as already indicated in the SO, in this Decision the Commission intends to use the sales figures for the year 2004 for the following reasons: First, the undertakings' sales of power cables at both EEA and worldwide level increased significantly as of 2006. The sales of the last full business year are therefore not sufficiently representative of the infringement period, particularly for those undertakings whose participation in the infringement ended after 2006. Using the sales made by all undertakings in 2004 provides a more accurate approximation of the economic importance of the infringement throughout its duration as well as the relative weight of the participating undertakings in that infringement. Second, it would avoid a discriminatory treatment between those that ended their (direct) participation in the cartel earlier and those that continued. Finally, it is clear from point 13 of the Guidelines on fines that the Commission may depart from using the last year's sales in this situation.
- (966) In addition, for the application of point 18 of the Guidelines on fines (see below) it is preferable to use one single reference year during which all of the parties participated in the infringement, in order to properly reflect the weight of each undertaking in the infringement. Accepting different reference years for the different participants would in this case seriously undermine the purpose and the application of point 18 of the Guidelines on fines.
- (967) The Commission will also take into account the evolvement of the EEA territory during the infringement period following the accessions of new Member States to the Union in 2004 and 2007. Regarding the assessment of the fine for the infringement before 1 May 2004, only the proxy for the value of sales within the then 18 Contracting Parties to the EEA agreement will be taken into account. From 1 May 2004 until 31 December 2006 the proxy for the value of sales within the then 28 Contracting Parties to the EEA agreement will be taken into account. From 1 January 2007 until the end of the infringement the proxy for the value of sales within the then 30 Contracting Parties to the EEA agreement will be taken into account.
- (968) In the SO, the Commission had already indicated that it intended to apply point 18 of the Guidelines on fines and to use the undertakings' worldwide sales shares since the sales of some undertakings in the EEA do not adequately reflect their weight in the infringement. The territory covered by the cartel is wider than the EEA and all cartel members are major producers active on a worldwide basis. In order to reflect both the aggregate size of the sales related to the infringement within the EEA and the relative weight of each undertaking in the infringement, the value of sales of each undertaking will be estimated by allocating the sales in the EEA related to the infringement of all the undertakings in accordance with their respective shares of the sales to which the infringement relates at worldwide level, excluding the sales *in the United States*.¹³⁶¹ The sales in the United States have been excluded since this is the

¹³⁶⁰ Intra-group sales means sales made between legal entities within the same undertaking, including sales between the joint ventures and their respective parent companies.

¹³⁶¹ See the second paragraph of point 18 of the Guidelines on fines. The application of point 18 has been approved by the General Court, see Case T-146/09 *Parker ITR v Commission* [2013] not yet reported,

only territory for which the Commission possesses clear evidence that it was not covered by the almost worldwide cartel pursued in this Decision (see Recital (93)).

- (969) Most Japanese and Korean addressees of the SO have claimed that the application of point 18 of the Guidelines on fines would overstate the level of competition that these undertakings could exercise in the power cables market in the EEA and would lead to disproportionately higher fines for them. In addition, only the European producers would benefit from the agreement to insulate the EEA from foreign competition.¹³⁶² It is also argued that including sales of cables that could allegedly not be sold in Europe would artificially increase the Japanese and Korean addressees' share of the worldwide market, leading to an attribution of sales under point 18 of the Guidelines on fines that is disproportionate to the weight of those undertakings in the infringement.¹³⁶³ With regard to these arguments, the Commission notes that the consequence of applying a home territory protection agreement was that the Japanese and Korean addressees had limited or no sales in the EEA. Thus, if only the sales in the EEA were to be taken into account for determining the basic amount of the fine, the fine for these addressees would be zero or close to zero and they would be rewarded for having complied with the cartel arrangement not to compete on this market.¹³⁶⁴
- (970) As explained in Section 4.3.4.3., while some Japanese and Korean addressees¹³⁶⁵ may have had a more limited ability and/or commercial interest to increase their market presence in the EEA during the infringement, this does not alter the conclusion that they participated in a cartel arrangement that had a restriction of competition in the EEA as its object and that the agreement and/or concerted practice was implemented in practice.
- (971) The appropriate way to reflect each undertaking's weight in that infringement is to apportion the EEA sales according to the shares of each addressee in the overall almost worldwide cartel arrangement. Relying solely on each addressee's individual sales in the EEA would not properly reflect the harm caused by those that abstained from competing in the EEA. Moreover, any form of modification of the attribution under point 18 of the Guidelines on fines to take account of the actual ability and/or commercial interest to compete for individual projects in the EEA would be artificial and would, contrary to established case-law, require the Commission to demonstrate

paragraphs 205 et seqq and Case T-154/09 *Manuli Rubber Industries SpA v Commission* [2013] not yet reported.

¹³⁶² ID [...], [...]; ID [...], EXSYM/Showa reply to SO of 30 September 2001; ID [...], Furukawa reply to SO of 11 November 2011; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], LS Cable reply to SO of 31 October 2011; ID [...], Taihan reply to SO of 7 November 2011.

¹³⁶³ ID [...], VISCAS submission of 15 October 2013.

¹³⁶⁴ Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai carbon Co. Ltd and Others v Commission ('Graphite Electrodes')* [2004] ECR II-1181, paragraph 198.

¹³⁶⁵ ID [...], Showa reply to SO of 30 September 2011; ID [...], EXSYM reply to SO of 30 September 2011; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], Furukawa reply to SO of 11 November 2011; ID [...], [...]; ID [...], LS Cable reply to SO of 31 October 2011; ID [...], Taihan reply to SO of 7 November 2011; ID [...], VISCAS reply to SO of 9 November 2011.

the actual effects of the cartel for each of the addressees and/or the actual individual sales that were affected by the cartel.¹³⁶⁶

- (972) The Court has consistently held that the market share of each undertaking on the cartelised market constitutes an objective factor which, even in the absence of proof that the infringement had an actual effect on the market, gives a fair measure of the liability of each of them as regards the potential harm that the practice represented for the normal operation of competition.¹³⁶⁷ Therefore the market shares of each undertaking provide an adequate indication of each addressee's responsibility for the infringement and the influence it may exert on the market.¹³⁶⁸
- (973) As previously stated, the cartel covered at least all types of UG cables of 110 kV and above and all types of SM cables of 33 kV and above.¹³⁶⁹ The fact that some European customers requested SM cables that were not normally requested on the Asian market and not normally produced by the Asian addressees does not mean that the share of the sales affected by the overall almost worldwide market would not constitute an adequate indication of each addressee's weight in the infringement in the EEA.
- (974) Further, it is not true that only the European producers benefitted from the protection of the European home territory since the reciprocity of the home territory principle foresaw a similar protection of the home territories of the Japanese and Korean producers. The additional distortion caused by the market allocation within the EEA will however be reflected in the difference in the percentage of the affected sales that is taken into account at a later stage of the fine setting for the European and the Asian producers.¹³⁷⁰

7.3.2.1. Arguments of the parties and findings

- (975) Brugg has claimed that using 2004 as a reference year deviates from the general principle in point 13 of the Guidelines on fines and would lead to a disproportionate disadvantage for Brugg since its sales in 2004 were significantly higher than in 2003 and 2005, which would have been the last business year for its involvement.¹³⁷¹ In reply to this argument the Commission observes that it may depart from using the last year's sales as a proxy for the affected sales. The Commission must, to the extent possible, ensure that the undertakings' respective sales are comparable, which normally requires using a single reference period, even in situations where point 18 of the Guidelines on fines is not applicable.¹³⁷² This can justify departing from the last year of the infringement and instead using an earlier representative year during which all addressees were involved in the infringement, which is the case for the year

¹³⁶⁶ See, for example, Cases T-211/08 *Putters International v Commission* [2011] ECR II-3729, paragraphs 58-62, T-204/08 *Team Relocations v Commission* [2011] ECR II-3569, paragraph 63 and T-214/06 *Imperial Chemical Industries v Commission* [2012] not yet reported, paragraph 112.

¹³⁶⁷ See, for example, Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others v Commission* [2004] ECR II-1181, paragraphs 196 to 198.

¹³⁶⁸ Cases C-185/95 P *Baustahlgewebe v Commission* [1998] ECR I-8417, paragraph 139 and C-534/07 P *Prym and Prym Consumer v Commission* [2009] I-07415, paragraph 62.

¹³⁶⁹ See Recitals (11)-(13).

¹³⁷⁰ See Recital (997) et seqq, related to the gravity of the infringement.

¹³⁷¹ ID [...], Brugg reply to SO of 24 October 2011; ID [...], Brugg reply to RFI of 17 May 2013.

¹³⁷² See, for example, Case T-133/07, *Mitsubishi v Commission* [2011] ECR II-04219, paragraphs 268, 276 to 278.

2004.¹³⁷³ The fact that a different reference year may be more advantageous for one of the participating undertakings cannot prevent the Commission from choosing a methodology that avoids discrimination and that provides the most accurate and representative picture of the total sales affected by infringement and the attribution of those sales to the individual participants. Although 2004 appears to have been a more successful business year for Brugg compared to 2005, Brugg has not claimed that this is due to any reasons that are unrelated to its normal business activity, such as the acquisition of the business of a competitor. Therefore, there is nothing to suggest that the value of sales in 2004 does not properly reflect Brugg's size and economic power or the scale of the infringement which it committed. The Commission will therefore use the 2004 sales for all addressees.

- (976) Some parties have claimed that the costs of raw materials should be excluded from the value of sales.¹³⁷⁴ However, the value of sales reflects the price invoiced to the customers which gives the most complete picture of the sales related to the infringement.¹³⁷⁵ The Commission is not obliged to deduct any of the various cost elements, for example transport costs or the production cost of raw materials from such sales and the parties have not provided any convincing reason why this should be done in this case.¹³⁷⁶
- (977) For the purposes of establishing the amount of the fine in the case of the Japanese companies, there are two distinct periods: the first period, that is to say the period prior to the formation of their respective joint ventures, for which Sumitomo, Hitachi, Furukawa, Fujikura, Showa and Mitsubishi are held liable for their own participation in the cartel, and the second period during which these undertakings continued their participation in the cartel through their respective joint ventures JPS, Viscas and EXSYM and for which the parent companies and their joint ventures are jointly and severally liable.¹³⁷⁷
- (978) Given that the parent companies continued their involvement in the cartel during the second period through their respective joint ventures, it would be artificial to use a different reference year for the value of sales used for setting the fine in the first and the second period. Accepting a different reference year would discriminate between those undertakings and other addressees by the simple fact that the former decided to form joint ventures.
- (979) As already indicated in Recital (786) of the SO, the sales to be applied for the joint ventures and their parent companies include not only the 2004 sales made by each joint venture to third parties but also the sales of their parent companies to third parties that were maintained as reserved customers by the parent companies during the joint venture period. Furukawa, Fujikura and VISCAS have claimed that this approach contravenes point 13 of the Guidelines on fines; they argue that their sales

¹³⁷³ See Case T-76/06, *Plásticos Españoles (ASPLA) v Commission* [2011] not yet reported, paragraphs 112 and 113.

¹³⁷⁴ ID [...], Nexans reply to SO of 26 October 2011; ID [...], Prysmian reply to SO of 24 October 2011.

¹³⁷⁵ See Case T-406/08, *Industries chimiques du fluor (ICF) v Commission* [2013] not yet reported, paragraph 176.

¹³⁷⁶ See Cases C-272/09 P, *KME Germany and Others v Commission* [2011] not yet reported, paragraphs 49-53, T-122/04, *Outokumpu v Commission* [2009] ECR II-1135, paragraph 82 and T-11/05 *Wieland-Werke v Commission* [2010] ECR II-86, paragraph 161.

¹³⁷⁷ See above, Sections 5.2.3 to 5.2.6 and 5.2.11 to 5.2.12

to such reserved customers are not directly or indirectly related to the infringement.¹³⁷⁸ There are several reasons to reject the arguments.

- (980) The sales that prior to the formation of the joint ventures had been cartelised were afterwards shared between the parent companies and the joint ventures according to clear criteria based on types or customers and geographic scope. Through the application of the home territory principle, all the sales made by the parent companies after the formation of the joint ventures were equally protected by the cartel arrangements through the participation of their joint ventures in the cartel. As a consequence, the sales were directly related to the infringement and must therefore be considered as cartelised sales for each undertaking comprising the joint venture and its parent company for the purposes of calculating the fine to be imposed on those undertakings. It is clear that the joint ventures are penalised only for their own acts since the protection of the sales made by their parent companies by virtue of the home territory principle was made possible through the direct involvement of the joint ventures in the arrangements.
- (981) In order to reflect each parent company's economic strength and weight in the infringement during the period prior to the formation of the joint ventures, the sales determined for the joint venture will be shared amongst the parent companies proportionally to the individual sales achieved by each parent company in the full business year prior to the formation of their joint venture.
- (982) Therefore, for the joint ventures and their parent companies, the values of sales that will be used for the attribution under point 18 of the Guidelines on fines will be determined as follows. Regarding JPS, Viscas and EXSYM, the value of sales will be determined on the basis of their respective sales made in 2004 as well as the sales by their parent companies to the reserved customers. The parent companies will be jointly and severally liable for the fines based on these sales. Regarding Sumitomo, Hitachi, Furukawa, Fujikura, Showa and Mitsubishi, the value of sales used to determine the fine for their own participation in the infringement prior to the formation of the joint ventures will be the value of sales determined for their respective joint ventures but shared amongst each parent company as explained in the above Recital.¹³⁷⁹
- (983) In the SO it was observed that the infringement related to the supply of power cables by Nexans, whether they were produced and/or sold by Nexans France SAS, Nexans Norway A/S, Nexans Iberia SL or any other Nexans' entity and, consequently, that the sales of the entire Nexans' group should be considered when determining the

¹³⁷⁸ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], VISCAS submission of 15 October 2013.

¹³⁷⁹ Based on the data provided by each company, the proportions of the value of sales of each joint venture attributed to its parent companies will be the following: for Furukawa and Fujikura, 54.7%/45.3% and 0%/100% of Viscas' respective UG and SM sales; for Hitachi and Sumitomo, 39.6%/60.4% and 83%/17% of JPS' respective UG and SM sales; and for Mitsubishi and Showa, 48%/52% of EXSYM's UG sales (see ID [...], Furukawa reply to RFI of 17 May 2013; ID [...] and ID [...], Fujikura reply to RFI of 17 May 2013; ID [...], [...]; ID [...], Mitsubishi reply to RFI of 17 May 2013; ID [...], Showa reply to RFI of 17 May 2013).

relevant value of sales. In its reply to the SO Nexans has disputed this observation.¹³⁸⁰

- (984) Nexans' arguments are not sufficient to change the conclusion that Nexans France SAS was in fact also acting and adhering to the cartel on behalf of these other entities, even though the entities were not wholly owned by Nexans France SAS. As explained in Recitals (715)-(728), objective factors such as the decision making structure in the Nexans group, the reporting lines in place between Nexans France SAS and other Nexans SA subsidiaries and the factual implementation of the cartel by Nexans France SAS justify this conclusion. In this case, the objective factors are such that any other conclusion would allow for undertakings to use smaller subsidiaries to act as cartel participants on behalf of their larger sister companies and thereby succeed in keeping important parts of their cartelised values of sales outside the reach of the Commission.
- (985) LS Cable and Taihan have claimed that the sales of UG power cables to the Korean Electric Power Corporation (KEPCO) were not open to competition from foreign suppliers.¹³⁸¹ During the period of the infringement only those producers that manufactured power cables in Korean facilities, that is to say the Korean producers, were allowed to participate in the tenders organised by KEPCO for the supply of the UG power cables covered by this Decision.¹³⁸² Given that the sales of UG power cables made during the period of the infringement by LS Cable and Taihan to the Korean company KEPCO were legally not contestable; such sales are excluded from the value of sales of these two companies.
- (986) Several companies have claimed that either the share of sales attributed to them or the resulting fine should be reduced to take account of the fact that they have already been fined or are under investigations for similar conducts in other jurisdictions.¹³⁸³ The principle of *non bis in idem* however does not apply to situations in which the legal systems and competition authorities of non-Member States intervene within their own jurisdiction and there is no principle of law obliging the Commission to take account of proceedings and penalties to which an undertaking has been subject in non-Member States.¹³⁸⁴
- (987) Some of the addressees that only produce UG power cables, for example Brugg, have argued that the attribution made under point 18 of the Guidelines on fines should be

¹³⁸⁰ ID [...], Nexans reply to SO of 26 October 2011.

¹³⁸¹ ID [...], LS Cable reply to SO of 31 October 2011; ID [...], LS Cable reply to RFI of 17 May 2013, and annexes ID [...], ID [...] and ID [...]; ID [...], LS Cable submission of 26 June 2013; ID [...], LS Cable submission of 4 July 2013. See also ID [...], Taihan reply to RFI of 25 July 2013 and ID [...], Taihan's reply to SO of 7 November 2011.

¹³⁸² Korea became bound by the GPA as of 1 January 1997. See ID [...], LS Cable reply to RFI of 17 May 2013. Annex 3 of the GPA included KEPCO as one of the entities subject to the GPA except for purchases of products in the categories of HS Codes 8504, 8535, 8537 and 8544. Power cables covered by this Decision fall under the HS Code 8544, and particularly under the sub-code 8544.60 which covers "*other electric conductors for a voltage exceeding 1,000 V*", ID [...], LS Cable reply to RFI of 17 May 2013. See also, [Confidentiality claim pending]

¹³⁸³ On 27 January 2010, the Japan Fair Trade Commission issued cease and desist orders and surcharge payment orders against EXSYM, JPS and VISCAS and on 9 and 11 February 2011, the Korea Fair Trade Commission imposed surcharges and corrective orders against, among others, Taihan and LS Cable. ID [...], [...], ID [...], EXSYM's reply to SO of 30 September 2011; ID [...], Email from Japan Fair Trade Commission; ID [...], Taihan's reply to SO of 7 November 2011.

¹³⁸⁴ See Case C-308/04 *SGL Carbon v Commission* [2006] ECR I-05977, paragraphs. 33-34.

done separately for UG and SM cables in order not to overstate the relative weight of the addressees in the infringement.¹³⁸⁵

- (988) Some companies have claimed that the fine should be based on or take into account the profitability of the undertaking rather than the sales and turnover.¹³⁸⁶ The Court has confirmed that it is for the Commission to choose, within the framework of its discretion and respecting the principles of equal treatment and the applicable legislation, the factors and the detailed figures to be taken into account when implementing a policy which ensures compliance with the prohibitions laid down by Article 101 of the Treaty.¹³⁸⁷ Despite turnover being a vague and imperfect measure that does not distinguish between sectors with high or low added value, or between more or less profitable undertakings, it is nevertheless currently considered by the Union legislature, the Commission and the Court, as an adequate criterion in the context of competition law for assessing the size and economic power of the undertakings concerned. These claims must therefore be rejected.

7.3.2.2. Conclusions on value of sales and attribution under point 18 of the Guidelines on fines

- (989) The Commission will therefore use the parties' worldwide shares of sales (excluding United States' sales) to adequately reflect the relative weight of each undertaking in the infringement and to provide an appropriate evaluation of their capacity to affect free competition in the EEA. In view of the fact that not all parties produce SM cables, the attribution under point 18 of the Guidelines on fines will be done separately for the sales of UG and SM power cables.
- (990) In order to take account of the evolvement of the EEA territory, the attribution of the EEA sales under point 18 of the Guidelines on fines is done separately for each of the aggregated EEA sales achieved in the territories reflecting each of the three enlargement periods.
- (991) Table 4 shows the worldwide excluding the United States' shares of sales of the parties in 2004:

Table 4 - Worldwide sales excluding the United States and shares of sales in 2004 (EUR in thousand)

Addressees	UG	Shares of sales	SM	Shares of sales
Nexans ¹³⁸⁸	131 409	18.71%	25 040	9.54%
Prysmian ¹³⁸⁹	145 976	20.79%	102 389	38.99%
ABB ¹³⁹⁰	33 723	4.80%	36 812	14.02%

¹³⁸⁵ ID [...], Brugg State of Play meeting powerpoint presentation; ID [...], Brugg state of play meeting minutes, ID [...], Brugg reply to SO of 24 October 2011.

¹³⁸⁶ ID [...], Nexans reply to SO of 26 October 2011.

¹³⁸⁷ Case T-127/04 *KME Germany and Others v Commission* [2009] ECR II-01167, paragraphs 92.

¹³⁸⁸ ID [...], ID [...], ID [...], ID [...], Nexans reply to RFI of 17 May 2013.

¹³⁸⁹ ID [...], ID [...], ID [...], ID [...], Prysmian reply to RFI of 17 May 2013.

¹³⁹⁰ ID [...], ID [...], [...].

Brugg ¹³⁹¹	27 045	3.85%	0	0.00%
Sagem/Safran/Silec ¹³⁹²	33 597	4.78%	0	0.00%
nkt ¹³⁹³	16 875	2.40%	0	0.00%
Furukawa ¹³⁹⁴	23 642	-	1 674	-
Fujikura ¹³⁹⁵	21 848	-	13 420	-
Viscas ¹³⁹⁶	46 102	-	2 929	-
Viscas Total	91 591	13.04%	18 023	6.86%
Hitachi ¹³⁹⁷	10 336	-	19 432	-
Sumitomo ¹³⁹⁸	42 053	-	29 509	-
JPS ¹³⁹⁹	43 277	-	31 370	-
JPS Total	95 667	13.62%	80 312	30.59%
Mitsubishi ¹⁴⁰⁰	330	-	0	-

¹³⁹¹ ID [...], ID [...], ID [...], ID [...], ID [...], Brugg reply to RFI of 17 May 2013.

¹³⁹² The values of sales in 2004 attributed to Safran (previously Sagem) are the ones provided by and attributed to Silec. See ID [...], ID [...], ID [...], Safran reply to RFI of 17 May 2013; ID [...], ID [...], ID [...], ID [...], ID [...], Silec reply to RFI of 17 May 2013.

¹³⁹³ ID [...], ID [...], ID [...], ID [...], ID [...], nkt reply to RFI of 17 May 2013. Following a request from the Commission, nkt updated its figures on 25 October 2013 including a stand-alone sale of a power cable that had originally been excluded.

¹³⁹⁴ ID [...], ID [...], ID [...], ID [...], ID [...], Furukawa reply to RFI of 17 May 2013. Furukawa was not able to precisely determine and exclude from its reported sales the amount of certain intra-group sales made to one of its subsidiaries. In order to take this factor into account, Furukawa's best estimate of such intragroup sales has been deducted from its reported sales.

As regards the sales provided for the financial year 2000, Furukawa has indicated that these are sales made by two subsidiaries. The first one is located in Japan and the data only captures the last 4 months of its financial year 2000 (1 December 2000-31 March 2001). The second one is located in Singapore and the data cover its full financial year 2000 (in this case 1 January 2000-31 December 2000). The annual value of sales for the first subsidiary in the financial year 2000 has therefore been estimated on the basis of the monthly average of the sales reported for the last four months of such financial year.

¹³⁹⁵ ID [...], ID [...], ID [...], Fujikura reply to RFI of 17 May 2013. For two of its subsidiaries Fujikura has not been able to retrieve the sales figures for the financial years 2000 and 2004. The Commission has therefore relied upon the internal sales of Fujikura to these subsidiaries with a representative mark-up provided by Fujikura. In addition, the reported sales of SM power cables for the financial year 2000 have been corrected by converting them into EUR using the exchange rate of 1 EUR = 100.33 JPY.

¹³⁹⁶ ID [...], ID [...], VISCAS reply to RFI of 17 May 2013.

¹³⁹⁷ ID [...], ID [...], [...]. The reported sales have been corrected by converting them into EUR using the exchange rate of 1 EUR = 135.175 JPY for the financial year 2004 and 1 EUR = 100.33 JPY for the financial year 2000.

¹³⁹⁸ ID [...], ID [...], [...].

¹³⁹⁹ ID [...], ID [...], ID [...], [...].

¹⁴⁰⁰ ID [...], Mitsubishi reply to RFI of 17 May 2013.

Showa ¹⁴⁰¹	5 595	-	0	-
Exsym ¹⁴⁰²	15 154	-	0	-
Exsym Total	21 079	3.00%	0	0.00%
LS ¹⁴⁰³	68 041	9.69%	0	0.00%
Taihan ¹⁴⁰⁴	37 310	5.31%	0	0.00%
Total=	702 313	100%	262 576	100%

(992) Table 5 shows the value of sales of power cables achieved by the parties in the EEA in 2004 (as defined in Recitals (963) to (990)).

Table 5 – EEA sales achieved by the addressees in 2004 (EUR in thousand)

Type of cables	EEA18	EEA28	EEA30
UG	204 228	208 974	209 874
SM	19 203	19 313	19 313

(993) In line with the conclusions of Recital (989), the relevant sales imputed to the undertakings are established by allocating the EEA sales in Table 5 according to the share of sales established for each party in Table 4.

(994) The relevant sales of the parties are indicated in Tables 6 (separately for UG and SM) and 7 (UG and SM combined):

Table 6 – UG and SM EEA sales attributed to each addressee in 2004 (EUR)

Addressees	UG			SM		
	EEA18	EEA28	EEA30	EEA18	EEA28	EEA30
Nexans	38 212 936	39 100 956	39 269 355	1 831 254	1 841 770	1 841 770
Prysmian	42 448 930	43 435 389	43 622 457	7 488 028	7 531 029	7 531 029
ABB	9 806 545	10 034 437	10 077 653	2 692 184	2 707 645	2 707 645
Brugg	7 864 521	8 047 282	8 081 940	0	0	0
Sagem/Safran/Silec	9 769 899	9 996 939	10 039 993	0	0	0
nkt	4 907 147	5 021 183	5 042 808	0	0	0
Furukawa*	14 556 259	14 894 528	14 958 676	0	0	0
Fujikura*	12 077 897	12 358 572	12 411 798	1 318 072	1 325 641	1 325 641
Viscas Total	26 634 156	27 253 100	27 370 474	1 318 072	1 325 641	1 325 641
Hitachi*	11 010 344	11 266 210	11 314 731	4 877 676	4 905 687	4 905 687
Sumitomo*	16 808 935	17 199 553	17 273 628	995 784	1 001 502	1 001 502
JPS Total	27 819 279	28 465 763	28 588 359	5 873 460	5 907 189	5 907 189

¹⁴⁰¹ ID [...], ID [...], ID [...], Showa reply to RFI of 17 May 2013.

¹⁴⁰² ID [...], ID [...], EXSYM reply to RFI of 17 May 2013.

¹⁴⁰³ ID [...], ID [...], LS reply to RFI of 17 May 2013.

¹⁴⁰⁴ ID [...], ID [...], Taihan reply to RFI of 17 May 2013.

Mitsubishi*	2 937 211	3 005 468	3 018 412	0	0	0
Showa*	3 192 419	3 266 607	3 280 676	0	0	0
Exsym Total	6 129 631	6 272 076	6 299 088	0	0	0
LS	19 785 789	20 245 585	20 332 779	0	0	0
Taihan	10 849 600	11 101 731	11 149 544	0	0	0
Total=	204 228	208 974	209 874	19 203	19 313	19 313

(*)The sales attributed to each of the parent companies of VISCAS, JPS and EXSYM for the period of their own participation in the cartel are those of each respective joint venture split among its parent companies proportionally to the individual sales achieved by the parent companies in the full business year prior to the formation of the joint venture. These values are not included in the "Total" row of the table. VISCAS' sales have been split amongst Furukawa and Fujikura as follows: 54.7%/45.3% for UG and 0%/100% for SM. JPS' sales have been split amongst Hitachi and Sumitomo as follows: 39.6%/60.4% for UG and 83%/17% for SM. EXSYM's sales have been split amongst Mitsubishi and Showa as follows: 48%/52% for UG.

Table 7 – Total EEA sales attributed to each addressee in 2004 (EUR)

Addressees	UG +SM		
	EEA18	EEA28	EEA30
Nexans	40 044 189	40 942 725	41 111 125
Prysmian	49 936 958	50 966 418	51 153 486
ABB	12 498 729	12 742 081	12 785 297
Brugg	7 864 521	8 047 282	8 081 940
Sagem/Safran/Silec	9 769 899	9 996 939	10 039 993
nkt	4 907 147	5 021 183	5 042 808
Furukawa*	14 556 259	14 894 528	14 958 676
Fujikura*	13 395 969	13 684 213	13 737 439
Viscas Total	27 952 228	28 578 741	28 696 115
Hitachi*	15 888 020	16 171 897	16 220 418
Sumitomo*	17 804 719	18 201 055	18 275 130
JPS Total	33 692 739	34 372 952	34 495 549
Mitsubishi*	2 937 211	3 005 468	3 018 412
Showa*	3 192 419	3 266 607	3 280 676
Exsym Total	6 129 631	6 272 076	6 299 088
LS	19 785 789	20 245 585	20 332 779
Taihan	10 849 600	11 101 731	11 149 544
Total=	223 431 430	228 287 714	229 187 724

(*) See explanation given under Table 6 above.

7.3.3. Determination of the basic amount of the fine

- (995) The basic amount consists of a variable amount of up to 30% of an undertaking's relevant sales in the EEA, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the

infringement, and, where appropriate, an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of the duration.¹⁴⁰⁵

- (996) In order to take account of the involvement of the EEA territory, the values of sales achieved in the EEA territories under each of the three enlargement periods are multiplied by the duration factor corresponding to the duration of the infringement under each period.

7.3.3.1. Gravity

- (997) The gravity of the infringement determines the percentage of the value of sales taken into account when setting the fine. When assessing the gravity of the infringement, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and the extent to which the infringement has been implemented. These elements are assessed as follows:

(a) Nature of the infringement

- (998) The addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement. The infringement consisted of market and customer allocation which is, by its very nature, among the most harmful restrictions of competition, as this practice distorts competition with regard to the main parameters of competition. According to point 23 of the Guidelines on fines, these practices will, as a matter of policy, be heavily fined and the gravity percentage is generally set at the higher end of the scale. In this case the Commission believes that this element would justify a gravity percentage of 15%.
- (999) In addition to the allocation mechanisms of the A/R cartel configuration set out in Section 3.3.1, EEA projects were subject to further allocation among the Europeans producers through the European cartel configuration, see Section 3.3.2. This part of the cartel, which was carried out exclusively by the European producers, increased the harm to competition already caused by the market sharing agreement between the European, Japanese and Korean producers, and therefore the gravity of the infringement. The further distortion caused by the European cartel configuration justifies an increase in the gravity percentage of 2% for those undertakings that participated in that aspect of the cartel.¹⁴⁰⁶
- (1000) The fact that Brugg, Sagem/Safran/Silec, Mitsubishi, Showa, LS Cable, Taihan and nkt did not produce SM power cables during the infringement period and that EXSYM chose to stay out of the arrangement involving SM power cables is not an element that would require an adjustment in the above gravity percentage compared to those addressees that were involved also in that part of the single and continuous infringement. Contrary to the situation in the preceding paragraph, the lack of involvement of these addressees in the SM power cables part of the single continuous infringement has already been taken into account in the fines calculation by not including any SM power cables sales that they may have had. As seen in Section 4.3.3, except for two exceptions (LS Cable and Taihan), all addressees were or should have been aware of the conduct planned or put into effect by the other

¹⁴⁰⁵ Points 19-26 of the Guidelines on fines.

¹⁴⁰⁶ Nexans, Pirelli/Prysmian, ABB, Brugg, Sagem/Safran/Silec, nkt and the companies held jointly and severally liable with either of them.

addressees regarding SM power cables and are therefore liable also for that part of the infringement. Since the additional harm caused by those addressees that were involved in the SM power cables part has already been taken into account by the additional value of sales, it is not necessary to make a further differentiation in the gravity percentage for those addressees that are liable for that part due to their awareness.

- (1001) Neither is it necessary to make a differentiation for the addressees that are not held liable for that part of the infringement. It is clear from the Commission's findings in this case that all addressees, irrespective of whether or not they were involved in or can be held liable also for the SM power cable part, were involved in restrictions of competition that are among the most serious infringements of Article 101 of the Treaty and, as such, justify a gravity percentage of at least 15%. It is therefore not necessary to take into account any particular intensity of the anti-competitive conduct in the case of one of the two products involved compared with the intensity of the conduct specific to the other product,¹⁴⁰⁷ and to set the gravity percentage for the nature of the infringement below the level of 15%.¹⁴⁰⁸ The evidence presented in Section 3 would in any case not suggest that the conduct regarding the UG power cables was less intense than the conduct regarding SM power cables.
- (1002) Similarly, the lack of evidence showing that Mitsubishi and Showa were or should have been aware of the arrangements among the European producers under the European cartel configuration does not justify a reduction of the gravity percentage below the 15% level.

(b) Combined market share

- (1003) The parties had a considerable market presence in the EEA. They have however not been able to provide coherent and reliable information to estimate their shares of sales of the relevant HV SM and UG products in the EEA. There are nevertheless other indications that, depending on the specific products or industry in question, can offer useful information. It must be noted that the number of players on the HV SM and UG power cables markets who are not addressees of this decision is extremely limited.¹⁴⁰⁹ As indicated in Recital (35) many of the addressees are considered or consider themselves to be global and European leaders in their respective field. The addressees are the main suppliers in the EEA HV SM and HV UG power cable sector. For certain products subject to this Decision, the addressees are the only suppliers within the EEA. It is therefore reasonable to assume that all addressees combined constitute nearly the entire EEA HV SM and HV UG power cables market. This leads to an increase in the gravity percentage for all undertakings.

(c) Geographic scope

- (1004) The infringement was almost worldwide and clearly covered the entire EEA (see Recital (657)). This justifies an increase in the gravity percentage for all undertakings.

(d) Implementation

¹⁴⁰⁷ See Joined Cases T-379/10 and T-381/10 *Keramag Keramische Werke AG and Others v Commission and Sanitec Europé Oy v Commission* [2013] not yet reported, paragraph 354.

¹⁴⁰⁸ See Case T-386/10 *Dornbracht v Commission* [2013] not yet reported, paragraph 251.

¹⁴⁰⁹ Recital (35).

- (1005) Nexans has claimed that there are many countries for which there is no evidence of sales subject to collusion.¹⁴¹⁰ Several companies have argued that the alleged arrangements lacked effects on competition in the EEA.¹⁴¹¹ Several parties have argued that they were not aware of certain conducts or that they did not participate in certain conduct as they were not able to produce certain types of cables.¹⁴¹²
- (1006) As established in Section 4.3.5, the arrangements sanctioned by this Decision constitute an infringement by object of Article 101(1) of the Treaty and Article 53 of the EEA Agreement which may affect trade between Member States. Consequently for the fining purposes, there is no need to prove the effects or to consider the magnitude of such arrangements' impact on the market or on competition.¹⁴¹³
- (1007) The Courts have also confirmed that the lack of implementation in full of the agreements does not mean that there was not, in practice, implementation in practice of the collusive agreements.¹⁴¹⁴ Neither would the fact that the Commission does not possess evidence of collusion in every Member State and Contracting Party that was covered by the cartel mean that the arrangement was not implemented.
- (1008) As concluded in Section 4.3.3, all undertakings contributed in their own way to the single aim of the cartel. With the exception of LS Cable and Taihan for SM power cables and Mitsubishi and Showa for the European cartel configuration, all undertakings were aware of the other unlawful conducts planned or put into effect by the other participants in the cartel or could reasonably have foreseen such conduct and have been prepared to take the risk. Therefore, with the exception of these four companies, the Commission is entitled to attribute liability to the undertakings in relation to all the forms of anti-competitive conducts of the single and continuous infringement. The Commission attributes liability to LS Cable, Taihan, Mitsubishi and Showa only in relation to the conduct in which they have participated and for the conduct planned or put into effect by the other participants of which they were aware or which they could reasonably have foreseen and have been prepared to take the risk.¹⁴¹⁵
- (1009) In general, the cartel was implemented and the parties' adherence to the arrangement was monitored through the exchange of position sheets and reporting obligations.¹⁴¹⁶ The arrangements in place were, however, not of the nature and intensity that would require an increase in the gravity percentage. Neither would the alleged lack of

¹⁴¹⁰ ID [...], Nexans reply to SO of 26 October 2011, Chapter 7, paragraph 79.

¹⁴¹¹ ID [...], Nexans reply to SO of 26 October 2011; ID [...], Prysmian reply to SO of 24 October 2011; ID [...], EXSYM/Showa reply to SO of 30 September 2001; ID [...], Fujikura reply to SO of 24 October 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], Brugg reply to SO of 24 October 2011. Although EXSYM claims that its limited role should be considered when determining the gravity of the infringement, this is a factor related to its own contribution to the cartel and therefore is to be assessed as a mitigating factor. ID [...], GS reply to SO of 11 October 2011 and Annex 22 (ID [...]), ID [...], [...], insisting on the lesser effect on competition in the EEA of the A-arrangement.

¹⁴¹² ID [...], Brugg reply to SO of 24 October 2011; ID [...], nkt reply to SO of 3 November 2011; ID [...], EXSYM reply to SO of 30 September 2011, ID [...], [...].

¹⁴¹³ See e.g. Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others v Commission* [2004] ECR II-1181, paragraphs 196 to 198; Case C-185/95 P *Baustahlgewebe v Commission* [1998] ECR I-8417, paragraph 139 and Case C-534/07 P *Prym and Prym Consumer v Commission* [2009] ECR I-07415, paragraph 62.

¹⁴¹⁴ See Case T-71/03 *Tokai Carbon v Commission* [2005] ECR II-00010, paragraphs 74, 75 and 297.

¹⁴¹⁵ See Case C-441/11 P *Commission v Coppens* [2012] not yet reported, paragraphs 43-44.

¹⁴¹⁶ See Recitals (99) and (493).

implementation of the cartel arrangements, effects or awareness/participation in certain conducts justify a reduction in the gravity multiplier.

(e) Conclusion on the gravity

- (1010) Given the specific circumstances of this case, taking into account the criteria discussed in Recitals (998) to (1009), the Commission considers that the proportion of the value of sales to be taken into account should be 17% for Sumitomo, Hitachi, JPS, Furukawa, Fujikura, VISCAS, Showa, Mitsubishi, EXSYM, LS Cable, Taihan, and the companies held jointly and severally liable with either of them, and 19% for Nexans, Prysmian, ABB, Brugg, Sagem/Silec, nkt and the companies held jointly and severally liable with either of them.

7.3.3.2. Duration

- (1011) The Commission will take into account the actual duration of participation of the undertakings involved in the infringements as summarised in Section 6 on a rounded down monthly and *pro rata* basis to take fully into account the duration of the participation for each undertaking. Hence, if, for example, the duration is 7 years and 1 month and 12 days, the calculation will take into account 7 years and 1 month without counting the number of days less than a month.
- (1012) Table 8 sets out the duration multipliers corresponding to the participation of each undertaking:

Table 8 – Duration multipliers

Addressees	Start date	End date	Duration
ABB AB	01/04/2000	17/10/2008	8.5
ABB Ltd	01/04/2000	17/10/2008	8.5
Brugg Kabel AG	14/12/2001	16/11/2006	4.91
Kabelwerke Brugg AG Holding	14/12/2001	16/11/2006	4.91
Nexans France SAS	13/11/2000	28/01/2009	8.16
Nexans SA	12/06/2001	28/01/2009	7.58
nkt cables GmbH	03/07/2002	17/02/2006	3.58
NKT Holding A/S	03/07/2002	17/02/2006	3.58
Prysmian Cavi e Sistemi S.r.l.	18/02/1999	28/01/2009	9.91
Pirelli & C. S.p.A.	18/02/1999	28/07/2005	6.41
Prysmian S.p.A.	29/07/2005	28/01/2009	3.5
The Goldman Sachs Group, Inc.	29/07/2005	28/01/2009	3.5
Safran SA	12/11/2001	29/11/2005	4

Silec Cable, SAS	30/11/2005	16/11/2006	0.91
Safran SA (parent)	30/11/2005	21/12/2005	0.057
General Cable Corporation	22/12/2005	16/11/2006	0.853
Sumitomo Electric Industries, Ltd.	18/02/1999	30/09/2001	2.58
Hitachi Metals, Ltd.	18/02/1999	30/09/2001	2.58
J-Power Systems Corporation	01/10/2001	10/04/2008	6.5
Sumitomo Electric Industries, Ltd.	01/10/2001	10/04/2008	6.5
Hitachi Cable Ltd.	01/10/2001	10/04/2008	6.5
Furukawa Electric Co. Ltd.	18/02/1999	30/09/2001	2.58
Fujikura Ltd.	18/02/1999	30/09/2001	2.58
VISCAS Corporation	01/10/2001	28/01/2009	7.25
Furukawa Electric Co. Ltd.	01/10/2001	28/01/2009	7.25
Fujikura Ltd.	01/10/2001	28/01/2009	7.25
SWCC SHOWA HOLDINGS CO., LTD.	05/09/2001	30/06/2002	0.75
Mitsubishi Cable Industries, Ltd.	05/09/2001	30/06/2002	0.75
EXSYM Corporation	01/07/2002	28/01/2009	6.5
SWCC SHOWA HOLDINGS CO., LTD.	01/07/2002	28/01/2009	6.5
Mitsubishi Cable Industries, Ltd.	01/07/2002	28/01/2009	6.5
LS Cable & System Ltd.	15/11/2002	26/08/2005	2.75
Taihan Electric Wire Co., Ltd.	15/11/2002	26/08/2005	2.75

7.3.3.3. Additional amount

(1013) The Commission includes in the basic amount a sum of between 15% and 25% of the value of sales in order to deter undertakings from even entering into horizontal price-fixing and market-sharing agreements irrespective of the duration of the undertakings' participation in the infringement.¹⁴¹⁷ In deciding the specific

¹⁴¹⁷ Point 25 of the Guidelines on fines. The additional amount will be calculated for each undertaking on the basis of the sales attributed to it in each of the three EEA enlargement periods weighted according of the duration factors of the undertaking under each period.

percentage to be applied, the factors referred to in Recitals (998) to (1010) are considered.¹⁴¹⁸

- (1014) As stated in Recitals (977)-(982), Sumitomo, Hitachi, Furukawa, Fujikura, Showa and Mitsubishi initially participated independently in the cartel and later continued their participation via their respective joint ventures. Consequently, separate additional amounts are imposed on each of those undertakings, calculated on the basis of the value of sales to be used for the period before the formation of the joint ventures.¹⁴¹⁹ No additional amount is imposed on the joint ventures JPS, Viscas and EXSYM. Since Silec is the new operator of the same business previously run by Safran, there will only be one additional amount which is apportioned between the two companies proportionally to the period that each of them participated in the infringement.¹⁴²⁰ The percentage to be applied for the additional amount is therefore 17% for Sumitomo, Hitachi, Furukawa, Fujikura, Showa, Mitsubishi, LS Cable and Taihan and 19% for Nexans, Prysmian, ABB, Brugg, Safran/Silec, nkt and the companies held jointly and severally liable with either of them.
- (1015) In cases where an addressee is, for parts of the infringement period, held jointly and severally liable with an addressee directly participating in the infringement, it will be held jointly and severally liable for a part of the entry fee imposed on the direct participant which is proportional to the period during which it exercised a decisive influence on such direct participant.¹⁴²¹

7.3.3.4. Calculation and conclusion on basic amounts

- (1016) Based on the values of sales, the percentages to be applied to them and the duration multipliers established in Recitals (1011) to (1012), the basic amount of the fine to be imposed on each participant in the infringement is set out in Table 9:

Table 9 – Basic amounts of the fines (EUR)

Addressees	Basic amount of the fine
ABB AB	22 806 000
Brugg Kabel AG	8 937 000
Nexans France SAS	70 670 000
nkt cables GmbH	4 319 000
Prysmian Cavi e Sistemi S.r.l.	104 613 000
Safran SA (for its direct participation)	9 018 000
Silec Cable, SAS	2 080 000

¹⁴¹⁸ Point 25 of the Guidelines on fines.

¹⁴¹⁹ See section 7.4.

¹⁴²⁰ Safran will therefore be liable for 81.47% of the entry fee and Silec Cable SAS for 18.53%.

¹⁴²¹ Goldman Sachs group Inc will therefore be jointly and severally liable with Prysmian S.p.A for 35.23% of the Prysmian' entry fee whereas Pirelli & C, S.p.A will be jointly and severally liable with Prysmian S.p.A. for the remainder, Safran SA will be jointly and severally liable with Silec Cable SAS for 6.25% of Silec Cable SAS's entry fee and General Cable Corporation will be jointly and severally liable with Silec Cable SAS for the remainder. Nexans SA will be jointly and severally liable with Nexans France SAS for 92.96% of the entry fee imposed on Nexans France SAS. These percentages are based on the non-rounded periods during which each parent exercised a decisive influence on the direct participant.

Sumitomo Electric Industries, Ltd. (for its direct participation)	4 782 000
Hitachi Metals, Ltd. (for its direct participation)	4 267 000
J-Power Systems Corporation	37 711 000
Furukawa Electric Co. Ltd. (for its direct participation)	8 858 000
Fujikura Ltd. (for its direct participation)	8 152 000
VISCAS Corporation	34 992 000
SWCC SHOWA HOLDINGS CO., LTD. (for its direct participation)	949 000
Mitsubishi Cable Industries, Ltd. (for its direct participation)	873 000
EXSYM Corporation	6 896 000
LS Cable & System Ltd.	12 752 000
Taihan Electric Wire Co., Ltd.	6 993 000

7.4. Adjustments to the basic amount

7.4.1. Aggravating circumstances

- (1017) The basic amount of the fine imposed on an undertaking can be increased in case of the existence of aggravating circumstances. Among these circumstances, point 28 of the Guidelines on fines includes situations where an undertaking continues or repeats the same or a similar infringement after the Commission or a national competition authority has made a finding that the undertaking infringed Article 101 or 102 of the Treaty. This type of recidivism shows that previously imposed sanctions were not a sufficient deterrent and therefore an increase of the basic amount of the fine is justified.¹⁴²² In these cases, the basic amount will be increased up to 100% for each earlier infringement.
- (1018) On 24 January 2007, ABB Ltd was held liable for an infringement of Article 101 of the Treaty in the Commission Decision in the case COMP/F/38.899 - Gas Insulated Switchgear. Consequently, the basic amount of the fines for ABB and ABB Ltd should be increased by a factor of 50%.
- (1019) There are no further circumstances that would require an increase in the basic amount of the fine for any addressee.

7.4.2. Mitigating circumstances

- (1020) The basic amount of the fine imposed on an undertaking can also be reduced in cases where the Commission finds the existence of mitigating circumstances. Among these circumstances, point 29 of the Guidelines on fines includes situations where the undertaking provides evidence showing that the infringement has been committed as a result of negligence, or shows that its involvement in the infringement is substantially limited. Other situations includes those where the undertaking has effectively cooperated with the Commission outside the scope of the Leniency Notice or where the anti-competitive conduct of the undertaking has been authorised or encouraged by public authorities or by legislation.

7.4.3. Arguments of the parties and conclusions of the Commission

- (a) Measures to ensure the termination of the arrangements

¹⁴²² See, for instance, Case T-203/01 *Michelin v Commission* [2003] ECR II-4071, paragraph 293.

- (1021) Nexans and EXSYM have highlighted the fact that their efforts to uncover the alleged conduct ensured that any arrangements had effectively ceased and prevented any future infringement and claim that this should be rewarded as a mitigating factor.¹⁴²³ JPS also argues that [company representative C2]'s farewell tour of July 2004 substantially disrupted the cartel, leading to its termination.¹⁴²⁴
- (1022) While point 29 of the Guidelines on fines provides that fines may be reduced where the undertaking concerned provides evidence that it terminated the infringement as soon as the Commission intervened, this provision does not apply to cartels. Therefore Nexans', JPS' and EXSYM's claims are rejected.
- (b) Negligence
- (1023) nkt has claimed that its employee was not aware that his participation in the seminars amounted to an infringement of competition law.¹⁴²⁵ nkt therefore argues that its conduct should be considered as the result of negligent behaviour rather than having an anti-competitive intent.
- (1024) The Courts have consistently held that for an infringement to be regarded as having been committed intentionally it is not necessary for an undertaking to have been aware that it was infringing Union competition rules. It is sufficient that it could not have been unaware that the contested conduct had as its object or effect the restriction of competition in the internal market, and affected or might affect trade between Member States.¹⁴²⁶
- (1025) As argued in Recitals (617)-(619), nkt could not have had reasonable doubts about the fact that it was participating in an almost worldwide market sharing agreement and in collusive practices within the EEA together with other power cable producers, and that their behaviour breached EU antitrust rules. Consequently, no reduction can be granted to nkt on account of a negligent or unintentional infringement of Union competition rules.
- (c) Substantially limited role
- (1026) Several parties have claimed that they should benefit from a reduction due to their substantially limited or passive role.¹⁴²⁷ In this regard, some parties have pointed at the fact that they only attended a limited number of meetings or that the employees that attended the meetings did not hold very high positions.¹⁴²⁸ In addition, some parties point at the lack of cooperation in the allocation of certain projects, the lack of implementation of the agreements and the competitive strategy they pursued.¹⁴²⁹

¹⁴²³ ID [...] et seqq, Nexans reply to SO of 26 October 2011; ID [...], EXSYM/Showa reply to the SO of 30 September 2001.

¹⁴²⁴ ID [...], [...].

¹⁴²⁵ ID [...], nkt reply to SO of 3 November 2011.

¹⁴²⁶ Case 246/86 *Belasco v Commission* [1989] ECR 2117, paragraph 41.

¹⁴²⁷ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], [...]; ID [...], Showa reply to SO of 30 September 2011; ID [...], LS Cable reply to SO of 31 October 2011; ID [...], NKT reply to SO of 3 November 2011; ID [...], Safran reply to SO of 3 October 2011; ID [...], Taihan reply to SO of 7 November 2011.

¹⁴²⁸ ID [...], EXSYM/Showa reply to the SO of 30 September 2001. ID [...], Safran reply to SO of 3 October 2011; ID [...], LS Cable reply to the SO of 31 October 2011; ID [...], Taihan reply to SO of 7 November 2011.

¹⁴²⁹ ID [...], Brugg reply to SO of 24 October 2011; ID [...], Prysmian reply to SO of 24 October 2011; ID [...], [...], ID [...], nkt reply to SO of 3 September 2011.

Other parties point at their very small position in comparison with other cable producers.¹⁴³⁰ One party argues that it was encouraged by others to attend the meetings.¹⁴³¹ Finally some parties have commented that they did not participate in the creation and establishment of the cartel.¹⁴³²

- (1027) Point 29 of the Guidelines on fines provides that the basic amount of the fine may be reduced where the undertaking provides evidence that its involvement in the infringement is substantially limited. The 2006 Guidelines on fines do not, in contrast to the 1998 Guidelines on fines, provide for a reduction on the basis of a passive or minor role. Thus, the Commission no longer considers that a passive role constitutes a mitigating circumstance that justifies a reduction in fines,¹⁴³³ whereas a minor role can only constitute a mitigating circumstance if the involvement of the undertaking in the infringement is substantially limited. In any event, it is clear from the evidence set out in Section 3 that none of the parties has played a passive role within the meaning of case-law of the Court of Justice of the European Union that would justify a reduction in fines.¹⁴³⁴
- (1028) The fact that some addressees have not taken part in some of the aspects of the cartel does not relieve them from their responsibility for an infringement of Article 101 of the Treaty for those parts that they were aware or should have been aware of.¹⁴³⁵ Moreover, factors such as not having been involved in the creation of the anticompetitive arrangements or the lack of participation in certain meetings, when the cartel can be operated through other mechanisms, do not by themselves constitute mitigating circumstances. Considering the positions of the employees that attended the meetings (see Annex II), the arguments regarding the level of the concerned employees' positions are neither credible nor relevant in order to demonstrate a substantially limited role in the infringement. Neither does evidence suggesting instances of lack of cooperation in certain projects or other non-substantiated claims of non-implementation of the cartel showing that an addressee avoided the application of the cartel agreement and deliberately disrupted the cartel.¹⁴³⁶ Although an undertaking may be tempted not to comply in full with the agreed conduct and take advantage of the others' discipline in complying with cartel agreements and cheat with a view to increasing its market share, this does not mean that it behaved in the way it would have done in the absence of the cartel. Therefore this is not a matter that must necessarily be taken into account as a mitigating circumstance.¹⁴³⁷

¹⁴³⁰ ID [...], Brugg reply to SO of 24 October 2011; ID [...], nkt reply to SO of 3 November 2011; ID [...], Taihan reply to SO of 7 November 2011; ID [...], LS Cable reply to SO of 31 October 2011; ID [...], Showa reply to SO of 30 September 2011; ID [...], EXSYM reply to SO of 30 September 2011.

¹⁴³¹ ID [...], Furukawa reply to SO of 11 November 2011.

¹⁴³² ID [...], Safran reply to SO of 3 October 2011.

¹⁴³³ Case T-83/08 *Denki Kagaku Kogyo Kabushiki Kaisha and Denka Chemicals GmbH v Commission* [2012] not yet reported, paragraph 253.

¹⁴³⁴ See Case T-83/08 *Denki Kagaku Kogyo and Denka Chemicals v Commission* [2012] not yet reported, paragraphs 253-254, Case T 73/04 *Carbone-Lorraine v Commission* [2008] ECR II-02661, paragraphs 163-164 and cited case-law.

¹⁴³⁵ Joined Cases 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 *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 253.

¹⁴³⁶ See, for instance, T-26/02 *Daiichi Pharmaceutical Co. Ltd v Commission* [2006] ECR II-497, paragraph 113.

¹⁴³⁷ See, for example, Cases T-71/03 *Tokai Carbon v Commission* [2005] ECR II-00010, paragraph 75 and T-348/08 *Aragonesas v Commission* [2011] ECR II-07583, paragraphs 296-301.

- (1029) With regard to some of the undertakings' arguments as to their weak position, it has been recognised by Court that the question whether the individual participation of an undertaking in an agreement could, by itself, restrict competition or affect trade between Member States, account being taken of the undertaking's weak position on the market concerned, is irrelevant when it comes to ascertaining whether there is an infringement.¹⁴³⁸
- (1030) As described in Recital (545) Nexans, Pirelli/Prysmian, JPS, Sumitomo, Hitachi, Furukawa, Fujikura and VISCAS are considered to be the core group of participants of the cartel. Their involvement cannot be classified as limited compared to the other addressees. Claims made by any of these companies are therefore to be rejected.
- (1031) On the other hand, as described in Recitals (562)-(594), the evidence shows that the other addressees of this decision participated in the infringement to a different extent compared to Nexans, Pirelli/Prysmian, JPS, Sumitomo and Hitachi and Furukawa, Fujikura and VISCAS. In order to ensure that the different degrees of involvement of the addressees is duly reflected in the fine beyond the differentiation that has already been made under the gravity section, it is deemed appropriate to reduce the fine for those that did not belong to the core group of cartel participants.
- (1032) As described in Recitals (562)-(575), the evidence shows that ABB, EXSYM, Sagem/Safran/Silec and Brugg had a level of involvement that distinguishes them from the core group but is insufficient to qualify them as fringe players. It is therefore concluded that ABB, EXSYM, Sagem/Safran/Silec and Brugg should be granted a reduction of 5% of the fine on account of their substantially limited involvement in the infringement.
- (1033) As described in Recitals (576)-(594) Mitsubishi and Showa (prior to the formation of EXSYM), LS Cable, Taihan and nkt had a level of involvement that distinguishes them from the core group and is sufficient to qualify them as fringe players. It is therefore concluded that Mitsubishi and Showa, for the period before the formation of EXSYM, LS Cable, Taihan and nkt should be granted a reduction of 10% of the fine on account of their substantially limited involvement in the infringement. In addition, Mitsubishi and Showa, for the period before the formation of EXSYM,¹⁴³⁹ LS Cable and Taihan¹⁴⁴⁰ should be granted an additional 1% reduction for their lack of awareness of and liability for parts of the single and continuous infringement.
- (d) Effective cooperation outside the scope of the Leniency Notice
- (1034) A number of parties have indicated that they have cooperated with the investigation beyond their legal obligation to do so.¹⁴⁴¹
- (1035) According to the Guidelines on fines, the Commission may reduce the basic amount of the fine for effective cooperation outside the scope of the Leniency Notice should that cooperation be beyond the legal obligation of the undertaking concerned. Simply complying with legal requirements to disclose information cannot be regarded as such cooperation. Moreover such cooperation should be effective, meaning that it

¹⁴³⁸ See Case C-441/11 P *Commission v Verhuizingen Coppens* [2012] not yet reported, paragraphs 63-64.

¹⁴³⁹ See, in particular, Recital (614).

¹⁴⁴⁰ See, in particular, Recital (615).

¹⁴⁴¹ ID [...] et seqq, Nexans reply to SO of 26 October 2011; ID [...], Furukawa reply to SO of 11 November 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], EXSYM/Showa reply to SO of 30 September 2001; ID [...], [...]; ID [...], LS Cable reply to SO of 31 October 2011.

should provide added value to the investigation, providing facts and explanations that lead to a better understanding of the case, or admissions facilitating the work of the Commission. According to the practice of the Commission, in cases where the Leniency Notice may find application, cooperation by undertakings which are party to the proceeding should, as a matter of principle, be assessed within the framework of the Leniency Notice and reduction outside the Leniency Notice can be awarded only under exceptional circumstances.

- (1036) While Nexans¹⁴⁴² has claimed that it has cooperated with the Commission's investigation, the explanations and studies it provided were no more than part of Nexans' strategy to articulate its defence in this case. Apart from contributing to the Commission's understanding of the sector, such cooperation has not translated into admissions that could facilitate the work of the Commission or helped in the clarification of facts beyond their mere interpretation from Nexans' perspective.
- (1037) As regards the arguments of Furukawa, VISCAS, EXSYM and LS Cable,¹⁴⁴³ apart from some of them citing the effort and high costs incurred when replying to the several RFIs, they have not provided evidence that would demonstrate an effective cooperation of such kind that would justify a reduction in the fine.¹⁴⁴⁴
- (1038) LS Cable has indicated that it did cooperate with the Commission's investigation even when it was outside the Commission's jurisdiction and power to compel, and that the Commission has relied on one of its documents to establish three out of the six meetings attended by LS Cable, thereby providing significant added value to the investigation.¹⁴⁴⁵ The Commission is entitled to rely on the information provided by a company in reply to a request for information under Article 18(2) of Council Regulation (EC) No 1/2003, without assessing whether or not it would have been in a position to compel the addressee to provide that information. Establishing a difference between replies provided by companies located within and outside the EEA would otherwise introduce a discriminatory element between the addressees if some would be entitled to a reduction for the information provided without having to cooperate under the Leniency Notice. Finally, LS Cable's voluntary submission was clearly not required to establish certain meetings. In fact, the information given by LS Cable in this submission formed a clarification of the information it had provided earlier, in reply to a specific Commission request for all information with regard to these meetings.
- (1039) Sumitomo, Hitachi and JPS have claimed that they should be granted an additional reduction of the fine on account of their cooperation outside the Leniency Notice in view of the essential role played by the evidence provided to the Commission on the case.¹⁴⁴⁶
- (1040) It is however noted that the factors alleged by Sumitomo, Hitachi and JPS, such as the significant added value provided by submitting evidence that allowed the Commission to supplement the alleged incomplete information provided by the

¹⁴⁴² ID [...], Nexans reply to SO of 26 October 2011.

¹⁴⁴³ ID [...], Furukawa reply to SO of 11 November 2011; ID [...], VISCAS reply to SO of 9 November 2011; ID [...], EXSYM reply to SO of 30 September 2011; ID [...], LS Cable reply to SO of 31 October 2011.

¹⁴⁴⁴ See, for example, Case T-343/08 *Arkema France v Commission* [2011] ECR II-2287, paragraph 138.

¹⁴⁴⁵ ID [...], LS Cable reply to SO of 31 October 2011.

¹⁴⁴⁶ ID [...], [...].

immunity applicant or reinforce the evidence basis following the contestations caused by Nexans and Prysmian's appeals of the Commission decision, are clearly aspects of cooperation that are to be assessed under the scope of the Leniency Notice. These claims must therefore be rejected.

- (1041) Mitsubishi has in its leniency application [...].¹⁴⁴⁷ This evidence does not represent significant added value and *inter alia* for that reason will not be rewarded under the Leniency Notice.¹⁴⁴⁸ Although this evidence is not necessary to prove Mitsubishi's involvement in the cartel in the period before the establishment of the EXSYM joint venture, it did bring some limited added value to the investigation and did to some extent facilitate the work of the Commission.¹⁴⁴⁹ Since it is relied upon in this decision¹⁴⁵⁰ the Commission believes that it is in this case appropriate to grant Mitsubishi a reduction of 3% of the fine set for the period of its own participation in the infringement on account of effective cooperation outside the scope of the Leniency Notice.

(e) Conduct which is authorised or encouraged by public authorities or by legislation

- (1042) LS Cable and Taihan point to the fact that they only adhered to the cartel due to the dependency that they had on the other cartelists for the procurement of accessories.¹⁴⁵¹
- (1043) Point 29 of the Guidelines on fines only considers such situation as a mitigating circumstance in cases where the conduct has been encouraged by public authorities or legislation.
- (1044) The pressure resulting from the refusal to supply that Taihan and LS Cable allege to have been under does not change the qualification or the gravity of the infringement, and cannot constitute an attenuating circumstance, given that the undertakings suffering the pressure had the possibility to report such illegal conduct to the competent authorities.¹⁴⁵² Given that the refusal to supply accessories may also constitute a violation of Article 102 of the Treaty, Taihan and LS Cable could also have reported such conduct to the competent authorities with a view to putting an end to it. Their claims must therefore be rejected.

(f) Compliance programs and other measures

- (1045) Nexans, General Cable and Furukawa have indicated that they have carried out antitrust audits and/or implemented compliance programs.¹⁴⁵³
- (1046) While measures taken by undertakings to avoid the recurrence of cartel infringements or to ensure the retention of documents potentially relevant for the investigation are welcome, such measures cannot change the reality that

¹⁴⁴⁷ Recitals (50) and (614); ID [...], Mitsubishi reply to SO of 20 September 2011.

¹⁴⁴⁸ See Section 7.6.3 below for further explanations concerning the rejection of Mitsubishi's leniency application.

¹⁴⁴⁹ See, in this respect, Case T-384/09 *SKW Stahl-Metallurgie Holding AG and SKW Stahl-Metallurgie GmbH v Commission* [2014] not yet reported, paragraph 186.

¹⁴⁵⁰ See, for instance, Recitals (578), (579), (614) and (878).

¹⁴⁵¹ ID [...], LS Cable reply to SO of 31 October 2011; ID [...], Taihan reply to SO of 7 November 2011.

¹⁴⁵² Case T-21/05 *Chalkor AE Epexergasias Metallon v Commission* [2010] ECR II-01895, paragraph 72.

¹⁴⁵³ ID [...] et seqq, Nexans reply to SO of 26 October 2011; ID [...], Furukawa reply to SO of 11 November 2011; ID [...], General Cable reply to SO of 28 October 2011.

infringements occur and need to be sanctioned.¹⁴⁵⁴ Compliance programmes, disciplinary measures or the retention of documents cannot exempt companies from their liability or entitle undertakings to a reduction of the fine, particularly in cartel cases which are among the more serious infringements of Article 101 of the Treaty and Article 53 of the EEA Agreement. The claims of Nexans and Furukawa concerning the measures adopted in this respect must therefore be rejected.

(g) Negative impact of the fine on the competitiveness of the undertaking

- (1047) Nexans has also alleged that the negative impact that the fine could have on Nexans' competitiveness and ability to make new investments should be considered as a mitigating circumstance.¹⁴⁵⁵ Similarly, Brugg has claimed that it would have difficulties in paying the fine as a medium sized company.¹⁴⁵⁶ Point 35 of the Guidelines on fines provides for a possible reduction of the fine on the basis of the impact that such fine may have on the economic viability of an undertaking only in cases where such viability could irretrievably be jeopardised and the assets of the undertaking would lose all their value. Any claims in this respect must be substantiated, and the assessment is to be done by the Commission only upon formal request by the undertaking concerned.
- (1048) Only [...] has submitted a formal inability to pay request pursuant to point 35 of the Guidelines on fines, which is assessed in more detail in Annex III.¹⁴⁵⁷ **The vague and unsubstantiated claims made by Nexans and Brugg in this respect can therefore not be considered.**

7.4.4. *Deterrence multiplier*

- (1049) 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.
- (1050) Taking that into account, and in view of the total turnovers of the undertakings concerned by this Decision set out in Table 10 and the fine to be imposed on each of them set out in Table 11, it is not necessary to apply a multiplier for deterrence for any of the addressees.

7.5. **Application of the 10% turnover limit.**

- (1051) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking shall not exceed 10% of its total turnover in the preceding business year.
- (1052) Several addressees have at the time of the adoption of this decision not drawn up and verified their annual accounts for 2013. The Commission will for those addressees use the turnover figures for 2012.¹⁴⁵⁸ The global turnover achieved in 2013 or in 2012 by each of the undertakings concerned is set out in Table 10:

¹⁴⁵⁴ Case C-501/11 P *Schindler v Commission* [2013] not yet reported, paragraphs 113-114.

¹⁴⁵⁵ ID [...] et seqq, Nexans reply to SO of 26 October 2011.

¹⁴⁵⁶ ID [...], Brugg reply to SO of 24 October 2011.

¹⁴⁵⁷ ID [...], [...] reply to SO of 7 November 2011..

¹⁴⁵⁸ See, in that respect, Case T-410/09, *Almamet GmbH Handel mit Spänen und Pulvern aus Metall v Commission* [2012] not yet reported, paragraph 215.

Table 10 – Worldwide Turnover in either 2012 or 2013¹⁴⁵⁹

Addressees	EUR Million
ABB Ltd	31 509
Kabelwerke Brugg AG Holding	[450-550]
Nexans SA	6 711
NKT Holding A/S	2 119
Prysmian S.p.A.	7 273
The Goldman Sachs Group, Inc.	30 776
Pirelli & C. S.p.A. ¹⁴⁶⁰	6 071
Safran SA	13 615
General Cable Corporation	4 834
Sumitomo Electric Industries, Ltd.	14 695
Hitachi Metals Ltd.	3 384
J-Power Systems Corporation	720
Furukawa Electric Co. Ltd.	8 634
Fujikura Ltd. ¹⁴⁶¹	4 592
VISCAS Corporation	[530-650]
SWCC SHOWA HOLDINGS CO., LTD.	[1350-1650]
Mitsubishi Cable Industries, Ltd.	569
EXSYM Corporation	[200-250]
LS Cable & System Ltd.	[2 700 -3 300]
Taihan Electric Wire Co., Ltd.	[1550 – 1 900]

- (1053) Nexans has claimed that the 10% limit should be set by reference to the turnover of Nexans France SAS alone or, alternatively, to the turnover of those Nexans' subsidiaries mentioned in the SO, namely Nexans France SAS, Nexans Norway A/S and Nexans Iberia.¹⁴⁶² In any case, it claims that the turnover of Nexans (SA) should be excluded for the purposes of determining the 10% cap since it did not exercise decisive influence over Nexans France SAS.
- (1054) The 10% cap laid down in Article 23(2) or Regulation (EC) No. 1/2003 is calculated on the basis of the total turnover of all the entities constituting an 'undertaking' in accordance with the approach adopted by the Court of Justice, the General Court and the Commission.¹⁴⁶³ This applies equally to legal entities that have become part of

¹⁴⁵⁹ For JPS, Sumitomo, Hitachi, VISCAS, Furukawa, Fujikura, EXSYM, Showa and Mitsubishi, the reported turnover covers the period 1 April 2012 – 31 March 2013 (see also the respective replies of these companies to RFI of 21 February 2014, ID [...], ID [...], ID [...], ID [...], ID [...], ID [...], ID [...], ID [...] and ID [...]). Information on the 2013 turnovers of the other undertakings was provided in their replies to RFI of 21 February 2014: ID [...] (ABB), ID [...] (Brugg), ID [...] (Nexans), ID [...] (NKT), ID [...] (Prysmian), ID [...] (Goldman Sachs), ID 7488 (Safran), ID [...] (General Cable), ID [...] and [...] (Taihan) and ID [...] (LS).

¹⁴⁶⁰ Turnover for 2012. See ID [...], Pirelli reply to RFI of 17 May 2013 and ID [...], Pirelli reply to RFI of 21 February 2014.

¹⁴⁶¹ The turnover of Fujikura has been corrected on the basis of the average of the JPY/EUR exchange rate of each of the four quarters of the period 1 April 2012 – 31 March 2013, which is 106.95 JPY/EUR (source <http://www.ecb.europa.eu>).

¹⁴⁶² ID [...], Nexans reply to SO of 26 October 2011.

¹⁴⁶³ See, for instance, Joined Cases T-204/08 and T-212/08, *Team Relocations and Others v Commission* [2011] ECR II-3569, paragraph 154; upheld on this point on appeal in Case C-444/11 P, *Team Relocations and Others v Commission* [2013] not yet reported, paragraphs 170-179; Case T-411/10, *Laufen Austria v Commission* [2013] not yet reported, paragraph 150; Case T-146/09, *Parker ITR and*

the undertaking during the course of the infringement. The Commission has verified that there are no situations where an entity is held solely liable for a period where its fine would exceed its own turnover in the year preceding the adoption of the Decision.

- (1055) Since the fines resulting from the basic amounts and the additional factors set out in Section 7.3.3 and 7.4 do not exceed 10% of the total turnover of the last full business year before the adoption of this Decision (for which figures are available) for any of the undertakings concerned, the amounts of the fines do not need to be modified.

7.6. Application of the Leniency Notice

- (1056) According to point 8(a) of the Leniency Notice, the Commission will grant immunity from any fine which would otherwise have been imposed on an undertaking disclosing its participation in an alleged cartel affecting the Union if that undertaking is the first to submit information and evidence which in the Commission's view will enable it to carry out a targeted inspection in connection with the alleged cartel.
- (1057) Under points 23 and 24 of the Leniency Notice, undertakings disclosing their participation in an alleged cartel affecting the Community that do not meet the conditions for immunity may be eligible to benefit from a reduction of any fine that would otherwise have been imposed on them if they 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 meet the cumulative conditions set out in points (12)(a) to (12)(c) of the Leniency Notice.

7.6.1. ABB

- (1058) On 17 October 2008 ABB submitted an application under point 8 (a) of the Leniency Notice. On 22 December 2008 the Commission granted ABB conditional immunity.
- (1059) ABB cooperated fully and on a continuous and expeditious basis throughout the procedure and has gradually complemented its original application by further submissions as it proceeded with its internal investigation and conducted interviews with the individuals concerned. It remained at the disposal of the Commission to provide explanations and clarifications. There are no indications that ABB continued its involvement in the cartel after its first submission of evidence.¹⁴⁶⁴ In addition, there is no evidence that ABB took any steps to coerce other undertakings to participate in the infringement. ABB should therefore be granted immunity from any fines that would otherwise have been imposed on it.

Parker-Hannifin v Commission [2013] not yet reported, paragraphs 226-230; Case T-448/07 *YKK and Others v Commission* [2012] not yet reported, paragraphs 192-195; Case T-384/06, *IBP Limited and International Building Products France SA v Commission* [2011] ECR II-1177, paragraph 101; Joined Cases T-122/07 to T-124/07 *Siemens Österreich and VA Tech Transmission & Distribution v Commission* [2011] ECR II-793, paragraphs 189-192; Case T-79/06, *Sachsa Verpackung v Commission* [2011] ECR II-406*, Summ.pub., paragraph 108; Case T-26/06, *Trioplast Wittenheim v Commission* [2010] ECR II-188*, Summ.pub., paragraph 114, Case T-38/05 *Agroexpansión v Commission* [2011] ECR II-7005, paragraphs 109-111, 175.

¹⁴⁶⁴

Except for what was reasonably necessary to preserve the integrity of the inspections.

7.6.2. JPS, Sumitomo and Hitachi

- (1060) JPS, Sumitomo and Hitachi were second to approach the Commission under the Leniency Notice.¹⁴⁶⁵ The evidence submitted concerns the period before and after the formation of the JPS joint venture. They have claimed that they should be granted (i) partial immunity under point 26 of the Leniency Notice [time period],¹⁴⁶⁶ (ii) partial immunity under point 26 of the Leniency Notice for the aspects of the infringement relating to UG power cables [time period],¹⁴⁶⁷ and (iii) a reduction of 50% of any fine that would otherwise be imposed on them as a result of their leniency application.¹⁴⁶⁸
- (1061) Within the framework of their leniency application, JPS, Sumitomo and Hitachi [...]. JPS, Sumitomo and Hitachi were the first to corroborate and confirm evidence in the Commission's possession at that time. [...] evidence was also provided, allowing the Commission to prove the meetings and contacts between the parties that were involved [time period].
- (1062) Through their submissions, JPS, Sumitomo and Hitachi facilitated the Commission's task by providing in particular evidence relating to [...], some of which was previously not in the Commission's possession. Therefore, the Commission considers that JPS, Sumitomo and Hitachi were the first to submit evidence representing significant added value within the meaning of the Leniency Notice and the first to meet the requirements of point 24 of the Leniency Notice.
- (1063) [...] JPS, Sumitomo and Hitachi have however argued that the participation of JPS in the cartel was partially interrupted between July 2004 and October 2005 and they have been unclear and contradictory about the end date of JPS' participation throughout the investigation.¹⁴⁶⁹ The arguments have not been accepted by the Commission in light of the contemporaneous evidence [...]. The position expressed [...] bears a certain ambiguity and the reliability [...] have been questioned by some parties.¹⁴⁷⁰ This has reduced the value of the evidence and the cooperation provided by JPS and its parent companies to some extent. However, as a whole their application demonstrated genuine cooperation required under point 12(a) of the Leniency Notice. Taking everything into account, JPS, Sumitomo and Hitachi are entitled to a 45% reduction of the fine that would otherwise have been imposed.
- (1064) The Commission further considers that the information provided by JPS, Sumitomo and Hitachi under its leniency application constitutes stand-alone evidence in relation to [time period] not requiring further corroboration, hence amounting to compelling evidence as set out in point 26 of the Leniency Notice. The Commission was, solely on the basis of this evidence, able to establish additional facts proving the existence of the cartel [time period]. As a result, in line with point 26 of the Leniency Notice,

¹⁴⁶⁵ In view of the fact that Sumitomo, Hitachi and JPS were part of the same undertaking during parts of the infringement and at the time of the leniency application, the Commission exceptionally accepted their joint application.

¹⁴⁶⁶ ID [...], [...].

¹⁴⁶⁷ ID [...], [...]. ID [...], [...].

¹⁴⁶⁸ ID [...], [...].

¹⁴⁶⁹ As explained in Recital (943), [...] July 2004 formed the end date of its participation in the market coordination. It has thereafter also mentioned October 2006, July 2006 and April 2008 as end dates.

¹⁴⁷⁰ Section 3.5.

this period will not be taken into account for the purpose of determining the fine to be imposed on them.

- (1065) On the other hand, the Commission does not accept JPS, Sumitomo's and Hitachi's claim that they should benefit from further partial immunity for the aspects of the infringement relating to the UG power cables [time period]. Although the evidence provided by JPS, Sumitomo and Hitachi with regard to UG power cables for this period is relied upon to reinforce facts already known, it does not allow the Commission to establish additional facts. ABB had already provided sufficient indicia to conclude that the alleged cartel covered not only SM but also UG power cables prior to the leniency application submitted by JPS, Sumitomo and Hitachi.¹⁴⁷¹ This conclusion has also been upheld by the General Court in the judgments on Nexans and Prysmian's appeals against the Commission's inspection decisions.¹⁴⁷² The Court has made it clear that the leniency rules must be interpreted strictly, since they constitute an exception to the rule that an undertaking must be punished for any infringement of the competition rules.¹⁴⁷³ This is why the Court has confirmed that partial immunity should be limited to cases in which a company provides the Commission with new information relating to the gravity or the duration of the infringement and not to cases where a company has merely provided information which strengthens the evidence of the existence of the infringement.¹⁴⁷⁴ Taking into account the evidence in the Commission's possession at the time of [...] application, the evidence provided for this period does not constitute compelling evidence in the sense of point 25 of the Leniency Notice which the Commission uses to establish additional facts increasing the gravity or duration of the infringement. The fact that this evidence reinforced the Commission's ability to prove the facts in that period with regard to the part of the infringement relating to UG power cables is however taken into account when determining the appropriate fine reduction within the relevant band.

7.6.3. *Mitsubishi*

- (1066) On 20 April 2009, Mitsubishi submitted an application for immunity, or in the alternative, for leniency reduction under the Leniency Notice, consisting of a single corporate statement. In the application, [...].¹⁴⁷⁵
- (1067) At the time of Mitsubishi's application, the Commission was already in possession of a significant number of documents and statements gathered during the inspections and received from ABB and Sumitomo, Hitachi and JPS, on the basis of which it was able to prove the main elements of the cartel. Mitsubishi has failed to provide evidence that constitute significant added value within the meaning of point 24 of the

¹⁴⁷¹ [...]

¹⁴⁷² Cases T-135/09 *Nexans France SAS and Nexans SA v Commission* [2012] not yet reported and T-140/09 *Prysmian Spa and Prysmian Cavi e Sistemi Energia Srl v Commission* [2012] not yet reported.

¹⁴⁷³ Case T-370/06 *KWE v Commission* [2012] not yet reported, paragraph 34.

¹⁴⁷⁴ *Ibid.*, paragraph 33. See also Case T-128/11 *LG Display Co. Ltd v Commission* [2014] not yet reported, paragraphs 166-168. Although these judgments were rendered for cases in which the 2002 Leniency Notice had been applied, the changes in the wording of point 26 of the 2006 Leniency Notice compared to point 23 of the 2002 Leniency Notice do not mean that partial immunity has under the 2006 Leniency Notice been extended to situations where evidence merely reinforced the Commission's ability to prove certain facts with regard to which the Commission already had evidence on the file.

¹⁴⁷⁵ See point 23 of the Leniency Notice which requires the applicant to disclose its participation in the alleged cartel.

Leniency Notice and has, except for the single submission filed on 20 April 2009, not cooperated genuinely and fully with the Commission as required under points 12, 23 and 29 of the Leniency Notice.

- (1068) Mitsubishi should, for the reasons explained in the preceeding Recitals, therefore not be granted any reduction of the fine under the Leniency Notice.

7.7. Retroactive application of the Guidelines on fines

- (1069) Prysmian has claimed that, given that the application of the Guidelines on fines results in much higher fines than those that would result when applying the Guidelines of 1998, they cannot be applied to situations existing prior to their adoption by virtue of the principle of legality/non-retroactivity as enshrined in Article 49(1) of the EU Charter of human Rights.¹⁴⁷⁶

- (1070) In view of settled case law of the court, this claim must be rejected.¹⁴⁷⁷

7.8. Inability to pay

- (1071) In exercising its discretion under point 35 of the Guidelines on fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.

- (1072) Among the undertakings addressed in the Decision, [addressee] has made an application claiming inability to pay the fine under point 35 of the Guidelines on fines.¹⁴⁷⁸ The Commission has considered this claim and carefully analysed the available financial data of this undertaking. [Addressee] received requests for information pursuant to Article 18(1) and (2) of Regulation (EC) No 1/2003 asking it to submit details about its individual financial situation and the specific social and economic context it operates in.

- (1073) Insofar as an undertaking argues that the estimated fine would have a negative impact on its financial situation, without adducing credible evidence demonstrating its inability to pay the expected fine, the Commission points to settled case law according to which the Commission is not required, when determining the amount of the fine to be imposed, to take into account the poor financial situation of an undertaking, since recognition of such an obligation would be tantamount to giving unjustified competitive advantages to undertakings which are the least well adapted to the conditions of the market.¹⁴⁷⁹

- (1074) Accordingly, the financial position of [addressee] and the impact of the fine imposed upon it are assessed in the specific social and economic context. The financial

¹⁴⁷⁶ ID [...], Prysmian reply to SO of 24 October 2011.

¹⁴⁷⁷ See, for example, Case T-380/10 *Wabco Europe and Others v Commission* [2013] not yet reported, paragraph 179; Case T-240/07 *Heineken Nederland BV and Others v Commission* [2011] ECR II-03355, paragraphs 312, 388; Case T-127/04 *KME Germany and Others v Commission* [2009] ECR II-01167, paragraphs 92-93.

¹⁴⁷⁸ ID [...], [...] reply to SO of 7 November 2011.

¹⁴⁷⁹ See Joined Cases 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82 *IAZ International Belgium and Others v Commission* [1983] ECR 3369, paragraphs 54 and 55; Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 327; Case C-308/04 P *SGL Carbon AG v Commission* [2006] ECR I-5977, paragraph 105.

situation of the undertaking concerned is assessed at the time the Decision is adopted and on the basis of the financial data and information submitted by the undertaking.

(1075) **In assessing the undertaking's financial situation,** the Commission considers the financial statements, for example, annual reports, consisting of a balance sheet, an income statement, a statement of changes in equity, a cash-flow statement and notes, usually of the last five financial years, as well as their forecasts for the current year and the next two years. The Commission takes into account and relies upon a number of financial ratios measuring the solidity, in this case, the proportion which the expected fine would represent of the undertaking's equity and assets, its profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. In addition, the Commission takes into account relations with outside financial partners such as banks, on the basis of copies of contracts concluded with those partners in order to assess the undertaking's access to finance and, in particular, the scope of any undrawn credit facilities it may have. The Commission also includes in its analysis the relations with shareholders in order to assess their confidence in the undertaking's economic viability (shareholder relations may be illustrated by recent dividend payments and other outflows of cash paid to the shareholders), as well as the ability of the shareholders to assist the undertaking concerned financially.¹⁴⁸⁰ Attention is paid both to the equity and profitability of the undertaking and, above all, to its solvency, liquidity and cash flow. The analysis is both prospective and retrospective but with a focus on the present and immediate future of the undertaking. The analysis is not purely static but rather dynamic, whilst taking consistency over time of the submitted forecasts into account. The analysis takes possible restructuring plans and their state of implementation into account.

(1076) The inability to pay claim submitted by [addressee] should be rejected for the reasons set out in confidential Annex III accessible to [addressee].

7.9. Fines sharing in cases of joint and several liability

(1077) In reaction to the judgment of the General Court in the case *Siemens AG Österreich v Commission*,¹⁴⁸¹ several addressees of the SO¹⁴⁸² have raised the point that the Commission should, where it intends to hold different legal entities jointly and severally liable for a fine, determine the respective share of the fine for which each legal entity is responsible. The Commission has appealed the above judgment regarding this precise finding to the Court of Justice. Most importantly the Commission considers that its legal powers under Article 101 of the Treaty are limited to finding infringements and imposing sanctions on undertakings but that it has no legal basis to determine the respective shares that each legal entity that is jointly and severally liable should pay compared to the other legal entity that is held liable for (part of) the same fine. Following this approach would violate the principle of subsidiarity and would undermine the concept of undertaking as established by the European Courts.

¹⁴⁸⁰ By analogy to 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 (Case C-335/99 P(R) *HFB v Commission* [1999] ECR I-8705; Case C-7/01 P(R) *FEG v Commission* [2001] ECR I-2559; Case T-410/09 R *Almamet v Commission* [2012] not yet reported, paragraphs 47 et seqq).

¹⁴⁸¹ Cases T-122/07 to T-124/07 *Siemens AG Österreich and Others v Commission* [2011] ECR II-00793.

¹⁴⁸² In particular Goldman Sachs, Prysmian and Pirelli.

7.10. Final amount of the fines

(1078) The financial amounts of the fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 11:

Table 11: Final amount of the fines per undertaking (after inability to pay claims)

Fine EUR	Addressees
0	On ABB AB, of which - ABB Ltd is held jointly and severally liable for the amount of EUR 0.
8 490 000	On Brugg Kabel AG, of which - Kabelwerke Brugg AG Holding is held jointly and severally liable for the amount of EUR 8 490 000.
70 670 000	On Nexans France SAS, of which - Nexans SA is held jointly and severally liable for the amount of EUR 65 767 000.
3 887 000	On nkt cables GmbH, of which - NKT Holding A/S is held jointly and severally liable for the amount of EUR 3 887 000.
104 613 000	On Prysmian Cavi e Sistemi S.r.l., of which - Prysmian S.p.A. and the Goldman Sachs Group Inc. are held jointly and severally liable for the amount of EUR 37 303 000; - Pirelli & C. S.p.A. is held jointly and severally liable for the amount of EUR 67 310 000.
8 567 000	On Safran SA.
1 976 000	On Silec Cable, SAS, of which - General Cable Corporation is held jointly and severally liable for the amount of EUR 1 852 500; - Safran SA is held jointly and severally liable for the amount of EUR 123 500.
2 630 000	On Sumitomo Electric Industries, Ltd.
2 346 000	On Hitachi Metals, Ltd.
20 741 000	On J-Power Systems Corporation, of which - Sumitomo Electric Industries, Ltd. and Hitachi Metals, Ltd. are held jointly and severally liable for the amount of EUR 20 741 000.

8 858 000	On Furukawa Electric Co. Ltd.
8 152 000	On Fujikura Ltd.
34 992 000	On VISCAS Corporation, of which - Furukawa Electric Co. Ltd. and Fujikura Ltd. are held jointly and severally liable for the amount of EUR 34 992 000.
844 000	On SWCC SHOWA HOLDINGS CO., LTD.
750 000	On Mitsubishi Cable Industries, Ltd.
6 551 000	On EXSYM Corporation, of which - SWCC SHOWA Holdings Co., Ltd. and Mitsubishi Cable Industries, Ltd. are held jointly and severally liable for the amount of EUR 6 551 000.
11 349 000	On LS Cable & System Ltd.
6 223 000	On Taihan Electric Wire Co., Ltd.

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in a single and continuous infringement in the (extra) high voltage underground and/or submarine power cables sector:

1. ABB:

- (a) ABB AB, from 1 April 2000 to 17 October 2008
- (b) ABB Ltd, from 1 April 2000 to 17 October 2008

2. Brugg:

- (a) Brugg Kabel AG, from 14 December 2001 to 16 November 2006
- (b) Kabelwerke Brugg AG Holding, from 14 December 2001 to 16 November 2006

3. Nexans:

- (a) Nexans France SAS, from 13 November 2000 to 28 January 2009
- (b) Nexans SA, from 12 June 2001 to 28 January 2009

4. nkt:

- (a) nkt cables GmbH, from 3 July 2002 to 17 February 2006
- (b) NKT Holding A/S, from 3 July 2002 to 17 February 2006

5. Prysmian:

- (a) Prysmian Cavi e Sistemi S.r.l., from 18 February 1999 to 28 January 2009
- (b) Prysmian S.p.A., from 29 July 2005 to 28 January 2009
- (c) The Goldman Sachs Group, Inc., from 29 July 2005 to 28 January 2009
- (d) Pirelli & C. S.p.A., from 18 February 1999 to 28 July 2005

6. Safran:

- (a) Safran SA (previously Sagem SA), from 12 November 2001 to 21 December 2005

7. Silec:

- (a) Silec Cable, SAS, from 30 November 2005 to 16 November 2006
- (b) General Cable Corporation, from 22 December 2005 to 16 November 2006

8. JPS:

- (a) Sumitomo Electric Industries, Ltd., from 18 February 1999 to 10 April 2008
- (b) Hitachi Metals, Ltd., from 18 February 1999 to 10 April 2008
- (c) J-Power Systems Corporation, from 1 October 2001 to 10 April 2008

9. VISCAS:

- (a) Furukawa Electric Co. Ltd., from 18 February 1999 to 28 January 2009
- (b) Fujikura Ltd., from 18 February 1999 to 28 January 2009
- (c) VISCAS Corporation, from 1 October 2001 to 28 January 2009

10. EXSYM:

- (a) SWCC SHOWA HOLDINGS CO., LTD., from 5 September 2001 to 28 January 2009. For the period 5 September 2001 to 30 June 2002, SWCC SHOWA HOLDINGS CO., LTD. is not liable for the European cartel configuration.
- (b) Mitsubishi Cable Industries, Ltd., from 5 September 2001 to 28 January 2009. For the period 5 September 2001 to 30 June 2002, Mitsubishi Cable Industries, Ltd. is not liable for the European cartel configuration.
- (c) EXSYM Corporation, from 1 July 2002 to 28 January 2009

11. LS Cable:

- (a) LS Cable & System Ltd., from 15 November 2002 to 26 August 2005. LS Cable & System Ltd. is not liable for the infringement in so far as (extra) high voltage submarine power cables are concerned.

12. Taihan:

- (a) Taihan Electric Wire Co., Ltd., from 15 November 2002 to 26 August 2005. Taihan Electric Wire Co., Ltd. is not liable for the infringement in so far as (extra) high voltage submarine power cables are concerned.

Article 2

For the infringement(s) referred to in Article 1, the following fines are imposed:

- (a) ABB AB and ABB Ltd jointly and severally liable: EUR 0
- (b) Brugg Kabel AG and Kabelwerke Brugg AG Holding jointly and severally liable: EUR 8 490 000
- (c) Nexans France SAS and Nexans SA jointly and severally liable: EUR 65 767 000
- (d) Nexans France SAS: EUR 4 903 000
- (e) nkt cables GmbH and NKT Holding A/S jointly and severally liable: EUR 3 887 000
- (f) Prysmian Cavi e Sistemi S.r.l, Prysmian S.p.A. and The Goldman Sachs Group, Inc., jointly and severally liable: EUR 37 303 000
- (g) Prysmian Cavi e Sistemi S.r.l. and Pirelli & C. S.p.A. jointly and severally liable: EUR 67 310 000
- (h) Safran SA: EUR 8 567 000
- (i) Silec Cable, SAS and General Cable Corporation jointly and severally liable: EUR 1 852 500
- (j) Silec Cable, SAS and Safran SA, jointly and severally liable: EUR 123 500
- (k) Sumitomo Electric Industries, Ltd.: EUR 2 630 000
- (l) Hitachi Metals, Ltd.: EUR 2 346 000
- (m) J-Power Systems Corporation, Sumitomo Electric Industries, Ltd. and Hitachi Metals, Ltd. jointly and severally liable: EUR 20 741 000
- (n) Furukawa Electric Co. Ltd.: EUR 8 858 000
- (o) Fujikura Ltd.: EUR 8 152 000
- (p) VISCAS Corporation, Furukawa Electric Co. Ltd. and Fujikura Ltd. jointly and severally liable: EUR 34 992 000
- (q) SWCC SHOWA HOLDINGS CO., LTD.: EUR 844 000
- (r) Mitsubishi Cable Industries, Ltd.: EUR 750 000
- (s) EXSYM Corporation, SWCC SHOWA HOLDINGS CO., LTD. and Mitsubishi Cable Industries, Ltd. jointly and severally liable: EUR 6 551 000
- (t) LS Cable & System Ltd.: EUR 11 349 000
- (u) Taihan Electric Wire Co., Ltd.: EUR 6 223 000

The fines shall be paid, 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'EPARGNE DE L'ETAT

1-2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

SWIFT: BCEELULL

Ref.: European Commission – BUFI/AT.39610

After the expiry of this 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.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee, or by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.¹⁴⁸³

Article 3

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

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to

ABB AB
Kopparbergsvägen 2
721 83 Västerås
Sweden

ABB Ltd
Affolternstrasse 44
8050
Zurich
Switzerland

Brugg Kabel AG
Klosterzelgstrasse 28
5201 Brugg
Switzerland

EXSYM Corporation
Shiroyama Trust Tower 3-1

¹⁴⁸³ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1–111).

Toranomon 4-chome, Minato-ku
Tokyo 105-6013
Japan

Fujikura Ltd.
1-5-1 Kiba, Koto-ku
Tokyo 135-8512
Japan

Furukawa Electric Co. Ltd.
2-3 Marunouchi 2- chome
Chiyodaku, Tokyo 100-8322
Japan

General Cable Corporation
4 Tesseneer Drive
Highland Heights
KY 41076 – 9753
United States of America

Hitachi Metals, Ltd.
Seavans North 2-1
Shibaura 1-chome
Minato-ku
Tokyo 105 -8614
Japan

J-Power Systems Corporation
3-13-16 Mita
Minato-ku,
108 – 0073 Tokyo
Japan

Kabelwerke Brugg AG Holding
B12, Industriestrasse 21
5201 Brugg
Switzerland

LS Cable & System Ltd.
LS Tower (12-17 th Floor)
1026-6 Hogue-dong
Dongan-gu, Anyang-si
Gyeonggi-do
Republic of Korea

Mitsubishi Cable Industries, Ltd.
Shin-Kokusai Bldg.
4-1 Marunouchi 3-chome
Chiyoda-ku

Tokyo 100-8303

Japan

Nexans France SAS

4-10 rue du Mozart

92587 Clichy Cedex

France

Nexans SA

8 rue du Général Foy

Paris 75008

France

nkt cables GmbH

Düsseldorfer Straße 400

51061 Köln

Germany

NKT Holding A/S

Vibeholms Allé 25

2605 Brøndby

Denmark

Pirelli & C. S.p.A.

Viale Piero e Alberto Pirelli 25

20126 Milano

Italy

Prysmian Cavi e Sistemi S.r.l.

Viale Sarca 222

20126 Milan

Italy

Prysmian S.p.A.

Viale Sarca 222

20126 Milan

Italy

Safran SA

2 boulevard du Général Martial-Valin

75724 Paris Cedex 15

France

Silec Cable, SAS

Rue de Varennes Prolongée

77876 Montereau Cedex

France

Sumitomo Electric Industries, Ltd.

5-33 Kitahama 4-chome

Chuo-ku

Osaka 541-0041

Japan

SWCC SHOWA HOLDINGS CO., LTD.

Shiroyama Trust Tower 3-1

Toranomon 4-chome

Minato-ku
Tokyo 105-6013
Japan

Taihan Electric Wire Co., Ltd.
G. Square
180 Simin-daero
Dongan-gu, Anyang-si
431-812 Gyeonggi-do
Republic of Korea

The Goldman Sachs Group, Inc.
200 West Street
New York
NY 10282
United States of America

VISCAS Corporation
Shinagawa Seaside West Tower
4-12-2, Higashi-Shinagawa
Shinagawa-Ku
Tokyo 140-0002
Japan

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels,

For the Commission

Vice-President

ANNEX I TABLE OF MEETINGS AND COMMUNICATIONS

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
[...]			
1.	[...]	[...]	[...]. ¹
[...]			
2.	[...]	[...]	[...]. ²
3.	[...]	[...]	[...] ³ ---
4.	[...]	[...]	[...] ⁴
5.	[...]	[...]	[...] ⁵
6.	[...]	[...]	[...] ⁶
7.	[...]	[...]	[...] ⁷
8.	[...]	[...]	[...] ⁸
9.	[...]	[...]	[...] ⁹
10.	[...]	[...]	[...] ¹⁰
11.	[...]	[...]	[...] ¹¹
12.	[...]	[...]	[...] ¹²
13.	[...]	[...]	[...] ¹³
14.	[...]	[...]	[...] ¹⁴
15.	[...]	[...]	[...] ¹⁵
1999			
16.	18 February 1999 Mövenpick Hotel Zurich	[company representative A2] ([company, non-addressee of this decision]), [company representative B6] (Pirelli), [company representative E2]	A/R meeting devoted to SM matters. Discussion on participants, rules of the cartel arrangement. ¹⁶

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#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		(Furukawa), [company representative F1] (Fujikura), a representative of Hitachi, [company representative C2] (Sumitomo)	
17.	24 March 1999 Banker's Club in Kuala Lumpur	Representatives of [company, non-addressee of this decision], Pirelli, [company, non-addressee of this decision], Furukawa, Fujikura, Hitachi, Sumitomo	A/R meeting on UG matters. ¹⁷
18.	7 April 1999	[company representative CD1] (Sumitomo), a European producer	Communication of prices and conditions for a project in the UK. ¹⁸
19.	3, 4 June 1999 Tokyo	<u>Meeting on the 3rd on SM:</u> at least by [company representative B6] (Pirelli), [company representative A2] ([company, non-addressee of this decision]), [company representative C2] (Sumitomo) <u>Meeting on the 4th on UG:</u> representatives of Sumitomo, Hitachi, Fujikura, Furukawa, and three other producers including [company, non-addressee of this decision], Pirelli	A/R meetings on SM, UG matters. ¹⁹
20.	26 July 1999 Holiday Inn Mayfair Hotel London	[company representative A2] ([company, non-addressee of this decision]), representatives of [company, non-addressee of this decision], Hitachi, [company representative B6] (Pirelli), [company representative E2] (Furukawa), [company representative F1] (Fujikura), and [company representative C2] (Sumitomo)	A/R meeting devoted to UG matters. ²⁰
21.	31 August-15	[company representative C2] (Sumitomo), Pirelli,	Bilateral meetings. No details available on the meetings between Sumitomo and Pirelli and Sumitomo and [company,

¹⁷ [...] [...] was active in the production of UG power cables only, which indicates that the meeting was focused on UG matters. See [...].

¹⁸ [...]

¹⁹ [...]

²⁰ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	September 1999	[company, non-addressee of this decision], ABB	non-addressee of this decision]. Attempt at coordination during meeting with ABB. ²¹
22.	19 October 1999 Kuala Lumpur	[company representative A2], [company representative A1] ([company, non-addressee of this decision]), representatives of [company, non-addressee of this decision], Hitachi, [company representative B6] (Pirelli), [company representative B6] (Furukawa), [company representative F1] (Fujikura), [company representative C2] (Sumitomo)	A/R meeting (probably) focused on UG cables. ²²
23.	Fall 1999 - Beginning 2000	[company representative I2] (ABB), [company representative A2] ([company, non-addressee of this decision])	Bilateral meeting. ²³ Both companies indicated that they would not continue the previously discussed allocations.
2000			
24.	9 February 2000	[company representative] (...)	Diary notes on the allocation of the Norned project to the European producers (Furukawa would decline to bid - this project had already been discussed in 1996), and the allocation of two projects for the customer Viking. ²⁴
25.	1-2 March 2000 Tokyo	<u>Meeting on the 1st:</u> Probably attended by [company representative A2], [company representative A1] ([company, non-addressee of this decision]), [company representative B1] (Pirelli), [company representative C2] (Sumitomo) and, [company representative F1] (Fujikura), Furukawa denies its attendance ²⁵ . <u>Meeting on the 2nd:</u> Representatives of Sumitomo, Hitachi, Fujikura, [company, non-addressee of this decision], Pirelli	A/R meeting. ²⁶
26.	10, 14 April	[...]	Internal notes pointing at awareness of the cartel. ²⁷

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²⁴ [...].

²⁵ ID [...] Furukawa reply to SO of 11 November 2009.

²⁶ [...] See also: [...] ID [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	2000		
27.	17 April 2000	Probably Sumitomo, Hitachi, Fujikura, Furukawa	Meeting between Japanese producers. Discussion on the price levels to be quoted in a tender for a non-EU project. This is an illustration of the "cover-bid" process, involving the use of "protection-bid" offers where the allottee would indicate its bid price, the remaining producers would then submit cover-bids at agreed percentages of that price. The European producers Pirelli, [company, non-addressee of this decision] were also participating in these cartel activities. ²⁸
28.	26 April 2000 Paris	[company representative D1] (Hitachi), [company representative B1] (Pirelli), other unidentified producers	Bilateral meetings. Discussion on non-EU projects. ²⁹
29.	April/May 2000	ABB, Pirelli	Retaliation for ABB's violation of the home territory principle within Europe. ³⁰
30.	14 April 2000	[...], (...)	[...] suggesting the existence of an allocation mechanism within Europe based on geographic criteria. ³¹
31.	April-mid June 2000	[company representative I4], another representative of ABB [company representative X], another representative of [company, non-addressee of this decision]	Bilateral meeting. Discussion on which company was better suited to win a given project. ³²
32.	10 May 2000 Paris	[company representative C2] (Sumitomo), [company representative B6], [company representative B1] (Pirelli), [company representative L2] (Sagem)	Bilateral meetings. No further information available. ³³
33.	11 May 2000 Paris	Probably attended by the representatives of the companies normally attending the A/R meetings: [company, non-addressee of this decision], Pirelli, Sumitomo, Hitachi and Fujikura. Furukawa has confirmed the attendance of [company representative E2] ³⁴ .	A/R meeting. The discussions related to UG issues in the morning, to SM issues in the evening. ³⁵
34.	July 2000	Hitachi, ABB	ABB called to order after ignoring a project allocation. ³⁶

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³⁴ ID [...]Furukawa reply to SO of 11 November 2009

³⁵ [...]. See also: [...], [...].

³⁶ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
35.	12 July 2000 Furukawa's offices Tokyo	Probably representatives of Furukawa, Sumitomo, Hitachi were present	Meeting between Japanese producers focussed on a non-EU project allocated to SEI-Hitachi. ³⁷
36.	Between 9 and 21 July 2000 Milan or London	Probably attended by representatives of the companies normally attending the A/R meetings: [company, non-addressee of this decision], Pirelli, Sumitomo, Hitachi and Fujikura. Furukawa denies that [company representative E3] attended ³⁸ .	A/R meeting. ³⁹ Agenda prepared by the European producers include: exchange of information about the corporate changes in the companies (such as Pirelli's purchase of General Cable's cable business), discussions on price levels and projects or analysis of the "position sheets" indicating the share of business obtained by A or R in the export territories. No minutes of the meeting available.
37.	4 September 2000 Tokyo	Representatives of Sumitomo, Hitachi, Fujikura, Furukawa	Meeting between the Japanese producers (" <i>4 Company Meeting</i> "). No further information available. ⁴⁰
38.	5-7 September 2000 Milan	[company representative C2] (Sumitomo), representative(s) of Pirelli	Bilateral meeting. No further information available. ⁴¹
39.	5-7 September 2000 Paris	[company representative C2] (Sumitomo), representative(s) of [company, non-addressee of this decision]	Bilateral meeting. No further information available. ⁴²
40.	12 September 2000	[company representative D1] (Hitachi), [company representative A1] ([company, non-addressee of this decision])	Excel spreadsheet with several UG, SM projects. The voltages of the non-EU UG projects listed range between [...] kV and [...] kV. The list of SM projects includes eleven projects in non-EU countries, one project in Greece. The voltages range between [...] kV, [...] kV. ⁴³
41.	29 November 2000 Banker's Club in Kuala Lumpur	[company representative C2] (Sumitomo) [company representative D1] (Hitachi). Probably also attended by the representatives of the other companies normally attending the A/R meetings: [company, non-addressee of this decision], Pirelli, Fujikura, Furukawa	A/R meeting. The discussions related to UG issues in the morning, to SM issues in the evening. ⁴⁴
2001			
42.	22 February 2001	[company representative C2] (Sumitomo), [company	A/R meeting. The discussions related to both UG, SM issues. ⁴⁵

³⁷ [...]

³⁸ ID [...] Furukawa reply to SO of 11 November 2009.

³⁹ [...], [...].

⁴⁰ [...]

⁴¹ [...]

⁴² [...]

⁴³ [...]

⁴⁴ [...]. See also minutes of the A/R meeting held on 22 February 2001: [...].

⁴⁵ [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	Mayfair Intercontinental Hotel London	representative D1] (Hitachi), [company representative E2] (Furukawa), [company representative F1] (Fujikura), [company representative A2], [company representative A1] ([company, non- addressee of this decision]) as well as [company representative B3], another representative of Pirelli	
43.	March 2001 Zurich	[company representative I3], [company representative I2] (ABB), [company representative A2] ([company, non- addressee of this decision]), [company representative B1] (Pirelli)	Meeting ABB/[company, non-addressee of this decision]/Pirelli. Discussion on cartel arrangements and SM projects. ⁴⁶
44.	4-5 March 2001 Kuala Lumpur	[company representative B3], [company representative B7] (Pirelli), [company representative C2], two representatives of Sumitomo	Bilateral meeting. Discussions on the [non-EEA country] [...] kV [non-EEA project] project. ⁴⁷
45.	23 March 2001 Geneva	[company representative C2] (Sumitomo), [company representative A2] ([company, non-addressee of this decision])	Bilateral meeting. Discussion on pending matters between the two companies, probably in relation to the allocation of projects. ⁴⁸
46.	25 April 2001	At least [company representative D1] (Hitachi), [company representative A2] ([company, non-addressee of this decision]), [company representative C2] (Sumitomo). Probably the remaining participants were those normally attending these types of meetings, representing also Fujikura, Pirelli. [company representative B1] (Pirelli) did not attend but was represented by Nexans. Furukawa questions [company representative E2]'s attendance of the meeting ⁴⁹ .	A/R meeting. Discussion on UG and SM projects/issues, cooperation with Taihan and LG and Brugg cables in a non- European project, contact between Japanese companies and Taihan and LG to enter the "scheme". ⁵⁰

⁴⁶ [...].

⁴⁷ [...].

⁴⁸ [...].

⁴⁹ ID [...] Furukawa reply to SO of 11 November 2009

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
47.	11 June 2001	[company representative D1] (Hitachi), [company representative C2] (Sumitomo). Probably the remaining participants were those normally attending these types of meetings representing Furukawa, Fujikura, [company, non-addressee of this decision]/Nexans, Pirelli	A/R meeting dealing with both SM, UG matters. Two projects affecting the EU/EEA were allocated to the European producers: (i) the Spain-Morocco interconnection – SM, 400/500 kV –, (ii) the Norned project – SM, 450 kV – connecting Norway, the Netherlands, for which a split between ABB (70%), Nexans (30%) was agreed. These projects were further discussed in subsequent A/R meetings. ⁵¹
48.	19-26 July 2001	[company representative A1] (Nexans), [company representative D1] (Hitachi), [company representative F1] (Fujikura), with copy to [company representative B7], [company representative B3], [company representative B2] (Pirelli), [company representative E2] (Furukawa), [company representative C2] (Sumitomo)	Email exchange regarding the involvement of Showa, Mitsubishi, LG, Taihan in the cartel arrangements. ⁵²
49.	26 July 2001 Airport Hotel Zurich	[company representative B6] (Pirelli), [company representative I3] (ABB)	Bilateral meeting. Discussion on the Danish wind projects Nysted, Rödsand. ⁵³
50.	31 July 2001 Tokyo	[company representative C2] (Sumitomo), [company representative A1] (Nexans)	Bilateral meeting. No further information available. ⁵⁴
51.	5 September 2001 Kuala Lumpur	[company representative C2] (Sumitomo), [company representative F3] (Fujikura), [company representative D1] (Hitachi), [company representative A2], [company representative A1] (Nexans) as well as [company representative B3], [company representative B7], [company representative B1] (Pirelli)	A/R meeting dealing with both SM, UG matters. ⁵⁵
52.	7 September 2001	At least [company representative C2]	A/K/R meeting. ⁵⁶

⁵⁰ [...]; [...].

⁵¹ [...] normally the same individuals attended these meetings on behalf of the European and the Japanese companies. See also [...].

⁵² [...].

⁵³ [...]

⁵⁴ [...].

⁵⁵ [...].

⁵⁶ [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	Tokyo	(Sumitomo). Probably the other participants were those that participated in the A/R meeting held on 5 September 2001, plus representatives of a Korean company.	
53.	October 2001	[company representative B4] (Pirelli), [company representative I3] (ABB),	Bilateral meetings, contacts in the context of the ICF Berlin. Discussions on sharing the Madrid Airport project. ⁵⁷
54.	12 November 2001 Paris	[company representative L2], [company representative L1] (Sagem), [company representative F3] (VISCAS), [company representative C2] (JPS), another individual	Trilateral meeting. Discussion on the allocation of non-EU projects and the home territory principle. ⁵⁸
55.	13 November 2001 London	[company representative B1], [company representative B3], [company representative B7] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative F3] (VISCAS), [company representative C2], [company representative CD1] (JPS)	A/R meeting on UG, SM matters. Confirmation of further allocation of projects in Europe between the European producers. Discussion/arrangement of the Spain-Morocco interconnector; a 150 kV project in certain non-identified Greek islands; the North Sea Interconnector ("NSI"). Discussion of security issues, "position sheets". ⁵⁹
56.	5-6 December 2001 London	At least [company representative I3] (ABB), [company representative A2] (Nexans), probably representatives of Pirelli	"NSI" meeting. Discussion of projects and availability. ⁶⁰
57.	14 December 2001 Divonne-les-Bains	[company representative A1], [company representative J2] (Brugg), probably [company representative L2] (Sagem) and a representative from Pirelli.	R Meeting. ⁶¹
58.	20 December 2001 Copenhagen	[company representative I3] (ABB), [company representative A2] (Nexans)	"NSI" meeting. The participants also discussed pending/upcoming projects. ⁶²
59.	20-25 December	[company representative F3] (VISCAS), [company	Email exchange. VISCAS, Sumitomo communicated to Nexans, Pirelli the receipt of an invitation to tender for the

⁵⁷ [...]

⁵⁸ [...]

⁵⁹ [...]. With respect to "M", see [...]. With respect to "K", normally it refers to "Korean" companies. However, when discussions relate to Japanese companies, "K" stands for Showa; see [...]

⁶⁰ [...]

⁶¹ ID [...], reply Brugg of 7 May 2010 to RFI of 31 March 2010.

⁶² [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	2001	representative C2] (JPS), [company representative A2] (Nexans), [company representative B1] (Pirelli)	Spain-Morocco interconnector. Allocation of this tender to the European producers. ⁶³
2002			
60.	In 2002 (i)	[company representative I3], [company representative I4] (ABB), [company representative A2], [company representative A1] (Nexans)	Contacts on non-EEA UG [...]kV project won in 2001 which had been arranged to be split among Brugg, Nexans, a Japanese supplier, ABB. ⁶⁴
61.	In 2002 (ii)	[company representative A1] (Nexans), [company representative I3] (ABB)	Contacts on non-EEA oil filled cable projects. ⁶⁵
62.	In 2002	VISCAS, JPS	Note in a table indicating a SM project of [...] kV in Holland was notified by VISCAS. ⁶⁶
63.	In 2002	VISCAS, JPS	Note in a table indicating the SM interconnection Spain-Morocco project was notified. ⁶⁷
64.	Beginning of 2002	[company representative I3] (ABB), [company representative A2] (Nexans), probably a representative of Pirelli	Meeting. Discussion of the UK-Netherlands project, wind farm projects in the UK (North Hoyle, Crowbeson, Scroby Sand), the link between Algeria, Spain, the Sardinia-Italy interconnection, the Spain-Morocco interconnection. ⁶⁸
65.	Prior to 30 January 2002 Divonne-les-Bains	At least [company representative A1] (Nexans), [company representative L2] (Sagem)	[Confidentiality claim pending]. ⁶⁹
66.	11 January 2002 Arlanda airport Stockholm	[company representative I1] (ABB), [company representative C2] (JPS)	Bilateral meeting. Discussion on the allocation of a project for [non-EEA customer]; [company representative C2] informed [company representative I1] about the general organisation of the cartel, e.g. the Japanese and European sphere of influence. ⁷⁰
67.	16 January 2002	[company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative F3] (VISCAS)	Email message in which the receipt of an inquiry for a project in Spain (400 kV – UG) is communicated. ⁷¹

⁶³ [...]

⁶⁴ [...].

⁶⁵ [...].

⁶⁶ [...].

⁶⁷ [...].

⁶⁸ [...].

⁶⁹ [Confidentiality claim pending]

⁷⁰ [...].

⁷¹ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
68.	29 January 2002	Nexans, Taihan, LG	Meetings. Discussion of cartel. ⁷²
69.	30 January 2002 Akasaka	[company representative B1], [company representative B3], [company representative B7] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative F3], [company representative EF3] (VISCAS), [company representative C2], [company representative CD1] (JPS)	A/R meeting dealing with both SM, UG matters. Discussion of the SM Spain-Morocco project. ⁷³
70.	31 January 2002	[company representative B1] (Pirelli), [company representative C2] (JPS)	Bilateral meeting. No further information available. ⁷⁴
71.	4 February 2002	[company representative A1] (Nexans), [company representative CD1], [company representative C2] (JPS), [company representative F3] (VISCAS), [company representative B1] (Pirelli)	Email exchange which confirms agreement to cooperate on the Spain-Morocco project. ⁷⁵
72.	19-20 February 2002	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative F3] (VISCAS)	[Confidentiality claim pending] ⁷⁶
73.	20 February 2002 Amsterdam	[company representative C2] and [company representative C3] (JPS), [company representative B1] (Pirelli)	Bilateral meeting. Discussion of two non-EU projects in [non-EEA country] and [non-EEA country]. ⁷⁷
74.	5 March 2002	ABB managers	Internal minutes stating that the SM Algeria-Spain interconnector belonged to "Pirelli's area". ⁷⁸

⁷² [...]

⁷³ [...].

⁷⁴ [...].

⁷⁵ [...].

⁷⁶ [Confidentiality claim pending]. See also: [Confidentiality claim pending], ID [...], Nexans RFI.

⁷⁷ [...].

⁷⁸ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
75.	8 March 2002	[company representative A2] (Nexans), [company representative I5] (ABB)	[Confidentiality claim pending] ⁷⁹
76.	12 March 2002 Zurich	[company representative I3] (ABB), [company representative A2] (Nexans), [company representative B6] (Pirelli)	"NSI" meeting, used to discuss projects. ⁸⁰
77.	20-22 March 2002 Zurich	[company representative I4], [company representative I3] (ABB), [company representative B1], [company representative B4] (Pirelli)	Bilateral meetings. Discussion of the Nysted project. Further discussion of some 400kV UG projects. ⁸¹
78.	5 April 2002 Chateau de Raray (Raray, France)	[company representative B3] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative F3] (VISCAS), [company representative C2], [company representative CD1] (JPS)	A/R meeting dealing with both SM, UG matters. Discussion of the Spain-Morocco interconnector, SM projects in Scandinavia related to wind power generation, the state of play of future UG projects with voltages between [...]kV, 400 kV. ⁸²
79.	30 April 2002-16 May 2002	[company representative F3], [company representative EF3] (VISCAS), [company representative C2], [company representative CD1] (JPS), [company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli)	Email exchange on a project in the UK for National Grid – Remote Oil Pressure Monitoring System. Allocation of the project to Pirelli. ⁸³
80.	7-13 May 2002	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B1] (Pirelli), [company representative F3] (VISCAS)	Email exchange on the Spain-Morocco interconnector, showing Nexans' efforts to persuade JPS, VISCAS to cooperate by submitting a cover bid for this project. ⁸⁴
81.	20 May 2002	[company representative D3], [company	Email exchange on the receipt of an inquiry for an offshore site project in the UK – 33 kV, 31km + 12 km. Request for

⁷⁹ [Confidentiality claim pending]

⁸⁰ [...]

⁸¹ [...].

⁸² [Confidentiality claim pending], [...]

⁸³ [Confidentiality claim pending] and [...].

⁸⁴ [...],[Confidentiality claim pending]. Several follow up contacts took place in this period, some of them dealing with questions that JPS may raise in the meeting with the customers, [Confidentiality claim pending], [...];[Confidentiality claim pending]. See also [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		representative CD1], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B1], [company representative B3] (Pirelli)	preference in these types of projects for European producers. ⁸⁵
82.	22 May 2002 Zurich (Switzerland)	[company representative I3], [company representative I4] (ABB), [company representative B6], [company representative B1] (Pirelli), [company representative A2] (Nexans)	"NSI" meeting. The objective of these meetings was to split prospective wind farm projects so that each company would get one third of the business. ⁸⁶
83.	4 June 2002 Frankfurt	[company representative I5] (ABB), [company representative C2] (JPS)	Bilateral meeting. No further information available. ⁸⁷
84.	6 June 2002 Amsterdam	[company representative C2] (JPS), [company representative B1] (Pirelli)	Bilateral meeting. Discussion on the coordination of power cable projects. ⁸⁸
85.	10 June 2002	[company representative A5], [company representative A1] (Nexans)	[Confidentiality claim pending] ⁸⁹
86.	12 June 2002	[company representative B1] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending]. ⁹⁰
87.	13 June 2002	[company representative A5], [company representative A1] (Nexans)	[Confidentiality claim pending] ⁹¹
88.	14 June 2002 Copenhagen	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral meeting. Discussion on pending/ upcoming projects. ⁹²
89.	18 June 2002	[company representative F3] (VISCAS), [company representative C2], [company representative D3], [company representative CD1] (JPS), [company representative EF3] (VISCAS), [company representative A1] (Nexans), [company representative B3],	Email exchange during which VISCAS communicated the receipt of an inquiry for the NoordZee Wind project (Holland) – SM 30 kV. The project was discussed in the next A/R meeting of 20 June 2002 in Kuala Lumpur where it was agreed to exchange price information. ⁹³

⁸⁵ [Confidentiality claim pending] , [...]

⁸⁶ [...].

⁸⁷ [...].

⁸⁸ [...].

⁸⁹ [Confidentiality claim pending].

⁹⁰ [Confidentiality claim pending]

⁹¹ [Confidentiality claim pending]

⁹² [...].

⁹³ [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		[company representative B1] (Pirelli)	
90.	20 June 2002 Banker's Club in Kuala Lumpur	[company representative B3], [company representative B7], [company representative B1] (Pirelli) - the latter probably only attended the discussion on submarine projects - [company representative A1], [company representative A2] (Nexans), [company representative F3] (VISCAS), [company representative C2], [company representative CD1] (JPS)	A/R meeting. Discussion on the status of EXSYM. Allocation, status discussion of SM projects (including Spain-Morocco, NoordZee wind – SM 30 kV), UG projects - between [...], 400 kV. ⁹⁴
91.	26 June 2002	[company representative B1] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ⁹⁵
92.	3 July 2002 Chateau de Habsbourg Brugg	[company representative J2], [company representative J3] (Brugg), [company representative A1], [company representative A2] (Nexans), [company representative B2], [company representative B3] (Pirelli), [company representative K4], [company representative K2] (nkt)	R meeting. ⁹⁶
93.	8-24 July 2002	[company representative B1] (Pirelli), [company representative A1] (Nexans), [company representative CD1], [company representative C2] (JPS)	Email exchange. Exchange of information on Spain-Morocco interconnector. ⁹⁷
94.	9-10 July 2002 Paris	[company representative I3], [company representative I4] (ABB), representatives of Nexans, Pirelli	Meeting. Exchange of information on projects – between 36, 150 kV. Possible allocation of the Thornton Bank SM project. ⁹⁸

⁹⁴ [...]. According to [Confidentiality claim pending][company representative B3] would not have been available for the meeting, despite the fact that his acronyms ("[...]") are recorded in the minutes of the meeting. This same document confirms however the presence of [company representative B7] (Pirelli) at least in the discussion on UG projects.

⁹⁵ [Confidentiality claim pending]

⁹⁶ [Confidentiality claim pending] ID [...], reply Brugg of 7 May 2010 to RFI of 31 March 2010.

⁹⁷ [Confidentiality claim pending]

⁹⁸ [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
95.	11 July 2002	[company representative B1] (Pirelli), [company representative CD1], [company representative C2] (JPS)	Email message. Exchange of price information on project Spain-Morocco. Attachments with prices, technical details. ⁹⁹
96.	17 July 2002 Tokyo	[company representative C2] (JPS), [company representative B1] (Pirelli)	Bilateral meeting. No further information available. ¹⁰⁰
97.	23 July 2002 Tokyo	[company representative C2] (JPS), [company representative A2], [company representative A3] (Nexans)	Bilateral meeting. Exchange of information on projects. ¹⁰¹
98.	30 July 2002	[company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative B3], [company representative B1] (Pirelli), and [company representative F3] (VISCAS)	Email message. Notification enquiry for project Fingleton White, Co (Ireland) – SM 100 kV. ¹⁰²
99.	7 August 2002	[company representative B2] (Pirelli), [company representative A2] (Nexans)	[Confidentiality claim pending] ¹⁰³
100.	29 August 2002 Paris	[company representative A2] (Nexans), [company representative I3] (ABB), , representatives of Pirelli and VISCAS	Dinner at the occasion of a CIGRE meeting. Discussion on facilitation of cooperation between European and Japanese power cable suppliers. ¹⁰⁴
101.	2 September 2002	[company representative A1] (Nexans), [company representative B3], [company representative B7] (Pirelli)	[Confidentiality claim pending] ¹⁰⁵
102.	4 September 2002 Västerås	[company representative A2], [company representative A6] (Nexans) and [company representative I3] (ABB)	Bilateral meeting. Discussion of the [non-EEA project]and NSI projects. ¹⁰⁶

⁹⁹ [...].

¹⁰⁰ [...].

¹⁰¹ [...].

¹⁰² [Confidentiality claim pending]. See also [...].

¹⁰³ [Confidentiality claim pending]

¹⁰⁴ [...].

¹⁰⁵ [Confidentiality claim pending]

¹⁰⁶ [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
103.	4 September 2002	[company representative A1] (Nexans), [company representative CD1] (JPS)	Email message on contacts with nkt, Brugg, EXSYM. ¹⁰⁷
104.	4 September 2002	[company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative B7], [company representative B3], [company representative B1] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	Email message. Confirmation of cooperation with EXSYM on UG projects. ¹⁰⁸
105.	6-7 September 2002 London (Thames Valley)	[company representative B3], [company representative B7], [company representative B1] (only on SM projects) (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative F3] (VISCAS), [company representative C2], [company representative CD1], (JPS). [company representative I3] (ABB)	A/R meeting dealing with both SM, UG matters. Confirmation of cooperation with EXSYM on UG projects, award of a 400 kV project. Discussion of SM projects from [...] kV including Spain-Morocco; UG projects between [...], 400 kV. Discussion on restriction of supply to Korean companies. ¹⁰⁹
106.	6-7 September 2002	[company representative A2] (Nexans), [company representative I3] (ABB)	[company representative A2] (Nexans) suggested contacts between [company representative I3] (ABB) with [company representative C2] (JPS). ¹¹⁰
107.	6-7 September 2002	[company representative C2] (JPS), [company representative I3] (ABB)	Discussion of origination principle. ¹¹¹
108.	11-12 September 2002 Lavagna, near Milan	At least [company representative A1], [company representative A2] (Nexans), [company representative K2] (nkt), [company representative J2], [company representative J3] (Brugg).	[Confidentiality claim pending] ¹¹²

¹⁰⁷ [...]. The message itself is not dated, but included in the reply sent on 4 September 2002 by [company representative CD1] (JPS) to [company representative A1] (Nexans), [company representative B7], [company representative B3] and [company representative B1] (Pirelli), [company representative F3] (VISCAS), [company representative D3] and [company representative C2] (JPS).

¹⁰⁸ [...];[Confidentiality claim pending]

¹⁰⁹ [...];[Confidentiality claim pending]

¹¹⁰ [...]

¹¹¹ [...]

¹¹² [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		[company representative L2] (Sagem) was invited.	
109.	12-13 September 2002	[company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	[Confidentiality claim pending] ¹¹³
110.	12-13 September 2002	[company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	[Confidentiality claim pending] ¹¹⁴
111.	17 September – 25 November 2002	[company representative CD1], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B1] (Pirelli)	Email exchange regarding information on Spain – Morocco interconnector project. ¹¹⁵
112.	19 September 2002	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹¹⁶
113.	27 September – 7 October 2002	[company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative B3] (Pirelli)	[Confidentiality claim pending] ¹¹⁷
114.	15 October 2002 Zurich	[company representative B6] (Pirelli), [company representative I3], another representative of ABB	"NSI" meeting. Potential discussion of other general topics in addition to "NSI", such as the relationship between the two companies and/or the market for UG power cables. ¹¹⁸
115.	15 October 2002	[company representative B1] (Pirelli), [company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ¹¹⁹

¹¹³ [Confidentiality claim pending]

¹¹⁴ [Confidentiality claim pending]

¹¹⁵ [Confidentiality claim pending]

¹¹⁶ [Confidentiality claim pending]

¹¹⁷ [Confidentiality claim pending]

¹¹⁸ [...]

¹¹⁹ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
116.	6-7 November 2002	[company representative J2], [company representative J3] (Brugg), [company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli)	[Confidentiality claim pending] ¹²⁰
117.	7 November 2002	[company representative A1] (Nexans), [company representative B3], [company representative B2] (Pirelli), [company representative J2], [company representative J3] (Brugg)	[Confidentiality claim pending] ¹²¹
118.	14 November 2002 Tokyo	[company representative A2], [company representative A1] (Nexans), [company representative B7], [company representative B3] (Pirelli), [company representative C2], [company representative CD1] (JPS), [company representative F3], [company representative EF3] (VISCAS), [company representative G1], [company representative H1] (EXSYM) – last two only for discussions on UG matters	A/R meeting. Agreement on price list for accessories. Discussion of several EEA, non-EEA projects. SM EEA projects include Spain – Morocco. UG EEA projects include 11 projects previously allocated, 17 current, future projects discussed (at least 4 allocated). EXSYM participated actively for the first time. Participation of ABB, Sagem, Brugg is indirectly confirmed. ¹²²
119.	15 November 2002 Tokyo	[company representative A2], [company representative A1] (Nexans), [company representative B3], [company representative B7] (Pirelli), [company representative C2], [company representative CD1] (JPS), [company representative F3], or [company representative	A/K/R meeting. Discussion of organisation of the cartel, confirmation of contact points for A, R, K. Home, export territories and voltage rule explained, confirmed for K participants. Certain non-EEA UG projects also discussed. ¹²³

¹²⁰ [Confidentiality claim pending]

¹²¹ [Confidentiality claim pending]

¹²² [...]; [Confidentiality claim pending]; ID [...], EXSYM RFI on meetings. [company representative B1] and [company representative B2] were not able to participate but they were fully aware of the meeting; see [Confidentiality claim pending]

¹²³ [Confidentiality claim pending], [...]. There is a discrepancy in the dates of these two sets of minutes: ID [...] indicates 13 November 2002 while ID [...] indicates 15 November 2002. ID [...] also indicates a possible date on 15 November 2002. With respect to the participants, see also ID [...], LS Cable submission of 6 September 2010, ID [...], Reply EXSYM of 7 May 2010 to RFI of 31 March 2010. [company representative B1] was not able to participate but was fully aware of the meeting; see [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		EF3] (VISCAS), [company representative G1], [company representative H1] (EXSYM), [company representative M3] (LG), [company representative N1] (Taihan)	
120.	18 November 2002 – 15 January 2003	[company representative CD1] (JPS), [company representative A1] (Nexans), [company representative B1] (Pirelli)	Email exchange containing information on project Spain – Morocco. ¹²⁴
121.	22 November 2002	[company representative J2], [company representative J3] (Brugg), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹²⁵
122.	22 November 2002	[company representative J2] (Brugg), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹²⁶
123.	27-28 November 2002 La Chapelle en Serval	[company representative A1] (Nexans), [company representative J2] (Brugg), [company representative L2] (Sagem), [company representative B3], [company representative B2] (Pirelli), [company representative K2], [company representative K1] (nkt)	R meeting shortly after A/R meeting of 14 November 2002. ¹²⁷
124.	29 November 2002	[company representative J2], [company representative J3] (Brugg), [company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli), [company representative L2] (Sagem)	[Confidentiality claim pending] ¹²⁸
125.	12-13 December 2002	[company representative H1] (EXSYM), [company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative F3]	Email exchange containing a notification enquiry for EEA project "64/110 kV RWE Solutions, SAG-EL GmbH". ¹²⁹

¹²⁴ [Confidentiality claim pending], [...]

¹²⁵ [Confidentiality claim pending]

¹²⁶ [Confidentiality claim pending]

¹²⁷ [Confidentiality claim pending][...], Reply nkt of 7 May 2010 to RFI of 31 March 2010, [...], Reply Brugg of 7 May 2010 to RFI of 31 March 2010.

¹²⁸ [Confidentiality claim pending]

¹²⁹ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		(VISCAS)	
126.	18 December 2002 Zurich	[company representative B1], [company representative B6] (Pirelli), [company representative A2], [company representative A1] (Nexans), [company representative I3] (ABB).	"NSI" meeting. Allocation of EEA wind farm projects. Discussion of several projects in the EEA, allocation of two other projects in Norway to Nexans. ¹³⁰
2003			
127.	7-8 January 2003 Location unknown	[company representative A2], [company representative A1] (Nexans), representatives of certain [...] companies	[Confidentiality claim pending] ¹³¹
128.	10 January 2003	[company representative A5], [company representative A1] (Nexans), [company representative L2] (Sagem)	[Confidentiality claim pending] ¹³²
129.	13 January 2003 Paris	[company representative I3], [company representative I6] (ABB), [company representative A3], [company representative A2] (Nexans)	Bilateral meeting. Possible discussion of project allocation. ¹³³
130.	13 January 2003	[company representative A1] (Nexans), [company representative CD1], [company representative C2] (JPS), [company representative F3] (VISCAS), [company representative H1] (EXSYM), [company representative B3], [company representative B2] (Pirelli)	[Confidentiality claim pending] ¹³⁴
131.	14 January 2003	[company representative L2] (Sagem), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹³⁵
132.	16-21 January 2003	[company representative A1] (Nexans), [company representative B1], [company representative B2] (Pirelli)	[Confidentiality claim pending] ¹³⁶
133.	17 January	[company representative	A/K meeting. Allocation of non-EEA UG projects. ¹³⁷

¹³⁰ [Confidentiality claim pending][...]; The Rødsand and the Hornsrev projects are Danish projects, [...].

¹³¹ [Confidentiality claim pending]

¹³² [Confidentiality claim pending]

¹³³ [...].

¹³⁴ [Confidentiality claim pending]

¹³⁵ [Confidentiality claim pending]

¹³⁶ [Confidentiality claim pending]

¹³⁷ [...]; ID [...], EXSYM reply to SO of 7 September 2012.

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	2003 Seoul	H1] (EXSYM), [company representative C2], [company representative CD1] (JPS), [company representative M2], another representative (LG), [company representative N1], [company representative M3] (Taihan)	
134.	21-22 January 2003 La Chapelle en Serval	[company representative A2], [company representative A1] (Nexans), [company representative B1] (Pirelli), [company representative C2], [company representative CD1] (JPS), [company representative F3] (VISCAS), [company representative B3] (Pirelli) and [company representative G1] (EXSYM) for UG only, [company representative B2] (Pirelli) invited but not attended.	A/R meeting. Discussion of Spain-Morocco interconnector. Allocation of several SM, UG non-EEA projects – [...], [...] kV for SM, [...], [...] kV for UG projects. ABB, Brugg and nkt also involved in allocation of some UG projects. ¹³⁸
135.	23 January 2003	[company representative N1], [company representative M3] (Taihan), [company representative CD1] (JPS)	Email exchange on infringement of "home-territory" principle and the involvement of Korean companies in the allocation of non-EEA projects. ¹³⁹
136.	24 January 2003	[company representative L2] (Sagem), [company representative A1], [company representative A5] (Nexans)	[Confidentiality claim pending] ¹⁴⁰
137.	29 January 2003	[company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative F3] (VISCAS), [company representative B3], [company representative B1] (Pirelli)	[Confidentiality claim pending] ¹⁴¹
138.	31 January 2003 – 18 March 2003	[company representative A1] (Nexans), [company representative B1] (Pirelli),	Email exchange concerning implementation of cover bid for Spain-Morocco project. ¹⁴²

¹³⁸ [...];[Confidentiality claim pending] [...]. See also [...];[Confidentiality claim pending]

¹³⁹ [...]

¹⁴⁰ [Confidentiality claim pending]

¹⁴¹ [Confidentiality claim pending]

¹⁴² [Confidentiality claim pending][...]; [Confidentiality claim pending][...]; [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		[company representative CD1], [company representative C2] (JPS)	
139.	4-6 February 2003	[company representative B1] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹⁴³ .
140.	4 February 2003	[company representative A1], [company representative B1] (Nexans), [company representative B3] (Pirelli), representatives of [...]	[Confidentiality claim pending] ¹⁴⁴
141.	7 February 2003 Lennestadt-Bilstein	[company representative K1], [company representative K2] (nkt), [company representative A1], [company representative A2] (Nexans), [company representative B3] (Pirelli), [company representative J2] (Brugg), Possibly [company representative L2] (Sagem)	R meeting. Agenda, related documents. ¹⁴⁵
142.	14-24 February 2003	[company representative A1], [company representative A5] (Nexans), [company representative L2] (Sagem)	Email exchange concerning the allocation of three UG 220 kV projects, two UG 132 kV projects for Union Fenosa in Spain. Contains references to Pirelli and Brugg. ¹⁴⁶
143.	19 February 2003	From [company representative A1] (Nexans) to [company representative B1] (Pirelli)	Email message concerning exchanges of price information about EKOFISK project in Norway – SM, 36 kV. ¹⁴⁷
144.	19 February 2003	From [company representative B2] (Pirelli) to [company representative A1] (Nexans)	Email message on general agreement to share power cable projects within Europe. ¹⁴⁸
145.	24-28 February 2003	[company representative A1] (Nexans), [company representative CD1], [company representative C2] (JPS), [company representative F3] (VISCAS), [company representative CD1], [company representative N1] (Taihan)	Email exchange of information on bidding behaviour for a project in Spain for Union Fenosa. ¹⁴⁹
146.	27 February 2003	[company representative B3], [company	[Confidentiality claim pending] ¹⁵⁰

¹⁴³ [Confidentiality claim pending]

¹⁴⁴ [Confidentiality claim pending]

¹⁴⁵ [Confidentiality claim pending]ID [...], Reply Brugg of 7 May 2010 to RFI of 31 March 2010.

¹⁴⁶ [Confidentiality claim pending]

¹⁴⁷ [Confidentiality claim pending]

¹⁴⁸ [Confidentiality claim pending]

¹⁴⁹ [...].;[Confidentiality claim pending]

¹⁵⁰ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		representative B2] (Pirelli), [company representative K2] (nkt), [company representative A1] (Nexans)	
147.	4 March 2003 Seoul	Representatives from [...], [company representative M3] (LS), [company representative M2] (Taihan), [company representative A2] (Nexans), [company representative CD1], [company representative C2] (JPS), [company representative G1] (EXSYM). [company representative B3] (Pirelli) did not attend the meeting but was aware of it	A/R/K meeting and A/R/[...] meeting between Japanese, European, and [non-EEA country] companies. ¹⁵¹
148.	10 March 2003 Barcelona	[company representative A2], possibly [company representative A1] (Nexans), [company representative L2] (Sagem), [company representative B3] (Pirelli)	Meeting in Barcelona prior to a meeting from a trade association. No further information available. ¹⁵²
149.	27 March 2003 Tokyo	[company representative B3], [company representative B1] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative C2] (JPS), representatives of VISCAS, EXSYM (only UG)	A/R meeting. Discussion, allocation of several EU/EEA, non-EU/EEA projects. Agreement on detailed "contractors rule". ¹⁵³
150.	6 April 2003	[company representative A1] (Nexans), [company representative B1] (Pirelli)	[Confidentiality claim pending] ¹⁵⁴
151.	15 April 2003	[company representative B2], [company representative B3] (Pirelli), [company representative CD1] (JPS)	Email exchange related to Pirelli's concern that the Greek company Hellenic Cables was acquiring technology from Japanese companies to produce power cables up to 400 kV. ¹⁵⁵
152.	21-22 April 2003	[company representative F3], [company representative EF3]	Email exchange concerning Furukuwa's commitment not to deal with Hellenic Cables. ¹⁵⁶

¹⁵¹ [Confidentiality claim pending][...]. With respect to the participants see also ID [...], LS Cable submission of 6 September 2010 and ID [...], EXSYM reply to SO of 7 September 2012.

¹⁵² [Confidentiality claim pending][...]; [Confidentiality claim pending]

¹⁵³ [Confidentiality claim pending]These minutes do not record the attendance of [company representative B3], but other minutes do: [...]. See also [Confidentiality claim pending][...]

¹⁵⁴ [Confidentiality claim pending]

¹⁵⁵ [...]

¹⁵⁶ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		(VISCAS), [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative H1] (EXSYM), [company representative B3], [company representative B2] (Pirelli)	
153.	22 April 2003	[company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹⁵⁷
154.	22-25 April 2003	[company representative D3] (JPS), [company representative A1] (Nexans), other contacts of EXSYM, VISCAS, Pirelli	Email message concerning an exchange of information on a project in Greece – 150 kV, 1500/3000m, later allocated to R, not to A. ¹⁵⁸
155.	23 April 2003 Moret sur Loing	[company representative A1], [company representative A2] (Nexans), [company representative K1] (nkt), [company representative J3] (Brugg), [company representative L2] (Sagem), [company representative B3] (Pirelli) invited but did not attend	[Confidentiality claim pending] ¹⁵⁹
156.	6-12 May 2003	[company representative B2] and [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹⁶⁰
157.	7 May 2003	[company representative L2] (Sagem), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹⁶¹
158.	19 May 2003	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B3], [company representative B1] (Pirelli), [company representative F3]	Email message concerning exchange of information on a project in Norway – SM, 85/125/150 kV, exchange of information on prices. ¹⁶²

¹⁵⁷ [Confidentiality claim pending]

¹⁵⁸ [...];[Confidentiality claim pending] [...].

¹⁵⁹ [Confidentiality claim pending]

¹⁶⁰ [Confidentiality claim pending]

¹⁶¹ [Confidentiality claim pending]

¹⁶² [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		(VISCAS)	
159.	13 June 2003 Villa Odescalchi, Milan	[company representative A2], [company representative A1] (Nexans), [company representative B3], [company representative B2] (Pirelli), [company representative C2], [company representative CD1] (JPS), [company representative F3] (VISCAS), for the discussion on UG matters, [company representative G1], [company representative H1] (EXSYM)	A/R meeting. Participants proposed to increase security, discussed the role of [non-EEA country], Korean companies as well as EEA and non-EEA UG and SM projects. ¹⁶³
160.	26, 30 June 2003	Nexans, Pirelli, ABB, nkt, Brugg, Olex, Sagem	[Confidentiality claim pending] ¹⁶⁴
161.	30 June & 1 July 2003 Meisterschwanden (CH)	[company representative J2], [company representative J3] (Brugg), [company representative A1], [company representative A2] (Nexans), [company representative B2], [company representative B3] (Pirelli), [company representative L2] (Sagem), [company representative K1] (nkt) invited but did not attend.	[Confidentiality claim pending] ¹⁶⁵
162.	3 July 2003	[company representative F3], [company representative EF3] (VISCAS), [company representative CD1], [company representative D3], [company representative C2] (JPS)	Email message communicating that VISCAS had received an inquiry for the Piacenza Power Plant – UG, 400 kV project. ¹⁶⁶
163.	11 July 2003	[company representative CD1] (JPS), [company representative A1]	[Confidentiality claim pending] ¹⁶⁷

¹⁶³ [...];[Confidentiality claim pending]ID [...], EXSYM reply to SO of 29 June 2012.

¹⁶⁴ [Confidentiality claim pending]

¹⁶⁵ [Confidentiality claim pending]

¹⁶⁶ [...].

¹⁶⁷ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		(Nexans), [company representative D3], [company representative C2] (JPS), [company representative B3], [company representative B2] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	
164.	22 July 2003 Tokyo	[company representative B3], another representative of Pirelli, [company representative C2] (JPS)	Bilateral meeting. Discussion of project in [non-EEA country]. ¹⁶⁸
165.	29 August – 2 September 2003	[company representative F3] (VISCAS), [company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative EF3] (VISCAS), [company representative A1] (Nexans), [company representative B3], [company representative B1] (Pirelli)	Email exchange concerning allocation of a project in Greece – [...] kV, 15.5 km. ¹⁶⁹
166.	1 September 2003	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	Email message related to projects in Spain for Union Fenosa. Taihan was asked to submit a revised offer, JPS asked Nexans to send guidance on prices as soon as possible. ¹⁷⁰
167.	3-5 September 2003	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B3], [company representative B1] (Pirelli), [company representative F3] (VISCAS)	Email exchange related to the Corfu project in Greece. ¹⁷¹

¹⁶⁸ [...].

¹⁶⁹ [...].

¹⁷⁰ [Confidentiality claim pending]

¹⁷¹ [...];[Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
168.	11 September 2003 Tokyo	[company representative A2], [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative C2], another representative (JPS), [company representative F3], [company representative EF3] (VISCAS), [company representative G1], [company representative H1] (for UG) (EXSYM), [company representative B1] invited but did not attend	A/R meeting. Allocation of the Corfu project. Discussions on security, Spain-Morocco projects, allocation of several non-EU/EEA UG projects, related price fixing. ¹⁷²
169.	From 15 September 2003	[company representative B1] (Pirelli), [company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral contacts on allocation of Estlink project (SM cable of 150 kV between Estonia, Finland), the Spain-Mallorca project. ¹⁷³
170.	16 September 2003	Nexans	[Confidentiality claim pending] ¹⁷⁴
171.	16 September 2003 Either near the Como lake or Milan (Italy)	[company representative B3], [company representative B2] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative J3], [company representative J2] (Brugg), [company representative K2] (nkt), [company representative L2] (Sagem)	R meeting. ¹⁷⁵
172.	6-7 October 2003	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative B3], [company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative F3] (VISCAS), [company	[Confidentiality claim pending] ¹⁷⁶

¹⁷² Although the minutes prepared by JPS [...] state "exm only sub", this appears to be a mistake as EXSYM attended only discussions on land issues. [...]; [Confidentiality claim pending] [...]

¹⁷³ [...]

¹⁷⁴ [Confidentiality claim pending]

¹⁷⁵ [Confidentiality claim pending] ID [...], Reply Brugg of 7 May 2010 to RFI of 31 March 2010.

¹⁷⁶ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		representative H1] (EXSYM)	
173.	8-16 October 2003	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	Email exchange related to a meeting with the Korean companies aimed at improving their cooperation. ¹⁷⁷
174.	15-16 October 2003	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative F3] (VISCAS), [company representative H1] (EXSYM), [company representative B3], [company representative B2] (Pirelli)	Email exchange in which JPS and Nexans complained about offers made by Pirelli in Korea and offers made by the Korean companies in Italy. ¹⁷⁸
175.	17 October 2003 Seoul	[company representative A2], [company representative A1] (Nexans), [company representative C2], [company representative CD1] (JPS), [company representative F3] (VISCAS), [company representative H1] (EXSYM) (all of the above also attended preparatory meeting), [company representative N1], [company representative N2] (Taihan), [company representative M2], [company representative M3] (LS). [company representative B3] (Pirelli) invited but did not attend.	A/K/R meeting dealing with conflicts with Korean companies; allocation of non-EU/EEA projects; clarifications on rules, status of participants in the cartel. ¹⁷⁹

¹⁷⁷ [Confidentiality claim pending][...].

¹⁷⁸ [...]

¹⁷⁹ [...];[Confidentiality claim pending]With respect to the participants see also ID [...], LS Cable submission of 6 September 2010, [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
176.	20-22 October 2003	[company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ¹⁸⁰
177.	22 October 2003	[company representative M3] (LG), [company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative N1] (Taihan), [company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	[Confidentiality claim pending] ¹⁸¹
178.	4-5 November 2003	[company representative F3], [company representative EF3] (VISCAS), [company representative CD1], [company representative C2], [company representative D3] (JPS), [company representative A1] (Nexans), [company representative B3], [company representative B1] (Pirelli), [company representative EF3] (VISCAS)	Email exchange concerning a project in Greece – 150 kV, SM (66 km), UG (14 km). ¹⁸²
179.	18-19 November 2003 Divonne-les-Bains	[company representative A1], [company representative A2] (Nexans), [company representative B1], [company representative B3], [company representative B2] (Pirelli), [company representative J3], [company representative J2] (Brugg), [company representative K1] (nkt), [company representative L1], [company representative ...]	R meeting. Allocation of several EU, non-EU projects; discussion of position sheets. ¹⁸³

¹⁸⁰ [Confidentiality claim pending]

¹⁸¹ [Confidentiality claim pending]

¹⁸² [...].

¹⁸³ [Confidentiality claim pending]ID [...], Reply nkt of 7 May 2010 to RFI of 31 March 2010.

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		L2] (Sagem)	
180.	24 November 2003 Frankfurt	[company representative I3] (ABB), [company representative C2] (JPS)	Bilateral meeting. Agreement not to compete against each other. ¹⁸⁴
181.	25 November 2003	[company representative C2] (JPS), representatives of Pirelli	Bilateral meeting. No further information available. ¹⁸⁵
182.	26 November 2003 Paris	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral meeting. Potential discussion on the Q-7 wind farm project. ¹⁸⁶
183.	27 November 2003 Paris	[company representative A2], [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative C2], [company representative CD1] (JPS), [company representative F3] (VISCAS), [company representative H1] (EXSYM).	A/R meeting. Discussion, allocation of at least two EEA SM projects, several non-EEA UG (voltages from [...] kV), SM (voltages between [...] kV, [...] kV) projects. ¹⁸⁷
184.	1 December 2003	[company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ¹⁸⁸
2004			
185.	5-8 January 2004	[company representative A1] (Nexans), [company representative B2], [company representative B3], [company representative B1] (Pirelli), [company representative H1] (EXSYM), [company representative F3] (VISCAS), [company representative CD1] (JPS)	[Confidentiality claim pending] ¹⁸⁹
186.	8 January – 9 February 2004	[company representative A1] (Nexans), [company representative B1] (Pirelli), [company representative CD1], [company representative C2] (JPS), [company representative F3] (VISCAS), [company representative G1],	[Confidentiality claim pending] ¹⁹⁰

¹⁸⁴ [...].

¹⁸⁵ [...].

¹⁸⁶ [...].

¹⁸⁷ [...];[Confidentiality claim pending]

¹⁸⁸ [Confidentiality claim pending]

¹⁸⁹ [Confidentiality claim pending]

¹⁹⁰ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		[company representative H1] (EXSYM)	
187.	11 -15 January 2004	[company representative A1] (Nexans), [company representative J2] (Brugg), [company representative B2] (Pirelli)	[Confidentiality claim pending] ¹⁹¹
188.	13 January 2004	[company representative CD1] (JPS), [company representative A1] (Nexans), [company representative B1] (Pirelli), [company representative F3] (VISCAS)	[Confidentiality claim pending] ¹⁹²
189.	19-29 January 2004	[company representative B8], [company representative B2], [company representative B1] (Pirelli), [company representative I7], [company representative I3], other representative (ABB), [company representative A1] (Nexans)	Contacts related to Sardinia-Corsica project, exchanges of information on prices. ¹⁹³
190.	21 January 2004	[company representative CD1] (JPS), [company representative A1] (Nexans), [company representative B1] (Pirelli), [company representative F3] (VISCAS)	Fax message related to "Mediterranean Sea Crossing" project aimed at initiating general views on possible price levels. ¹⁹⁴
191.	28 January 2004 Kuala Lumpur	[company representative A2], [company representative A1] (Nexans), [company representative B3], [company representative B1] (Pirelli), [company representative C2], [company representative CD1] (JPS), [company representative F3] (VISCAS), [company representative G1] (EXSYM) (only at UG meeting), unidentified participant with acronym [company representative]	A/R meeting. Participants discussed, allocated several EU/EEA, non-EU/EEA UG, SM projects. The minutes also confirm the participation of other undertakings (not attending the meeting) in the allocation of non-EEA UG projects: Brugg, ABB, Sagem, LG, Taihan. ¹⁹⁵

¹⁹¹ [Confidentiality claim pending]

¹⁹² [Confidentiality claim pending]

¹⁹³ [...];[Confidentiality claim pending]

¹⁹⁴ [...].

¹⁹⁵ [Confidentiality claim pending], [...];[Confidentiality claim pending] See also: ID [...], Reply EXSYM of 7 May 2010 to RFI of 31 March 2010.

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
192.	5 February 2004	[company representative A1] (Nexans), [company representative B3] (Pirelli)	[Confidentiality claim pending] ¹⁹⁶
193.	6 February 2004	[company representative A1] (Nexans), [company representative B2] (Pirelli)	[Confidentiality claim pending] ¹⁹⁷
194.	9-12 February 2004 Tokyo	[company representative I3] (ABB), [company representative C2], [company representative CD1], (JPS), representatives of VISCAS (probably [company representative F3]), EXSYM	Bilateral and multilateral meetings. Discussion of bids for non-EEA and EEA projects. ¹⁹⁸
195.	10 February 2004 Divonne-les-Bains	[company representative A1], [company representative A2] (Nexans), [company representative B3], [company representative B2] (Pirelli), possibly [company representative L2] and/or [company representative L1] (Sagem), representative of Brugg, [company representative K1] (nkt).	R meeting in which participants discussed several EU/EEA, non-EU/EEA projects. ¹⁹⁹
196.	20 February 2004	[company representative CD1] (JPS), [company representative A1] (Nexans), [company representative B1] (Pirelli), [company representative F3] (VISCAS)	Email message containing inquiries, price guidance regarding offshore wind farm project for a German customer (Montagegesellschaft mbH) – SM 33/150 kV. ²⁰⁰
197.	1 March 2004 Zurich	[company representative I3] (ABB), [company representative A2], [company representative A1] (Nexans). [company representative B1] (Pirelli) invited but did not attend	Bilateral meeting between ABB, Nexans on the allocation of various EEA projects. ²⁰¹
198.	3 March 2004 Alzate Brianza	[company representative A1] (Nexans), [company representative B3], [company representative B2] (Pirelli), [company representative L2] (Sagem),	R meeting on allocation of EEA 400 and 200 kV projects. ²⁰²

¹⁹⁶ [Confidentiality claim pending]

¹⁹⁷ [Confidentiality claim pending]

¹⁹⁸ [...].

¹⁹⁹ [Confidentiality claim pending] Reply Brugg of 7 May 2010 to RFI of 31 March 2010; ID [...], Reply nkt of 7 May 2010 to RFI of 31 March 2010. See also: ID [...], Reply EXSYM of 7 May 2010 to RFI of 31 March 2010.

²⁰⁰ [...].

²⁰¹ [Confidentiality claim pending][...], ID [...], [Confidentiality claim pending]

²⁰² [Confidentiality claim pending] ID [...], Reply Brugg of 7 May 2010 to RFI of 31 March 2010.

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		[company representative J2] (Brugg)	
199.	11 March 2004	[company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁰³
200.	16-17 March 2004	[company representative A1] (Nexans), [company representative B2] (Pirelli), [company representative J2], [company representative J3] (Brugg)	[Confidentiality claim pending] ²⁰⁴
201.	17 March 2004 Barcelona	[company representative A2], [company representative A5], [company representative A1] (Nexans), [company representative L2], unidentified participant "[...]" (Sagem), a representative of Pirelli	[Confidentiality claim pending] ²⁰⁵
202.	18 March 2004	[company representative A2], [company representative A1] (Nexans), [company representative B1] (Pirelli)	[Confidentiality claim pending] ²⁰⁶
203.	19 March 2004	[company representative B2] (Pirelli), [company representative J2], [company representative J3] (Brugg), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁰⁷
204.	24 March 2004 Stockholm or Copenhagen	[company representative C2], possibly [company representative CD1] (JPS), [company representative I3] (ABB)	Bilateral meeting. No further information available. ²⁰⁸
205.	24 March 2004 Milan	[company representative C2] (JPS), representative(s) of Pirelli	Bilateral meeting. No further information available. ²⁰⁹
206.	26 March 2004 Stresa	[company representative B3], [company representative B2], [company representative B1] (Pirelli), [company representative A2], [company representative	A/R meeting. Discussion, allocation of several UG, SM non-EEA projects, discussion of two EEA projects. ²¹⁰

²⁰³ [Confidentiality claim pending]

²⁰⁴ [Confidentiality claim pending]

²⁰⁵ [Confidentiality claim pending]

²⁰⁶ [Confidentiality claim pending]

²⁰⁷ [Confidentiality claim pending]

²⁰⁸ [...]

²⁰⁹ [...]

²¹⁰ [...][Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		A1] (Nexans), [company representative C2], [company representative CD1] (JPS), [company representative F3] (VISCAS), [company representative H1] (EXSYM) (UG only), [company representative D3] (JPS) invited but did not attend.	
207.	3 April 2004	[company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²¹¹
208.	27 April - 28 May 2004	[company representative A1] (Nexans), [company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative F3], [company representative EF3], [company representative EF4] (VISCAS), [company representative B3], [company representative B1] (Pirelli)	Email exchange on allocation of project "Ormen Lange" of Stattnet, note in an allocation table. ²¹²
209.	9 June 2004 Tokyo	[company representative B3], [company representative B1] (SM only) (Pirelli), [company representative A2], [company representative A1] (Nexans), [company representative C2], [company representative CD1] (JPS), [company representative F3], [company representative EF3] (VISCAS), [company representative H1] (only UG) (EXSYM).	A/R meeting. Discussion, allocation of several non-EEA projects with voltage ranges of [...] kV, [...] kV, also to Korean companies. Two EEA projects, Corfu, Ormen Lange were discussed and/or allocated. ²¹³
210.	18-22 June 2004	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²¹⁴
211.	24 June 2004	[company representative A1] (Nexans), [company representative B2] (Pirelli)	[Confidentiality claim pending] ²¹⁵

²¹¹ [Confidentiality claim pending]

²¹² [Confidentiality claim pending][...]

²¹³ [...]

²¹⁴ [Confidentiality claim pending]

²¹⁵ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
212.	25 June 2004	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative B3] (Pirelli), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	Email message with exchange of information contained in a position sheet. Five EEA projects are mentioned: Spain-Morocco, two projects in Greece (Corfu, another one of [...] kV), Estlink, Ormen Lange. ²¹⁶
213.	28, 30 June 2004 Tokyo	[company representative B5], [company representative B1] (Pirelli), [company representative C2] (JPS)	Bilateral meetings. General discussion on cooperation between JPS and Prysmian; potential discussion of project coordination issues. ²¹⁷
214.	30 June-1 July 2004 "Franco-Swiss border resort", possibly at Divonne-les-Bains	[company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli), [company representative L2], [company representative L1] (Sagem), [company representative J2] (Brugg), [company representative A2] (Nexans), [company representative J3] (Brugg) were aware of meeting, [company representative K1] (nkt) invited but did not attend	[Confidentiality claim pending] ²¹⁸
215.	1 July 2004	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative M2] (Taihan), [company representative B3], [company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative F3] (VISCAS), [company representative H1] (EXSYM)	[Confidentiality claim pending] ²¹⁹
216.	5-22 July 2004	[company representative B2] (Pirelli), [company	[Confidentiality claim pending] ²²⁰

²¹⁶ [Confidentiality claim pending][...]

²¹⁷ [...]

²¹⁸ [Confidentiality claim pending]

²¹⁹ [Confidentiality claim pending]

²²⁰ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		representative A1] (Nexans), [company representative L2] (Sagem), [company representative J3], [company representative J2] (Brugg)	
217.	7-9 July 2004	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²²¹
218.	19 July 2004 Västerås	[company representative I3] (ABB), [company representative C2] (JPS)	Bilateral meeting at which JPS announced its withdrawal from the arrangements. ²²²
219.	19 July 2004	[company representative B3] (Pirelli), [company representative CD1], [company representative C2] (JPS)	Email exchange containing a dispute between Pirelli and a Korean undertaking. ²²³
220.	19-20 July 2004	[company representative C2] (JPS), [company representative A1], [company representative A2] (Nexans), [company representative B1] (Pirelli), [company representative B3] (Pirelli) invited but did not attend, ABB	Bilateral (ABB/JPS) and Trilateral (Nexans, Pirelli, JPS) meetings at which JPS communicates a withdrawal from the cartel meetings, communications. ²²⁴
221.	26 July 2004	[company representative CD1], [company representative D3], [company representative C2] (JPS), [company representative A1] (Nexans), [company representative F3] (Viscas), [company representative B3], [company representative B1], [company representative B2] (Pirelli), [company representative H1] (Exsym)	[Confidentiality claim pending] ²²⁵
222.	5 August 2004	[company representative J2], [company representative J3] (Brugg), [company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²²⁶

²²¹ [Confidentiality claim pending]

²²² [...]

²²³ [...].

²²⁴ [Confidentiality claim pending][...]; [Confidentiality claim pending][...]

²²⁵ [Confidentiality claim pending]

²²⁶ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
223.	17 September 2004 Divonne-les-Bains	[company representative A1], probably [company representative A2] (Nexans), [company representative J2] (Brugg), representatives of Pirelli, possibly Sagem, nkt. [company representative J3] (Brugg) invited but did not attend	R meeting. Allocation of several projects: 400 kV of Tennet project allocated to Pirelli, small section of Tennet project, Belgium [...] kV project, Luxembourg 220 kV project allocated to nkt. Further UG non-EEA projects, French Frame contract were discussed. ²²⁷
224.	21 September 2004	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²²⁸
225.	30 September/1 October 2004	[company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²²⁹
226.	1 October 2004	[company representative I8], another representative of ABB	Internal email containing a statement on home territory principle. ²³⁰
227.	8 October 2004	[company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli)	[Confidentiality claim pending] ²³¹
228.	8-27 October 2004	[company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending]. ²³²
229.	12 October 2004	[company representative I3] (ABB), [company representative A2], [company representative A1] (Nexans)	Bilateral meeting. Discussion of several EEA projects, including Estlink, Kontek SM 400 kV 50 km, Fennoskan, Ibiza-Majorca, Barcelona Airport 220 kV. ²³³
230.	13 or 14 October 2004 Milan	[company representative B1], [company representative B8] (Pirelli), [company representative A2], [company representative A1] (Nexans)	[Confidentiality claim pending] ²³⁴
231.	22 October	[company representative	[Confidentiality claim pending] ²³⁵

²²⁷ [Confidentiality claim pending] ID [...], Reply Brugg of 7 May 2010 to RFI of 31 March 2010, [Confidentiality claim pending] See also: [Confidentiality claim pending]

²²⁸ [Confidentiality claim pending]

²²⁹ [Confidentiality claim pending]

²³⁰ [...]

²³¹ [Confidentiality claim pending]

²³² [Confidentiality claim pending]

²³³ Other EEA projects discussed were Norned (Norway-Netherlands), Lynn and Inner Dowsing (UK), Butendiek (Germany), Robbin Rigg (UK), Fuerteventura/Lanzarote (Spain) and Ormen Lange (Norway). [...],[Confidentiality claim pending]

²³⁴ The evidence related to this meeting suggests two possible dates: (i) an exchange of emails confirming the booking of the hotel and the meeting on 14 October 2004 ([Confidentiality claim pending]) and (ii) the minutes of the meeting dated 13 October 2004 ([Confidentiality claim pending]).

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	2004	B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	
232.	27 October 2004	[company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending]. ²³⁶
233.	28 October 2004	[company representative A1] (Nexans), [company representative B1] (Pirelli)	[Confidentiality claim pending]. ²³⁷
234.	28 October 2004	[company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli)	[Confidentiality claim pending]. ²³⁸
235.	November 2004	[company representative F3], [company representative EF3] (VISCAS), [company representative A1] (Nexans), [company representative B1] (Pirelli)	[Confidentiality claim pending]. ²³⁹
236.	5 November 2004	[company representative CD1], [company representative C2] (JPS), [company representative B1] (Pirelli)	Email message to a customer containing information on project Estlink. Implementation of home territory rule. ²⁴⁰
237.	5,15,16 November 2004	[company representative A1] (Nexans), [company representative CD1] (JPS)	[Confidentiality claim pending]. ²⁴¹
238.	8-9 November 2004	[company representative A1] (Nexans), [company representative F3], [company representative EF3] (VISCAS)	[Confidentiality claim pending]. ²⁴²
239.	15 November 2004 Probably in Milan	[company representative F3], [company representative B3], [company representative B1] (Pirelli), [company representative A1] (Nexans)	Bilateral meeting, subsequent email exchange. Exchange of prices, discussion of several non-EEA and EEA projects. These include SM project Sardinia-Corsica interconnection, [Confidentiality claim pending]. ²⁴³
240.	17 November 2004 Copenhagen	[company representative I3] (ABB), [company representative L2], [company representative	Bilateral meeting. Discussion of a possible supply arrangement for accessories for high extra voltage power cable and Sagem's capabilities in relation to extruded DC power cable. ²⁴⁴

²³⁵ [Confidentiality claim pending]

²³⁶ [Confidentiality claim pending]

²³⁷ [Confidentiality claim pending]

²³⁸ [Confidentiality claim pending]

²³⁹ [Confidentiality claim pending]

²⁴⁰ [...]

²⁴¹ [Confidentiality claim pending]

²⁴² [Confidentiality claim pending]

²⁴³ [Confidentiality claim pending]

²⁴⁴ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		L3] (Sagem)	
241.	19-22 November 2004	[company representative J2], [company representative J3] (Brugg), [company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending]. ²⁴⁵
242.	22-23 November 2004	[company representative A1] (Nexans), [company representative B2] (Pirelli)	[Confidentiality claim pending] ²⁴⁶
243.	December 2004/June 2005	[company representative I3] (ABB), [company representative A2] (Nexans).	Bilateral contacts. Discussion of project allocations in Spain. Followed by allocation of project referred to as "Melancolicos" to ABB. ²⁴⁷
244.	9-10 December 2004 "South east of France" at the "usual location", probably Divonne-les-Bains	[company representative A1], probably [company representative A2] (Nexans), [company representative B2] (Pirelli), [company representative J3] (Brugg), [company representative L2] (Sagem), [company representative K1], [company representative K3] (nkt), [company representative B3] (Pirelli), [company representative J2] (Brugg) invited but did not attend	[Confidentiality claim pending] ²⁴⁸
245.	14 December 2004	[company representative L2] (Sagem), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁴⁹
246.	16 December 2004	[company representative A1] (Nexans), [company representative CD1] (JPS)	[Confidentiality claim pending]. ²⁵⁰
247.	17-23 December 2004	[company representative H1] (EXSYM), [company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli)	[Confidentiality claim pending] ²⁵¹

²⁴⁵ [Confidentiality claim pending]

²⁴⁶ [Confidentiality claim pending]

²⁴⁷ [...]

²⁴⁸ [Confidentiality claim pending] See also: [Confidentiality claim pending]

²⁴⁹ [Confidentiality claim pending]

²⁵⁰ [Confidentiality claim pending]

²⁵¹ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
248.	20-22 December 2004	[company representative L2] (Sagem), [company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁵²
249.	27 December 2004	[company representative A1] (Nexans), [company representative M1], [company representative M3] (LG)	[Confidentiality claim pending] ²⁵³
250.	28 December 2004	[company representative A1], [company representative A2] (Nexans), [company representative CD1] (JPS), [company representative F3] (VISCAS), [company representative B1] (Pirelli)	[Confidentiality claim pending] ²⁵⁴
2005			
251.	In 2005	[company representative I3] (ABB), [company representative B5], [company representative B4] (Pirelli)	Bilateral contacts. Discussion on allocation of 3 EEA projects, including Norkop cable in the Netherlands. ²⁵⁵
252.	4 January 2005	[company representative A1] (Nexans), [company representative J2], [company representative J3] (Brugg)	[Confidentiality claim pending] ²⁵⁶
253.	4 January 2005	[company representative A1] (Nexans), [company representative H1] (EXSYM)	[Confidentiality claim pending] ²⁵⁷
254.	5 January - 6 February 2005	[company representative B2] (Pirelli), [company representative L2] (Sagem), [company representative A1] (Nexans)	[Confidentiality claim pending]. ²⁵⁸
255.	5-28 January 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative L2] (Sagem)	[Confidentiality claim pending] ²⁵⁹
256.	6-7 January 2005	[company representative A1] (Nexans), [company	[Confidentiality claim pending] ²⁶⁰

²⁵² [Confidentiality claim pending]

²⁵³ [Confidentiality claim pending]

²⁵⁴ [Confidentiality claim pending]

²⁵⁵ [...]

²⁵⁶ [Confidentiality claim pending]

²⁵⁷ [Confidentiality claim pending]

²⁵⁸ [Confidentiality claim pending]

²⁵⁹ [Confidentiality claim pending]

²⁶⁰ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		representative J2], [company representative J3] (Brugg)	
257.	7 January 2005	[company representative A1] (Nexans), [company representative L2] (Sagem), [company representative B2], [company representative B3] (Pirelli)	[Confidentiality claim pending] ²⁶¹
258.	12-14 January 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending]. ²⁶²
259.	14 January 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁶³
260.	14-31 January 2005	[company representative B2] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative L2] (Sagem), [company representative M3], [company representative M1] (LG)	[Confidentiality claim pending]. ²⁶⁴
261.	17 January – 9 February 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁶⁵
262.	17 January 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁶⁶
263.	18-21 January 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁶⁷
264.	18 January 2005	[company representative A1] (Nexans), [company representative J2], [company representative J3] (Brugg)	[Confidentiality claim pending] ²⁶⁸
265.	19 January 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans), [company representative B2], [company representative B3] (Pirelli)	[Confidentiality claim pending] ²⁶⁹
266.	20 January	[company representative	[Confidentiality claim pending] ²⁷⁰

²⁶¹ [Confidentiality claim pending]

²⁶² [Confidentiality claim pending]

²⁶³ [Confidentiality claim pending]

²⁶⁴ [Confidentiality claim pending]

²⁶⁵ [Confidentiality claim pending]

²⁶⁶ [Confidentiality claim pending]

²⁶⁷ [Confidentiality claim pending]

²⁶⁸ [Confidentiality claim pending]

²⁶⁹ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	2005	A1] (Nexans), [company representative B2] (Pirelli)	
267.	21 January 2005	[company representative B3], [company representative B2] (Pirelli), [company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ²⁷¹
268.	24 January 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁷²
269.	25 January 2005	[company representative L2] (Sagem), [company representative A1], [company representative A2] (Nexans), [company representative I3] (ABB)	Bilateral contacts. Exchange of information on prices for several projects in Spain. ²⁷³
270.	26-28 January 2005	[company representative L2] (Sagem), [company representative B2], [company representative B3] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁷⁴
271.	31 January - 7 February 2005	[company representative B2] (Pirelli), [company representative A1], [company representative A2] (Nexans), [company representative M3], [company representative M1] (LG)	[Confidentiality claim pending]. ²⁷⁵
272.	31 January - 15 February 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative J2] (Brugg)	[Confidentiality claim pending] ²⁷⁶
273.	Before February 2005	[company representative I3] (ABB), [company representative A2] (Nexans)	[Confidentiality claim pending] ²⁷⁷
274.	9 February 2005	[company representative B2] (Pirelli), [company representative A2] (Nexans)	[Confidentiality claim pending] ²⁷⁸
275.	9-24 February 2005	[company representative B2] (Pirelli), [company representative A1],	[Confidentiality claim pending] ²⁷⁹

²⁷⁰ [Confidentiality claim pending]

²⁷¹ [Confidentiality claim pending]

²⁷² [Confidentiality claim pending]

²⁷³ [...];[Confidentiality claim pending]

²⁷⁴ [Confidentiality claim pending]

²⁷⁵ [Confidentiality claim pending]

²⁷⁶ [Confidentiality claim pending]

²⁷⁷ [...]

²⁷⁸ [Confidentiality claim pending]

²⁷⁹ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		[company representative A2] (Nexans), [company representative M3], [company representative M1] (LG)	
276.	10 February 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative J2], [company representative J3] (Brugg), [company representative L2] (Sagem)	Email message containing an exchange of information on project "Natural Gas via Elecnor/Semi". ²⁸⁰
277.	14 February 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁸¹
278.	16 February 2005	[company representative L2] (Sagem), [company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁸²
279.	24-25 February 2005	[company representative A1] (Nexans), [company representative L1], [company representative L2] (Sagem), [company representative B2] (Pirelli), [company representative J2] (Brugg), [company representative K3] (nkt)	R meeting. ²⁸³
280.	March 2005	Nexans, Pirelli, Sagem	[Confidentiality claim pending] ²⁸⁴
281.	2 March 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁸⁵
282.	3-4 March 2005 Tokyo	[company representative A1], [company representative A2] (Nexans), [company representative CD2], [company representative C1], [company representative CD1] (JPS), possibly [company representative H1] (EXSYM)	[Confidentiality claim pending] ²⁸⁶
283.	7-8 March	[company representative	K/R meeting. Discussion of home territory principle. ²⁸⁷

²⁸⁰ [Confidentiality claim pending]

²⁸¹ [Confidentiality claim pending]

²⁸² [Confidentiality claim pending]

²⁸³ [Confidentiality claim pending] ID [...], reply nkt of 7 May 2010 to RFI of 31 March 2010.

²⁸⁴ [Confidentiality claim pending]

²⁸⁵ [Confidentiality claim pending]

²⁸⁶ [Confidentiality claim pending] ID [...], EXSYM reply to SO of 7 September 2012.

²⁸⁷ [Confidentiality claim pending] With respect to the participants, see also ID [...], LS Cable submission of 6 September 2010. See also: [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	2005 Zurich	M1], [company representative M3] (LS), [company representative B4], [company representative B2], [company representative B3] (Pirelli), [company representative A2] (Nexans)	
284.	9 March 2005 Paris	[company representative L2] (Sagem), [company representative A2] (Nexans)	[Confidentiality claim pending] ²⁸⁸
285.	10 March 2005	[company representative A1] (Nexans), [company representative B2] (Pirelli)	[Confidentiality claim pending] ²⁸⁹
286.	14-15 March 2005	At least [company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative J2], [company representative J3] (Brugg), [company representative K3] (nkt)	R meeting. Discussion, allocation of several EEA projects, one non-EEA project, organisation of the cartel. ²⁹⁰
287.	23 March 2005	[company representative A1] (Nexans), [company representative B2] (Pirelli)	[Confidentiality claim pending] ²⁹¹
288.	7 April 2005	[company representative B2] (Pirelli), [company representative A2], [company representative A1] (Nexans), [company representative L2] (Sagem)	[Confidentiality claim pending] ²⁹²
289.	9-11 May 2005	[company representative J2] (Brugg), [company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁹³
290.	10 May 2005	[company representative A1] (Nexans)	[Confidentiality claim pending] ²⁹⁴
291.	12 May 2005 Divonne-les-Bains	[company representative A1], probably [company representative A2] (Nexans), [company representative B2] (Pirelli), [company representative K3] (nkt), one representative from Safran, [company representative J2] (Brugg) declined.	[Confidentiality claim pending] ²⁹⁵

²⁸⁸ [Confidentiality claim pending]

²⁸⁹ [Confidentiality claim pending]

²⁹⁰ [Confidentiality claim pending] ID [...], Reply nkt of 7 May 2010 to RFI of 31 March 2010. See also [...].

²⁹¹ [Confidentiality claim pending]

²⁹² [Confidentiality claim pending]

²⁹³ [Confidentiality claim pending]

²⁹⁴ [Confidentiality claim pending]

²⁹⁵ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
292.	18 May 2005 Kuala Lumpur	[company representative M2], [company representative M3] (LS), [company representative CD1] (JPS), [company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending]. ²⁹⁶
293.	21 May 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ²⁹⁷
294.	8 June - 1 July 2005	[company representative A1], [company representative A2] (Nexans), [company representative B2] (Pirelli), [company representative M3], [company representative M1] (LS)	[Confidentiality claim pending] ²⁹⁸
295.	9-17 June 2005	[company representative F3] (VISCAS), [company representative A1] (Nexans), [company representative B3] (Pirelli)	[Confidentiality claim pending] ²⁹⁹
296.	9 June-11 July 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans), [company representative B2] (Pirelli)	[Confidentiality claim pending] ³⁰⁰
297.	10 June – 19 July 2005	[company representative A1], [company representative A2] (Nexans), [company representative L2], [company representative L1] (Safran), [company representative B2] (Pirelli), probably [company representative K3] (nkt)	[Confidentiality claim pending] ³⁰¹
298.	10-21 June 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans), [company representative L2] (Safran)	[Confidentiality claim pending] ³⁰²

²⁹⁶ [Confidentiality claim pending]

²⁹⁷ [Confidentiality claim pending]

²⁹⁸ [Confidentiality claim pending]

²⁹⁹ [Confidentiality claim pending]

³⁰⁰ [Confidentiality claim pending]

³⁰¹ [Confidentiality claim pending]

³⁰² [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
299.	3 July 2005	[company representative M2], [company representative M3] (LS Cable), [company representative CD1] (JPS), [company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁰³
300.	4 July 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁰⁴
301.	4-29 July 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁰⁵
302.	18 July – 16 September 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁰⁶
303.	21 July 2005 Divonne-les-Bains	[company representative A1], [company representative A2] (Nexans). Possibly [company representative L2], (Sagem), [company representative B2] (Pirelli) invited but could not attend	[Confidentiality claim pending] ³⁰⁷
304.	25 July 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁰⁸
305.	25 July 2005	[company representative CD1] (JPS), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁰⁹
306.	28 July 2005	[company representative A1] (Nexans), unidentified person	[Confidentiality claim pending] ³¹⁰
307.	28 July 2005	[company representative B2] (Pirelli), [company representative A1] (Nexans)	[Confidentiality claim pending] ³¹¹
308.	25 July - 1 August 2005	[company representative A1], [company representative A2] (Nexans), [company representative CD1] (JPS)	[Confidentiality claim pending] ³¹²
309.	4 August 2005	[company representative B1] (Pirelli), [company	[Confidentiality claim pending] ³¹³

³⁰³ [Confidentiality claim pending]

³⁰⁴ [Confidentiality claim pending]

³⁰⁵ [Confidentiality claim pending]

³⁰⁶ [Confidentiality claim pending]

³⁰⁷ [Confidentiality claim pending]

³⁰⁸ [Confidentiality claim pending]

³⁰⁹ [Confidentiality claim pending]

³¹⁰ [Confidentiality claim pending]

³¹¹ [Confidentiality claim pending]

³¹² [Confidentiality claim pending]

³¹³ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		representative A2] (Nexans)	
310.	11 August 2005	[company representative B1] (Pirelli), [company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ³¹⁴
311.	23 August - 9 September 2005	[company representative A1], [company representative A2] (Nexans), [company representative H1], [company representative G2] (EXSYM), [company representative B2] (Prysmian), JPS	[Confidentiality claim pending] ³¹⁵
312.	7 September 2005	[company representative B1] (Prysmian), [company representative A2] (Nexans)	Bilateral meeting. No further information available. ³¹⁶
313.	9 September 2005	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³¹⁷
314.	9 September 2005	[company representative B1] (Prysmian), [company representative A2], [company representative A1] (Nexans)	Email exchange containing information on price for the EEA project "Mare nostrum/SAPEI". Attachment with price list, general conditions. ³¹⁸
315.	12 September 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³¹⁹
316.	12-13 September 2005 Prague	[company representative B1], [company representative B8] (Prysmian), [company representative A2] (Nexans), [company representative I3] (ABB)	[Confidentiality claim pending] ³²⁰
317.	14 September 2005 Paris	[company representative A2], [company representative A3], another representative of Nexans, [company representative B6] (Prysmian)	[Confidentiality claim pending] ³²¹
318.	14 September 2005	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ³²²

³¹⁴ [Confidentiality claim pending]

³¹⁵ [Confidentiality claim pending]

³¹⁶ ID [...] Reply Nexans of 7 May 2010 to RFI of 31 March 2010.

³¹⁷ [Confidentiality claim pending]

³¹⁸ [Confidentiality claim pending] See also: [...]

³¹⁹ [Confidentiality claim pending]

³²⁰ [Confidentiality claim pending]

³²¹ [Confidentiality claim pending]

³²² [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
319.	14 September – 3 November 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³²³
320.	13 or 15 September 2005 Prague	[company representative I3] (ABB), [company representative A2] (Nexans), [company representative B1] (Prysmian)	Bilateral meeting. Exchange of information on several projects – probably SM. ³²⁴
321.	20 September 2005 – 9 January 2006	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³²⁵
322.	21-22 September 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³²⁶
323.	28 September 2005	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³²⁷
324.	29 September 2005	[company representative A1] (Nexans), [company representative H1] (EXSYM), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³²⁸
325.	30 September – 21 October 2005	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending]. ³²⁹
326.	30 September-7 October 2005	[company representative A1] (Nexans), [company representative CD1] (JPS)	[Confidentiality claim pending] ³³⁰
327.	3 October 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³³¹
328.	4-14 October 2005	[company representative A1] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³³²

³²³ [Confidentiality claim pending]

³²⁴ [...].

³²⁵ [Confidentiality claim pending]

³²⁶ [Confidentiality claim pending]

³²⁷ [Confidentiality claim pending]

³²⁸ [Confidentiality claim pending]

³²⁹ [Confidentiality claim pending]

³³⁰ [Confidentiality claim pending]

³³¹ [Confidentiality claim pending]

³³² [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
329.	7 October 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³³³
330.	8-10 October 2005	[company representative H1] (EXSYM), [company representative C1] (JPS), [company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³³⁴
331.	13 October 2005	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³³⁵
332.	18-19 October 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³³⁶
333.	20 October 2005 Tokyo	[company representative E3], [company representative F2] (VISCAS), [company representative CD2], [company representative C1] (JPS), [company representative A3], [company representative A2] (Nexans), [company representative B4], [company representative B1] (Prysmian)	A/R meeting. JPS invited to resume full participation. Exchange of information on several SM projects. ³³⁷
334.	24 October 2005 - 9 January 2006	[company representative A1] (Nexans), [company representative B2] (Prysmian), [company representative J2] (Brugg)	[Confidentiality claim pending] ³³⁸
335.	3-18 November 2005	[company representative I3] (ABB), [company representative A2] (Nexans)	Email exchange. Exchange of information on a non-EEA project. ³³⁹
336.	10 November - 19 December 2005	[company representative C1] (JPS), [company representative A2], [company representative A1] (Nexans), [company representative F3] (VISCAS), [company representative B1]	[Confidentiality claim pending] ³⁴⁰

³³³ [Confidentiality claim pending]

³³⁴ [Confidentiality claim pending]

³³⁵ [Confidentiality claim pending]

³³⁶ [Confidentiality claim pending]

³³⁷ [...],[Confidentiality claim pending]

³³⁸ [Confidentiality claim pending]

³³⁹ ID [...].

³⁴⁰ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		(Prysmian)	
337.	8-15 December 2005	[company representative J2], [company representative J1] (Brugg), [company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³⁴¹
338.	14-16 December 2005	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³⁴²
339.	21-23 December 2005	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ³⁴³
340.	21-22 December 2005	[company representative L2] (Silec), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁴⁴
2006			
341.	4 January 2006	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁴⁵
342.	4-5 January 2006	[company representative CD1] (JPS), [company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ³⁴⁶
343.	13 January 2006 Kuala Lumpur (Malaysia)	[company representative C1] (JPS), [company representative F3] (VISCAS), [company representative A2], [company representative A1] (Nexans), [company representative B1] (Prysmian)	A/R meeting. Organisation of the cartel. Allocation, exchange of price information on projects – SM between [...] and 230 kV. ³⁴⁷
344.	16 January – 6 February 2006	[company representative C1] (JPS), [company representative H1] (EXSYM), [company representative A1], [company representative A2] (Nexans), [company representative B2] (Prysmian), [company representative J2] (Brugg)	[Confidentiality claim pending] ³⁴⁸
345.	16-17	[company representative	[Confidentiality claim pending] ³⁴⁹

³⁴¹ [Confidentiality claim pending]

³⁴² [Confidentiality claim pending]

³⁴³ [Confidentiality claim pending]

³⁴⁴ [Confidentiality claim pending]

³⁴⁵ [Confidentiality claim pending]

³⁴⁶ [Confidentiality claim pending]

³⁴⁷ [Confidentiality claim pending][...], [Confidentiality claim pending][...].

³⁴⁸ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	January 2006	A2] (Nexans), [company representative B1] (Prysmian)	
346.	17 January 2006	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁵⁰
347.	18 January – 2 February 2006	[company representative C1] (JPS), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁵¹
348.	25 January 2006	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁵²
349.	6-7 February 2006	[company representative C1] (JPS), [company representative A1], [company representative A2] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³⁵³
350.	16 February 2006 Divonne-les-Bains (France)	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³⁵⁴
351.	17 February 2006 Divonne-les-Bains	[company representative A1] (Nexans), [company representative B2] (Prysmian), [company representative K3] (nkt), [company representative J2], [company representative J1] (Brugg), Silec's representative (probably [company representative L2]) invited but did not attend	R meeting. Participants discussed cartel arrangements, preventing detection, allocation of projects in Europe. Projects include a frame contract in Belgium for 70 kV, 150 kV, Maasvlakte, Croydon 400 kV, Olympics 400k. ³⁵⁵
352.	7-13 March 2006	[company representative B2] (Prysmian), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁵⁶
353.	13 March 2006	[company representative A1] (Nexans), [company representative J2], [company representative J1] (Brugg)	Email message on preparation of R meeting on 13 March 2006. ³⁵⁷

³⁴⁹ [Confidentiality claim pending]

³⁵⁰ [Confidentiality claim pending]

³⁵¹ [Confidentiality claim pending]

³⁵² [Confidentiality claim pending]

³⁵³ [Confidentiality claim pending]

³⁵⁴ [Confidentiality claim pending]

³⁵⁵ [Confidentiality claim pending] ID [...] Reply Brugg of 7 May 2010 to RFI of 31 March 2010, [Confidentiality claim pending]

³⁵⁶ [Confidentiality claim pending]

³⁵⁷ [Confidentiality claim pending] See also: ID [...], Reply Nexans of 7 May 2010 to RFI of 31 March 2010.

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
354.	23-24 March 2006	[company representative C1] (JPS), [company representative A1] (Nexans)	[Confidentiality claim pending] ³⁵⁸
355.	23 March 2006	[company representative C1] (JPS), [company representative A2], [company representative A1] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³⁵⁹
356.	31 March – 3 April 2006	[company representative A1] (Nexans), [company representative B2] (Prysmian), [company representative J2] (Brugg)	[Confidentiality claim pending] ³⁶⁰ [Confidentiality claim pending]
357.	31 March 2006	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³⁶¹
358.	3 April 2006	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³⁶²
359.	27 April 2006 Kuala Lumpur	[company representative C1] (JPS), [company representative F3] (VISCAS), [company representative A2], [company representative A1] (Nexans), [company representative B1] (Prysmian)	A/R meeting. Allocation, discussion of a large number of non-EEA SM projects with voltages ranging between [...] kV, [...] kV, home territory issues (Greece), opportunities for cooperation in large UG projects (see evidence dated 29 May 2006), date of next A/R meeting (6 July 2006 in Jakarta). ³⁶³
360.	8 May - 4 September 2006	[company representative B4], [company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ³⁶⁴
361.	9-10 May 2006 Zurich airport	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral meeting to discuss "BritNed project - SM 450 kV". Also discussed at a later meeting in Zurich, on 4 June 2007, [company representative A2] expressing dissatisfaction at ABB regarding Britned project, providing initial basis for ABB not to bid on the Fennoskan II project - SM 500 kV. ³⁶⁵
362.	29 May - 12 June 2006	[company representative C1] (JPS), [company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ³⁶⁶

³⁵⁸ [Confidentiality claim pending]

³⁵⁹ [Confidentiality claim pending]

³⁶⁰ [Confidentiality claim pending]

³⁶¹ [Confidentiality claim pending]

³⁶² [Confidentiality claim pending]

³⁶³ [Confidentiality claim pending] See also: [...], [Confidentiality claim pending]

³⁶⁴ [Confidentiality claim pending]

³⁶⁵ [...].

³⁶⁶ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
363.	6 June 2006 Madrid	[company representative A2] (Nexans), [company representative B1] (Prysmian)	Bilateral meeting. No further information available. ³⁶⁷
364.	12 June 2006	[company representative A2] (Nexans), probably [company representative B4] (Prysmian)	[Confidentiality claim pending] ³⁶⁸
365.	19-21 June 2006	[company representative A2] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³⁶⁹
366.	6 July 2006 Jakarta	[company representative C1] (JPS), [company representative F3] (VISCAS), [company representative A2], [company representative A1] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³⁷⁰
367.	[...]	[...]	[Confidentiality claim pending]. ³⁷¹
368.	20 – 27 July 2006	[company representative A2] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³⁷²
369.	25 July 2006	[company representative F3], [company representative EF1] (VISCAS), [company representative B1] (Prysmian), [company representative A1] (Nexans), [company representative C1] (JPS)	[Confidentiality claim pending] ³⁷³
370.	25 July – 4 September 2006	[company representative B1], [company representative B4] (Prysmian), [company representative C1] (JPS), [company representative A2] (Nexans)	[Confidentiality claim pending] ³⁷⁴
371.	30 August 2006	[company representative A2] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ³⁷⁵

³⁶⁷ ID [...] Reply Nexans of 7 May 2010 to RFI of 31 March 2010.

³⁶⁸ [Confidentiality claim pending]

³⁶⁹ [Confidentiality claim pending]

³⁷⁰ [Confidentiality claim pending]

³⁷¹ [Confidentiality claim pending]

³⁷² [Confidentiality claim pending]

³⁷³ [Confidentiality claim pending]

³⁷⁴ [Confidentiality claim pending]

³⁷⁵ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
372.	14 September 2006	[company representative A1], [company representative A2] (Nexans), [company representative N1] (Taihan)	[Confidentiality claim pending] ³⁷⁶
373.	15 September 2006 Karlskrona	[company representative I3], two other representatives of ABB, [company representative C1], a representative of Sumitomo	Bilateral Meeting. Review of possible areas for technical cooperation and discussion on potential collaboration in relation to individual extra-EEA projects ([non-EEA country]). ³⁷⁷
374.	4 October 2006	[company representative B2] (Prysmian), [company representative A1] (Nexans)	Email addressed to web-based email account of [company representative A1]. ³⁷⁸
375.	6 October 2006 Baveno	[company representative C1] (JPS), [company representative F3], [company representative EF1] (VISCAS), [company representative A2], [company representative A1] (Nexans), [company representative B1] (Prysmian)	A/R meeting on SM projects. Bids on a number of specific projects discussed for the purpose of allocation. JPS informed the other participants that it would not participate in any further meetings. ³⁷⁹
376.	18-22 October 2006 Chicago	[company representative A3], [company representative A2] (Nexans), [company representative B4], [company representative B1] (Prysmian), [company representative CD2] (JPS), [company representative E3], [company representative F3] (VISCAS)	Meetings at the fringe of ICF Conference. Discussion on allocation of [...] kV UG cable projects outside the EEA. ³⁸⁰
377.	16 November 2006	[company representative J1] (Brugg), [company representative L2] (Silec), [company representative A1] (Nexans)	Email exchange related to prices to be quoted in bids for an unnamed project. Use of web-based email accounts. ³⁸¹
378.	28 November 2006 Dubai	[company representative A2] (Nexans), [company representative B1] (Prysmian)	Bilateral meeting. No further information available. ³⁸²
379.	13 December 2006	[company representative C2] (SEI), [company representative A2] (Nexans)	Bilateral meeting, JPS/Nexans. According to JPS, no discussion of cartel, although [company representative A2] responded to the relationship of the two companies. ³⁸³

³⁷⁶ [Confidentiality claim pending]

³⁷⁷ [...]; ID [...], JPS' Reply of 13 October 2011 to SO.

³⁷⁸ ID [...], Reply Nexans of 5 June 2009 to RFI of 20 March 2009.

³⁷⁹ [...], [Confidentiality claim pending]

³⁸⁰ ID [...], Reply VISCAS of 2 September 2010 to RFI of 31 March 2010. See also: [...]

³⁸¹ ID [...], Reply Nexans of 5 June 2009 to RFI of 20 March 2009.

³⁸² [Confidentiality claim pending]. See also: ID [...], Reply Prysmian of 7 May to RFI of 31 March 2010.

³⁸³ [...]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
380.	Late 2006	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral contacts on project HornsRev SM – Denmark, 34/170 kV. ³⁸⁴
381.	2006 or 2007	ABB, Nexans	Bilateral contacts on [...] /170 kV SM project Q7 Wind park, the Netherlands. ³⁸⁵
2007			
382.	January 2007	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral contact on Gjøa project in Norway - 115/132 kV SM. The expectation of this exchange was that Nexans would take the next project. ³⁸⁶
383.	Beginning 2007	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral contact on Alpha Ventus SM project in Germany. ³⁸⁷
384.	3 January 2007	[company representative B4], [company representative B2], [company representative B1], [company representative B9] (Prysmian)	[Confidentiality claim pending] ³⁸⁸
385.	4 January 2007	[company representative A1] (Nexans), [company representative B3], [company representative B1] (Prysmian), [company representative CD1] (JPS), [company representative H1] (EXSYM), [company representative F3] (VISCAS)	[Confidentiality claim pending] ³⁸⁹
386.	28 January 2007	[company representative A1] (Nexans), [company representative B1] (Prysmian)	Fax relating to planned A/R meeting in January 2007. Nexans has denied its participation in this meeting which indicates that the meeting was probably cancelled. ³⁹⁰
387.	6 March 2007	[company representative B2], [company representative B1] (Prysmian)	Internal email exchange relating to the established arrangement that in case of repairs only the original installing companies should get the project. ³⁹¹
388.	11 April 2007 Paris	[company representative A1], [company representative A2] (Nexans), [company representative EF1], [company representative E1] (VISCAS), [company representative B1], [company representative	A/R meeting that was postponed from February to April. SM projects -33 kV to 345kV - discussed including "Balears", "Greece/Cyclades Islands". Further discussion of two non-EEA UG projects. ³⁹²

³⁸⁴ [...].

³⁸⁵ [...].

³⁸⁶ [...].

³⁸⁷ [...].

³⁸⁸ [Confidentiality claim pending]

³⁸⁹ [Confidentiality claim pending]

³⁹⁰ [Confidentiality claim pending] ID [...] and ID [...] Nexans reply of 7 May 2010 to RFI of 31 March 2010.

³⁹¹ [Confidentiality claim pending] See also: [...].

³⁹² [...],[Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		B2] (Prysmian) invited but probably did not attend	
389.	9 May 2007	[company representative E1], [company representative EF1] (VISCAS), [company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ³⁹³
390.	May 2007 Paris	[company representative C1] (JPS), [company representative A1] (Nexans)	Bilateral meeting to discuss allocation of a non-EEA project. ³⁹⁴
391.	4 June 2007 Zurich	[company representative A2] (Nexans), [company representative I3] (ABB)	Bilateral meeting. Discussion of EEA projects. ³⁹⁵
392.	4-6 June 2007	[company representative A1] (Nexans), [company representative B2] (Prysmian)	[Confidentiality claim pending] ³⁹⁶
393.	10 or 11 June 2007 Paris	[company representative I3] (ABB), [company representative C1] (JPS)	Bilateral meeting about respecting home territory principle. ³⁹⁷
394.	27/28 June 2007 Tokyo	Representatives of Nexans, JPS and EXSYM	[Confidentiality claim pending] ³⁹⁸ [Confidentiality claim pending] ³⁹⁹
395.	13 July – 3 August 2007	[company representative A1], [company representative A2] (Nexans), [company representative E1] (VISCAS)	[Confidentiality claim pending] ⁴⁰⁰
396.	18 July 2007	[company representative A2] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ⁴⁰¹
397.	23 July - 13 September 2007	[company representative A1], [company representative A2] (Nexans), [company representative H1] (EXSYM), [company representative EF1] (VISCAS), [company representative C1], [company representative	[Confidentiality claim pending] ⁴⁰²

³⁹³ [Confidentiality claim pending]

³⁹⁴ [...]

³⁹⁵ [...]

³⁹⁶ [Confidentiality claim pending]

³⁹⁷ [...]

³⁹⁸ [Confidentiality claim pending]

³⁹⁹ [Confidentiality claim pending]

⁴⁰⁰ [Confidentiality claim pending]

⁴⁰¹ [Confidentiality claim pending]

⁴⁰² [Confidentiality claim pending], [...].

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
		D4] (JPS)	
398.	31 August 2007	[company representative A2] (Nexans), [company representative B1] (Prysmian)	Email message relating to exchange of commercial information on "Gunfleet sands" project, SM 132 kV ⁴⁰³
399.	20 September 2007	[company representative A2] (Nexans), [company representative B1] (Prysmian), [company representative C1] (JPS)	[Confidentiality claim pending] ⁴⁰⁴
400.	3 October 2007 Probably Rome	[company representative B4], [company representative B1], (Prysmian), [company representative A2] (Nexans)	Bilateral meeting. No further information available. ⁴⁰⁵
401.	10-23 October 2007	[company representative B10], [company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴⁰⁶
402.	11 October 2007	[company representative A1], [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴⁰⁷
403.	24 October 2007	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴⁰⁸
404.	October 2007 Copenhagen airport	[company representative A2] (Nexans), [company representative I3] (ABB)	Bilateral meeting on allocation, price fixing of "Fennoskan II project, SM 400/500 kV". Nexans to get the project in return for ABB obtaining the "EirGrid" project. ⁴⁰⁹
405.	16 November 2007	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴¹⁰
406.	3 December 2007 Le Meridien Montparnasse, Paris	[company representative A2], [company representative A1] (Nexans), [company representative EF1], [company representative E1] (VISCAS)	A/R meeting on SM matters, allocation EEA projects "COMETA 230kV", the Greek project "Evia Attika". Several non-EEA projects ranging at least between [...] kV, [...] kV were discussed. ⁴¹¹
407.	19 December 2007	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴¹²
408.	22	[company representative	[Confidentiality claim pending] ⁴¹³

⁴⁰³ [Confidentiality claim pending] See also: [...]

⁴⁰⁴ [Confidentiality claim pending]

⁴⁰⁵ [Confidentiality claim pending]

⁴⁰⁶ [Confidentiality claim pending]

⁴⁰⁷ [Confidentiality claim pending]

⁴⁰⁸ [Confidentiality claim pending]

⁴⁰⁹ [...].

⁴¹⁰ [Confidentiality claim pending]

⁴¹¹ [Confidentiality claim pending] ID [...], VISCAS reply of 2 September to RFI of 31 March 2010.

⁴¹² [Confidentiality claim pending]

⁴¹³ [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
	December 2007	B1] (Prysmian), [company representative A2] (Nexans)	
2008			
409.	27 February 2008	[company representative A1] (Nexans), [company representative B1] (Prysmian)	[Confidentiality claim pending] ⁴¹⁴
410.	7 March 2008	[company representative A1] (Nexans), [company representative EF1], [company representative E1] (VISCAS)	[Confidentiality claim pending] ⁴¹⁵
411.	4 April 2008	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴¹⁶
412.	9-10 April 2008 Tokyo	[company representative A1], [company representative A2] (Nexans), [company representative EF1], [company representative E1] (VISCAS)	Bilateral meeting on orders of projects, future projects. ⁴¹⁷
413.	10 April 2008 Tokyo	[company representative A1], [company representative A2] (Nexans), [company representative H1] (EXSYM)	Bilateral meeting. According to EXSYM and Showa, no anti-competitive issues were discussed. No further information available. ⁴¹⁸
414.	10 April 2008 Tokyo	[company representative A1], [company representative A2] (Nexans), [company representative C1], [company representative D4] (JPS)	Bilateral meeting. JPS demands not to be contacted, for compliance reasons. ⁴¹⁹
415.	24 April 2008	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴²⁰
416.	2 June 2008	[company representative A2] (Nexans), [company representative B4] (Prysmian), [company representative I3] (ABB)	Bilateral meeting in the context of CRU Conference, Barcelona, Spain. No further information available. ⁴²¹
417.	6-10 June 2008	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ⁴²²

⁴¹⁴ [Confidentiality claim pending]

⁴¹⁵ [Confidentiality claim pending]

⁴¹⁶ [Confidentiality claim pending]

⁴¹⁷ [Confidentiality claim pending] ID [...] Reply VISCAS of 2 September 2010 to RFI of 31 March 2010.

⁴¹⁸ [Confidentiality claim pending] ID [...], EXSYM reply to SO of 7 September 2012.

⁴¹⁹ [...].

⁴²⁰ [Confidentiality claim pending]

⁴²¹ ID [...], Reply Prysmian of 7 May 2010 to RFI of 31 March 2010.

⁴²² [Confidentiality claim pending]

#	Date and Location	Known participants	Known additional information on meeting, subjects discussed and source(s) of the evidence
418.	9 June 2008	[company representative EF1], [company representative E1] (VISCAS), [company representative A2], [company representative A1] (Nexans)	[Confidentiality claim pending] ⁴²³
419.	7 July 2008 Swiss Hotel in Zurich	[company representative I3] (ABB), [company representative A2] (Nexans)	Bilateral meeting. Price fixing, "Eirgrid" project, SM 220 kV. ⁴²⁴
420.	3-18 October 2008 Copenhagen	[company representative I3], [company representative I9] (ABB), [company representative A2], [company representative A7], other representative (Nexans)	Bilateral contacts. Discussion on possible allocation of project "Belwind – SM, UG cables of 33/150 kV" in Belgium. ⁴²⁵
421.	25 October 2008	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴²⁶
422.	5-7 November 2008	[] ([...], [company representative A2] (Nexans)	Phone calls. Exchange of price information for possible bid, outsourcing/sharing of project "London Array", a large wind farm project of 33/132 kV in the UK. ⁴²⁷
423.	9 December 2008	[company representative H1] (EXSYM), [company representative A1] (Nexans)	[Confidentiality claim pending] ⁴²⁸
2009			
424.	28-29 January 2009	[company representative B1] (Prysmian), [company representative A2] (Nexans)	[Confidentiality claim pending] ⁴²⁹

⁴²³ [Confidentiality claim pending]

⁴²⁴ [...]

⁴²⁵ [...].

⁴²⁶ [Confidentiality claim pending]

⁴²⁷ [...].

⁴²⁸ [Confidentiality claim pending]

⁴²⁹ [Confidentiality claim pending]