EUROPEAN COMMISSION

Brussels, 30.6.2010
C(2010) 4387 final

COMMISSION DECISION

Of 30.6.2010

(as amended by Commission Decision of 30 September 2010 notified under document number C(2010) 6676 (final) and Commission Decision of 4 April 2011 notified under document number C(2011) 2269 (final)).

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

(COMP/38.344 – Prestressing Steel)

(ONLY THE DUTCH, ENGLISH, GERMAN, ITALIAN, PORTUGUESE AND SPANISH TEXTS ARE AUTHENTIC)

(Text with EEA relevance)

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as (…)

TABLE OF CONTENTS

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

Case COMP/38344 – Prestressing Steel

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation 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*, and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission decision of 30.09.2008 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 No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[1],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions[2],

Having regard to the final report of the Hearing Officer in this case[3],

Whereas:

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* 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". The terminology of the TFEU will be used throughout this Decision.

1 OJ L 123, 27.4.2004, p. 18.

2 To be published in the Official Journal.

3 To be published in the Official Journal.

I. INTRODUCTION

(1) This Decision relates to a cartel between prestressing steel suppliers that participated in quota fixing, customer sharing, price fixing and exchanging of sensitive commercial information relating to price, volume and customers at European, regional and national level. They thereby committed a single and continuous infringement of Article 101(1) of the Treaty on the Funtioning of the European Union (hereinafter 'TFEU' or 'the Treaty') and, from 01.01.1994, Article 53(1) of the Agreement on the European Economic Area (hereinafter 'the EEA Agreement'). The illegal behaviour lasted from at least the beginning of 1984 until 19.09.2002 (hereinafter the 'period of infringement').

II. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

1. THE PRODUCT

(2) Prestressing steel (hereafter 'PS') refers to metal wires and strands made of wire rod. For the purposes of this Decision it covers both:

(a) 'Steel used for prestressed concrete': Prestressed concrete[4] is cast around already tensioned wire/strands and is generally prefabricated in a factory. Pre-tensioned elements may be balcony elements, foundation piles, pipes etc.

(b) 'Steel used for post-tensioned concrete': Post-tensioned concrete is the descriptive term for a processing method whereby the concrete is cast around a plastic, steel or aluminium curved duct. After a set of wires/strands is fished through the duct, the concrete is poured. Once the concrete has hardened, the wires/strands are tensioned. This method is commonly used in structural engineering, underground engineering and bridge building (piles, beams, railway sleepers, anchors, floors)[5].

(3) The PS product range includes different types of single PS wires (for example smooth, bright or galvanized; indented, ribbed etc.) as well as different types of PS strands (for example bright, indented; polyethylene-coated or metallic coated etc.). PS strands are composed of 3 or 7 wires. PS is sold in several diameters[6].

(4) For the purpose of this Decision, PS does not include 'special strands' (i.e. strand which is galvanized or sheathed – greased or waxed) nor 'stays' (i.e. galvanized, coated strand and galvanized wire for bridge building).

(5) Technical approval by national authorities is mandatory in many countries. Time and resource intense certification procedures increase costs, lessen flexibility and are an impediment to export[7]. The lead time of around 6 months

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4 Prestressed concrete is the most common application of PS (see also ESIS document [6109]), hence the reason for the generic name '*prestressing* steel'.

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6 (…)The most common diameter is 12, 5 mm or ½ inch wire.

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for accomplishment of the certification does give an early warning of potential competition to incumbents. It also prevents companies from quickly reacting to an interesting opportunity in a country where no certification has yet been obtained. Nevertheless, the bigger companies of the sector deliver to most of the larger markets. Smaller companies to the contrary tend to concentrate on their national market and on a limited number of export countries.

2. THE MARKET PLAYERS

2.1. Undertakings subject to the present proceedings

(6) The undertakings listed in 2.1.1 until 2.1.18 are subject to this proceeding. Most of the market players have changed names and/or ownership structure during and/or after the infringement. In order to simplify reading, the names referred to in this Decision are the names used by the cartel participants themselves during the period of infringement, or during most of it.

2.1.1. Tréfileurope

(7) Tréfileurope SA (now ArcelorMittal Wire France SA, hereafter 'Tréfileurope') was founded on 29.08.1977 as Tréfileries et Câbleries Chiers Chatillon (from 02.04.1984 until 31.07.1987 called Tecnor SA, then Tréfilunion SA., as of 16.10.1992 denominated Tréfileurope France SA, as of 09.10.1995 Tréfileurope SA and finally, as of 25.07.2007, ArcelorMittal Wire France SA[8]) and it is based in Bourg-en-Bresse, France. It offers a wide range of wire-drawing products, including PS.

(8) Tréfileurope has amongst others a factory in France, located in Sainte-Colombe. It also acquired 100% of its operational subsidiaries Fontainunion SA (now ArcelorMittal Fontaine SA) on 30.05.1989 and of Tréfileurope Italia Srl (now ArcelorMittal Verderio Srl) on 28.02.1994[9]. This led to large overlaps in human resources in the 3 companies[10].

(9) ArcelorMittal Fontaine SA (previously Fontainunion SA, hereafter 'Fontainunion') is based in Fontaine-L'Evêque, Belgium, and is active in the PS sector. It was founded on 20.12.1984. It had been owned by (…) and (…) until Fontainunion's entire stock was acquired by Usinor (via Tréfileurope) on 30.05.1989[11].

(10) ArcelorMittal Verderio Srl (until 15.02.2002 called AFT Aldé Filo Srl, then Tréfileurope Italia Srl until 24.07.2007, hereafter referred to as 'AFT' or 'Tréfileurope Italia') is based in Verderio Inferiore, Italy. It was incorporated on 15.03.1988 under the corporate name TRACOFIL Srl. Tréfileurope acquired 100% of TRACOFIL Srl on 16.12.1991. Immediately afterwards, two additional shareholders joined in exchange of the transfer of their wire business into TRACOFIL Srl: on 24.12.1991 Aldé Filo SpA with a 30% shareholding (as of that date TRACOFIL Srl changed its denomination into AFT Aldé Filo Srl) and on 01.04.1992 Acciaierie e Ferriere Lombarde Falck SpA (hereafter 'Falck')

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with a 23,077% shareholding. Tréfileurope finally acquired 100% direct or indirect control in Tréfileurope Italia on 28.02.1994.[12]

(11) From 24.12.1987 until 30.06.1999, Tréfileurope was owned and controlled indirectly also amongst others via Unimétal SA (a company incorporated under French law) by Usinor Sacilor SA. (a company organised under French law, as of 09.06.1997 called Usinor SA[13], as of 07.04.2006 called Arcelor France SA[14], now called ArcelorMittal France SA)[15]. Only in the period from 15.01.1993 until 29.12.1994, the shares of Tréfileurope (at that time called Tréfileurope France SA) were not entirely held by the Usinor Group: apart from Usinor Sacilor SA (88,02%) and Unimétal (3,51%), ARBED SA (registered under Luxembourg law) stepped in as a qualified minority shareholder (8,32%)[16].

(12) Also in a partially overlapping period, more precisely from 29.01.1993 until 01.09.1995, Tréfileurope (at that time called Tréfileurope France SA) was solely a manufacturing entity, the commercial interests of which were carried out by a joint-venture (JV) called TréfilEUROPE Sales Sarl[17].The name and the shareholders of that JV changed various times. Originally, as of 01.08.1984 when it was founded under Luxembourg law, it was called TrefilARBED Luxembourg/Saarbrücken Sàrl (hereafter 'JV TALS') and jointly owned by Arbed SA and Saarstahl AG[18]. As of 29.01.1993, the JV was jointly owned, each for 1/3, by Arbed SA, Saarstahl AG and Usinor Sacilor SA. As Usinor Sacilor SA also controlled Saarstahl AG from 15.06.1989 until at least 31.07.1993[19] and as Arbed SA did not produce any PS,(…). It should however be noted that in this period, Tréfileurope and Saarstahl/DWK continued to directly participate in the Club Zurich meetings[20]. Moreover, by agreement of 30.06.1995, the 3 JV parents (Usinor Sacilor, Arbed and Saarstahl) commonly decided to terminate the JV early,(…)[21].

(13) When Usinor Sacilor SA stepped out of the JV on 01.09.1995, its entire share in the JV was taken over 50/50 by Arbed SA and Saarstahl AG and the corporate name of the JV was changed again into TrefilARBED Luxembourg/Saar Sàrl[22]. (…) [23]. As regards Usinor's exercise of control over Tréfileurope (at that time still Tréfileurope France SA), including during the JV period, that was concretised through (i) appointments by Usinor of Tréfileurope's executive Board Members, (ii) periodic reporting on financial and strategic aspects by Tréfileurope to Usinor executives[24] and (iii) staff overlaps between the management levels of Usinor and Tréfileurope. From 1990 until 30.06.1999,

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Mr. (…) (1990-1994) and Mr. (…) (1994-1999) were chairman of the board ('*président directeur général*', or PDG[25]) of Tréfileurope, exercised the function and powers of Managing Director ('*Directeur Général*'), were employees of Usinor and their salaries were invoiced by Usinor to Tréfileurope[26].

(14) Usinor SA sold Unimétal SA, including its subsidiary Tréfileurope and the latter's subsidiaries Fontainunion and Tréfileurope Italia, on 01.07.1999 to Ispat International SA.

(15) Usinor SA itself merged with effect from 18.02.2002 with Arbed SA (Luxembourg) and Aceralia SA (Spain). The operation consisted of a complete amalgamation of all businesses of Aceralia SA, Arbed SA and Usinor SA into a new single corporate entity, 'Arcelor SA', a company registered under Luxembourg law. As of 31.12.2002, Arcelor SA held 99,56 % of Arbed SA (now ArcelorMittal Luxembourg SA), 98,91 % of Usinor SA (now ArcelorMittal France SA) and 95,03 % of Aceralia SA (now ArcelorMittal España S.A.). Arbed SA, Usinor SA and Aceralia SA continued to operate as part of the Arcelor group and are currently subsidiaries of the ArcelorMittal group (see recital (17))[27].

(16) On 01.07.1999, Unimétal SA became an indirect 100% subsidiary of Ispat International NV, which was controlled by the Mittal family, and changed its name into Ispat Unimétal SA. Ispat International NV was incorporated and organised under the laws of the Netherlands on 27.05.1997 to hold directly or indirectly certain subsidiaries involved in steel manufacturing activities. Ispat International NV remained Tréfileurope's ultimate parent company, despite a substantial number of internal changes in the corporate structure of the group[28].

(17) On 17.12.2004, Ispat International NV was renamed 'Mittal Steel Company NV'[29]. Ispat Unimétal SA was renamed 'Mittal Steel Gandrange SA'. Effective as from 03.09.2007, Mittal Steel Company NV merged into ArcelorMittal, a Luxembourg subsidiary of Mittal Steel Company NV, and on the same date ceased to exist by operation of law. ArcelorMittal subsequently merged on 13.11.2007 into Arcelor SA, thus ceasing to exist by operation of law. On the latter date, Arcelor SA was renamed ArcelorMittal. ArcelorMittal is a Luxembourg '*Société Anonyme*' but the suffix 'SA' is not part of the company name in Luxembourg[30].

(18) In addition to the 100% ownership links, not less then six persons, i.e. Mr. (…), Mr. (…), Mr. (…), Mr. (…), (…) and Mr.(…), are mentioned as simultaneously being a member of the Board of Tréfileurope (Messrs. (…) and (…) even as Chairmen) and as executive manager (i.e. Chief Executive Officer (CEO), Chief Operating Officer or Director) of Ispat International NV (and/or its subsidiary Ispat Europe BV) as from 30.06.1999 until at least the end of 2002.

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(19) In particular, Mr. (…) was Member of the Board of Tréfileurope from 01.07.1999 until 25.05.2004 and Chairman of the Board of Tréfileurope from 04.09.2000 until 05.05.2004. During that period, Mr. (…) was Deputy Director General ('*Directeur Général adjoint*') of Tréfileurope. Simultaneously, Mr. (…) was Chief Executive Officer (CEO) of Ispat International NV from 1997 until at least 29.11.2004[31].

(20) Similarly, Mr. (…) was Chairman of the Board of Tréfileurope from 01.07.1999 to 04.09.2000 and then an ordinary Member of the Board in Tréfileurope until 20.04.2001. Simultaneously, he was President and Chief Operating Officer of Ispat International NV from 1997 to 19.02.2001[32].

(21) The consolidated PS turnover of Tréfileurope in the EEA in 2001 was EUR 43 969 769[33]. The consolidated total turnover of ArcelorMittal for the year ended 31.12.2009 was EUR 46 680 000 000. The consolidated total turnover of ArcelorMittal Wire France SA for the year ending 31 December 2009 was EUR (…). In the course of the financial year ending 31 December 2009 ArcelorMittal Verderio Srl was divested by ArcelorMittal Wire France. The turnover of ArcelorMittal Verderio Srl for the year ending 31 December 2009 was EUR (…).

2.1.2. Emesa

(22) Emesa-Trefilería S.A. (hereafter also 'Emesa'), located in Arteixo (Spain), was founded on 05.12.1984[34]. From 19.10.1989 until 31.03.1995, Emesa was a fully-owned subsidiary of the Spanish state-owned company Empresa Nacional Siderúrgica, SA (also called 'Ensidesa').

(23) In 1995, following the approval of the restructuring by a Commission decision of 12.04.1994[35], the Spanish public steel industry was reorganised. On 31.03.1995, Ensidesa transferred its participation in Emesa (and Galycas, see section 2.1.3) by way of a contribution in kind to a newly created company CSI Productos Largos SA, Ensidesa remaining active as a steel manufacturer for a number of years after the divestiture. On 02.04.1995 the Spanish state contributed all the shares of CSI Productos Largos SA to the newly established holding company, CSI Corporación Siderúrgica SA, which thus obtained the control of Emesa and Galycas[36]. Also on 02.04.1995 the Spanish state acquired (via CSI Corporación Siderúrgica SA) 100% of the share capital of another newly created company, CSI Planos SA. The Spanish state remained the 100% indirect owner of Emesa and Galycas (through CSI Corporación Siderúrgica SA and later through Aceralia) until 23.07.1997, when its entire participation was gradually divested[37].

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35 XXIV Report on Competition policy, 1994, paragraph 365 and the references therein to previous Reports.

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(24) As of 23.07.1997 CSI Planos SA, until then a 100% subsidiary of CSI Corporación Siderúrgica SA, became the sole shareholder of CSI Corporación Siderúrgica SA and also of CSI Productos Largos SA (thus also of Emesa and Galycas). CSI Planos SA changed its corporate name into Aceralia Corporación Siderúrgica SA (now ArcelorMittal España S.A.), hereafter also 'Aceralia' or 'ArcelorMittal España') on 01.09.1997[38]. On the following day, on 02.09.1997, the totality of assets and liabilities of CSI Corporación Siderúrgica SA were transferred to Aceralia and CSI Corporación Siderúrgica SA was subsequently dissolved[39]. Therefore, Aceralia (previously called CSI Planos SA) took over the liabilities of CSI Corporación Siderúrgica SA for the period 02.04.1995 until 23.07.1997. Since the end of 1997 Aceralia is no longer a State-owned company. The privatisation of Aceralia was carried out in three stages. Initially, Arbed acquired a 35% share in Aceralia. Subsequently, two Spanish industrial partners – Corporación JM Aristrain and Corporación Gestamp – acquired respectively 13,242% and 6,67% of Aceralia. Finally, the remaining shares of the company still in public hands were sold in a public offer on the Spanish Stock Exchange that was finalised on 10.12.1997.

(25) As of 18.02.2002, after the merger of Aceralia (now ArcelorMittal España) with Arbed SA and Usinor SA (now ArcelorMittal France) mentioned in recital (15), Aceralia was part of the Arcelor Group, headed by Arcelor SA. After the integration of the three groups in February 2002, Arcelor SA owned more than 95% of the share capital of each of the three subsidiaries, Aceralia, Arbed and Usinor[40]. As to the merger between Arcelor and Mittal Steel Company NV, see recital (17).

(26) Emesa continued to be (directly or indirectly) fully owned by Aceralia until 2004, i.e. after the end of the infringement, when Emesa was acquired 100% by the Portuguese company Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A. (hereafter also 'Companhia Previdente') by Share Purchase Agreement dated 15.04.2004[41].

(27) With regard to the links between Emesa and Galycas (see section 2.1.3) and with other companies within the Aceralia group, it is worth noting that Emesa and Galycas had overlaps in their Boards of Directors from 1992 until at least 2002: from 1992-1997, Mr. (…) was President of both boards of directors; from 1993-1997 Mr. (…) was member of the Board of Directors of Emesa and from 1992 to 1997 of Galycas; moreover from 1997-2000 Aceralia Productos Largos SA (100% subsidiary of Aceralia Corporación Siderúrgica SA) was sole administrator ('administrador único') and from 2000-2002 Aceralia Redondos Comercial SA was equally sole administrator in both companies[42]. Aceralia[43] explains that the General Managers of Emesa and Galycas were appointed by Aceralia but that each such manager remained responsible for his own financial results and that there would be no detailed hierarchical control regarding the

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daily operation of these companies. However, Aceralia also confirms that the management of Emesa and Galycas had reporting duties on financial issues[44].

(28) The total PS turnover of Emesa in 2001 in the EEA was EUR 24 513 197[45] and its consolidated world-wide turnover in 2009 was EUR 27 125 319.

2.1.3. Galycas

(29) Industrias Galycas, S.A. (hereafter also 'Galycas'), with its registered office in Vitoria (Spain), was founded in 1963 and exists under its current name and corporate form since 03.07.1972. Ensidesa acquired Galycas on 30.04.1992.

(30) Like Emesa (see recitals (23) to (26)), from 02.04.1995 Galycas was a 100% subsidiary first of CSI Corporación Siderúrgica SA (via CSI Productos Largos SA) and then of Aceralia[46]. From 18.02.2002, Galycas continued to be (directly or indirectly) fully owned by Aceralia (now ArcelorMittal España S.A.) until 2004, i.e. after the end of the infringement, when it was acquired 100% by Companhia Previdente by a Share Purchase Agreement dated 15.04.2004[47]. Concerning Galycas' links with Emesa and other companies of the Aceralia group see recital (27).

(31) In 2001, Galycas' total PS turnover in the EEA was EUR 6 348 809[48] and its consolidated world-wide turnover in 2009 was EUR 9 140 514.

2.1.4. Socitrel

(32) SOCITREL - Sociedade Industrial de Trefilaria, SA (hereafter also 'Socitrel'), based in Trofa (Portugal), is a producer of, amongst others, PS, mainly active in Spain and Portugal. It exists since 1971. Between 1994 and the end of 1998, Companhia Previdente directly owned 21,2% of Socitrel and 70% of Preside SGPS Sociedade Gestora de Participações Sociais (hereafter Preside SGPS) which, in turn and throughout the same period, directly owned 70,6% of Socitrel[49]. Between 30.12.1998 and the end of 2002, Companhia Previdente owned 100% of Preside, SGPS and directly and indirectly owned 91,8 % to 93,7 % of Socitrel[50]. At least between the beginning of 1994 and the end of 2002, there were numerous and strong personnel links between Socitrel and Companhia Previdente: the two companies had the same President (Mr.(…)) and several other overlapping members in their respective boards of directors (Messrs.(…), (…),(…)and(…))[51].

(33) Socitrel's total PS turnover in the EEA in 2001 was EUR 12 169 481.[52] The consolidated world-wide turnover of Companhia Previdente in 2009 was EUR 125 904 527.

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2.1.5. Tycsa/ Trefilerías Quijano

(34) Trenzas y Cables de Acero SA (later **Global Steel Wire SA**, hereafter 'GSW'), a company incorporated under Spanish law, was founded by the Borell family on 17.07.1951. On 10.06.1993 it incorporated a company denominated Trenzas y Cables, S.L. (now called **Moreda-Riviere Trefilerías S.A.**, see recital (37), hereafter 'MRT'), with registered offices in Cerdanyola del Vallès (Barcelona, Spain), and which it fully owns since then. Trenzas y Cables, S.L. was active in the production and sales of PS until it set up, on 26.03.1998, the company **Trenzas y Cables de Acero P.S.C., SL** (with registered offices in Santander, Spain, hereafter 'Tycsa PSC')) to which it only transferred its PS production[53],while thus retaining the PS sales activities. Only as of March 2002, Tycsa PSC started selling its products directly to its clients.[54] References to 'Tycsa' (an abbreviation for **T**(renzas) **y C**(able)**s** (de) **A**(cero)) or ' the Tycsa companies' in this Decision can cover one, two, three or all of the four legal entities: Trenzas y Cables de Acero SA (now GSW), Trenzas y Cables S.L. (now MRT), Tycsa PSC and Trefilerías Quijano S.A. (see more on this company in recital (41) onwards).

(35) Trenzas y Cables de Acero SA merged on 22.06.1996 with the company Nueva Montaña Quijano Siderúrgica SL[55], a subsidiary of Nueva Montañ Quijano, SA (a company belonging to the 'Celsa Group', see recital (36))[56], into a newly created company, which subsequently changed its denomination into 'Global Steel Wire SA' on 19.10.1996. As stated in recital (34), GSW's control over Trenzas y Cables S.L. has been continuous until today.[57] From 26.03.1998 until today, GSW has also indirectly held 100% of Tycsa PSC, via Trenzas y Cables SL (now MRT)[58]. In addition, GSW was the sole administrator (*'administrador único*') in these companies i.e.: (i) in Trenzas y Cables SL from at least 1997 until the end of 2002 and (ii) in Tycsa PSC, first from 1998 until 2001 through the nomination of Trenzas y Cables SL as sole administrator (which GSW controlled 100% and in which GSW was itself sole administrator, see recital (34)) and then from 2002 until at least 2004 directly as sole administrator itself. GSW was also sole administrator from at least 1997 until the end of 2004[59] in a third subsidiary equally involved in the cartel, i.e. Trefilerías Quijano S.A. (see more on this company in recital (41) onwards).

(36) The major shareholders of GSW are, at least from 31.12.1993 onwards[60], Nueva Montaña Quijano, SA (a company belonging to the Celsa group, which changed its denomination into Inversiones Picos de Europa, SA in 2005[61]), Compañia Española de Laminación, SL (belonging to the Celsa group), Nervacero SA (also belonging to the Celsa group) and, since 2002, Coal Trade, SL[62]. The

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Celsa group does not have an ultimate controlling legal entity, but is controlled by the Rubiralta Vilaseca family[63]. Hence, GSW, whilst being part of the Celsa group, does not have a controlling corporate shareholder.

(37) On 27.12.2002, Trefilerías Moreda SA, a company incorporated in Gijón, Spain (in the 'Celsa group' since 1990),[64] absorbed Trenzas y Cables, S.L. and Riviere SA, and changed its denomination into Moreda-Riviere Trefilerías S.A.

(38) There was a large overlap of personnel between the 'Celsa' companies and in particular between the 'Tycsa' companies, including Trefilerías Quijano S.A. First, most of the sales personnel employed primarily by Trenzas y Cables, S.L. were transferred to Tycsa PSC end February 2002 when the latter took up the sales of its own PS production (wire and strands)[65] (Ms. (…) and Messrs.(…), (…) and(….))[66]. For the same reason, Mr. (…) while remaining employed by Trefilerías Quijano S.A. (where he was employed at least as from 30.04.2000), was simultaneously employed by Tycsa PSC as of March 2002[67]. Moreover, as of the end of 2001 Tycsa PSC and Trefilerías Quijano S.A. had a single General Manager (Mr.**(…)**) and as of February 2002 a single sales manager (Mr.**(…)**) [68]. This remained so until the beginning of 2003 (see also recitals (41) and (42))[69].

(39) **Mr. (…)** played a key role in GSW, Trenzas y Cables S.L. (now MRT), Tycsa PSC and Trefilerías Quijano S.A. all throughout the period 1992 until at least the end of 2002: i) in GSW as General Manager ('Director General') as of November 2001; ii) in Trenzas y Cables S.L. from 01.04.1994 until the end of 2002, first as Sales Manager ('Director Ventas') from 01.04.1994-31.12.1996, then as General Manager from 01.01.1997-31.12.2001, and finally from 19.11.2001-2002 as physical person representing GSW (being on GSW's payroll), GSW being designated sole administrator ('administrador') of Trenzas y Cables SL; (iii) in Tycsa PSC from 26.03.1998 until at least 21.07.2003 as physical person representing first Trenzas y Cables SL until 2002 and then from 2002 until 2004 GSW, both companies being designated sole administrator in Tycsa PSC; (iv) and finally in Trefilerías Quijano S.A. from 2001 until at least 2004 as physical person representing GSW (which was the sole administrator of Trefilerías Quijano S.A.)[70]. It is also to be noted that Mr. (…) was Sales Director from 1992 until 31.03.1994 in Nueva Montaña Quijano Siderúrgica S.L. (which Trenzas y Cables de Acero SA, now GSW, absorbed in 1996, see recital (35))[71].

(40) As noted in section 9.2.2 below the terms GSW and Celsa are often interchanged by the cartel participants and the 'Tycsa' companies and Trefilerías Quijano S.A. are also often mentioned together as 'Celsa'. Also, common quotas were often allocated to 'Tycsa' and Trefilerías Quijano S.A..

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(41) **Trefilerías Quijano S.A.**, (hereafter Trefilerías Quijano) based in Los Corrales de Buelna, Santander (Spain), is a PS producer mainly active in Spain and Portugal. It was founded on 29.12.1986. Trefilerías Quijano states that it has no information available on the ownership relations before 19.10.1996 (as of which date GSW held 90, 61% in it), but that from 16.06.1997 to 25.12.2000, it was held 100 % by GSW[72]. Thereafter and until 29.07.2004, it was mainly (directly and indirectly) owned by Celsa (33 %), GSW (45 %) and Nervacero SA, which is also part of the Celsa group (22%)[73]. The Commission is, however, in possession of ample contemporaneous evidence (see further section 9.2.2 and list of meetings in Annex 4) that Trefilerías Quijano was considered part of the Celsa/GSW group at least as of **15.12.1992**: in minutes of a meeting on that date, Trefilerías Quijano and Tycsa are mentioned together, with one quota for the Spanish and Portuguese markets. Other examples are the meeting of 16.03.1993 between Spanish players, where quotas for the Spanish and Portuguese markets were allocated to amongst others 'Celsa', and the meeting of 20.04.1993 where Trefilerías Quijano and Tycsa are again mentioned together as 'Celsa' for purposes of fixing the quotas for the Spanish and Portuguese markets[74].

(42) Also, GSW supplied the raw material (wire rod) at an agreed transfer price to both Trefilerías Quijano and Trenzas y Cables SL/Tycsa PSC. According to Tycsa PSC[75], each of these three companies followed its own commercial policy and kept for a long period of time distinct management teams. Nonetheless, the co-ordination of activities and decisions between Trefilerías Quijano and the other Tycsa companies has increased over time, since: (i) GSW was the sole and common administrator (*'administrador único'*) in the boards of both Trefilerías Quijano and Trenzas y Cables S.L from 1997 until the end of 2002, and in the board of Tycsa PSC as of 2002 (where GSW was represented by Mr.(…))[76]; (ii) from 1998 until 2003 it was decided that Trefilerías Quijano would sell mainly in the domestic market, specialise in the production of wire and that the strand that it would need to sell to its customers would be bought from Tycsa PSC[77]; (iii) in March 2002 Mr. (…) was employed by Tycsa PSC, while at the same time remaining employed by Trefilerías Quijano S.A. (where he already worked at least since 30.04.2000) and (iv) finally, Tycsa PSC and Trefilerías Quijano had a common General Manager as of the end of 2001 and a common Sales Manager as of early 2002 until the beginning of 2003 (see recital (38)).

(43) In 2001, GSW, including Tycsa PSC and Trenzas y Cables SL had a total PS turnover in the EEA of EUR 51 569 000.[78] The worldwide consolidated turnover of GSW was EUR (…) in 2009. In 2001 Trefilerías Quijano S.A. only

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sold PS in Spain and Portugal and its total PS turnover was EUR 6 257 146.[79] Its worldwide consolidated turnover was EUR (…) in 2009.

2.1.6. Austria Draht

(44) The company voestalpine Austria Draht GmbH (hereafter also 'Austria Draht'), based in Bruck an der Mur (Austria), has existed under different denominations (amongst others AUSTRIA DRAHT Gesellschaft m.b.H) since 18.08.1981.[80]

(45) From 24.02.1988 until 03.12.2002, Austria Draht was owned 95% by VOEST-ALPINE Stahl Gesellschaft m.b.H. and to 5% by Donauländische Baugesellschaft m.b.H. Further to an internal restructuring, on 03.12.2002, voestalpine Bahnsysteme GmbH81 acquired as a full legal successor of VOEST-ALPINE Stahl Gesellschaft m.b.H. 99, 95% of the shares in Austria Draht82. Both VOEST-ALPINE Stahl Gesellschaft m.b.H. and voestalpine Bahnsysteme GmbH & Co KG are fully owned subsidiaries ('Divisionsleitgesellschaften') of the Austrian holding company voestalpine AG. The Board of Directors of voestalpine AG is composed, amongst others, of representatives of these 'Divisionsleitgesellschaften'. As regards the advisory board of Austria Draht, it is composed of representatives of the 'Divisionsleitgesellschaft' voestalpine Bahnsysteme GmbH & Co KG. Austria Draht has to report quarterly (and certain financial data are even circulated monthly) to its own supervisory board and to voestalpine Bahnsysteme GmbH & Co KG. As regards its ultimate mother company voestalpine AG, Austria Draht has to report to it its general financial figures to it on a monthly /quarterly basis83. Austria Draht's accounts are consolidated with those of voestalpine Bahnsysteme GmbH & Co KG, which are in turn forwarded to voestalpine AG84.

(46) Austria Draht entrusted its marketing/sales in Italy to an agent, (…) , which was managed and represented by Mr. (…). Mr. (…) had been Austria Draht's sales agent in Italy since 1984. He was not authorised to sign contracts, which were always concluded directly between Austria Draht and the client (by express confirmation of any order). This is confirmed by voestalpine AG[85] and by the sales agent contract[86].

(47) The worldwide consolidated turnover of voestalpine AG was EUR 8 550 000 000 in the business year 01.04.2009-31.03.2010. In its fiscal year 01.04.2001-31.03.2002, it had a PS turnover in the EEA of EUR 18 270 306[87] (exclusively through sales by voestalpine Austria Draht GmbH).

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2.1.7. Fapricela

(48) Fapricela Indústria de Trefilaria SA (hereafter also 'Fapricela') is based in Coimbra, Portugal, and started its industrial activities in 1977. It is an independent producer of PS mainly active in Spain and Portugal. Its PS turnover in the EEA in 2001 was EUR 10 813 222[88]. Its consolidated worldwide turnover in 2009 was EUR (…).

2.1.8. Proderac

(49) Proderac Productos Derivados del Acero S.A. (hereafter also 'Proderac') is based in Catarroja, Spain, and was founded on 01.01.1966. It is an independent PS producer active mainly in Spain. Its PS turnover in the EEA in 2001 was EUR 1 104 472[89]. In 2009, its worldwide consolidated turnover was EUR 6 435 968.

2.1.9. Westfälische Drahtindustrie (WDI)

(50) Westfälische Drahtindustrie GmbH (hereafter also 'WDI') is based in Hamm, Germany. It exists since 1856[90]. From 1964 to 1987 it was first part of the Krupp and then of the Klöckner Group (Klöckner-Werke AG). Since 03.09.1987 it was owned 98 % by Westfälische Drahtindustrie Verwaltungsgesellschaft mbH which changed its legal form on 15.02.1999 [91], and to 2% by Hammer Drahtbeteiligungsgesellschaft mbH. Since 01.07.1997, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH is owned 2/3 by the Managing Director Mr. (…) (through Pampus Industriebeteiligungen GmbH & Co. KG) and to 1/3 by Ispat Hamburger Stahlwerke GmbH (now ArcelorMittal Steel Hamburg GmbH)[92]. Mr. (…) is not only Managing Director ('Geschäftsführer') of WDI but also of Pampus Industriebeteiligungen GmbH & Co. KG and Hammer Drahtbeteiligungsgesellschaft mbH[93].

(51) On 06.05.2003, i.e. after the end of the infringement, WDI sold its PS business to Nedri Spanstaal BV and since 14.05.2003; it has a 30% participation in Nedri.[94] In its fiscal year 01.10.2000/30.09.2001, WDI's PS turnover in the EEA was EUR 15 192 783.[95] In 2009 the worldwide consolidated turnover of Pampus Industriebeteiligungen GmbH & Co. KG was EUR 627 000 000.

2.1.10. Nedri Spanstaal (Nedri)

(52) Nedri Spanstaal BV (hereafter also 'Nedri'), based in Venlo in the Netherlands, is one of the largest PS producers in the European Union ('EU'). Its roots go back at least until 1969[96], but it has changed names several times. From 1969 until 28.02.1994, Nedri was controlled directly or indirectly by

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Hoogovens Groep BV. From 01.05.1987, this indirect control took place via Hoogovens Industriële Toeleveringsbedrijven BV, which changed its name into Hit Groep BV on 28.02.1994 when the Hit Groep BV became an independent entity after its sale to three participating enterprises. Between 01.05.1994 and 31.12.1997, Nedri was controlled by Nedri Draht Beteiligungs GmbH, which was 70% owned by Hit Groep BV and 30% by Thyssen Draht AG. On 31.12.1997, Hit Groep BV took over the 30% stake of Thyssen Draht AG in Nedri Beteiligungs GmbH and on the same date it took over all shares in Nedri from Nedri Beteiligungs GmbH. It remained the 100% parent company of Nedri until 17.01.2002[97].

(53) Except from 01.05.1994 to 31.12.1997[98], the control of Hit Groep BV over Nedri Spanstaal BV (as over the other companies which HIT Groep controlled) was secured via regular[99] steering group meetings from 1990 until the end of 2001. The steering group was composed of Nedri's employees Messrs. (…) (General Director, 1990-2004), (…) (Head of Sales, 1990-2002), (…) (Controller, 1991-2004) and (…) (Head of Production, 1990-2004) and of HIT Groep BV's employees Mr. (…) (General Director, 1990-2004) and Mr. (…) (Controller/Financial Director, 1990-2004). Mr.(…) worked first in Hit Groep as Assistant Controller (1989-1991) and was then employed by Nedri as Head of Administration (1991-18.11.2004 at least).[100]

(54) An instruction ('*Directie-Instructie*') of May 1994[101], signed by HIT Groep BV and Nedri, further provides that HIT Groep BV had to approve the annual plan of Nedri, including the provisional statement of profits and losses, balance sheet, as well as the provisional financial, personnel, marketing and investment plans. It also provides that every three years, HIT Groep BV had to approve Nedri's operational plan and that HIT Groep's prior approval was necessary for *inter alia* acquisitions of real property, important lease contracts or loans, changes to employment contracts of directors, starting of important litigation, important investments and communication in the media. Finally, the instruction provides that Nedri had the obligation to report at least monthly to HIT Groep on *inter alia* financial results, liquidity, commercial development and progress of projects. The instruction concludes that compliance with it by Nedri's directors is compulsory.

(55) On 17.01.2002, Nedri was acquired by Vadeho III BV.[102] Less than a month later, on 15.02.2002, Vadeho III BV sold 95% of its stake in Nedri to private investors and 5% to the Nedri management.[103] By an agreement dated 06.05.2003 Nedri took over the PS-activities from WDI. Since 14.05.2003 WDI holds a 30% share in Nedri[104] and since 20.11.2006, Ovako Holdings BV,

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which is itself owned 100% by Pampus Stahlbeteiligungs GmbH, holds 70% of Nedri (see recital (68)).

(56) Nedri's 2001 PS turnover in the EEA was EUR 31 641 636[105]. Its 2009 worldwide consolidated turnover was EUR 67 420 000. The 2003 world-wide turnover of the Hit Groep BV was EUR 69 345 000. According to HIT Groep BV, they would no longer have any turnover since the sale of their last stakes on 1 November 2004[106].

2.1.11. DWK Drahtwerk Köln (DWK)

(57) DWK Drahtwerk Köln GmbH (hereafter also 'DWK'), with registered office in Köln, Germany, exists in its current form since 09.02.1994. It is a successor of 'TréfilEUROPE Drahtwerk Köln GmbH', which was renamed TréfilEUROPE Deutschland GmbH in 1992[107] and which filed for bankruptcy in 1993. When the company was (re)founded on 09.02.1994 as TréfilEUROPE Drahtwerk Köln GmbH, it did not take over liabilities of the bankrupt company. On 25.07.1995, TréfilEUROPE Drahtwerk Köln GmbH was renamed DWK Drahtwerk Köln GmbH.

(58) Since 09.02.1994, DWK has been indirectly wholly owned by Saarstahl AG, which has its registered office in Völklingen, Germany.[108] As already mentioned in recital (12) above, Saarstahl AG was controlled by the Usinor-Sacilor Group from 15.06.1989 until at least 31.07.1993. At the latter date, bankruptcy proceedings were opened for Saarstahl AG[109]. Saarstahl AG became only completely independent from the Usinor-Sacilor group on 07.01.1994 when it was sold to the Saarland region. DWK´s management is obliged to present its yearly business plan to the Board of Directors of Saarstahl AG, which approves it. It further has to provide quarterly and monthly reports to Saarstahl AG in execution of the yearly business plan.[110]

(59) Prior to 09.02.1994 and more specifically since 1985, Mr. (…) was CEO ('*Geschäftsführer*') of TrefilARBED Drahtwerk Köln GmbH (later renamed TrefilEUROPE Deutschland GmbH), which until the date of its bankruptcy on 01.09.1993, was owned by Saarstahl AG (successor of Arbed Saarstahl GmbH) first indirectly via the intermediate company TechnoARBED Deutschland GmbH (in 1986 renamed TechnoSaarstahl GmbH) and since 01.01.1993, when Techno Saarstahl GmbH was absorbed by Saarstahl A.G, directly[111]. Simultaneously, Mr. (…) acted as CEO in the JV TALS from 1984 until 1993, in which TechnoARBED Deutschland GmbH had a 50% stake holding[112]. As of 29.01.1993 he became product group manager in the JV then renamed Tréfileurope Sales Sarl (see recital (12)).[113] As of its incorporation on

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09.02.1994, Mr. (…) was moreover CEO ('*Geschäftsführer*') of TréfilEUROPE Drahtwerk Köln GmbH (subsequently DWK) until late 2002.[114]

(60) In 2001, DWK's global turnover amounted to EUR 58 126 445 and its PS turnover in the EEA was EUR 12 531 707[115]. The worldwide consolidated turnover of Saarstahl was EUR 1 369 810 397 in 2009.

2.1.12. Fundia

(61) **Fundia Hjulsbro AB** (now Ovako Hjulsbro AB, hereafter 'Fundia Hjulsbro'), a PS producer based in Linköping (Sweden), exists since 1993 as a legal successor of Hjulsbro Spännarmering AB, a company founded in 1985.

(62) **Fundia Wire Oy Ab** (now Ovako Wire Oy Ab, until 04.11.1993 Dalsbruk Invest Oy Ab, then Fundia Finland Oy Ab) owned Fundia Hjulsbro 100% from 01.01.1994 until 31.12.1995 when it transferred its subsidiary to its sister company **Fundia Bar & Wire Processing AB** (now Ovako Bright Bar AB, hereafter 'Fundia Bar & Wire').

(63) Antinos Oy (on 25.03.1996 renamed **Fundia Dalwire Oy Ab,** now Ovako Dalwire Oy Ab, hereafter 'Fundia Dalwire'), based in Dalsbruck (Finland), acquired the wire drawing operations business unit of Fundia Wire Oy Ab (now Ovako Wire Oy Ab) on 01.01.1996[116]. Before that date, this business unit already operated under the name 'Fundia Dalwire' within the group. Ovako Wire Oy Ab is no longer active in PS since the split off of this business unit, but still produces wire rod[117]. Since 01.01.1996 Fundia Bar & Wire has also been the exclusive owner of Fundia Dalwire[118]. This 100% ownership of Fundia Hjulsbro and Fundia Dalwire by Fundia Bar & Wire remained unchanged until 01.01.2009, when they were sold intra-group within the Pampus undertaking (see further recital (68)).

(64) Both Fundia Hjulsbro and Fundia Dalwire are members of ESIS, participate in the Eurostress Information Service ('ESIS') meetings as such and produce PS.

(65) Both also had at all times reporting duties to their mother company, Fundia Bar & Wire[119]. Moreover, at least Fundia Dalwire and Fundia Bar & Wire had an important overlap in their Board of Directors: **Mr. (…)** is Managing Director of Fundia Bar & Wire as from 13.09.1995 until today[120] and was Managing Director of Fundia Dalwire from 01.01.1998 until 31.08.2003[121].

(66) Apart from Mr.(…) , the Fundia staff referred to in the contemporaneous notes and corporate statements in the possession of the Commission are Messrs.(…) , (…) and (…) .[122] It is to be noted in this context

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that the cartel participants always referred to Fundia without further specification of the legal entities concerned. This lack of specification in the perception of the other cartel members as well as the fact that both Fundia Hjulsbro and Fundia Dalwire sold simultaneously to (…) [123] (see section 9.1.4), shows that the two companies operated as a single economic entity. Hence, the Commission refers to any one or both companies as 'Fundia' in this Decision.

(67) At least from 01.01.1995 until 10.05.2005 Fundia Bar & Wire was a 100 % direct subsidiary of Fundia AB. The latter was owned by Rautaruukki Holding AB (50 %) and by Norsk Jern Holding AS (50 %) until 01.04.1996. As of that date Rautaruukki Holding AB increased its ownership in Fundia AB to 100%[124]. Rautaruukki Holding AB was itself a 100% direct subsidiary of the ultimate mother company, Rautaruukki Oyj[125].

(68) On 10.05.2005, i.e. after the likely date of cessation of the infringement, Rautaruukki Holding AB contributed three of its subsidiaries – i.e. Fundia Bar & Wire (including the subsidiaries Fundia Hjulsbro AB and Fundia Dalwire Oy AB), Fundia Special Bar AB and Fundia Wire Oy – to a newly created Joint Venture, 'Oy Ovako Ab', a Finnish company with headquarters in Sweden.[126] Rautaruukki Holding AB owns this company with Aktiebolaget SKF (26,5 %) and Wärtsilä corporation (26,5 %), who respectively transferred Ovako Steel AB and Imatra Steel Oy to it.[127] From then, Oy Ovako Ab was the ultimate 100% parent of Fundia Bar & Wire and thus of Fundia Hjulsbro and Fundia Dalwire.[128] On 20.11.2006[129], at least the 3 last-mentioned companies were acquired by Ovako Holdings BV, registered in Teteringen (Netherlands), which is the ultimate parent company in the Ovako Group. Since the same date (20.11.2006), Ovako Holdings BV holds 70% of the shares in Nedri Spanstaal BV. As of 17 October 2007, Ovako Holdings BV is owned 100% by Pampus Stahlbeteiligungs GmbH[130], a company owned by the same natural persons as those which own Pampus Industriebeteiligungen GmbH & Co. KG (which owns WDI, see recital (50))[131].

(69) Fundia is PS market leader in Norway, Sweden, Finland and Denmark[132]. In 2001, Fundia Hjulsbro had a total PS turnover in the EEA of EUR 13 219 000 and Fundia Dalwire had a total PS turnover in the EEA of

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125 (…) Rautaruukki Oyj is the correct legal name, and means 'Rautaruukki Corporation' in English. (See Articles of Association of Rautaruukki Oyj and references to Rautaruukki Oyj on the website of Rautaruukki, (…).

126 (…)

127 (…)

128 (…)

129 See approval Commission decision of 10.11.2006, case n° COMP/M.4384 Hombergh/De Pundert/PIB/Ovako; Rautaruukki Oyj Stock Exchange Release 21.02.2007 at 11.30 - Roundup of Rautaruukki in 2006, available in file under [28978-28979].

130 Rautaruukki Oyj´s Interim report – January – September 2006, p.3 (http://www.ruukki.com/www/publications.nsf/materials/ACB625C8A3320F9AC225722800377A72/$File/interim306_en.pdf?openElement and Ovako in (http://www.ovako.com/index.asp?r=3421), and Ovako, (…).

131 (…)

132 (…)

EUR 7 628 000. No other companies within the Rautaruukki Group produced or sold PS.[133] Fundia agreed with (…) to sell to it during 2001 wire and strand in Norway, Finland and Sweden for a value of EUR 5 085 300[134]. The worldwide consolidated turnover of Rautaruukki Oyj was EUR 1 950 000 000 in 2009. The 2009 worldwide consolidated turnover of Ovako Bright Bar AB was EUR 108 656 000, of Ovako Hjulsbro AB EUR 18 086 000 and of Ovako Dalwire Oy AB EUR 5 548 000.

2.1.13. Italcables (ITC)

(70) Italcables S.p.A., founded in 1974, is an Italian PS producer, based in Sarezzo (BS)[135]. In the period from at least 01.01.1995 until 31.12.2002 it was owned 99, 9% by Antonini S.p.A., having also its registered offices in Sarezzo (BS), Italy.

(71) Italcables Srl (until 18.04.2000 denominated Italcables Sud Srl), used to produce PS until it was absorbed by Italcables S.p.A.on 12.09.2002[136]. In the period from 01.01.1995 until 19.01.1998 it was owned 50% by Italcables S.p.A., and 50% by Toto SpA and then Co.Ind SpA (subsequently named Ge. Par SpA). From 20.01.1998 until 02.03.2002 it was owned 99% by Italcables S.p.A.and from 02.03.2002 until 12.09.2002 owned 100% by Italcables S.p.A.[137]. Italcables Srl and Italcables S.p.A.are hereafter also interchangeably referred to as 'ITC'.

(72) Mr. (…) worked for Redaelli SpA from 1955 to 1968. Mr.(…) , Ms.(…) , Mr.(…) , Ms.(…) , Ms. (…) amongst others, have been directly involved in the cartel meetings[138] and had overlapping management functions in two or more companies, as set out below (see recital (73)).

(73) In the period from at least 01.01.1995 to 12.09.2002, Mr. *(…)* had management functions in both Italcables S.p.A. (where he held these management functions until at least 31.12.2002) and Italcables Srl. From at least 01.01.1995-12.09.2002, Ms. *(…)* also had overlapping functions as, on the one hand, Managing Director and President in Antonini S.p.A. (from 11.04.1995 until at least 25.01.2008 and from 11.04.1995-04.09.2006, respectively) and, on the other hand, as Managing Director and thereafter board member in ITC (from 1995 to 1999 and from 2000 to 2005, respectively). Moreover, while she was working for ITC she was on the payroll of Antonini in 2001 and of Antonini and ITC in 1999, 2000 and 2002. From at least 01.01.1995- 12.09.2002, Mr. *(…)*had overlapping functions in Italcables Srl and Italcables S.p.A.(until at least 31.12.2002) and was Managing Director of Antonini S.p.A. from 11.04.1995-15.01.1998. Ms. *(…)* had overlapping functions from 01.01.1995-12.09.2002 in Italcables Srl and Italcables S.p.A.(until at least 31.12.2002) but was paid during this whole period by Antonini S.p.A.. Ms. *(…)* had overlapping functions from 01.01.1995 until at least 31.12.1996 in Italcables Srl and Italcables S.p.A. and

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was a Member of the Board of Antonini S.p.A. from 11.04.1995 until at least 31.12.2002.[139]

(74) Italcables S.p.A. entrusted its marketing/sales in France to an agent, Mr. (…), who was operating under the company (…).[140]

(75) Italcables S.p.A.'s PS turnover in the EEA in 2001 was EUR 22 181 376.[141] The total world-wide turnover of Antonini S.p.A. was EUR 451 754 in 2009.

(76) Companhia Previdente acquired 100% of Italcables S.p.A.'s capital from Antonini S.p.A. and the other minority shareholders on 10.10.2005[142]. The turnover of Italcables S.p.A. in 2009 was EUR 47 725 143.

2.1.14. Redaelli

(77) Redaelli Tecnasud SpA was set up in 1979 as a JV between the then holding company of the Redaelli Group, Giuseppe & Fratello Redaelli SpA, and INSUD SpA, Iniziative per il Sud, now Sviluppo Italia. Registered in Caivano, Italy, it was active in the production and sale of 3-wire and 7-wire strand as well as of other types of steel.

(78) From 20.12.1985[143] until 31.12.2003 (see recital (79)), Redaelli Tecnasud SpA was 100% controlled by Redaelli Tecna S.p.A., registered in Cologno Monzese Mi, Italy. Redaelli Tecna S.p.A. had been founded on 18.09.1981 as the new holding company of the group following the financial crisis of the previous holding company. On 19.01.1982 it took over the participation of Giuseppe & Fratello Redaelli SpA in Redaelli Tecnasud SpA.

(79) The current structure of the group is the result of the merger through absorption of the following companies into Redaelli Tecna S.p.A. on 31.12.2003: Redaelli Tecna Cordati SpA, TECI SpA, Redaelli Tecnasud SpA, Maroni Srl, Tecfin SpA and Redaelli Tecna Nastro Srl. Redaelli Tecna S.p.A. also set up Deriver Srl (hereafter 'Deriver') on 18.04.1990 and controls it since then[144]. (…) [145]. Redaelli Tecnasud SpA and Redaelli Tecna S.p.A. are hereafter also interchangeably referred to as 'Redaelli'. Redaelli was taken over by the Russia-based OAO Severstal on 30.07.2008.

(80) (…) [146] [147]

(81) In the trade federation meetings of ESIS and in the anti-competitive meetings subject of this Decision, Redaelli was mostly represented by Messrs. (…), (…), (…), (…) and (…). The latter three persons were employed by Redaelli Technasud SpA[148].

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(82) Redaelli Tecnasud SpA's PS turnover in the EEA in 2001 was 24 030 340[149]. Redaelli Tecna S.p.A.'s consolidated world-wide turnover in 2009 was EUR 63 410 524.

2.1.15. CB Trafilati Acciai (CB)

(83) CB Trafilati Acciai S.p.A. (hereinafter 'CB'), founded in 1975, is an independent Italian PS producer, with registered office in Tezze sul Brenta (VI).[150] At least from the beginning of 1995 until the end of 2002, CB's shares were held, each for one half, by two natural persons, Messrs. (…) and(…) . Mr.(…), Mr.(…)., Mr. (…) and Mr. (…) represented the company at the cartel meetings between at least 1995 until 2002. Whilst Messrs.(…) , (…) and (…) are CB employees, listed in the company's organisation chart[151], Mr. (…) - who was also sales agent of Austria Draht (see recital (46)) - was not. According to CB, Mr. (…) acted for CB without any written representation or agency contract[152].

(84) CB's PS turnover in the EEA in 2001 was EUR 21 770 675[153] and its world-wide consolidated turnover in 2009 was EUR 51 058 169.

2.1.16. I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.

(85) I.T.A.S. - Industria Trafileria Applicazioni Speciali - S.p.A. (I.T.A.S. SPA, hereinafter 'Itas') is an independent PS producer, registered in Mantova, Italy.[154] From 1996 until the end of 2002, its shares were for a majority held by natural persons[155].

(86) Itas was founded in 1939 and began selling PS on the European market after acquiring type approval, first, from 1995 for sales in Germany, then, from 1996 in Spain, and from 2001 onwards in France[156]. Itas sold PS in the EEA as defined in this Decision (in particular in Italy, Germany, Austria, France, and Spain) in 2001[157], corresponding to a turnover of EUR 15 386 712[158] and its world-wide consolidated turnover in 2009 was EUR 33 729 702.

2.1.17. Siderurgica Latina Martin (SLM)

(87) Siderurgica Latina Martin S.p.A. (hereinafter referred to as 'SLM') is a producer of 3-wire and 7-wire strand as well as of other types of steel, registered in Ceprano (Frosinone), Italy. From at least 31.12.1996 until 23.07.2004, SLM is 100% controlled by companies belonging to the ORI Martin group.[159] From 31.12.1996 until 31.12.1998[160], its shares were held 95, 28% by ORI Martin Acciaieria e Ferriera di Brescia SpA (hereafter 'ORI Martin SpA'), the main

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150 Website www.steelgroup.com, (…).
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operational company within the ORI Martin group, and 4,72% by Finoger SpA.[161] ORI Martin SpA itself was owned by Lucky Srl, Partenope SpA (later called Partenope & C. Sas) and Finoger SpA between 01.01.1995 and 31.12.1998.

(88) On 31.12.1998, the financial holding company established under Luxemburg law ORI Martin S.A. acquired 100% of SLM from ORI Martin SpA[162] of which it ceded 2% to ORI Martin Lux SA on 31.10.2001. As regards ORI Martin SpA, as of 01.01.1999, it was owned 90% by ORI Martin S.A. and owned 10% by Finoger SpA. On 01.01.2001 ORI Martin S.A. acquired 100% of ORI Martin SpA of which it ceded 2% to ORI Martin Lux SA on 01.01.2002.[163]. The entire shareholding in SLM was sold on 23.07.2004 to Private Equity & Partners SA. Ori Martin SpA re-acquired exclusive control over SLM on 26.02.2008[164]. On the same date, ORI Martin SpA was repurchased by ORI Martin S.A. and ORI Martin Lux SA, who then held 98% and 2% respectively[165]. This control over SLM and ORI Martin SpA, respectively, has been continuous since 26.02.2008.

(89) Mr. (…) worked as an employee of ORI Martin SpA dealing mainly with export sales from February 1987 to 31.12.1995. From 27.06.1996 until at least the end of 2006, Mr. (…) worked as General Managing Director for SLM[166]. ORI Martin SpA continued to pay his salary until the end of December 2001.[167]

(90) SLM's EEA turnover in the PS sector in 2001 was EUR 19 688 000.[168] The worldwide consolidated turnover of ORI Martin S.A. was EUR (…) in 2009. The total turnover of SLM in 2009 was EUR (…)

2.1.18. Trafilerie Meridionali (Trame)

(91) Trafilerie Meridionali SpA (now Emme Holding S.p.A., hereinafter referred to as Trame) is a producer of 3-wire and 7-wire strand as well as of other types of steel, registered in Chieti Scalo, Italy. Between at least the beginning of 1997 until the end of 2002, a majority share of the capital was held by the Masci family. At least Messrs. (…) (Managing Director) and (…) regularly attended the cartel meetings subject of this Decision. On 28.04.2008, Trafilerie Meridionali SpA changed its denomination into Emme Holding S.p.A. and set up a newly created subsidiary called Trafilerie Meridionali Srl which took over the manufacturing activities of the previous Trafilerie Meridionali SpA[169].

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(92) In 2001 its EEA turnover (mainly in Italy) in the PS sector was EUR 8 310 000[170] and its world-wide consolidated turnover in 2009 was EUR (…)

2.2. Other market players

(93) In addition to the addressees of the present Decision, which were the major producers of PS in the EEA at the time of the infringement, a number of other players are active in the EEA, such as: Bridon Wire (UK), Carrington Wire (UK), SIGMA-STAHL GmbH (Germany), José Maria Ucin SA (Spain), Drôtov• a Drôty a.s. (Slovakia) and 'D&D' Drótáru Ipari és Kereskedelmi Zártkör• en M• köd• Részvénytársaság (Hungary).

2.3. Trade associations

(94) Most European PS producers are organised in the **ESIS.** ESIS is based in Düsseldorf, Germany, and is the leading association of PS producers. It collects anonymous sales data on PS (such as prices for PS and raw materials, market shares and the evolution of the total market) and provides them to its members. ESIS is estimated to represent producers covering more than 90% of the EU PS production, the rest being imported or produced by producers which are not member of ESIS[171]. In 2001 until early 2002, Mr. (…) (DWK) was the Chairman. Simultaneously, he was Chairman of the Market Committee. The ESIS members in 2001 were: Austria Draht (Austria), Fontainunion (BE), Fundia (FIN), Tréfileurope (FR), DWK (DE), SIGMA-STAHL (DE), WDI (DE), D&D (HU), Tréfileurope Italia (IT), CB (IT), ITC (IT), Itas (IT), Redaelli (IT), SLM (IT), Nedri (NL), Companhia Portuguesa de Trefilaria (PT), Fapricela (PT), Socitrel (PT), Drôtov• a Drôty (SK), EMESA (SP), Galycas (ES), Trefilerías Quijano (ES), Trenzas y Cables (ES), Fundia (SW), Bridon Wire (UK), Carrington Wire (UK).[172]

(95) The **Federacciai (Federazione Imprese Siderurgiche Italiane)** is the Federation of Italian steel-making companies. Its registered office is in Milan, Italy. The Federacciai was set up on 16.12.1988 as a result of the merger of three large sector associations: Assider (Association of Italian Steelmaking Industries, with as members amongst others Redaelli and Itas)[173], the I.S.A. (Associated Steelmaking Industries) and the U.S.I. (Union of Italian Steelmakers). Participation in Federacciai automatically implies joining one or more of the federally structured sector associations (currently four): Italian 'Electro-Steelmaking' Association, 'Steel and Long Products and Ordinary Flat Products' Association, the 'Special Steels' Association or the 'Tubes and First Transformation' Association, the latter being a group of PS producers. In 2001, Tréfileurope Italia, CB, Itas, Italcables S.p.A.and Redaelli Tecna S.p.A.(group) were members of the 'Tubes and First Transformation' Association within Federacciai[174].

(96) **Asociación de Trefilerías de Acero ('ATA')** is a Spanish steel association based in Madrid, Spain. It offers a forum for the PS industry

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concerned to discuss both national and European issues, such as technical standards and relationship with public authorities.[175]

(97) Although ESIS, Federacciai and ATA meetings as such are not regarded as anti-competitive and the Commission does not hold these associations liable for the infringement, the cartel participants sometimes informally met in the margin of these meetings to discuss and agree on quotas, prices and customer arrangements[176].

3. SUPPLY OF PS

(98) All together the members of the cartel controlled approximately 80% of EEA sales.[177] In most countries several of the larger producers are present along with some local producers. Most of these larger producers belong to steel groups, which also produce wire rod. This is an important competitive factor as wire rod is a raw material for PS and by far the most important cost element.[178] Hence, whereas non-integrated companies are obliged to purchase their raw material on the market, integrated companies mostly rely on supplies within their group.

(99) The industry reports substantial and lasting overcapacities of PS.

(100) The value of PS sales in the EEA in 2001 was approximately EUR 365 000 000[179] for a total volume in that year of approximately 600 000 tons.[180] Approximately 20-25% account for PS wire and 75-80% for PS strand, with some differences to these averages by country.[181] Italy is the country with the most important consumption (approximately 28%) of PS due to its topographic structure. Other large consuming countries are Spain (16%), the Netherlands, France, Germany and Portugal (each approximately 8-10%) (See Annex 6).

4. DEMAND FOR PS

(101) The demand structure for PS is very heterogeneous.[182] Both producers of prefabricated building material and specialised engineering companies use PS as explained under recital (2), for example in constructions to stabilise buildings, bridges etc.

(102) The customer scheme consists of a very small number of large customers - see for example (…) which alone is estimated to account for 5-10% of EU consumption of PS[183] - and a large number of smaller customers.

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(103) Commercial habits vary between the Member States. PS producers and their customers often conclude six- or twelve-month framework contracts. Subsequently, depending on the demand, the customers order tonnages within the range of the volume agreed at the agreed price. Contracts are regularly extended after further negotiations.

5. INTERSTATE TRADE

(104) The sales volumes of PS during the period concerned show that the trade between the Member States was intensive. PS was produced and marketed throughout the EEA, including Norway.

III. THE PROCEDURE

6. THE COMMISSION'S INVESTIGATION

(105) On 09.01.2002, the German national competition authority ('Bundeskartellamt') handed over documents to the Commission[184] concerning a court case at the German local labour court on the dismissal of Mr.(…), a former WDI employee. Mr. (…) asserted that during his employment with WDI, he had been involved in an infringement of Article 101 of the TFEU on PS. In this context, he gave an account of the undertakings involved and first information on the infringement.

(106) (…[185]) , DWK expressed its expectation to benefit from the Commission Notice on Immunity from fines and reduction of fines in cartel cases of 19.02.2002[186] (hereafter the 'Leniency Notice').

(107) On (…), representatives of DWK met the Commission and the leniency procedure was discussed. On 19.07.2002, the Commission granted conditional immunity to DWK under Paragraph 8(b) of the Leniency Notice[187] as DWK was the first to submit evidence, which in the Commission's view, enabled it to find an infringement of Article 101 of the TFEU in connection with an alleged EU-wide cartel of PS producers.

(108) On 19 and 20.09.2002, the Commission conducted simultaneous inspections at the premises of WDI, DWK, Fontainunion, Tréfileurope, Emesa, Tycsa, Nedri, Tréfileurope Italia, CB, ITC, Redaelli Tecna, Itas, SLM, and Edilsider (the company owned by Mr.(…) , the sales agent of Tréfileurope Italia) together with their respective subsidiaries, pursuant to Articles 14 (3) or 14 (2) of Council Regulation No 17[188].

(109) As of 19.09.2002 the Commission sent several requests for information according to Article 11 of Council Regulation No 17 and Article 18 of Council

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185 (…)
186 O.J.19.02.2002, C45/3.
187 (…)
188 Council Regulation No 17, First regulation implementing Articles 85 and 86 of the Treaty, OJ 13, 21.02.1962, p. 204/62. Regulation repealed by Regulation (EC) No 1/2003.

Regulation No 1/2003 (hereafter 'Article 18 request' or 'request for information') to the companies involved in the present Decision, their mother companies, other companies, some individuals (Mr. (…), a retired Redaelli employee and later commercial adviser, and Mr. (…) through Edilsider) and trade associations.

(110) Among the addressees of this Decision, the companies DWK, ITC, Nedri, SLM, Redaelli, Tréfileurope (including its subsidiaries Fontainunion and Tréfileurope Italia), WDI, ArcelorMittal and ArcelorMittal España have made formal applications for leniency under the 2002 Leniency Notice. (…)

(111) As stated before, DWK was granted conditional immunity on 19.07.2002. ITC applied for leniency (…[189]). The Commission granted provisional reduction of fines in the order of 30-50% on 10.01.2003 on the condition that ITC would continue satisfying the conditions foreseen under Paragraph 21 of the Leniency Notice[190].

(112) On 17.10.2002, Tycsa sent a reply to a request for information,(…) [191]. (…) Redaelli (…) , whilst replying to a request for information[192] and it submitted a formal request to benefit from the Leniency Notice on (…) .[193](…) , while replying to a request for information, Nedri submitted evidence simultaneously requesting to benefit from the Leniency Notice.[194] (…) , Emesa submitted evidence(…) [195]. (…), while replying to a request for information, SLM applied for a reduction of fines.[196] (…) Tréfileurope and its Belgian subsidiary Fontainunion, and on (…) also its Italian subsidiary Tréfileurope Italia, (…)[197]. On (…) representatives of Tréfileurope and its parent company Ispat International NV met the Commission (...).[198] (…) [199]. (…), WDI (…) requesting the application of the Leniency Notice.[200] (…).[201]

(113) Following the Leniency applications, the Commission addressed letters to Nedri, ArcelorMittal, ArcelorMittal España S.A., ArcelorMittal France SA, ArcelorMittal Wire France SA, ArcelorMittal Verderio S.r.l., ArcelorMittal Fontaine SA and WDI, dated 19 September 2008, informing them that immunity from fines was not available and that, pursuant to point 26 of the 2002 Leniency Notice, it intended to apply a reduction of a fine within a specified band as provided for in point 23(b) of the 2002 Leniency Notice.[202] On the same day, the Commission also addressed letters to Redaelli and SLM, rejecting their Leniency applications.

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(114) On 07/08.06.2006, the Commission conducted an inspection pursuant to Article 20 of Regulation No. 1/2003 at the premises ('Studio') of Dottore Commercialista (…) (hereafter 'Mr.(...)).

7. STATEMENT OF OBJECTIONS AND ORAL HEARING

(115) On 30.09.2008, the Commission initiated proceedings in this case and adopted a Statement of Objections (hereafter 'SO') against Antonini S.p.A., ArcelorMittal España S.A., ArcelorMittal, CB Trafilati Acciai S.p.A., Companhia Previdente -Sociedade de Controle de Participações Financeiras, SA, DWK Drahtwerk Köln GmbH, Emesa-Trefilería S.A., Fapricela – Indústria de Trefilaria SA, ArcelorMittal Fontaine SA, Global Steel Wire SA, Hit Groep BV, Industrias Galycas, S.A., I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A., Italcables S.p.A., Moreda-Riviere Trefilerías S.A., Nedri Spanstaal BV, ORI Martin S.A., Ovako Bright Bar AB, Ovako Dalwire Oy Ab, Ovako Hjulsbro AB, Pampus Industriebeteiligungen GmbH & Co. KG, Proderac Productos Derivados del Acero S.A., Rautaruukki Oyj, Redaelli Tecna S.p.A., Saarstahl AG, Siderurgica Latina Martin S.p.A., SOCITREL - Sociedade Industrial de Trefilaria, SA, Trafilerie Meridionali SpA, Trefilerías Quijano S.A., ArcelorMittal Verderio Srl, ArcelorMittal Wire France SA, Trenzas y Cables de Acero P.S.C., SL, voestalpine Austria Draht GmbH, voestalpine AG, Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co.KG and four other companies.

(116) All undertakings to which the SO was addressed submitted written comments in response to the objections raised by the Commission.

(117) The undertakings had access to the Commission's investigation file in the form of a copy of the file on a DVD. With the DVD, the undertakings received a list specifying the documents contained in the investigation file (with consecutive page numbering) and indicating the degree of accessibility of each document. In addition, the undertakings were informed that the DVD gave the parties full access to all the documents obtained by the Commission during the investigation, except for those documents or part of documents containing business secrets and other confidential information. Access to leniency documents was granted at the Commission premises.

(118) (…) , Emesa and Galycas made a formal application for leniency under the Leniency Notice (…) . On 05.12.2008, the Commission replied that Emesa and Galycas cannot benefit from the leniency application made by ArcelorMittal España S.A. and others on (…) because Emesa and Galycas were not part of the same undertaking as ArcelorMittal España S.A. (or any of the other submitting undertakings) on that date.

(119) An Oral Hearing was held on 11 and 12.02.2009. All undertakings, to which the SO was addressed, with the exception of HIT Groep BV and Emesa/Galycas, took part in it. Following the Oral Hearing, Rautaruukki Oyj requested access to the part of the Ovako group's reply relating to parental liability. This access was granted on 17.02.2009 and Rautaruukki Oyj provided comments on 02.03.2009. Similarly, on 12.12.2008 HIT Groep BV

was granted access to the part of Nedri's reply regarding parental liability and on 19.12.2008 Nedri was granted access to the part of HIT Groep's reply regarding parental liability. Fourteen undertakings also invoked inability to pay within the meaning of point 35 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[203] (hereafter, '*the 2006 Guidelines on fines*'). They provided justifications to support this request.

(120) (…)

(121) The Commission has decided to close proceedings against four companies to which the SO had been addressed.

IV. DESCRIPTION OF THE EVENTS

8. OVERVIEW OF THE SCOPE AND BASIC CONTENT OF THE PS CARTEL ARRANGEMENTS

(122) At least from the early eighties (1984) until the inspections by the Commission on 19 and 20.09.2002, several companies active in the PS sector were, partly or constantly, involved in a **pan-European arrangement**, consisting of a Zurich and a European phase, and/or, as the case may be, in **national/regional arrangements**. The pan-European and the national/regional arrangements had the **identical overall aim** of maintaining equilibrium in order to avoid price decline in an evolving European market, characterised by excess production capacities (see also section 9.3.1). Therefore, the companies continuously attempted to avoid fierce competition in the home market and/or in export markets, by agreeing on quotas, prices and/or client allocation.

(123) The first phase of the pan-European arrangement is referred to as the **Zurich Club** (see section 9.1.1). Thus, from 01.01.1984 until 09.01.1996, following a strong pressure on price at that time, (predecessors of) Tréfileurope, Nedri, WDI, DWK and one Italian company, Redaelli, the latter representing several other Italian companies (at least as of 1993 and 1995), fixed quotas per country (Germany, Austria, Benelux, France, Italy and Spain), shared clients, fixed prices and exchanged sensitive commercial information. They were joined by the Spanish producers Emesa in 1992 and Tycsa in 1993 (which around the same time, also started meeting on a regional level regarding the Iberian market, first with other Spanish and then also with Portuguese producers in Club España, see recital (132) below). In the eighties, the meetings took mainly place in Zurich, and as of the nineties in Düsseldorf.

(124) Towards the end of the Zurich Club, at the latest from 23.01.1995 onwards and throughout the year 1995, the Italian companies Redaelli, ITC, CB and Itas (the latter three often represented by Redaelli) negotiated a (revised) quota arrangement with the other Zurich Club producers, which should cover the sales of the Italian producers and the other Zurich Club

[203] OJ C 210, 01.09.2006, p. 2.

producers in Italy and in the rest of Europe. Finally no agreement could be reached because the export quotas claimed by the Italian producers were considered too high. This contributed to the break up of the Zurich Club, the last recorded meeting of which took place on 09.01.1996. However, as a result of these negotiations the Italian companies Redaelli, ITC, CB and Itas nevertheless agreed on 05.12.1995 among themselves on a two-sided agreement fixing quotas both within the Italian market and regarding exports from Italy to the rest of Europe. These Italian companies were later on joined (again) by Tréfileurope and Tréfileurope Italia, SLM, Trame, Tycsa, DWK and Austria Draht[204] (the so-called **Club Italia,** see section 9.2.1). Together, they regularly met to monitor the implementation of the quota arrangement, to fix prices (including a surcharge, the so-called 'extras'), to share/allocate clients and to exchange sensitive commercial information, all of which took place until the Commission's inspection. The stakeholders operated a sophisticated monitoring system through an independent third party, who regularly checked prices and actual volume sold to customers in Italy. They also introduced and implemented a compensation mechanism. Redaelli, later on Tréfileurope, was keeping the members of the pan-European arrangement informed. Club Italia participants were also informed of relevant developments in the pan-European arrangement through Redaelli and then through Tréfileurope, DWK and Tycsa, which participated in both Clubs (see section 9.3.2).

(125) In parallel, throughout the year 1996, the Italian companies (at least Redaelli, CB, ITC and Itas), Tycsa and Tréfileurope negotiated and reached a specific agreement at the end of 1996, the '**Southern Agreement**', fixing the penetration rate of each of the participants in the Southern countries (Spain, Italy, France, Belgium and Luxemburg) and laying down an undertaking to jointly negotiate quotas with the other (Northern) European producers (see section 9.2.3).

(126) In order to overcome the Zurich Club crisis, its former participants (with however less regular participation from the Italian producers/Redaelli) moreover continued meeting on a regular basis between January 1996 and May 1997 (see section 9.1.2). Tréfileurope, Nedri, WDI, DWK, Tycsa and Emesa (hereafter the 'permanent members' or the 'six producers') finally agreed on a **revised pan-European arrangement** in May 1997 by which they shared quotas which were calculated based on figures for a specific reference area and a specific reference period (fourth quarter 1995-first quarter 1997, i.e. basically the crisis period). This second phase of the pan-European arrangement is referred to as **Club Europe**. The desirability of such revised quota agreement and a tentative allocation of quotas was already discussed at the last Zurich Club meeting of 09.01.1996 in which Redaelli also participated.

(127) The six producers moreover allocated customers and fixed prices (both country and client specific). They agreed on **co-ordination** rules, including the appointment of co-ordinators responsible for implementation of the

[204] (…)

arrangements in the individual countries as well as for co-ordination with other interested companies active in the same countries or regarding the same clients (see section 9.1.3.3). Moreover, their representatives **regularly met at different levels** (the directors' and sales representatives' level) to **monitor** the implementation of the arrangements. They exchanged sensitive commercial information. In case of discrepancy with the agreed trade behaviour, an appropriate **compensation** scheme was applied (see section 9.1.6).

(128) Within this pan-European arrangement, the 'six producers', occasionally joined by the Italian producers and Fundia, also had bilateral (or multilateral) contacts and participated in price fixing and client allocation on an ***ad hoc*** **basis**, if they had an interest (depending on their presence on the discussed market) (see section 9.1.3.6). For example, Tréfileurope, Nedri, WDI, Tycsa, Emesa, CB and Fundia jointly co-ordinated prices and volumes regarding the client **(…)**. These projects concerned mainly Finland, Sweden and Norway but also the Netherlands, Germany, the Baltic states and Central and Eastern Europe. The (…) co-ordination already took place during the Zurich Club phase of the pan-European arrangement and continued at least until the end of 2001 (see sections 9.1.1.6 and 9.1.4).

(129) In the period from at least September 2000 until the Commission's inspections in September 2002, the six producers, ITC, CB, Redaelli, Itas and SLM met regularly on a multilateral basis at the directors' level with the aim of integrating the Italian companies into the pan-European arrangement, i.e. the then-existing Club Europe, as permanent members. The Italian companies wanted to raise the Italian quota in Europe while Club Europe supported the existing ***status quo***. For this purpose, many meetings were organised either at multilateral, bilateral or national level (for example meetings within Club Italia to define a uniform position; meetings within Club Europe to examine this position and/or define its own position; meetings between (specific) Club Europe participants and Italian representatives to reach an agreement on allocation of the Italian quota in a specific market). The stakeholders involved constantly exchanged sensitive commercial information. For the purpose of reallocating the European quota in order to include the Italian producers, the parties agreed to use a new **reference period** (30.06.2000 – 30.06.2001). Finally, as was already the purpose of the 05.12.1995 agreement (see section 9.2.1.4.1 and recitals (124) and (552) onwards), they agreed on the global export volume (within Europe) for the Italian companies, which the Italian companies broke down by country amongst themselves, and they reached particular agreements on some quotas by country. At the same time, they discussed prices, whereby the members of Club Europe again sought to adopt, on a European-wide basis, the successful price-fixing mechanism applied by the Italian producers in their Club Italia (see sections 9.1.5.1 and 9.1.5.2).

(130) In the same period, in addition to the general (territorial) quota fixing, the distribution of quotas by customers was discussed. The company that traditionally co-ordinated a certain country would also manage the negotiation for detailed customer (quota) allocation in that country (see recital (316) and section 9.1.5.3).

(131) In parallel, the members of Club Europe attempted to integrate not only the Italian producers, but also all other significant PS producers, with which they previously had bilateral/multilateral arrangements or contacts, within their Club as permanent members and to reallocate the European quotas by country as had been done in the Zurich Club (see section 9.1.5.4).

(132) Also in parallel with the pan-European arrangement and with Club Italia, at least from December 1992 to September 2002, five Spanish companies (Trefilerías Quijano, Tycsa, Emesa, Galycas and Proderac (the latter as from May 1994)) and two Portuguese companies (Socitrel (as from April 1994) and Fapricela (as from December 1998)) agreed for Spain and Portugal to keep their market shares stable and to fix quotas, to allocate clients, including public works, and to fix prices and payment conditions. They moreover exchanged sensitive commercial information (**Club España**). Apart from the fact that Tycsa was attending both Club Europe and Club España meetings, there were also frequent discussions and arrangements between other participants of both Clubs (see section 9.2.2).

(133) The pan-European and regional (Club Italia/España/Southern Agreement) arrangements continued to be in force until the inspections conducted by the Commission in September 2002 (see sections 9.1 and 9.2).

(134) (…)

(135) For reasons of clarity, the infringement is described under several headings of this Decision (section 9.1 pan-European arrangements, section 9.2.1 Club Italia, section 9.2.2 Club España and section 9.2.3 Southern Agreement) rather than purely chronologically. Because all these arrangements/Clubs in reality form one single and continuous infringement, several meetings or anticompetitive agreements and contacts may be mentioned several times under different headings or Annexes. This does not mean that the Commission would count or punish the same meetings or contacts several times in violation of the '*ne bis in idem'* principle[205], but rather shows the connections between the different levels of the single and continuous infringement (see also section 12.2.2).

9. ORGANISATION AND FUNCTIONING OF THE CARTEL

9.1. Pan-European Arrangements

9.1.1. Zurich Club: 1984 – January 1996

(136) The Commission is in possession of documentary evidence(…) [206], (…) [207], (…) [208], (…) [209], (…) [210], (…) [211], (…) [212] and (…) [213] that at least

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since 01.01.1984 until January 1996, competitors met quarterly in order to co-ordinate their market behaviour, fix quotas, exchange sensitive business information, share clients and discuss target prices. These arrangements are commonly referred to as the Zurich Club, as meetings initially took place in Zurich (at least until the end of the eighties; as of the early nineties essentially in Düsseldorf).[214] (…).

(137) (…)[215], (…)[216], and (…) [217](…)[218], (…) [219] and (…). (…), it retains 01.01.1984 as starting date, based on minutes of the meetings of 11.05.1994 ('*Club '84'*) and 08/09.06.1994 (*'start +- 1983'*(…).

(138) (…) moreover states that the members of Club Zurich, when setting up their arrangement, were inspired by the already '*at that time successfully existing and implemented agreement among the Italian PS producers (on market allocation and quota-fixing)*' showing a close connection between the Zurich Club and Club Italia (see section 9.2.1) from the outset.[220]

9.1.1.1. The founding members of the Zurich Club

(139) The following companies are considered to have participated in the Zurich Club since its start in 1984: **Nedri** or as it was called at the time Nederlandse Draadindustrie BV (NDI)[221], **WDI** or as it was called at the time Klöckner Draht GmbH[222], **Tréfileurope** or as it was called at the time Tecnor SA (until 1987) and then Tréfilunion SA, through its French factory Sainte Colombe[223], **Redaelli**[224] and the later bankrupt company TrefilARBED Drahtwerk Köln GmbH. **DWK** is considered a participant since its incorporation on 9.02.1994.[225] **Fontainunion** (belonging to Tréfileurope since 1989) is considered a participant since its incorporation on 20.12.1984.[226]

9.1.1.2. Organisation and working of the Zurich Club

(140) The companies participating in Club Zurich fixed **specific quotas** (**expressed in percentage**) for each of the undertakings and for each of the following countries: Germany, France, Italy, the Netherlands, Belgium, Luxemburg, Spain and Austria. The quotas were redefined when the Spanish companies entered Club Zurich in the early nineties (see further recital (146)). One common quota was allocated to the **Italian** companies[227]. The Zurich Club thus *'set a limit to the volume that the Italian firms were allowed to*

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export to the territories of the other European producers involved, and vice versa'.[228]

(141) In the meeting of **02.05.1995** (…),(…)explained to the Club how the common Italian quota was split among the Italian producers for the Italian market as well as for the 'EC':

The division of (the Italian) quota among the Italian producers in Italy was done as follows *('reparto de los italianos')*:

Red[aelli]	*45%*
CB+ Itas	*25%*
Italcables	*18%*
Trame	*12%*

The export to the E.C. including Austria was decided as follows:

Redaelli	*71%*
CB+ Itas	*18%*
Italcables	*11%*

Source: (…)

(142) According to (…) [229], the volumes sold by the respective undertakings in **the reference period from ca. 1976 until 1980** served as a basis for the quota calculations. The Club members met on a quarterly basis to discuss and compare the real sales with the agreed quotas[230]. They regularly exchanged for that purpose sensitive information on wire and strand[231]. This exchange of confidential information initially only occurred orally among participants, who were asked not to take any personal notes[232]. As of approximately 1986/1987, the parties agreed to designate one person to serve as reporting office (…), initially a representative of Tréfileurope. As of 1990 until the end of 1995 this was Mr. (…) (DWK)[233]. The companies phoned this reporting office before each meeting to communicate their volume sold in the previous quarter for each market they were active in. The reporting office then compared this information (in German called: 'ist') with the quota (in percentage) originally agreed (in German called: 'soll') and, together with the deviations between the 'soll' and the 'ist', presented this information in a chart[234]. That chart was subsequently discussed at the quarterly meetings in order to monitor the respect of the agreed quotas.

(143) The data and calculations regarding the 'ist' and 'soll' quota were kept in a safe in Zurich[235]. The charts were not exchanged but projected by overhead projector during the meetings. Although there was no sanction mechanism if an undertaking deviated from its quota, a **compensation scheme** applied. If an undertaking surpassed the agreed quota in a country, it was

228 (…)
229 (…)
230 (…)
231 (…)
232 (…)
233 (…)
234 (…)
235 (…)

required to supply less during the following quarter[236]. The main aim of this quota arrangement was to divide up volumes in **order to stop price decrease and come to a gradual price increase.**

(144) On top of the exchange of data and quota fixing, the undertakings were also **sharing clients**[237] in the Zurich Club. This mainly consisted of a commitment from each participating company not to actively supply each others' clients, a so-called non-aggression agreement[238]. For example at the meeting of 26.01.1995 the names of 'preferred clients' were communicated to the reporting office, Mr.(…). During a telephone conversation between Nedri and Tycsa (Mr. (…)) on 27.09.1995, Tycsa mentioned that it had only one more customer to supply in the Netherlands in the second half of 1995 and that it would not accept this for 1996. Nedri, as market leader, should give Tycsa back its lost 'structured' tons otherwise Tycsa would get back the lost clients and tons by using the 'price instrument'[239].

(145) The Club Zurich members also **discussed and fixed 'target' prices**[240], which were generally fixed in the form of minimum PS prices per country and **were regularly adapted/increased** following the price variations of the raw material of PS, wire rod. It results amongst others from the meeting of 08/09.06.1994 that pricing was an integral part of the Zurich Club arrangement *('repetition of the rules of the Zurich Club: (…) pricing'*). There were several meetings where sensitive information on clients and prices in the various countries was exchanged and where prices were fixed/increased, such as the meetings of 04.02.1993 (price fixing for amongst others Scandinavia, Italy, Belgium Austria, Spain and France), 10.03.1993, 15.11.1993 (price discussion on amongst others the Scandinavian and Spanish market), 10.11.1994 (with price-fixing for the year 1995 for the reference product ½ inch[241] etc.) (…) .

9.1.1.3. The participation of the Spanish producers as of 1992/1993

(146) As regards the participation of the **Spanish producers** (Emesa and Tycsa) in the Zurich Club, (…) and (…) confirm that these companies were not part of the Zurich Club from the start[242]. According to (…) , they joined only in the late eighties or early nineties, most probably when the meetings started to take place principally in Düsseldorf. More concretely, the Commission has evidence of regular contacts between DWK (…) and Emesa relating to the Zurich Club dating back to end November 1992. At the meeting of **08/09.06.1994** (…), (…) confirms that the negotiations with the Spanish companies date back to 1992, when 'Trefilunion' (Tréfileurope) contacted them to suggest 'membership'. This could have concerned ESIS membership but Mr. (…) (…) also confirms that in the margin of an official trip to Spain to arrange for membership of the Spanish producers to ESIS, he had also

236 (…)
237 (…)
238 (…)
239 (…)
240 (…).
241 (…)
242 **(…)**

discussed the Zurich Club arrangements with them[243]. Also, when the Italian producers complain at that same meeting of **08/09.06.1994** about Tycsa (…) only 'benefiting' from the Club and that they could therefore not agree with any consolidation of the "93/'94 situation', Tycsa responded that it had kept its sales stable since 3 years already, without increase in Europe (…).

(147) The (…) confirm that Emesa had contacts and attended several meetings as of 1992 which all had a clear anti-competitive aim (discussion on prices, quotas and prospects of contracts with large clients) and at many of which Tycsa was present as well (…).

(148) The Commission concludes that the Spanish producers, **Emesa** and **Tycsa** participated with certainty to very detailed and frequent negotiations with the other Zurich Club members on a new allocation of quota at the latest as of **30.11.1992** and **10.06.1993**, respectively (see also recital (381)). According to (…) and (…), the originally fixed quotas (in percentage, the '*soll*') were adapted accordingly[244]. The negotiations on such quota for the Spanish producers proved difficult. Each time a general proposal for new quota allocation was made (often at the initiative of Mr. (…)), the Italian producers did not agree (see for example meetings of 08/09.06.1994 and 26.07.1994). Moreover, Emesa conditioned the quota allocation to its full exclusivity over Portugal (see for example meeting on 26.07.1994 as reiterated in meeting on 26.01.1995).

(149) Therefore, during that period there were often similar, but never identical quota allocations. The tables provided by (...) at a meeting of 26.07.1994 (…), for example, are different from the table in a document provided by (…), reproduced below in Table 1. The latter table contains the target data for 1994 and clearly mentions Tycsa (TY) and Emesa (EM) in the last two rows (see recital (150) for explanations on the table below). The allocated quota calculated would have been as follows (in %, based on the year 1994):

Table 1

	D	**F**	**I**	**NL**	**UEBL**	**ESP**	**A**	**SUM**
	%	%	%	%	%	%	%	%
DWK	33,69	0	0	12,04	1,30	0	0	5,58
FU	2,84	14,50	1,10	15,40	53,17	5,50	14,12	9,05
SteCo	0	43,48	8,61	2,65	10,98	0	0	11,06
WDI	18,57	1,35	0	17,09	3,28	0	0	4,92
Nedri	27,20	10,70	0	43,35	13,33	0	0	11,66
I	0,39	6,48	73,90	0	0	0	17,65	28,19
AD	6,71	3,19	9,29	4,77	2,54	1	49,41	7,08
TY	5,30	20,30	7,10	3,10	15,40	46,70	18,82	14,91
EM	5,30	0	0	1,70	0	46,70	0	7,55
1994	100	100	100	100	100	99,90	100	100

Source: (…)

[243] (…)
[244] (…)

(150) Table 1 refers to the year 1994 and confirms the participants and the reference area applicable in Club Zurich as set out in recitals (136) and (140). It contains the following abbreviations in the first column: DWK, FU (Fontainunion), SteCo (Sainte Colombe, a Tréfileurope factory), WDI, Nedri, I (the Italian companies taken together), AD (Austria Draht), TY (Tycsa) and EM (Emesa). The countries referred to in the first row are D (Germany), F (France), I (Italy), NL (the Netherlands), UEBL (Belgium and Luxembourg), ESP (Spain) and A (Austria). Austria Draht would not have participated in the Zurich Club but would have been included in the table only for 'the sake of completeness'[245].

(151) Other contemporaneous documents showing the negotiations of detailed quota allocation are a table called the '*Zurich's agreement*'[246] (part of the 1996 'Southern' agreement, see further section 9.2.3) and a table called '*supplies 1995*'[247]. The numbers in the latter document refer to the following companies: 1 (DWK), 2 (FU), 3(SteCo), 4 (Nedri), 5 (WDI), 6 (probably…) and 7 (Italian producers).

(152) At least a **partial agreement** was reached on the revision of the European quota system following the Spanish companies' joining in the Zurich Club: for example, the meetings of 16.06.1993, 15.11.1993 and 09.06.1994 (…) show that an agreement had been reached on the quota allocation for the Spanish market. In the meeting of 11.05.1994 (…) a detailed calculation was made of the number of tons the Spanish producers would be allowed to export outside Spain (20 000 tons). Moreover, in the Club España meeting of **08.11.1993** it is stated that Tycsa is allocated 23% of the French market and 13% of the Italian market (see more on Club España in section 9.2.2 below).

9.1.1.4. *The participation of the Italian producers, Itas, ITC and CB as of 1993/1995*

(153) Redaelli, which participated itself in the Zurich Club from the start (see recital (139)), represented three further Italian producers (ITC, Itas and CB). (…)[248](…) [249].(…) [250] (…) [251].

(154) Contemporaneous documents in the possession of the Commission, moreover, show that at least as of **24.02.1993**, **ITC and Itas**, together with Redaelli, participated in meetings with Zurich Club participants (the first two directly and through Redaelli). This date is upheld as starting date of the participation of ITC and Itas in the Zurich Club. Although there is ample evidence that Redaelli from the outset also de facto represented CB in the Zurich Club, the Commission has no evidence that CB was aware or should reasonably have been aware of this representation until 23.01.1995 (see recital

245 (…)
246 (…)
247 (…)
248 (…)
249 (…)
250 (…)
251 (…)

(166)), therefore **23.01.1995** is upheld as the starting date of **CB**'s participation in the Zurich Club.

(155) (…)[252](…) [253] and (…) [254]. According to (…), Redaelli would have 'auto-nominated' itself as representing the other Italian producers in the meetings of Club Zurich but the latter would not have entrusted or accepted this company as their representative.

(156) The Commission does not find this credible. The fact that Redaelli represented ITC, Itas and CB in the Zurich Club is not only confirmed by (…) , but also follows from documentary evidence, showing that Redaelli explicitly identified itself as representative of ITC, Itas and CB in Club Zurich (see for example meeting of **08/09.06.1994**, (…)) and de facto represented ITC, CB and Itas at these meetings. That Itas accepted this representation from the outset and CB as of 1995 follows from the fact that they prepared those meetings beforehand with Redaelli. In any event, the alleged lack of (express) acceptance is irrelevant as Itas knew from the outset, and CB at least as of 1995, that Redaelli was representing their interests in the Zurich Club and they did not oppose this.

(157) At the Zurich Club meeting of **24.02.1993** Redaelli, ITC, CB, Itas, Tréfileurope Italia, DWK, Tycsa and Mr.(…) discussed prices and sales on the Italian market as well as PS consumption on the European market (by country). Not only did ITC, CB and Itas participate directly in this Zurich Club meeting, but they moreover prepared this meeting in the morning among Italian producers.

(158) Also at a meeting of **07.05.1993** between Redaelli, ITC and Itas[255], Redaelli presented several possible agreements for sales quotas in Italy and exports. Several proposals for the pan-European producers were prepared. There is no trace that Itas would at any occasion have objected to these proposals and discussions of Redaelli with the other pan-European producers. To the contrary, it helped Redaelli in the preparation thereof.

(159) Preparatory meetings between Italian producers, followed by meetings with pan-European producers continued to take place in the following years. For example, at the Zurich Club meeting of **08/09.06.1994** it was noted that '*Redaelli is Italy / is a one person Club*'. Also (…) notes of **21.07.1994** provide an overview of the sales on the European market per (European, non-Italian) producer as well as of the sales of the Italian producers and the 'foreigners' in Italy. It can be assumed that these notes were also made in preparation of Zurich Club discussions. Furthermore, at the Zurich Club meeting of **26.07.1994** Redaelli asked the Club not to negotiate separately with the other Italian producers, as in this case it could not assume the responsibility of representation. At the same meeting, the pan-European producers asked Redaelli to try to calm the Italian front and to create conditions for integration.

252 (…)
253 (…)
254 (…)
255 There is no evidence that CB attended this meeting.

The other Club Zurich participants thus also clearly perceived Redaelli as representing the other Italian producers.

(160) Also in 1995, Redaelli continued to represent the other Italian producers in the negotiations with the Zurich Club participants, this time in accordance with a more explicit mandate providing that Redaelli would represent the other Italian producers towards the 'foreign', i.e. the other Zurich Club producers, stipulated in Article 5 of a draft agreement of 23.01.1995[256].

(161) Redaelli thus continued to defend the interests of the other Italian producers in the negotiations with the Zurich Club participants[257], which led to the 05.12.1995 agreement between Redaelli, ITC, Itas and CB and it regularly debriefed the Italian producers, including CB, ITC and ITAS, of these negotiations[258]. Furthermore, in order to enable Redaelli to represent them adequately, the Italian producers continued to first prepare the quota discussions with the pan-European producers by thoroughly discussing quota proposals amongst themselves.[259] Also the pan-European producers prepared discussions with the Italian producers and discussed the Italian claims and developments amongst themselves[260] (see also section 9.1.5, recitals (457)-(458) (…)).

(162) This co-ordination between Italian companies and representation by one of them in the Zurich Club was also logical in view of the common quota which was assigned to all Italian producers together in the Zurich Club (see section 9.1.1.2) and in view of the Club Italia quota fixing meetings, preparing or implementing the Zurich Club arrangements which took place at the same time (see section 9.2.1.3.). Finally it should also be noted that, at the same time, Redaelli also passed on information of the Italian producers in bilateral meetings with participants of Club España[261].

(163) (…) [262] submits that in the period 24.02.1993 to 09.01.1996 it would only have been present in two meetings, (…) and that these meetings would only have focused on the Italian market. This is contradicted by the evidence: the meeting with the pan-European producers of 24.02.1993 was prepared in the morning between the Italian producers. In these preparatory discussions, there was a proposal for 'action' on external markets. In the afternoon discussions with the pan-European producers, there were also discussions on PS consumption in Zurich Club territory per country by Italian and non-Italian companies, such as DWK and Tycsa. At the same meeting, clients were also allocated among the producers, including among Zurich Club producers. Also in the meeting of 07.05.1993 Itas discussed with Redaelli and ITC the different possible agreements for sales quotas in Italy and exports and discussed four proposals towards the pan-European producers. The meetings of 24.02.1993 and 07.05.1993 were thus clearly not exclusively focused on the

256 (…)
257 (…)
258 (…)
259 (…)
260 (…)
261 (…)
262 (…)

Italian market. Moreover in the period 24.02.1993 to 09.01.1996, Itas participated in several other Club Italia meetings (and is mentioned in several documents) in which discussions with the pan-European producers were prepared, summarised or followed up.[263]

(164) Itas[264] also claims that it would have had no interest in taking part in the Zurich Club in the years 1993-1994 because it only obtained the required certifications for Germany in 1995[265], for Spain in 1996 and for France in 2001. The Commission first notes that the Zurich Club territory also includes Italy and that Itas admits that during the Zurich Club period it was selling in Germany and in Spain, two countries covered by this Club. Moreover, discussions on countries where Itas was not yet selling could still influence Itas' future decision on which countries to export to and for which countries to apply for a certificate (see recital (582)). In any event it is irrelevant to speculate on the interest which Itas had in participating in the Zurich Club given that it is clearly established that it participated directly in a meeting with Zurich Club producers on 24.02.1993, was represented by Redaelli in the Zurich Club meetings thereafter, knew that Redaelli was representing it and did not oppose this representation (see recitals (153) to (162)).

(165) (…[266])

(166) It is however established that CB already on 24.02.1993 participated itself in discussions with Zurich Club producers on amongst others PS consumption in different Zurich Club countries, the number of tons produced by (…) and the Spanish producers ('Spain') and shipments, quota and allocation of clients between Italian and other Zurich Club participants (such as Tycsa and Tréfileurope). Also, on 15.03.1995, DWK invited CB to participate in the Zurich Club meeting of 27.03.1995. CB was moreover aware or should have been aware that it was represented in the Zurich Club by Redaelli as of **23.01.1995**. This is in view of (i) the explicit mandate to represent the other Italian producers towards the pan-European producers given to Redaelli in the draft agreement of 23.01.1995; (ii) the subsequent *de facto* representation of the Italian producers, including CB, by Redaelli in the negotiations with the other Zurich Club participants; (iii) a fax of 13.10.1995 of Redaelli to CB, ITC and Itas in which Redaelli refers to the 'quota proposals made taking into account the discussions *from the beginning of the year*' (emphasis added); (iv) the continued debriefing by Redaelli of the other Italian producers, including CB (see recital (162)); and the fact that CB does not contest that it participated in Club Italia as of January 1995 (i.e. 23.01.1995, when the draft agreement of that date stipulated that Redaelli would represent CB, Itas and ITC in the discussions with the foreign producers).[267] Therefore, on 23.01.1995, date retained by the Commission as starting date for CB's participation in the cartel, CB was clearly aware of the Zurich Club discussions and the relation of these discussions with those in Club Italia. In

263 (…)
264 (…)
265 (…)
266 (…)
267 (…)

this respect CB's allegation that the 23.01.1995 agreement was not signed nor implemented is irrelevant since it is clear that at least the express mandate given to Redaelli was in fact implemented (see recitals (160)-(161)).

9.1.1.5. Rising tensions in the Zurich Club

(167) The last exchange of information under the Zurich Club agreement concerned the last quarter of 1995.[268] As of the meeting of 08/09.06.1994 (see Annex 2) the tensions were rising in view of the respective positions of the Spanish and Italian companies for the re-negotiation of the quotas culminating in the proposal to set an ultimatum to the Italian producers at the meeting of **08.11.1995**. Several companies claim that the Zurich Club agreement ended at the end of 1995[269]. The Commission however notes that these companies continued to attend the Club Zurich meetings at least until **09.01.1996**. During the meeting of 08.11.1995, the companies moreover convened that, *'in case the Club would break down, they had to maintain the system of quotas and the information exchange.*'[270] This was repeated on 09.01.1996, Tréfileurope stating that everything collapses without a quota system (…).

(168) It is also worth mentioning that, throughout the year 1995, as was customary in the Zurich Club (see recitals (140) onwards), the Italian producers (CB, ITC and Itas, represented by Redaelli) were negotiating quotas in Italy and other European countries with the other Zurich Club participants. Although the Commission has no evidence that a quota agreement could finally be reached between the Italian and the six producers, these negotiations at least led to an agreement among the Italian producers, first on 19.09.1995, and then to a more detailed agreement on 05.12.1995, in which the quotas in Italy and the Italian export quota to the rest of Europe were fixed per Italian producer and per product (see section 9.2.1.4.1 below).

(169) CB argues that the 1995 discussions were purely internal to Club Italia, without involvement of the Zurich Club participants. It contests in particular that the 19.09.1995 and 05.12.1995 agreements were discussed in Club Zurich and refers to the fact that there is no evidence that a quota agreement was finally reached between the Italian and the pan-European producers (see recital (168)).

(170) However, it is established that the 19.09.1995 agreement was in fact discussed at the Zurich Club meeting of 08.11.1995 and was also mentioned at the last Zurich Club meeting of 09.01.1996, at which it was noted that the Italian producers had reached an agreement on 19.09.1995 and that it was therefore essential to fix quotas on the export from the Italian producers into Europe and vice versa ('*everything collapses without a quota system*'). Redaelli also intervened proposing specific percentages. It is also established that Redaelli constantly represented the other Italian producers in meetings with the other Zurich Club participants, prepared these meetings with the other Italian producers and debriefed them on these discussions (see recital (161) and section 9.2.1.4).

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268 (…)

269 (…)

270 (…)

(171) The fact that, according to CB[271], the Commission has no proof that the Italian 'agreement' of 05.12.1995 (see section 9.2.1.4) was discussed at the Zurich Club and that this agreement would differ from what was discussed at the last Zurich Club meeting of 09.01.1996 at most shows that the Zurich Club was in crisis at that time exactly because no agreement could be reached between the Italian and the other Zurich Club producers on the formers' export quotas for Europe. The meeting of 09.01.1996 can be considered a last (unsuccessful) call to reach consensus on the basis of the previous proposals[272]. It is moreover established that among Italian producers consensus was reached in relation to the quotas for Italy and for exports as a result of these discussions (see section 9.2.1.4). It is therefore clear that the 1995 discussions were not purely internal to Club Italia, but rather part of an intense exchange and negotiation between Club Italia and Club Zurich participants.

9.1.1.6. Parallel discussions regarding the Nordic market from 1991/1992 to 1995

(172) According to (…),[273] DWK, Tréfileurope, WDI, Tycsa, Emesa, Fundia[274], Thyssen Draht and (…) Nedri, met twice or three times (possibly in Copenhagen) in 1991-1992 in order to discuss the Nordic market. They agreed in particular on a status quo, stopping Fundia from expanding further in Western Europe and limiting imports of Western European producers in the Nordic market. It was agreed that Fundia would supply 2/3 of the demand in the 4 Nordic countries and the remaining participants 1/3. This arrangement did not contain any sanction mechanism. According to (….), the arrangement ended around 1995, when Fundia started to expand on the European market and the other producers became less interested in the Nordic market as selling in the US became more attractive. The Commission, however, has indications that co-ordination regarding the Nordic market, and in particular regarding (…) , continued until at least the end of 2001 (see section 9.1.4).

(173) The existence of such co-ordination in that period finds confirmation (…) the minutes of meetings of 26.11.1992, end November 1992, 04.02.1993, 15.11.1993, 23.11.1994 and 26.01.1995 (…). In these meetings, reference is made in particular to a 'Scandinavian Club' and to concrete arrangements with regard to the biggest client on the Scandinavian market, (…) (see further section 9.1.4).

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271 (…)

272 And thus not, as CB claims, a first attempt to do so. CB's argument that the attempt of the pan-European and Italian producers to agree at that last Zurich Club meeting would show that the Italian companies were not members of the Zurich Club until that date should therefore be rejected.

273 (…)

274 As regards the claim of the Ovako companies that the Commission has not clearly shown Fundia's participation in the Nordic market cooperation (reply to the SO, section 3.1), the Commission notes that Fundia is only held directly liable for participating in the (…) co-ordination as stated in recitals (255) et seq and (820).

9.1.2. Zurich Club: crisis January 1996 - May 1997

(174) As noted in recital (167), during the meeting of 08.11.1995 the Zurich Club members had arranged to maintain the system of quotas and information exchange if the Club broke down. A particularly significant meeting in this respect was the last recorded Club Zurich meeting of 09.01.1996 (…): this meeting was attended by all participants of Club Zurich, including Redaelli, representing the Italian producers, and in addition by (…). Whilst '*waiting for proposals, as everything would collapse without a quota system*', the participants discussed a tentative allocation of (revised) quotas (per country and per company, i.e. DWK, Tréfileurope ('Fontainunion/ Sainte Colombe'), WDI, Nedri, the Italian producers ('I'), (…) ('…'), Emesa and Tycsa ('SP')).

(175) The Zurich Club participants[275], initially including Redaelli, continued to meet regularly until early 1997 with the aim of designing a revised common European quota arrangement, which was concluded between the six producers in May 1997 (see section 9.1.3). The Commission identified around 20 meetings in that period and contemporaneous evidence as well as company statements indicating that during several of these meetings quotas and prices were discussed (…).

(176) The Tycsa companies argue[276] that the evidence regarding these crisis period meetings (…) would not be conclusive as a number of meetings would be not corroborated by a second source, some would not specify participants or content discussed and there would be conflicting leniency statements regarding the same meetings[277]. The Commission notes that the Tycsa companies disregard that (…) confirm that the Zurich Club participants continued to meet with the aim of designing a renewed European quota arrangement. Moreover, for several meetings, contemporaneous evidence confirms quota and price discussions[278]. It is therefore not of importance whether the existence of the meetings is always corroborated by a second source or whether the content or participants are each time indicated. In view of the documentary evidence on an important number of meetings in the short period of 09.01.1996-April 1997, the statements confirming these and other meetings in the same period are considered credible, in particular since no evidence has been put forward to discredit these statements.

(177) The Italian companies, CB, ITC and Itas, were initially also participating in the Zurich Club crisis meetings through Redaelli. Particularly illustrating is the Paris meeting on 01.03.1996, attended by DWK, Tycsa, WDI, Nedri, Tréfileurope and Redaelli at which prices and quotas in several European countries were discussed. This meeting was prepared among Italian producers (Redaelli, Itas, CB and ITC) on 13.02.1996 and Redaelli subsequently debriefed at least ITC on this meeting at a meeting in Milan on 12.03.1996 (…).

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275 (…)
276 (…)
277 (…)
278 (…)

(178) CB[279] and Itas[280] contest their participation in the Zurich Club during the crisis period. (…) . Even if the Commission does not have documentary evidence that Redaelli subsequently debriefed CB on this meeting, it can be assumed that CB was informed on the discussion by Redaelli, ITC or Itas at any of the frequent later contacts between those companies. This in any event does not change anything to the fact that CB prepared the Zurich Club meeting of 01.03.1996 with Redaelli and was represented by the latter company at that meeting. The Commission further observes that during this period CB was simultaneously present in various Club Italia meetings in which export and import figures, prices and quotas, both in Italy and abroad, were discussed[281].

(179) Itas, in turn, claims that it would not have participated in any of the Zurich Club crisis meetings. First, the Commission notes that Itas participated with the other Italian producers in the 13.02.1996 preparatory meeting of the Zurich Club crisis meeting held on 01.03.1996 at which it was represented by Redaelli. The Commission further observes that, like CB, Itas was simultaneously present in various Club Italia meetings during this period in which export and import figures and quota compliance were discussed[282].

(180) In addition to the contemporaneous evidence showing the frequent meetings during the Zurich Club crisis period, the negotiations are also described (…)[283], (…) [284],(…) [285],(…) [286],(…) [287] and(…) [288]. (…) indicates that the discussions focussed on agreeing on a general operational mode of the new envisaged arrangement including the definition of a reference area (Europe-wide and no longer national), a reference period, the obligation to deliver audited data and a co-ordination system.[289] (…) [290] (…) however show that also concrete data on volume and prices were exchanged and discussed.

(181) Furthermore, at least between 03.07.1996 and 10.03.1997, Italian and pan-European producers continued to negotiate and agree on quota: during that period Redaelli, CB, Itas, ITC and Tréfileurope Italia negotiated and concluded with Tréfileurope and Tycsa the 'Southern agreement', agreeing not only on quotas for the 'Southern' countries (France, Spain, Italy, Belgium and Luxemburg) but also on their penetration (i.e. quota) in the North for negotiation with the 'Northern countries'.

279 (…)
280 (…)
281 (…)
282 (…)
283 (…)
284 (…)
285 (…)
286 (…)
287 (…)
288 (…)
289 (…)
290 (…)

(182) Quota negotiations between Italian and pan-European producers thus simply continued during the Zurich Club crisis phase (see also section 9.2.3 and (….)).[291]

(183) Moreover, Tréfileurope, DWK and Tycsa also continued to discuss and negotiate directly with Italian producers on quotas, client allocation and price fixing in Italy and in the other European countries (see recitals (553) to (557)).

(184) It is also worth noting that in the same period the Spanish and Portuguese producers had their Iberian arrangement (Club España) successfully in place (see section 9.2.2). In the framework of this arrangement, they also allocated tons for the Spanish market to non-Iberian producers (amongst others to Tréfileurope, the Italian producers, Nedri and (…), see for example the meeting of 06.11.1996). They also in the same period continued to have contacts with Redaelli, which was representing CB, Itas and ITC, also towards the Iberian producers.[292]

(185) Thus the available (…) evidence (…) show that in the crisis period, between 09.01.1996 and the start of Club Europe on 12.05.1997, the Zurich Club participants, initially including the Italian producers, continued to meet with the aim to overcome the crisis by designing a revised pan-European quota agreement along the lines of the Zurich Club, which was concluded in May 1997 (see section 9.1.3). Even when Redaelli ceased participating in the meetings, the Italian companies were aware of these discussions and continued negotiating on matters of common interest with the pan-European producers throughout the crisis period (see recitals (174) and (176)). Even if there was a crisis, the anti-competitive behaviour was thus not interrupted.

9.1.3. Club Europe: from May 1997 onwards

9.1.3.1. Introduction

(186) Ample documentary evidence,(….)[293], shows that the meetings in the period January 1996- May 1997 (see section 9.1.2) between the pan-European producers DWK, Nedri, WDI, Emesa, Tycsa and Tréfileurope (with its subsidiaries Fontainunion and Tréfileurope Italia) (together called '**the six producers**' or '**permanent members**', see also recital (126)), led to a new common arrangement on 12/13.05.1997 (at a meeting held in Lyon, hereafter called the '**Lyon meeting**')[294] which lasted at least until the first day of the inspections on 19.09.2002 (hereafter also '**Club Europe**').

(187) As already mentioned in recital (185), the Club Europe arrangement was set up in analogy with the previously existing Zurich Club rules: (i) participation of the same companies (even if the Italian producers were no longer permanent members, they continued to discuss, negotiate and agree with pan-European producers in matters of common interest, including on quotas, prices and client allocation, see sections 9.1.5, 9.2.1 and 9.3), (ii) the same actions ((a) quota fixing on the basis of a reference period and for a

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given reference area, (b) price fixing per country for a reference product and (c) client allocation, including status quo), (iii) the same system of regular (at least quarterly) meetings to monitor and enforce the agreements, (iv) regular data exchange mostly orally to one reporting person (on sale volumes, prices and clients, in Club Europe there was in addition a system of country-co-ordinators with bilateral contacts), (v) no sanction mechanism but instead a compensation scheme which was applied in case of deviations from the fixed quotas calculated by the reporting person.

(188) The Club Europe arrangements thus included (1) a European-wide quota-fixing system, as will be developed in section 9.1.3.4, in a so-called **'reference area',** which concerned the EU 15 excluding the UK, Ireland and Greece, but including Norway and, as a non-EEA country, Switzerland[295]; (2) the fixing of country-specific target prices (minimum prices and price increases) in Austria, Belgium, the Netherlands, France, Germany, Spain and Switzerland, which was later on extended to the remaining countries of the reference area. Minimum prices were fixed generally for a particular reference product, the 12,5 mm wire (see footnote 6), which would serve as a basis for determining the price of other PS products; and (3) fixing quota per client and/or per country and allocating clients either within the circle of the six producers or between one or more of the six producers and other producers (for example CB, Austria Draht and Fundia[296]), depending on the common interests (see sections 9.1.3.5 and 9.1.3.6).

(189) The documents submitted by the local German labour court concerning WDI's former employee, Mr.(…), also confirm the existence of the Club Europe arrangement among the six producers and the negotiations to integrate the Italian producers further into the arrangements at European level (see section 9.1.5).[297]

9.1.3.2. Organisation

(190) It results from the inspection documents (…)that meetings would take place every month following the end of each quarter (see Lyon meeting). The meetings took usually place in Düsseldorf, Germany, at the premises of the steel association ESIS, and sometimes at the margin of official ESIS meetings[298] held occasionally in Paris, Brussels or at other places in the Netherlands or in Spain. Over 60 meetings among the Club Europe permanent members have been identified in the period 1997-2002.

(191) The Club Europe meetings were originally only attended by 'Seniors' (management level) and gradually also by more junior employees of the companies (sales level), who would ensure the more day-to-day management and implementation of the agreements. At the latest early 1998, a co-ordination system was also put in place (see section 9.1.3.3).[299]

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(192) The aim of the PS producers was to keep their market shares stable in the reference area and to increase sales only if the market would grow. It was also the intention that the price level on the European PS market would be stabilised. (…)**.**[300]

(193) It is worth mentioning that the six producers knew the illegal character of their behaviour and that they knew that the quota discussions should remain secret.[301]

9.1.3.3.Co-ordination

(194) Shortly after the six producers (at executive level) had agreed on the Club Europe arrangement at the Lyon meeting, they decided to designate country-co-ordinators to ensure its proper implementation[302]. The first trace of this co-ordination is recorded in minutes of a meeting of 08.10.1997 in which it is mentioned that Mr. (…) (WDI) is co-ordinator for the German market and in which the rule to always first contact the co-ordinator is explained (see also meeting of 23.10.1997, (…) recital (240) on the assumption that the co-ordination was already in place in October 1997). According to(…), the initiative for a co-ordination system would have come from Mr. (…) (Nedri) and the nomination of the co-ordinators was effective as of the end of 1997 or early 1998[303]. The co-ordinators were - except for Portugal, Italy, Austria and Scandinavia - the sales managers of the company with the highest market share in the country concerned.

(195) The country co-ordinators as of the end of 1997 can be summarised as follows [304]:

Germany	Messrs.(…), later (…) (WDI)
The Netherlands	Mr. (…) and later Messrs. (…) (Nedri)
Belgium	Mr. (…) (Tréfileurope)
Luxembourg	Mr. (…) (Tréfileurope)
France	Messrs. (…) and (…) (Tréfileurope)
Switzerland	Mr. (…) (DWK until the end of 2001) and later Mr. (…) (Nedri)
Austria	Mr. (…) (DWK until the end of 2001)[305]
Spain	Messrs. (…) and later (…) and then Messrs (…) (Tycsa)

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303 (…)
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305 (…)

Italy	Mr. (…) (Tréfileurope Italia)
Portugal	Mr. (…) and Mr. (…) (Tycsa) (from at least 30.06.2000)

(196) According to evidence in the possession of the Commission, Nedri was responsible for co-ordinating one large Nordic client (…).[306] At the meeting of 12.09.2002, it was proposed to ask Fundia (Mr….) to act/take over as co-ordinator for the Scandinavian market.[307]

(197) According to contemporaneous evidence(….), Tréfileurope was the co-ordinator for Italy from 1997 onwards and as such informed the Italian producers of the general lines of the decisions taken in Club Europe (see also section 9.2.1.2). For example, Tréfileurope informed the Italian producers in detail at the meeting of **16.12.1997** (…) about the Club Europe framework: the existence of an arrangement on quotas, clients and (minimum) prices, the identity of the Club Europe members, the existence of a reference period, the organisation of meetings among salespersons, the existence of a leader in each country and a system of (external) control on a trimestrial basis.

(198) Although in fact any of the six producers negotiated directly at national level with other producers when they had a common interest, the country-co-ordinators were in principle responsible for implementing the quota arrangements, in particular on a national level, negotiating with the producers active in the country concerned. A co-ordinator would do so by first gathering information on sales figures (list of clients and volume supplied) from all the Club members active in the country assigned to it and holding ' *'many 'one on one' discussions … until an agreement on sales quotas for the country was reached. Only the co-ordinator would know the volume of all the members and thus was the only one to know the market share of each member*'[308]. For example, at the Club Europe meeting of 27.09.2001 between the six and (…) at which prices and quota allocation were discussed, meetings were fixed with the co-ordinators ('captains') for several countries (Italy on 12.10.2001, France on 18.10.2001, the Netherlands on 14.10.2001, Germany 10.10.2001 and Spain 02.11.2001)[309]. Section 9.1.3.6 gives examples of quota fixing per country/client.

(199) Co-ordinators were also responsible for the implementation of price-fixing arrangements set for specific clients in the country assigned to it. The aim was in particular to establish specific prices and price increases for the large clients per country and per product and the common line of argumentation vis-à-vis clients in order to justify the price increases[310]. As such, the co-ordinator generally negotiated (over the phone or in bi- or multilateral meetings) the specific prices or price increases to be charged generally or to each of the clients in the country under its responsibility with

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other possible suppliers active in that country. That would mostly happen on a six-monthly or yearly basis, usually shortly before the (bi-) annual agreements with clients had to be renewed, as mentioned further in recital (216). It also debriefed the other Club Europe members of the negotiations/agreements reached for the country concerned. Section 9.1.3.5 gives examples of such price fixing.

(200) The co-ordinator also mediated in disputes between various suppliers, arising because a club member had either been perceived to have exceeded its volume to a particular client, not respected the exclusivity of a certain client to another member, or sold below set prices. Examples of settlement could be that the 'offending' company would withdraw its offer to the client, agree to limit the period of its offer or supply, or to give up a particular amount of volume for another client (see also section 9.1.6). If no solution at this level was achieved, senior members of the various companies would become involved to try to find a compromise.[311]

(201) Throughout the duration of Club Europe, including the expansion period (see section 9.1.5.1), the co-ordinators' task to implement certain quota arrangements and to set prices towards specific clients would also include arrangements with the Italian companies. The aim was to fix quotas for supplies by Italian companies to large customers in the reference area.[312] As expressed by (…) in minutes of a meeting of 10.09.2002: '*the president cannot coach the entire European market, the way this is done in Italy'*.[313] Contemporaneous evidence shows amongst others discussions between Tréfileurope (co-ordinator for amongst others France and Italy) and Italian producers on specific allocation to Italian producers of quotas and clients in France[314] and discussions between WDI (co-ordinator for Germany) and Italian producers on quotas, clients and prices in Germany[315].

(202) It was also the task of each supplier willing to supply a client for which it was not the main supplier, to first contact the co-ordinator of the country concerned and ask for the applicable minimum price. If the co-ordinator was also the main supplier of that client, it would directly transmit information on price and client conditions. Otherwise, it would put the requesting supplier in direct contact with the main supplier. Such co-ordination of the price offers to specific clients was meant to avoid price undercutting and thus help to ensure the respect of the existing supplier-client relationships.[316] This practice of contacting the market leader already existed during the Zurich Club. For example, on 27.09.1995, Tycsa called Nedri to inform it about a client it 'won' in the Netherlands and to claim that Nedri as the market leader had to ensure that Tycsa would be given back its lost tons (see recital (144)).

(203) Apart from the six producers, a number of other producers participated in the cartel activities of the six in order to preserve their respective market

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share and the existing arrangements per client and per country[317]. Some of the six producers were responsible for keeping these producers informed of their (monitoring) decisions. (…) formulates it as follows[318]: *'The companies Fundia, (…) and* [another competitor] *have also been implicated on an ad hoc basis, only at the level of sales managers…These contacts were bilateral with the 'co-ordinator' only, who was in charge of the client and the country concerned, as these arrangements among sales managers were never multilateral'*. Hence, Nedri was to liaise with Fundia concerning supplies to (…) (see also section 9.1.4 below).

(204) The co-ordination system continued to be in force until the date of the Commission's inspections. At a meeting of 05/06.06.2002 it was decided that a table should be exchanged with the country co-ordinator showing per country and per client the actual supplies and the desired quota. At the meetings of 01.07.2002 and 15.07.2002 the agreement on a 'leader/co-ordinator' per country was repeated. Finally, at a meeting of 12.09.2002 the names of the co-ordinators were repeated and they correspond with those mentioned in the table in recital (195) (see also section 9.1.5).

9.1.3.4.Europe-wide quota fixing

(205) As mentioned in recital (188) above, the Commission is in possession of a large amount of contemporaneous evidence, copied during the inspections, that the six producers (at executive level) agreed on and implemented a European-wide quota system for the PS products wire and strand[319] covering the entire reference area, i.e. the EU 15 excluding UK, Ireland and Greece and including Norway and Switzerland from May 1997 onwards. They excluded the sales of the six producers outside the reference area and the sales of others than the six producers in the reference area.

(206) Although the quotas (expressed in %) were initially Europe-wide, they were from the outset, in the Lyon meeting, meant to be divided by country later on[320], as was the practice in the Zurich Club. The six producers would also occasionally discuss sales per country (see for example meeting of 23.10.1997,(…)) and at the latest from September 2000 onwards they started to negotiate quotas per country for all important PS producers (see section 9.1.5).

(207) The quotas were calculated on the basis of the total European sales volume over a period of six quarters, i.e. the fourth quarter of 1995 to the first quarter of 1997, hereafter called **'reference period'**[321] in the reference area[322]. This period was mathematically reduced to a 12-month period for the purpose of calculating the quota of each company.[323] The participants had agreed to provide audited data of their sales, which all delivered, except Emesa[324].

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External audits were chosen in order to prevent cheating, which was considered a problem of the Zurich Club, where the parties had provided non-audited data. Samples of these audited reports were found during the inspection and were submitted by (…) ,[325](…) [326] and the Bundeskartellamt[327]. For the period of 01.04.1997 to 31.12.1997 (the period following the reference period), the six producers, except for Emesa, provided again audited sales figures[328].

(208) Based on the submitted audited data, the annual 'base-volume' (expressed in percentage and in absolute number of tons for the reference period) was calculated. It was agreed that the base-volume would be kept stable in the future among the producers involved[329]. The allocated quotas calculated on the basis of the audited data (the base-volumes, also called 'soll' figures) in the reference period were as follows:[330]

Tréfileurope:[331]	22.994%	(60 387 t)
Tycsa:	21.467%	(56 377 t)
Nedri:	18.659%	(49 002 t)
Emesa:	15.705%	(41 244 t)
WDI:	11.881%	(31 202 t)
DWK:	9.294%	(24 408 t)[332]
Total	*100%*	*(262 621 t)*

(209) It was also agreed in the Lyon meeting that a compensation mechanism would be applied if a party exceeded its allocated share (see recital (187) and recital (374)). The six producers would further regularly (**on a quarterly basis)**[333] exchange sensitive information on their sales volumes in order to allow verification of the respect of the quota agreed at the Lyon meeting by comparing the total actual volume sold by each company (called the 'ist') with the volume they were allowed to sell according to their allocated quota (the 'soll', see recital (208)). It was in this context also agreed that the six producers would submit their sales data to one person before the meetings, who was in charge of calculating the deviations from the agreed quotas in advance. Mr. (…) (DWK) was first in charge, whilst he was President of ESIS, followed by Mr. (…) (Nedri) in 2002[334].(…)[335] '*…(…)…*'. The parties aimed at coming to a **status quo** of their market shares for the whole of Europe[336].

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(210) Compelling illustrations of regular exchange of supply data in view of controlling whether the Lyon quotas had been respected are: eight tables each mentioning, for the periods III/99, 4/97-12/00, I/00, II/2000, 3/00, 4/00, 2000 and I/2001, the supply data for the six producers in the period concerned, the percentage in the total sales of the six in the same period and the deviations of the agreed quota[337]. In these tables the figures I, II, III, 3, 4 refer to the quarter of the year concerned. The same figures reappear in documents (…) , with tables for the second quarter of 1997 until the third quarter of 2001[338]. The regular exchange of supply data is further illustrated by the fact that DWK had in its possession WDI's supply figures (per country) for the periods IV/1995-1997, III/1998, IV/2000 and 2000, July, August, September 2001 and the total figures for III/2001.[339] Minutes of meetings of for example 04.08.2000[340] and 26.09.2000[341] between the six, except Emesa, illustrate the detail of the discussions regarding the implementation of the quota. For example the meeting of 23.01.1998 at which discussions on deviations took place (…) is also referred to.

(211) Finally, several (…) documents, subdividing the supply figures according to country for the fourth quarter of 1995 until 1997, the fourth quarter of 1998, the fourth quarter of 2000 and the entire year 2000 as well as for July, August and September 2001 were received by DWK at a meeting of 30.01.2001 and by fax dated 09.10.2001. The latter also kept its own internal supply data per country for the years 1997 to 2001.[342]

9.1.3.5. Price fixing per country

(212) As documented in (…) to the Decision, the six producers agreed at the latest at the meeting in Paris on **16.07.1997** to fix minimum prices and agree on price increases for Germany, the Netherlands, Belgium, France, Austria, Spain and Switzerland[343]. Moreover, over time, general price discussions also concerned Denmark, Italy, Portugal, Luxembourg, Scandinavia (including Norway) and Eastern Europe. Examples are the meetings of 08.10.1997, 23.10.1997, 23.01.1998, 16.07.1998, 25.09.1998, 30.09.1999 and 08.11.1999 (…), for price fixing during the Club Europe 'expansion period', i.e. after 11.09.2000, see also section 9.1.5.2). The prices were first fixed per country and then 'specified' client by client (see for example meeting of 30.09.1999,(…)).

(213) As explained in section 9.1.3.3, each of the six producers, except Emesa, was a co-ordinator responsible for one or more countries and proposed, for its country/-ies concerned, the minimum price for the reference product, the 12,5 mm wire[344], on which basis the producers selling in the country concerned could define the applicable prices for the other PS products

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as well. According to(…) [345], when fixing a (minimum) reference price per country, the members normally took as a reference the prices quoted to the largest customer in the country concerned, also called **'reference clients'** i.e. (…) for France (co-ordinator Tréfileurope)[346], (…) for the Netherlands (co-ordinator Nedri), (...) for Germany (co-ordinator WDI) and (…) for Scandinavia (co-ordinator Nedri, see also further, section 9.1.4). The co-ordinators generally agreed on the common lines of argumentation to justify price increases towards clients (see recital (199) above). Price differences among the members were tolerated as long as the overall price was maintained or increased. Prices and price increases agreed at a regional level were also reported in the Club Europe meeting[347]. Furthermore, it is worth noting that a surcharge could be fixed for smaller clients (for example in countries such as in France and Belgium, see meeting of 27.09.2001(…)).

(214) At the same time, price discussions took also place at regional/local level for Italy, Portugal, Spain and the Nordic market (see further sections on the (...) co-ordination (9.1.4) and Club Italia (9.2.1) and Club España (9.2.2), respectively). The co-ordinators and other pan-European producers regularly participated in these discussions, which they could therefore influence. Thus, in Club Italia the Italian producers, together with the pan-European producer Tréfileurope (co-ordinator for Italy) and sometimes also with Tycsa and DWK discussed prices and minimum prices in Italy and in other European countries during their meetings. Meetings were held on 22.10.1997, 16.12.1997, 11.03.1998, 07.09.1998, 28.09.1998, 05.10.1998, 04.12.1998, 18.01.1999, 15.03.1999, 13.05.1999, 31.05.1999, 12.07.1999, 20.07.1999, 29.11.1999, 17.01.2000 and 21.02.2000 and there is documentary evidence dated 06.04.1998 and (…) notes dated 20.07.1999 (see (…) and section 9.3.2). At the meeting of 13.05.1999 (prepared by Tréfileurope on 06.05.1999), the Italian producers even explicitly confirm that the foreign prices should be supported and then discuss the price increase foreseen in Germany, Belgium, France, Spain, the Netherlands, Austria, the United Kingdom and Italy. Also (…) notes of 20.07.1999 mention a European price increase of 20%.

(215) Similarly, the pan-European producers Tycsa (co-ordinator for Spain and Portugal) and Emesa were also simultaneously attending Club España meetings in which they could influence the price discussions between the Iberian producers regarding Spain, Portugal and other European countries (see (…) and section 9.3.2).[348] Furthermore, as explained in recital (198), there were also numerous bilateral or multilateral meetings on prices in specific countries between co-ordinators and producers active in these countries, including the Italian and Iberian producers.[349]

9.1.3.6. Client allocation and sales quotas per client or per country

9.1.3.6.1 General

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(216) Generally, it was the country-co-ordinator's task to negotiate the allocation of clients and sales quota per client for the country assigned to it in his bi- or multilateral meetings with the supplier(s) active in that country. Such meetings usually took place before the (mostly yearly) contracts with clients had to be renewed. At these occasions, the co-ordinators also agreed on a minimum price per country and mostly used the reference client's mechanism to that extent (see recital (213)).

(217) Regarding the two main reference clients, (…) and (…), discussions were conducted directly at executive level, in order to ensure proper execution of the general quota agreed within Club Europe[350]. According to (…), participants in the meetings relating to the Dutch customer (…) were those supplying it directly, i.e. Nedri ((…) was Nedri's most important customer), Tréfileurope, DWK and WDI. These four companies started discussing a general price increase for (…) in parallel with the preparatory meetings establishing the European-wide quota agreement (see section 9.1.3.1). The prices agreed during the spring 1997 negotiations were implemented as of July 1997[351]. The main suppliers and the arrangements regarding (…) are described in section 9.1.4.

(218) It seems that these discussions took place in the framework of the general quota discussions. As of early 1998, the producers agreed to respect each others 'exclusive' clients, set quotas on the volume to be supplied to shared clients, set minimum prices for offers to clients and agreed on price rises in advance of offers[352].

(219) (…) . In the following sections, examples are provided regarding the countries Germany, the Benelux, France, Italy, Spain and Portugal during Club Europe.

9.1.3.6.2 German market

(220) As described by (…), sales managers of the six producers, except the Spanish producers Tycsa and Emesa met on **06.03.1998**, **15.06.1998, 24.02.1999, 22.03.1999** and **04.05.1999** in Düsseldorf (Drahthaus) to discuss the German market situation and to consider whether client allocation could help protect them against the increasing sales of the Spanish, Hungarian and Italian companies in Germany[353].

(221) At a meeting between the six producers on **17.11.1999** (…), Tycsa, the co-ordinator for Spain, also requested to be more active in Germany. Also (…) described that a meeting took place in Moers **at the end of 1999-beginning of 2000** among the following companies active in Germany with the aim of discussing client allocation in that country: WDI (co-ordinator for Germany), DWK, Nedri, Tycsa and possibly Tréfileurope/Fontainunion. (…) mentions the aggressive market behaviour of the Spanish company, Tycsa, in Germany as the reason for the discussions. Notes of these discussions show that clients were allocated and list ten clients, the first three of which would have been

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clients of DWK, the next six companies would have been clients of WDI and the last company would have been a client of Nedri. The symbols 'V' and '-' next to each of these clients showed whether or not Tycsa was allowed to increase supplies to the client concerned. Regarding one client (named), a question mark shows that no agreement was reached.[354] Also (…) mentioned that the German co-ordinator (WDI) had bilateral phone discussions with other suppliers, i.e. Tréfileurope (Fontainunion), Nedri, DWK, (…) and Itas, regarding the same client.[355]

(222) On **27.01.2000** Nedri and WDI met Fundia with the aim of coming to a common agreement to limit Fundia's sales in Germany (…).

(223) Frictions and negotiations regarding the German market continued in 2000 and 2001: for example at the meeting between the six producers except Emesa on **03/04.08.2000**, Nedri requested a certain volume to be sold at a certain price on the Spanish market in compensation of the 'German problem' and found that it was up to Tycsa to organise this.[356] Tycsa was the co-ordinator for Spain. Also during the expansion period, negotiations regarding the German market continued and the Italian producers were requested to spread their exports more equally over the European countries in order to limit sales in particular in Germany (as well as in the Netherlands and France, see for example meeting of **04.09.2001**, (…), see also recitals (325) to (330) below).

9.1.3.6.3 Benelux market

(224) According to (…)[357], four clients in Belgium were the object of co-ordination. Mr (…) was the co-ordinator. Discussions took exclusively place over the phone and bilaterally and involved, depending on the clients, the following producers: WDI, Fontainunion, Tycsa, DWK, (…) and Fundia. The Commission is also in possession of written evidence confirming that the six producers discussed their sales in amongst others Belgium and the Netherlands:(…), for example the meetings of **23.10.1997** and of **04.08.2000** in particular on Tycsa's requests for more supplies in the Benelux market (which the other cartel members had rejected) and on the Benelux discussions among the Italian companies[358]. Discussions relating to the Benelux continued and even intensified during the expansion period (see recitals (331)-(339) below).

9.1.3.6.4 French market

(225) Tréfileurope, as co-ordinator for the French market, was involved in several bilateral or multilateral meetings regarding this market. Contacts between Tréfileurope and ITC regarding the French market started in 1998. Following Redaelli's financial crisis *'ITC was able to regain a part of the French market. In 1998, following its entry onto this market, bilateral contacts*

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began between the ITC agent for France and the agent for the French producer [Tréfileurope][359].

(226) Tréfileurope was also co-ordinating supplies to the French reference client (…). For example, when Nedri intended to supply (…) (again) in 1997/1998, it first contacted Tréfileurope and upon the latter's request, it refrained from doing so. In 2000, when Redaelli allegedly stopped supplying (…) , Tréfileurope entered into discussions with ITC on that client (even if they would not have come to an agreement). Furthermore, at a Club Italia meeting of 18.06.2001 between Tréfileurope, Redaelli, ITC, Itas, SLM and CB, the Italian producers were requested not to supply to (…). (…) also mentioned two other French clients, which were the object of a historical and tacit status quo. (…) had regular bilateral contacts with Redaelli and Tycsa with the aim of ensuring the respect of the **status quo** regarding the volume allocation and to increase prices.[360]

(227) Discussions regarding the French market also continued during the expansion period. For example, notes of a co-ordinators' meeting **of October 2000** list amongst others the prices fixed for the French reference client and another French client.[361] At a meeting in **September/November 2001** quotas were allocated to Tréfileurope, ITC, Redaelli, Itas and CB for a number of French customers (…). A lot of negotiation took place and agreement was reached on the export quota of the Italian producers for France and how this quota was to be subdivided between the Italian producers. Also clients continued to be allocated in France (see recitals (316) to (324) and section 9.1.5.3).

9.1.3.6.5 Italian, Spanish and Portuguese markets

(228) There were also discussions between the Spanish companies and the other members of Club Europe as well as between the Italian and the Club Europe producers regarding quota and client allocation on the Spanish, Portuguese and Italian markets (see sections 9.2.1.4, 9.2.1.6, 9.2.2.4 and 9.3.2).

9.1.4. Specific co-ordination and volume allocation regarding the client (…)

9.1.4.1. Characteristics of (…)

(229) (…), also considered the 'reference client' in the Scandinavian market (see recital (213))[362] (…) .[363] This Decision will continue to use the name (…) . Reference is occasionally made by the cartel participants to '(…) ' and also to '(…) '.

(230) (…) is one of the largest PS consumers in Europe. In 2001, (…) comprised (…)[364]. The volume of (…) annual PS orders (including non-EEA Contracting Parties) in 2002 is estimated to have exceeded 45 000 tons

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(approx. 5 to 10% of the EEA consumption). The main suppliers to (…) were: Fundia (20%), Nedri and CB (each 17%), Tycsa (14%) and Tréfileurope and Emesa (each 11%)[365].

(231) (…) used to organise its tenders via its subsidiary, (…) , located in the Netherlands. (…) sent tables with specifications, quantities and price requests to potential suppliers.[366] (…) made its orders on a yearly basis, (…) [367].

9.1.4.2. Description of the (…) co-ordination

(232) The Commission is in possession of statements from the Bundeskartellamt[368](…)[369], (…) [370] and (…)[371], confirmed by contemporaneous evidence, that between at least **23.10.1997** and **31.12.2001**, **the six producers,** as well as **Fundia** and **CB,** discussed and exchanged sensitive information on (…) and agreed on the volumes which each company would supply to (…) per country and per product type, as well as on the price and future price increases[372] to be charged. An agreement was reached for the year 2001. In this context, the Commission acknowledges that the documentary evidence on Fundia is not as abundant as for the other parts of the cartel (the pan-European and national/regional arrangements, see sections 9.1 and 9.2). This can however be explained by the fact (i) that a lot of contacts with (…) occurred bilaterally and by phone, for which logically no trace is left[373] and (ii) that, as regards Fundia, this company was involved in the cartel in a less regular way[374].

(233) The Commission considers, however, that the (…) contemporaneous documents suffice to prove the direct involvement, and thus the liability, of the six producers, CB and Fundia in the (…) co-ordination.

(234) As already mentioned in (231), (…) organised tenders on a **yearly** basis, generally in autumn for the year thereafter[375]. When the suppliers received the tender specifications from (…), co-ordination on their offers (regarding prices and quantities) occurred in writing[376] but most often by phone (see recital (232). Specific (…) discussions also took place in the margin of ESIS meetings. The co-ordination mechanism, as implemented in Club Europe (see section 9.1.3.3), was also used in these (…) negotiations; first, there were two operational levels – the directors' meetings and the sales representatives' meetings – and, second, the information flow was centralised – only the respective country co-ordinators had the complete overview of the

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sales volumes by all suppliers to the (…) subsidiaries[377]. The co-ordinator for the Scandinavian market, and (…) in particular, was Nedri (Mr. (…) , see recital (195)). At the meeting of 12.09.2002 it was proposed that Fundia (Mr (…)) would take over. That Nedri was a true co-ordinator for the (…) sales towards the other PS competitors follows from contemporaneous evidence available in the Commission's file, such as inspections documents found *inter alia* at the premises of Nedri[378] and Fontainunion[379] (…)[380]. A description of a selection of (…) meetings follows in the next sections (and in Annex 2).

Period 1992-1997

(235) As regards the period *prior* to the starting date which the Commission upholds for the (…) co-ordination (i.e. 23.10.1997, see section 9.1.1.6), the Commission observes that the evidence is not sufficiently precise to prove Fundia's participation in the cartel to the requisite legal standard. They are nevertheless useful indications explaining the starting date upheld by the Commission, as developed further under recital (242).

(236) The Commission has indications that the (…) discussions must have been ongoing at least as from November 1992: Notes of a meeting of **26 November 1992** (…) indicate that (…) offered *'4300 SKR'* to (…) in 1992 and further that Emesa will offer ('*ofertamos*') *'4200->4700(SKR)*'. The names (…) and 'Redaelli' are also mentioned in the notes. Later on in the notes, there are further references to prices offered to (…): '*4200/4310 SKR (DE 4700)*' with previsions for the year 1993: *'93: (…) (DE 4200->4700->4185)*'. Further notes (of the **end of November 1992**) clarify the prices offered by Emesa, (…) and Fundia to (…) in 1991. Notes of yet another meeting of the **end of November 1992** set out prices applied by Fundia, WDI, Thyssen, (…) and NDI (Nedri) on the Scandinavian market as well as concrete price-fixing towards (…), on the one hand, and 'other' clients, on the other hand. On **03.12.1992,** the (…) mention '*Sweden*' on a to-do list, probably hinting towards this Swedish company, (…).

(237) Minutes of a meeting of a Scandinavian club ('Skan Club', covering Denmark, Sweden, Norway and Finland) which took place on **04.02.1993** in Düsseldorf, contain volume figures for amongst others Fundia, Fontainunion, Emesa, (…) , WDI, Thyssen and Nedri (NDI). They also stipulate *'Fundia (agreed) 64%*', which most probably implies that the participants agreed that Fundia should be allocated a 64% market share in Scandinavia. This market share does not differ much from the market share Fundia had the year before (i.e. 67% according to the same minutes). The notes also show the agreed prices for 1992-1993 ('*Prices 92/93 agr*.'). The wording *'Finland 3500 (…) '* and below '*3700*', implies that the agreed price to charge to (…) would have been 3 500 and 3 700 for other Finnish clients. These prices were compared with the prices that were really charged (*'real Finland 3 040 UK; 3 250(…); 3 400 rest'*). At the meeting of **15.11.1993** between Tréfileurope, DWK,

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Tycsa, Emesa and Galycas, discussions took place on prices applicable in the Scandinavian market. It was also mentioned that Mr. (…) (Fundia) had to be contacted. On **10.11.1994**, Redaelli (Mr (…)) informed the other participants that as regards annual contracts, *'Fundia makes 4080'*. At the meeting of **23.11.1994** between at least Emesa, Galycas, Tréfileurope and DWK, the *'Hungarians (…) '* is mentioned as 'new' information for the Netherlands.

(238) At the meeting of **08.02.1995**, the Swedish market was amongst others discussed and reference was made to Mr. (…) (Fundia), NDI (Nedri), (…) and 'Italia'. The Commission further notes that Emesa was in possession of sensitive information on Fundia with respect to (…) and its delivered tons at the meeting of **07.11.1995** (and again on **03.11.1997**, i.e. each time in autumn (see recital (232)) when (…) offers were usually discussed). This illustrates that previous information exchange must have taken place on this topic among competitors.

(239) (…) on an 'ESIS'-meeting of **27.02.1997** show that prices and sales in several European countries were discussed in detail, as well as (…). Reference was, in particular, made to the fact that Tycsa had delivered 20 000 tons to (…), obliging Fundia to sell its tons elsewhere.

(240) On **01.10.1997**, Mr. (…) (Nedri) as (…) co-ordinator informed Mr. (…) (Emesa) on the prices for 1998 in Germany, the Netherlands and Belgium, including a reference to "(…*)* employee]*"*.

Period 1997-2001

(241) At the meeting of **23.10.1997** between **Emesa, DWK, Nedri, Tréfileurope, Tycsa** and **WDI**, it was indicated that Mr. (…) was the co-ordinator for (…) and that the rule was to *'contact the co-ordinator before contributing anybody new'*, clearly implying that the co-ordination system agreed in Club Europe was also in place for (…) . The participants further made reference to **'Fundia-(…) '** and to the fact that the same period of reference applied to it. They further discussed Fundia's figures, and in particular its applicable prices for Norway, Sweden, Finland and Denmark *('N(orway)=4700, S(weden)=4950, F(inland)=3460 and D(enmark)=4380')*. It was also mentioned that Fundia would increase its price for a specific product type with 40 DM ('3/8: + 40 DM') as well as in general for the period 1 January-1 April ('+ 50 DM'). It was repeated that Fundia had over 60% of the market (a similar reference to Fundia's market share can be found in the meeting of 04.02.1993, see recital (237)). It was concluded that a meeting had to be set up with Mr. (…) (Fundia) at a following (informal) ESIS meeting. The high level of detail of this commercially sensitive information on Fundia illustrates that previous information exchange with Fundia must have taken place. 23.10.1997 is therefore retained as starting date of Fundia's participation in the (…) co-ordination.

(242) This starting date must be seen in the context of the meetings and contacts which took place long before that date: **(i)** First, there are indications that Fundia's anti-competitive behaviour dates back to at least 1991-1992 when the division of the so-called Nordic market was discussed between competitors, including Fundia (see section 9.1.1.6). **(ii)** In the next years,

competitors at several occasions discussed Fundia's prices and sales regarding (…) (as well as other important clients)[381]. The fact that competitors several times mentioned to contact Mr (…) (Fundia)[382] is an additional indication that discussions with Fundia must have taken place or were at least envisaged. **(iii)** Lastly, while 3 statements confirmed Fundia's participation in the (…) co-ordination, Nedri also confirms Fundia's involvement in the (…) co-ordination as from 1995[383].

(243) On **24.10.1997**, Mr. (…) (Emesa) had a meeting with (…) in Oss in the Netherlands, and quantities and prices were discussed for at least Norway, Finland, Sweden (as well as for the Netherlands, Germany and France) with an indication that the decision would be taken at the end of the following week. On **03.11.1997**, Mr. (…) (Emesa) noted down the prices that Nedri and Fundia (Mr. (…)) gave to (…) (…), illustrating again the previous information exchange on this topic (see also (238)). Mr. (…), Emesa's sales agent for Germany, indicated on **05.11.1997** to Mr. (…) that '[employee of (…)] *says that he doesn't accept cartels and would give us our share with 75 HFL (in secret payment)*'. This implies that the client, quite rightly, assumed that a cartel was in place but that if Emesa accorded an additional discount, an order could be made. On **11.11.1997**, Mr. (…) had again a meeting with two (…) employees in Oss. At a meeting with the same participants on **25.08.1998** in Oslo an agreement was reached to supply a certain volume[384].

(244) During the **23.01.1998** meeting in Düsseldorf, the participants referred to '*(…) – from Fundia 14 000t*' when discussing the Netherlands. On **17.11.1998**, under the heading *'Contribution (…)* , Mr. (…) (Emesa) noted down the '*suggestions of the Club*' for three types of prices and '*offers (draft)*' for the Netherlands, Germany and Sweden, indicating for some that he '*discussed and agreed with Lange*' (Emesa's sales agent in Germany).

(245) At the meeting of **29.11.1999** between Redaelli, ITC, Itas, Tréfileurope, Mr (…) (representing (…) and CB), SLM, DWK and Tycsa, (…) estimated volume requirement for the year 2000 was, amongst others, discussed. At the meeting of **27.01.2000**, Nedri, WDI and Fundia tried to reach an agreement to limit Fundia's sales in Germany.

(246) Tréfileurope participated in at least 5 meetings on (…) among which at least 2 were held at directors' level in **December 1999** and in **May 2000**[385]. Meetings were also held at sales representatives' level, for example in the **first semester of 2000** where the market volume per country concerning the client (…) was discussed. In particular, it is referred to '*loss (…) : +/- 7000t*' and for Tycsa, Fundia, Fontainunion and 'others', the supplies (and their evolution) in Scandinavia and the Baltic states in 1999-2000 are listed. CB, Emesa and (…) are also mentioned, though without reference to supplies.

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(247) Further, the sales representatives from Nedri, DWK, WDI, Tréfileurope and Tycsa met on **03/04.08.2000** in Brussels within the framework of their Club Europe activities. Mr. (…) (Nedri) noted down in the minutes that Tycsa still needed to talk to Fundia (and the Italian producers) and that a *status quo* had to be respected until the discussion with Fundia and the Italian producers had taken place. These negotiations had to be held before 26.09.2000.[386] Minutes of a meeting held in Brussels attended by DWK, Tréfileurope/Fontainunion, Nedri, Emesa, Tycsa, (…) and WDI on **26.09.2000** show that such negotiations had effectively taken place with the Italian producers as well as with Fundia. It was in particular noted that Tycsa had reached an arrangement with the Italian producers and that, with respect to Fundia, discussions on a regional arrangement between Tycsa and Fundia were ongoing. According to the notes from Nedri and DWK of these discussions, Tycsa would be prepared to limit its sales in the Scandinavian market and to limit its supplies to (…) further to the benefit of Fundia, provided that it would get compensation in other countries (see also recital (376)).

(248) Another sales representatives' meeting on (…) took place in **September/October 2000**. The handwritten notes list inter alia the companies Tycsa, Emesa, WDI, Tréfileurope, Fontainunion, Fundia, CB[387] and with detailed supply figures for the years 2000 and 2001 amongst others in Sweden, Norway, the Netherlands, Finland and Germany, i.e. all countries in which (…) was active. The document also indicates prices and price increases per country and per product[388].

(249) At the meeting of **25.07.2001**, the allocation of tons was discussed in amongst others the Scandinavian countries (with indication of the names 'Fundia, (…) and CB' behind these countries). The sales representatives of Nedri, WDI, DWK, Tycsa, Tréfileurope/Fontainunion, (…) and Emesa also met on **27.09.2001** in the margin of ESIS in Düsseldorf (see … and recital (346)) to discuss their offers towards (…). Minutes of (…) of this meeting[389] indicate: '*concerning prices: 510 € (based on the comments by (…)* […], *confirmed by the offer received from [another competitor]).*' The minutes further contain seven tables which thoroughly describe the arrangement for the offer to (…) in 2002[390]. Some of the data contained in these tables are mentioned in Nedri's fax of **29.10.2001**[391] to Tréfileurope, also sent to Tycsa, CB and Emesa the next day (see recital (251)). The first three tables, entitled '*2002 offer (…) Group*', give an overview of Tycsa's sales and prices in 2001 for several PS products in Germany, the Netherlands, Norway, Lithuania, Finland, Estonia, Sweden and Poland and compare, in the same countries but for the year 2002, the supplies and prices proposed by the 'club' ('…') with those of the 'real proposal' (…)[392]. The fourth table, entitled 'competitors'

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approximate tonnage' ('*tonelage aprox. competencia*') provides an overview of the 2000 and 2001 supplies to (…) from inter alia Tycsa, (…) (only for 2000), Nedri, Emesa, Fundia, Fontainunion and CB per country, as well as their total supplies to (…) for these years. Additionally, this table contains the co-ordinator's proposal on how the sales to (…) should be divided over the same suppliers, except (…) (which is indicated with a '0'), in 2002 ('*propuesta coordinador reparto 2002*'). For 2001 the data mentioned in this table correspond with the sum of the supplies per country for each supplier mentioned in Nedri's fax of 29.10.2001.[393] The fifth table shows the co-ordinator's proposal for the year 2002 on how the total volume of supplies to (…) should be divided per country and per product ('*total tons 2002*'). On top of that, the table contains the price proposed by the co-ordinator per country and per product ('*propuesta precio co-ordinator'*).[394] In the same table, divided by countries, (…) provides its supply estimations and its expected prices for 2002 for each of the mentioned products (…) . The prices proposed by the co-ordinator ('…') appear to concern the year 2001, as they correspond with a 2001 price list found at (…) [395]. The table also shows the price proposed on **14.11.2000** in Düsseldorf and the price agreed after a meeting in Finland on **20.12.2000**. (…) was also discussed at a meeting on **10/11.10.2001** between Redaelli, Itas, CB, DWK, Tréfileurope, Nedri, ITC, SLM and Tycsa.

(250) Before the general consensus was reached, it was the co-ordinator's task to contact each supplier in order to negotiate the volume/price (if need be). This is illustrated by an email of **24.10.2001**[396] (incl. the annexes) sent by Ms. (…) (Tycsa) to Mr. (…) (Nedri) in which Tycsa informed the co-ordinator (Nedri) on its sales to (…) in 2000, 2001 and 2002 and delivered tender data for 2001 and 2002, each time subdivided according to the same countries (Germany, the Netherlands, Norway, Lithuania, Finland, Estonia, Sweden and Poland)[397]. On the basis of these data, (…) made handwritten notes regarding Tycsa's market shares.

(251) When the agreement among the actors was fine-tuned, the co-ordinator distributed the final results to all involved parties. Thus, (…) faxed the outcome of the negotiations on (…), which started at the latest at the sales representatives' meeting in **early October 2001**[398], at least to Tréfileurope on 29.10.2001 and to Tycsa, CB and Emesa on **30.10.2001**[399]. The fax shows the sales allocation for the (…) group per supplier (inter alia Nedri, Emesa, Tycsa, CB, Fundia and Tréfileurope) per type of product (subdivided by diameter) and per location of all (…)'s production units (the Netherlands, Germany, Finland, Sweden, Norway, Estonia, Poland and Lithuania) for the year 2001. On top of that, it includes (between brackets) the volume allocation per country and per product for the year 2002.

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(252) During a meeting held in Düsseldorf on **06.11.2001** between Tréfileurope, Nedri, Tycsa, WDI, DWK, Tréfileurope Italia, Redaelli and CB (see also recital (287)), at which a list of Dutch clients supplied by Italian producers was established, the supplies of CB to (…) were also reported (…)[400].

(253) Hand-written notes from a discussion between at least Emesa and Nedri of **early November 2001**, entitled *'agreed data in % for (…) 2001'* (…) set out the sales allocation for the (…) group (for the year 2001) for the following companies:

Nedri:		17,6
Emesa:		12,2
Tréfil[Europe]:		8,4
Tycsa:		12,95
CB		19,34
[another	competitor]	8,8
Fundia		21
Total= 100%		

(254) According to (…), the (…) co-ordination came to an end in 2001 and although an agreement in principle was reached on the quota for the supplies to (…) in the year 2002, this agreement was not implemented[401]. The Commission also has no further conclusive evidence of co-ordination relating to (…) in the year 2002. As the parties clearly agreed on the allocation of quota for supplies to (…) for the year 2001 (see recital (253)), 31.12.2001 is considered to be the end date of the (…) co-ordination.

9.1.4.3. Individual participation of other companies than the six producers in the (…) co-ordination

(255) It follows from the previous section that apart from the six producers[402], Fundia and CB co-ordinated their behaviour regarding some of their clients, and in particular regarding (…).

(256) As regards **CB**, the Commission has clear evidence of its regular participation in this co-ordination as from 29.11.1999 until 31.12.2001 (see recitals (245), (246), (248), (249), (251) and (254). CB contests its participation in the pan-European arrangements in general. However, given CB's regular attendance at meetings[403], the detailed level of information on CB's sales which was discussed[404] and the fact that (…) confirms CB's participation[405], the Commission upholds its conclusion that CB was involved in the (…) co-ordination from 29.11.1999 until 31.12.2001.

(257) As regards **Fundia**, it participated in this co-ordination at least from 23.10.1997 until 31.12.2001 (see recitals (222), (232), (245)-(254)).

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(258) First of all, Fundia's cartel participation is confirmed by (…) as well as by evidence submitted by the Bundeskartellamt (see recital (232)). (…) in particular confirms that Fundia participated in the (…) co-ordination through its employees Messrs (…) , (…) and (…) [406] and that the six core members consulted and co-ordinated *inter alia* with Fundia, to exchange commercially sensitive information (on volume and price) on (…) and to agree on volume and price regarding (…) (as well as for other clients[407]). According to (…) , this co-ordination took place as of 1995. Fundia thereby actively cooperated with the core members exchanging its commercially sensitive information with them[408]. (…) also confirmed that Fundia respected the existing *status quo* and equilibrium on the market[409]. Finally it mentions that Fundia, even though it was a 'by-stander' which had to be informed of the decision of the main participants, can be considered a participant in the anti-competitive arrangements[410]. The fact that Fundia was only a 'by-stander' explains precisely the limited amount of documentary evidence of its direct participation in cartel meetings[411].

(259) The underlying contemporaneous evidence in the Commission's file obtained from inspections confirms (…). First, documentary evidence shows that the (…) meeting of 23.10.1997 was preceded by many contacts with Fundia (see recitals (236) to (240)). The Commission notes that the participants at the meeting of **23.10.1997** were in possession of sensitive information on Fundia with respect to (…) and its prices and price increases applicable in the Scandinavian countries. It was also mentioned that Fundia applied the 'same reference period' and that a meeting with Mr (…) would be set up (see recital (241)). The notes of **03.11.1997** (see recital (243)) as well as the notes of the meeting of **23.01.1998** (see recital (244)) show that the exchange of information on amongst others Fundia's prices charged to a number of clients in the Netherlands, Belgium and France is so detailed, that the Commission can reasonably conclude that the information could only have come from Fundia itself, (…).

(260) The Commission further notes Fundia's presence at the meeting of **27.01.2000**. Rautaruukki, while not contesting Fundia's presence at that meeting, contests that this meeting would prove Fundia's role in the cartel. Instead, it would show that Fundia was competing fully in Germany and that this was not appreciated by competitors. The Commission notes that the aim of this meeting was clearly anti-competitive: Fundia, Nedri and WDI met with the aim of limiting (at least Fundia's) sales in Germany. Whether or not Fundia complied with the conduct agreed and thus whether or not it actively competed in Germany is irrelevant, as the mere presence at such an anticompetitive meeting without Fundia having dissociated itself from it, is sufficient to hold it

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liable (see also recital (588)). Also, shortly after the meeting, i.e. in the **first semester of 2000,** detailed information on Fundia's sales was exchanged[412]**.**

(261) The Commission's file contains evidence that Fundia was subsequently present in the anti-competitive meetings of 14/15.05.2001 and 05/06.02.2002, that competitors took Fundia into account in their discussions regarding (…) (see for example the 2001 agreement on (…) in recital (253)) and that Fundia's supplies, quotas and prices regarding (…) were discussed continuously until 31.12.2001 (see recitals (246) to (253)).

(262) The Ovako companies and Rautaruukki contest Fundia's presence at the meeting of 14/15.05.2001 claiming that it was a normal ESIS meeting, the purpose of which was different from Fundia's activities and which would only have concerned the Italian market[413]. Contemporaneous evidence submitted by (…) and the Bundeskartellamt however confirms Fundia's presence in Tegelen and that the discussions concerned quota allocation in general and not only the sales and quotas on the Italian market. The content of this meeting was in any case anti-competitive. Fundia was moreover present in another anti-competitive meeting on 05/06.02.2002, the purpose of which was to discuss the subdivision of quotas and clients in Club Europe (…).

(263) Finally, Fundia was involved in the discussion and agreement on the sales allocation to (…) in 2001 (recitals (251) to (253)). It results from this agreement that Fundia was allocated the biggest part of the (…) supplies (21% compared to all other participants which had a share below 20%). Even if there is no proof that Fundia was present at the October 2001 meetings or that it also received the confirmation fax from Nedri on the allocated sales on 30.10.2001 (recital (251)), the discussed data on Fundia's sales were of such a detailed nature that they could have come only from Fundia itself[414]. Rautaruukki's claim that commercially sensitive information on Fundia would have come from the client (…)[415], is not credible, (…) that Fundia actively exchanged commercially sensitive information on prices and volume regarding clients among which (…) (see recitals (237) and (258)). Also, in the context described, it is very unlikely that the cartel members would allocate the most important quota to a competitor without co-ordination with the latter.

(264) The Ovako companies finally submit that the vast majority of the (…) meetings described do not contain a reference to Fundia nor indicate that Fundia would have been present at the meetings[416]. The body of evidence relied on by the Commission, viewed as a whole, proves Fundia's involvement in the (…) co-ordination as of 23.10.1997. In those circumstances, it is not necessary to prove its presence at each meeting (see also recital (587))[417].

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417 See also judgment of the General Court of 8 July 2004 in Case T-67/00 *JFE Engineering v Commission* [2004] ECR II-2501, paragraphs 179 and 180. See also Joined Cases T-44/02 etc *Dresdner Bank v Commission* [2006] ECR II-3567, paragraph 63; Joined Cases T-305/94 etc Limburgse *Vinyl Maatschappij and Others* v *Commission ('PVC II')* [1999] ECR II-931,

Given the evidence described in recitals (232) to (254), and the fact that an agreement was reached for the year 2001, the Commission concludes that Fundia participated in the (…) co-ordination at least from 23.10.1997 to 31.12.2001.

9.1.5. Expansion of Club Europe: period September 2000/September 2002

(265) Much of the contemporaneous evidence (in the form mainly of minutes of meetings copied during the inspection) shows that the six producers continued to meet over the period September 2000/ September 2002[418], not only with the aim of following up on the respect and implementation of the May 1997 agreement, but also to expand this agreement, including the price and client allocation arrangements, to the Italian producers, Fundia [419] and(…) . There were around 40 such meetings (…) and they followed the same principles as described in the sections on quota fixing (9.1.3.4), price-fixing (9.1.3.5) and client allocation (9.1.3.6).

(266) As of 1998/1999 the Italian producers increased their pressure on the EEA market by creating new production capacities and applying for certification in the other European countries. From 2000 onwards, more and more Italian producers obtained certification in countries such as Germany, France, Belgium and the Netherlands, which enabled them to increase their sales, especially in these countries. Similarly, the Spanish producers also tried to export their excess quantities in Europe and focused on customers traditionally supplied by the 'national' producers. This gave rise to disputes which the producers tried to resolve by negotiation.[420] For example, a note (…) [421] states that Tréfileurope could find solutions for the year 2000 on SLM's additional capacity, but that SLM '*normally … must'* lower its quota in 2001. According to the same note, Tycsa put pressure in Italy, which would create a situation close to rupture.

(267) This explains why from at least 11.09.2000 onwards participants of Club Europe and Club Italia regularly met with the aim of co-ordinating each others' behaviour to reach a common goal: integrating the Italian producers into the European quotas system and containing Italian exports to the other European countries.

9.1.5.1. Multilateral meetings for the integration of Italian companies into Club Europe

9.1.5.1.1. Overview

(268) As explained in recital (168) and in section 9.2.1.4.1, the Italian producers reached an agreement on a quota of **45 000 tons** for their exports of wire, 3-wire and 7-wire strand in Europe in December 1995. Similarly, in the negotiations following the increase of the Italian producers' exports

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paragraphs 768 to 778, and in particular paragraph 777, confirmed on the relevant point by the Court of Justice, on appeal, in Joined Cases C-238/99 P etc *Limburgse Vinyl Maatschaapij and Others* v *Commission* [2002] ECR I-8375, paragraphs 513 to 523.

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420 (…)

421 (…)

within Europe around the year 2000 (see recital (266)), the participants in Club Europe on several occasions asked the Italian producers to respect a status quo[422] of around **45 000/47 000 tons**. For example, on 04.09.2001, Mr. (…) (DWK) warned that the Italian producers could not increase their current presence in Europe of 45 000 tons without further talks with the participants of Club Europe (see also recital (285)) and on 11.10.2001 the Italian producers claimed that their actual export figure of 7 wire strand to Europe was around **47 000 tons**. On the basis of this figure (and after the Italian producers had claimed an export quota of 60 000 tons), the participants in Club Italia and Club Europe reached an agreement in principle on a total Italian export quota for 7 wire strand in Europe of **50 000 tons**.

(269) At least from September 2000[423] to September 2002, the six producers, including Tréfileurope Italia, as well as Redaelli, ITC, Itas, CB, SLM and (…) regularly met mainly with the aim of integrating the Italian producers into the European quota system and containing the Italian exports to the other European countries.

(270) Bilateral meetings (often between the Italian producers and the co-ordinator for a particular country) were also held with the aim of reaching arrangements per country. Such implementation agreements, dividing the export quota agreed at European level between the Italian producers were reached for some countries.[424]

(271) The meetings were held either at Federacciai's head office in Milan, more frequently at the hotel Villa Malpensa in Milano, or in other European cities. The meetings held in Italy were organised by Mr. (…) (Tréfileurope Italia).[425] According to (…) [426], in order to facilitate the discussions, the Italian producers decided that after 2000 they would be represented at the meetings by a delegation of three people emanating respectively from Tréfileurope Italia (…), CB (…) and Redaelli (…). This was considered necessary by the Club Europe producers[427]. It appears from contemporaneous evidence in the possession of the Commission (…),(…) [428], that other Italian producers also sent their own representatives to the meetings.

(272) The numerous contemporaneous pieces of evidence show that the main purpose of these meetings was: (i) to fix an overall export quota and export quotas per country for the Italian producers in Europe; (ii) to exchange sensitive information (prices, sales figures) on the different European markets; (iii) to fix quotas for imports into Italy; (iv) to fix prices; and (v) to allocate and share customers.

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(273) (…)[429],(…) [430], (...) [431],(…) [432],(…) [433],(…) [434],(…) [435],(…) [436], and(…) [437] confirm the existence of the meetings and negotiations between these producers. (…) [438], (…) [439], (…) [440] and …)[441] moreover confirm that the European producers wanted to integrate the Italian producers into the revised quota-distribution agreements.

(274) In order to establish the quota of the Italian producers in Europe, the participants agreed, in the course of the meetings, to determine the real volume of Italian exports both in total and per country. They agreed on a new **reference period**: *June 2000-June 2001* in line with the methodology applied by the six producers when they established the Club Europe quota agreement in 1997 (see recitals (207) and (208)), and on certain **rules to be respected** (see recital (309)), for a specific product - '7-wire strand'. The Italian producers communicated their sales figures for this reference period to the other participants and put forward proposals for increases. These figures were then discussed in overall terms and thereafter by country and even (bilaterally) by customer (see for example recital (320)).

(275) According to the information held by the Commission, the total sales figure declared by the Italian producers based on their exports in the reference period was **47 000 tons**. The European producers initially proposed to fix the quota at the existing supply level of the Italian producers and that this export figure be divided differently over the European countries in order to reduce the Italian exports to France, the Netherlands and Germany[442]. On the other hand, the Italian producers wanted to change the status quo and increase their sales quota for Europe, requesting **60 000 tons**[443]. By way of illustration, reference is made to the contemporaneous documentary evidence relating to the meetings of 11.09.2000, 19.09.2000 (preparatory meeting for 09.10.2000), 09.10.2000, 11/12.06.2001, 12.07.2001, 23.07.2001 and 25.07.2001, 04.09.2001, 10/11.10.2001 and 06.11.2001 listed in (…) . Threats of retaliation on the Italian market were made unless an agreement was found[444]. For example, at the meeting of 27.09.2001 reference is made to a meeting with the Italian producers where it had been tried to convince them to 'collaborate', or else Nedri and other producers would enter Italy ((…) , meeting of 27.09.2001).

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(276) The members of Club Europe discussed the Italian situation and claims among them. Preparatory documents were drawn up for the meetings[445]. Club Italia (including Tréfileurope) for their part also devoted meetings to the preparation and definition of their position towards Club Europe before the multilateral meetings at European level, as well as afterwards in order to analyse the results. It was understood that participants in Club Italia would jointly define their export figures. The meetings were therefore also an opportunity for the Italian producers to exchange data on each other's exports. Particularly relevant are the meetings of 11.09.2000, 19.09.2000, 04.09.2001, 07.12.2001, 01.02.2002, 08.02.2002 and 15.05.2002 (…) .

(277) The exchange of information enabled the producers to draw up a table showing the Italian exports figures of '7 wire strand' for the period 30.06.2000-30.06.2001 for Germany, the Netherlands, France, Belgium, Scandinavia, Switzerland/Austria, UK/Ireland, Portugal and Spain as well as the real export figure of the Italian producers, both in global terms (47 113 tons) and per country, the planned export increase per country and the agreement on the overall export quota of the Italian producers in tons (**50 000 tons**) and per country, thus establishing the percentage quota for the Italian producers per country (see recitals (288), (289) and (294)). The Italian producers on their side divided among themselves the agreed export quota of 50 000 tons both as a total figure and per country (see recitals (296) to (303)).

9.1.5.1.2. Description of the main multilateral meetings: on a quota of 47 000 tons proposed by the European producers v. 60 000 tons proposed by the Italian producers and the agreement in principle of 50 000 tons

(278) As explained before, at the latest in autumn 2000, participants in Club Europe and in Club Italia started to look for a joint solution for the increasing exports by the Italian producers into Europe. For this purpose, the European market was analyzed and the percentage of interpenetration were discussed at the meeting on **09.10.2000** between Tréfileurope Italia, Redaelli, Itas, CB, Austria Draht (Mr. (…)) and the six producers (except Emesa) at Federacciai's head office in Milan.[446] This meeting was prepared by the participants of Club Europe at a meeting in Brussels on **26.09.2000**[447] and by the Club Italia participants at the Headquarters of Federacciai at least on 11.09.2000 and on 19.09.2000 (...). These participants continued meeting regularly from that date onwards.

(279) According to (…), at a meeting in Tegelen (NL) on **14.05.2001** between DWK, WDI, Redaelli, ITC, Tréfileurope, Socitrel, Tycsa, Nedri, Itas and CB, *'it was agreed in principle to grant the Italian producers an overall sales volume outside Italy'*[448].

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(280) On **11.06.2001**, during discussions between ITC, Itas, Tréfileurope, CB, SLM, DWK, Nedri and Tycsa at Villa Malpensa, the Italian producers requested an export volume for Europe of 60 000 tons. It was agreed that the Italian producers should provide an overview of their export figures in Europe for the period June 2000 to June 2001. The quota discussions continued the following day between the same companies and Redaelli, WDI and ITC (…).

(281) On **12.07.2001**, Tréfileurope, ITC, Redaelli, Itas, CB, DWK, Nedri, WDI and SLM met in Milan, where the Italian producers repeated their request of an increase of their export volume to 60 000 tons. First, the participants discussed the PS volume per country (Germany, the Netherlands, Italy, France, Spain, Portugal, Belgium, Scandinavia, Austria/Switzerland, UK/Ireland, Poland/ Hungary/Czech Republic) and the percentage of wire and strand in this volume. They also more specifically discussed the exports of Itas, CB, ITC and SLM (excluding those of Trame and Redaelli) for the **period June 2000-June 2001**. According to notes of this meeting, the total export figure of 7-wire strand of these four companies was 30 862 MT, exported to 14 countries. The notes further mention '*30,862 MT agreement + 10% supplement (divided over all Italian producers) = +/- 34,000*'.

(282) One of the problems regarding Italy mentioned at the meeting was further that Redaelli would not be in the Club and that it was crucial to know whether or not Redaelli wanted to participate, its estimated export of strand being 17 000 tons (1 000 tons for Trame). The minutes of the meeting then show the calculation made by the Italian producers to come to their requested export figure of around 60 000 tons: '*30,862 + 17,000 Redaelli 7-wire strand + 4,000 Redaelli 3-wire strand + 1,000 Trame 3-wire strand + 5,000 Redaelli wire = 57,862!!*' Prices were also discussed.[449] The notes conclude:

'*next meeting*

(1) breakdown per country/producer
(2) data of Redaelli are crucial. Participate!
(3) first agreement on volumes, then translation into market share percentages.
(4) then minimum prices per size + system extras/Italy agreement/2002.
(5) also take up wire + 3 wire strands in agreement
(6) Nedri figures export outside Netherlands.'[450]

(283) The notes also mentioned that the main export country for Itas was Germany, for CB the Netherlands, for ITC France and for SLM France and Germany and the approximate total volume exported by each of these four companies. Further it is also mentioned that in France, ITC would have pushed aside Redaelli and that now there would be a counter-reaction of Redaelli.

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[450] (…)

(284) A next meeting took place on **23.07.2001** with the same participants, except Redaelli, SLM and Tycsa. That their presence was expected follows from the minutes of this meeting, which mention them explicitly as excused. At this meeting, the Italian market was discussed in more detail. The Italian producers first gave a breakdown by supplier (including the non-Italian suppliers DWK, Austria Draht and Tycsa) of supplies of 7-wire strand in Italy and then presented their proposal to divide a total export volume **of 60 000 MT for 7-wire strand** over the European countries, whereby they proposed the bulk of the volume to be divided over France (18 000 tons), the Netherlands (14 000 tons) and Germany (10 000 tons). As follows from the notes made by Nedri at that meeting of 23.07.2001, this proposal was found unacceptable by the non-Italian producers amongst others because of the unbalanced distribution of the volume over the countries.[451]

(285) In Malpensa on **04.09.2001**, Tréfileurope, Redaelli, Itas, CB, DWK, WDI, Tréfileurope, Nedri, ITC and SLM exchanged figures on the European markets. Bargaining took place regarding the Italian producers' sales quotas for Europe. The Italian producers met on their own in the morning, while a meeting with the 'foreigners' was held in the afternoon. '*The Europeans called on the Italians to keep the rate of penetration at the current level and to distribute it differently in order to cut back exports to France, the Netherlands and Germany, which were then at a level of 46.000t (both Italian sales of 7-wire strand and sales by the foreigners of 7-wire and 3-wire strand). Failing an agreement, Italian prices were at risk. (…) called for a new meeting before the start of October. The intra-Italian discussion concerned the fact that no-one wanted to give up its quota which was already consolidated or considered as such (Red 17/18000, CB 11000, ITC 12000, SLM 2800, Itas 5000)'.* According to the (…) minutes, *'(…) said that the Italians can under no circumstances increase their current presence in Europe (**45 000 tons**) without talks'* (emphasis added).[452]

(286) On **10/11.10.2001**, the supply figures declared by the Italian producers were discussed for Germany, the Netherlands, Belgium, France, Denmark, Finland, Norway, Austria, Switzerland, Spain, Portugal, the UK and Ireland. According to the Italian producers, they supplied a total of **47 013** tons. For each country, an additional volume which the Italian producers would be allowed to supply was proposed, coming to a total sum of **50 000 tons**[453]. According to (…), in separate discussions, the co-ordinators mentioned in recital (289) had to distribute the quota over the suppliers in the countries concerned and negotiate the fixing of quotas for the Italian suppliers to large customers. At the meeting of 10/11.10.2001, such a meeting regarding the Benelux and Germany was fixed for **6.11.2001** while Spain, Italy and France was discussed on **25.10.2001** at Villa Malpensa.[454] Notes found at Tycsa of a meeting at Villa Malpensa (Milan) on 25.10.2001 show that apart from sales

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volume per client, prices in Spain were also discussed. The notes mention 'confidential'.[455]

(287) At a meeting of **06.11.2001** to which Tréfileurope, Nedri, Tycsa, WDI, DWK, Tréfileurope Italia, Redaelli and CB participated (…), a table was circulated giving an overview of the total market volume and the supplies by the Italian producers of 7-wire strand in the reference period in Europe (see recital (289) below).

9.1.5.1.3. Implementation of the agreement on an export volume for the Italian producers of 50 000 tons

(288) Table 2, found at Tycsa, Nedri, DWK, and ITC, splits up a total of **50 000 tons** for several countries. The initial table was drafted by Nedri[456]. The copy found at ITC's premises mentions the date **06.11.2001**, i.e. the date on which a meeting took place in Düsseldorf between Tréfileurope, Nedri, Tycsa, WDI, DWK, Tréfileurope Italia, Redaelli and CB. The figures of the second column *'supplied by Italian producers*' were discussed at least on **04.09.2001** and **10/11.10.2001** (see recitals (285) and (286)). On the copy found at Tycsa, the text '*Proposal accepted for 2002'*[457] was added in handwriting in the column '*Agreement in tons*':

(289) **Table 2**
'7 wire strand (30/6-2000/30/6-2001)

	Market Volume	Supplied by Italian Producers	Agreement in tons	Italian Market share [%]	2002 Market volume	2002 supply by ItalianProducers	Co-ordinator
Germany	**36 000**	**6 160+40**	**6 310**	17.53			(…) , WDI
NL	40 000	8 356+204	**8 560**	21.4	37 000	**7 918**	(…) , Nedri
France	**36 000**	**14 395+350**	**14 745**	40.96			(…), Tréfileurope
Belgium	13 000	1 292+32	**1 324**	10.18			(…) Tréfileurope
Scand	30 000	2 521+62	**2 583**	8.61			
CH/A	10 000	3 782+92	**3 874**	38.74			(…) , DWK
UK/I	28 000	8 629+1 000	**9 629**	34.29			
Portugal	20 000	400+10	**410**	2.05			(…), Tycsa
Spain	52 000	1 579+1 000	**2 578**	4.96			(…), Tycsa
	265 000	**47 113**	**50 000'**				

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Source: (…)

(290) Notes of the same meeting show that the Italian producers, and in particular CB and Redaelli, moreover provided information on their total sales in the **Netherlands**: **8 356 tons** (which corresponds to the figure in the table) as well as per client. Other notes found at Nedri regarding this meeting show for the Netherlands a list of clients for 2001/2 with volume indication, mentioning also CB, SLM and Redaelli[458]. On the notes of this meeting it is also mentioned '*respect existing clients. Direction: CB*'.[459] Furthermore, three alternatives of a concrete volume distribution for **Germany** were discussed for Itas, CB, ITC, SLM and Redaelli, with a proposed total supply in Germany by Italian companies of **6 000, 6 150 or 6 300 tons**.[460] Other contemporaneous notes found at Nedri regarding this meeting show for the Netherlands a list of clients for 2001/2 with volume indication, mentioning also CB, SLM and Redaelli. For Germany, the notes show that the Italian producers not only made volume requests for 2002 but that they also made price requests regarding specific clients. Moreover, Redaelli wanted less volume at a higher price and the establishment of a price list for Europe, based on the Italian example.[461] It was also agreed that the Italian producers should first agree internally and that they should then get a total volume per country. It was further noted that the Italian producers (incl. Redaelli) thought about a volume outside Italy of around 60 000 tons, whereas 20 000 tons would be the current situation estimated by Nedri. Finally, also Tycsa exceeding its quota was discussed.[462]

(291) According to notes of a discussion between Nedri and SLM (Mr.(…)), the latter informed Nedri amongst others that it had not yet made offers for the Netherlands and that the Italian producers had great difficulties to come to a redistribution of volume and clients. Mr. (…) also mentioned that the meeting with Mr. (…) (Tréfileurope Italia) and the discussion on who supplies where still had to take place and he considered that the other two suppliers must create space for SLM. Finally he also mentioned that he considered the price for a specific client too high[463].

(292) In an internal (…) note on the Dutch market in 2002, it is mentioned that of the total Dutch consumption of 40 000 tons in 2001, the Italian producers **supply 8 560 tons (i.e. 21,4%).** In 2002 the Italian producers would supply 7 918 tons of the total Dutch consumption of 37 000 tons, which is again 21,4%.[464] (This corresponds with the figures in the table '7 wire strand (30/6-2000/30/6-2001)' cited in recital (289)).

(293) In an effort to gather, correct and/or update the information cited in Table 2 in recital (289), the parties held numerous, very detailed discussions.

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For example, an excel sheet with handwritten notes found at Nedri, inter alia shows for 15 customers in the Netherlands, Nedri's estimate of the volume supplied as well as the estimate of the volume of strand supplied by the Italian producers to each of these customers, the volume per client the latter wish to supply, information provided by Mr. (…) on supplies by Redaelli and CB and the current main suppliers of each of these customers. Handwritten notes on top of the document mention '2nd semester + 1st 2001', i.e. the reference period.[465]

(294) According to (…), the table found at Fontainunion[466] with similar figures as those in the table cited in recital (289), '*shows handwritten notes taken by (…) on the negotiations for the quotas to be allocated to the Italian producers in the market for 7 strand wire. […] The fourth column indicates the quota which the Italian producers would have in each country following* ***an increase of approximately 2.5% of the estimate volume of their sales.*** *This is probably the increase (with reference to 3000 t as mentioned in (…)* […][467]*) requested by the Italian producers. The exceptions are the UK and the Spanish market where a higher increase is considered. The fifth column 'PdM' (part de marché) shows the market shares that the Italian producers would have in each market based on the quotas they request as shown in column four*'[468] (emphasis added).

(295) At a meeting held in **Paris on 22.11.2001** between Tréfileurope, ITC, Itas and CB[469], the parties discussed the export volume for France '14395 +350 = **14 745**' as mentioned in the table '*7 wire strand (30/6-2000/30/6-2001)*' cited in recital (289).

(296) Minutes of a **meeting between Italian producers dated 07.12.2001** found at Redaelli[470] show a detailed discussion on how to allocate the quota among the Italian producers. Mr. (…) states amongst others '***Confirmed 50 000t Europe (7-wire strand)'.***

(297) An in-house memo from Mr. (…) to Mr. (…) (Redaelli) dated **12.12.2001** sums up the discussions between the Italian and European producers. The memo mentions 5 annexes with tables, the fourth of which is cited below. Table 3 gives the breakdown of the sales volume of the Italian producers Itas, CB, ITC, SLM and Redaelli in the main European countries for the year 2000 and for the third quarter of 2001. The total export figure of '***47 113***' mentioned in this table nearly corresponds to the amount (of 47 013 tons) declared by the Italian producers at the meeting with the other European players on 11.10.2001 (see recital (286) and (289))[471]:

Table 3

Export of Italian producers

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Producers	**June 00 July 01**	Q3/01
Itas	**2 899**	1 160
CB	**11 667**	1 703
ITC	**12 861**	4 146
SLM	**2 686**	381
Redaelli	**17 000**	3 040
Total	**47 113**	10 430

Source: (…)

(298) Furthermore, Mr. (…) lists several points which were the subject of the meeting, amongst which:

'1) Self-*imposed reduction of export volume by Italian competitors: Italcables, CB and Redaelli. A reduction of this type, amounting to some 10-12% of the export volume, is meant to:*

a) reduce the export quota for Italian suppliers and thus bring down competitive pressure (…).

b) ***a greater balance and the distribution of market shares in the different countries is justified only if, as a result of this measure, the price on the Italian market and on the principal foreign markets causes the average price to rise by about 50 lire/Kg'.*** (emphasis added)

(299) Further and parallel to the discussions at European level, discussions between the Italian producers took place to fix each participant's share in the export quota by country agreed at European level within the total Italian export quota for Europe of **50 000 tons**. These discussions took place at least in the meetings of 07.12.2001[472], 01.02.2002[473] and 08.02.2002 (…)The Italian producers exchanged their export figures per country in Europe in 2001 (47 756 tons) and compared those figures with the overall quota and the quota per country ***'granted'*** to them ('*quote concesse*'). These 'granted' quota correspond with those listed under 'Agreement in tons' in Table 2 cited in recital (289). They also discussed the forecasts for 2002 (around 50 000 tons) as well as the subject of previous meetings with the European producers.[474]

(300) A typed document **dated 30.05.2002**, faxed by Edilsider (Tréfileurope) to ITC, reproduced below[475], illustrates the discussions on the breakdown of the overall Italian export quota for each of the main European countries between Redaelli, ITC, CB, SLM and Itas. The total figures per country in

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the column 'Dispon' are identical to those set out under 'Agreement in tons' in the table headed *'7 wire strand' (30/6-2000/30/6-2001)* cited in recital (289). The table shows that the Italian producers gathered the export data per country for each producer and compared their actual total sales with those agreed/'available' ('dispon') at European level. Other tables found during the inspection at ITC (but emanating from Redaelli) confirm that the Italian producers work on the basis accepted at European level and make adjustments among themselves.[476]

(301) Table 4
Italy Group :

	ITAS	CB	ITC	SLM	RED	TOTALE	DISPON	DIFF- TOT-DISP
FRANCIA	2000	1750	**7500**	560	5000	**16810**	**14745**	2055
BELGIO	300	300	300		600	**1500**	**1324**	176
AUSTRIA	700		400	500	1300	**2900**		
SVIZZERA	300		500			**800**	**3874**	-174
GERMANIA	2200	1500	800	1000	900	**6400**	**6310**	90
OLANDA		4600	300	1100	2300	**8300**	**8560**	-260
DANIMARCA		100		400		**500**		
FINLANDIA		200				**200**		
NORVEGIA		750				**750**	**2583**	-1133
INGHILTERRA			~~1000~~	1550	900	**3450**		
EIRE			200	1200	3250	**4650**	**9629**	1529
PORTOGALLO				200	200	**400**	**410**	-10
SPAGNA	500	500	500	500	500	**2500**	**2578**	-78
	6000	9700	11500	7000	14950	**49150**	**50013**	-863

Source: (…)

(302) In a document found at Tycsa regarding a meeting in Düsseldorf between itself, Nedri, Redaelli, WDI, Tréfileurope, Tréfileurope Italia and SLM, the same figures are mentioned as those under 'Agreement in tons' in Table 2, reproduced in recital (289), and in the column 'Dispon' in Table 4, cited in recital (301). These figures are referred to as a proposal of Mr. (…) , indicating that the 50 000 tons compromise emanated from Nedri. The document also shows sales figures per country under the heading 'Italy', adding up to a total of **49 150 tons** and a column giving the estimated figures by the participants. It was further noted that the figures of the Italian producers should be looked at as well as the sales per country/client during the reference period and that a reply was expected within two weeks.[477] The producers of Club Europe were thus closely monitoring the Italian exports within Europe.

[476] (…)
[477] (…)

(303) The discussions were, however, not limited to the overall export figures per country. Documents copied during the inspection at ITC reflect the talks on various European markets involving an assessment ('*forecasts 2002')* of all the Italian supplies per customer on the French, Belgian, Austrian, Dutch, Danish, Finnish, Norwegian, British, Irish, Swiss, Portuguese, Spanish and German markets)[478]. These documents have the same format as documents found on the premises of Fontainunion (see recital (318)) and Nedri[479].

(304) According to the report provided by (…) , at a meeting on **03.06.2002** in Milan *'after a further 6 months of disappointing export sales for the Italians, (…) the Italian producers showed their poor results, and threatened not to respect the* ***agreement****. Despite the threats*, the *meeting carried on with detailed cross-check of sales client by client'* [480] (emphasis added).

(305) Quotas were also discussed at a meeting of **06.06.2002** between Tréfileurope Italia, Redaelli, Nedri, Tréfileurope, Tycsa, CB and WDI. Nedri's Minutes of this meeting[481] first show the reference period of 01.07.2000-30.06.2001 (see recital (274)) and confirm that the total export figure of 7-wire strand of the Italian producers was to be increased from around 47 000 tons to 50 000 tons. In order to ensure the accuracy of the supply figures provided by the Italian producers,[482] it was decided that within two weeks a table should be exchanged with the **country co-ordinator, showing per country and per client the actual supplies and the desired volume**. It was also observed that 3-wire strand and single-wire strand should be included, that the Italian model should be followed regarding prices and that all co-ordination and communication with the Italian producers should take place via Mr. (…) (Tréfileurope Italia). The notes of the meeting conclude (original in English) '*1. stay to the customer – no visit new customers. 2. co-ordinator per country + Italian co-ordinator (…) largest supplier + about real volume reference period. +/- 2 weeks.*'Other notes found at Nedri regarding the same meeting contain similar and additional conclusions: *Action per 1/7/02: –stay to customer + volume/past –new contracts + € 30. Why: –price level today is to low –wire rod price+ –labour cost+ –energy cost+ –distribution cost+'*.[483] Table 2 cited in recital (289) was also discussed at the meeting of 06.06.2002. This follows from the handwritten notes on the table, which contain similar information as the notes described before.[484] Many of the issues discussed at the meeting of 06.06.2002 were already considered in a preparatory note of Nedri for this meeting. The aim was to talk about market share once the accurate figures were available.[485]

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(306) As discussed at the meeting of 06.06.2002, several tables containing the export figures of the Italian producers per country as well as a 'proposal' per country were found at Nedri.[486]

(307) Participants in Club Europe also considered their level of penetration (imports) in Italy in the 'new' (i.e. expanded) Club Europe. Thus, Nedri notes, dated **21.06.2002,** preparing a discussion with Tycsa on 26.06.2002 (see recital (368)), mention amongst others that the original agreement was that Tycsa would supply 2 500 tons in Italy and then the double.

(308) Also at a meeting of **02.07.2002** between WDI, Nedri, Tréfileurope Italia, Redaelli, Itas and CB, the producers discussed a table prepared by Italian producers which lists the clients of the **Italian producers in the Netherlands**, with their total consumption. Handwritten notes of Nedri on the table also indicate a desired volume to be sold in 2002 **(7 900 tons)** and the real sales of CB and other Italian suppliers to each of the clients in 2000/2001. Nedri's notes further indicate that the Italian producers wanted **8 500 tons** (+ Nedri's volume). Also prices were discussed and Nedri would receive the price list by client from Mr. (…) by the end of the following week.[487] At the same meeting, the producers also discussed several lists of clients of the Italian producers in Germany, showing the estimated supplies and the 'participation' of the Italian producers by client as well as the total target of the Italian producers in Germany (6 200/6 400 tons). For 2003, also the prices to be charged to each of these clients and the volume partitioning per client were discussed (coming to a total of 5 400 tons).[488] As follows from the handwritten date '8 July 2002' mentioned on one of the lists discussed at the meeting, discussions also continued after the meeting.[489]

(309) Further, according to (…), one of the versions of the table[490] mentioned in recital (289) lays down the overview given by the Italian producers of their export volumes at the meeting of **15.07.2002** (see also recital (369)) in Milan between Tréfileurope Italia, Redaelli, Nedri, Tréfileurope, Itas, Tycsa, CB and WDI. **The following agreements were reached at this meeting:**

'*Agreements:*

- reference period 2nd half 2000/1st half 2001
- leader/co-ordinator per country,
- customer list where to go Italians + price concept for Neth./Germany/Belgium before end next week
- status quo customers.
- principle about volume Neth./Germany/Belgium,
- bilateral contact/exchange figures Italian market Tycsa/Italians.
- bilateral contact, exchange figures France market Tycsa/TE (…).
- Frame work club figures per quarter.

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486 (…)
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- [unreadable]'.[491]

(310) These agreements had already been prepared on **06.06.2002** (see recital (305) and in a more restricted circle of companies on **26.06.2002** (see recitals (307) and (368)).

(311) These eight principles are confirmed in a note found at Fontainunion. According to (…), this document contains '*the rules of the co-ordination set by Mr (…) (Nedri): The document states the reference period as being 2000/7 to 2001/7. As for the volume, it should remain the same ('status quo'). The issue Tycsa/Italy was left open. Finally, the reference 'UK/Ireland – after general agreement*' [the last principle] means– *according to (…) - that after a general agreement, the UK and Irish competitors would be informed*.' As for the reference to countries the document mentions '*volume OK: NL - D – B*'[492].

(312) (…) further explains that these notes concern '*the situation of the Spanish market and in particular sales on the Italian market by the Spanish producers. Italian producers requested that Spanish producers stop sales in Italy in year 2002 and in* ***2003 limit sales to 6000 tons*** [see recital (341)]***, with some compensation in Spain****. Mr (…) formulates an alternative proposal.' 'The second page of* [the document] *… concerns sales by Italian producers into* ***Belgium****. It is the first attempt to reach an agreement on volumes in Belgium. (…) was the co-ordinator for Belgium. The figures do not reflect a final agreement but rather the ongoing discussion'*[493] (emphasis added).

(313) According to the same minutes cited in recital (309), no agreement would have been reached on the quota of the Italian producers in the French market and in other countries at that point in time (although for Spain 2 500 tons is mentioned and for Portugal 400 tons). Regarding the agreement on the '*reference period 2nd half 2000/1st half 2001*', the minutes of the meeting between Nedri and Tréfileurope of 09.09.2002 also mention that it was agreed to make a table (sheet) providing the volumes on the basis of the reference period and that Nedri had this table ready (see recital (366)).[494]

(314) Following the agreement in 'principle' on **15.07.2002** on the quota in the Netherlands and the reference period, a client list for the Netherlands found at Nedri shows for each current supplier (inter alia Nedri, Tycsa, WDI, DWK, Tréfileurope, (…) , Fundia and the Italian producers) the volume and prices per client for the reference period. (…) and (…) (…), see section 9.1.4), both reference clients (see recital (213)), are among the clients figuring on this list.[495] Another handwritten overview was found at Nedri with supply data per producer in the Netherlands for the reference period and separate notes state that Tycsa's figures should be checked client

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per client with Tycsa (…) […]).'[496] A breakdown per producer for the Netherlands and for Germany was also found at Nedri.[497] According to (…) these three documents were prepared/discussed at the meeting of **12.09.2002** between Tréfileurope, Nedri, WDI, Redaelli, Tréfileurope Italia and Tycsa[498].

(315) Thus, ample contemporaneous documentary evidence shows that the participants in Club Europe and Club Italia regularly met to determine a global export quota for Italian producers. In the process of the negotiations they exchanged sensitive commercial information and reached some agreements designed to reach the higher level agreement. Documentary evidence shows that they reached an agreement on the global Italian export quota, that the Italian producers met to split up this quota amongst themselves and that whilst quota discussions for many countries were ongoing at the time of the inspections, they had already agreed in principle for France as further developed below (see section 9.1.5.1.4).

9.1.5.1.4. Further evidence on continued discussions relating to France

(316) In the context of the negotiations with the Italian producers on their export quotas, separate negotiations for France took place, organised by the country co-ordinator, Tréfileurope. (…)[499](…) in line with the co-ordination mechanism agreed in 1997 (see section 9.1.3.3): '*the company that handled the market would co-ordinate these detailed quotas. Thus in regard to France, where Tréfileurope was the traditional supplier, Tréfileurope representatives with the Italian producers met a number of times*'. For example, on 27.09.2001, the six producers and (…) agreed that a co-ordinators' meeting should take place for France on 18.10.2001. Bilateral and multilateral meetings took place and faxes were exchanged regarding the French market amongst others on 23.07.2001 (see recital (284)), 04.08.2000, 04.09.2001, 03.10.2001, 10/11.10.2001 (see recitals (286) and (288)), 22.11.2001[500], 30.05.2002, 17.06.2002, 06.09.2002, 09.09.2002, 12.09.2002 (see recital (300),(…)).

(317) For example, at a meeting of **04.08.2000**, Mr. (…) (Nedri) noted that Mr. (…) (Tréfileurope) reported on the discussions with Italian producers and that this might have an influence on the consultations for the rest of Europe.[501] The negotiations led to an agreement on a global Italian quota for the French market, amounting to 14 745 tons (see recitals (289), (295), (318), (319)). In this context, an agreement was also reached at least for SLM (see recital (320)) and for ITC[502] (volume of 7500 tons (see recitals (321) and (323)).

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(318) Contemporaneous evidence[503] and (…) [504] show that further to these negotiations *'the parties' position converged towards a figure around **14.700 tons'*** as regards the exports of the Italian producers in France, at a meeting in Paris in 2002. According to (…) the '*(…)* [505] *is an evidence of the fact that as late as 28 August* [2002] *an agreement for the French market has not been reached yet and Fulvio Vercelli and Tréfileurope were still exchanging proposals for discussions*.' The document is probably a proposal sent by Mr. (…) to Tréfileurope concerning the request of the Italian producers as regards the French market. '*The first column 'Cliente' indicates the French client. The second column 'Stima' is an estimate of the total demand from that particular customer. The third column 'Tot. Italia' is the total amount allocated to the Italian producers. The following columns show the volumes allocated to each of Redaelli, Italcables, CB, Itas and SLM. The handwritten comment 'Vision TE' has been written by (…) of TFE. It shows the estimated actual deliveries by the Italian producers for each customer and in the next column, the difference between such figure and the amount proposed in the second column (estimated actual*)'.[506] The Commission notes that the total 'vision' amount of 14 670 tons, if rounded, corresponds with the 14 700 tons (…) and nearly corresponds with the figure stated for the French market of 14 745 tons in Table 2 '**7 wire strand'** at recital (289).

(319) That an agreement was reached on the French market shortly after 28.08.2002 results from minutes of a meeting between at least Nedri, Tréfileurope, WDI, Tycsa, Redaelli and Tréfileurope Italia of **09.09.2002** that show that the co-ordinator for France, Tréfileurope, reached an agreement with the Italian producers regarding the French market.[507] From minutes of a meeting of 12.09.2002, it follows that this agreement was reached on **06.09.2002**.[508]

(320) According to (…)[509], a table found during the inspection[510] shows the agreement reached on SLM's sales to French customers. The first column provides a list of French customers. The second the quantity to be supplied. As the document is not dated, the Commission considers that the agreement was reached during the period of negotiation in 2002 and at least before 19.09.2002[511]. This represents a partial agreement to implement the global Italian quota agreement for France (see recital (321)).

(321) ITC obtained a quota of **7 500** tons for 2002 as part of the Italian quota of 14 700 tons (or more exactly 14 745 tons according to the table cited in recital (289))[512]. A contemporaneous document drawn up by Mr.(…), the

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ITC agent in France, faxed to ITC[513] on 07.05.2002 discusses the situation in May 2002 as regards the ***7500 ton*** quota '***granted' for 2002***. It indicates the quantities lost to other producers in relation to certain customers. '*For the period May 2001-May 2002 we lost 2500 tons including 1700* ***under the Italian quota*** *(…) in conclusion: Italcables will under no circumstances reach the* ***7500 tons permitted*** *in the first months of 2002. Apart from what has been transferred within the Italian quota (by force) the amount lost because of Tycsa and DWK is considerable. New customers will have to be found to make up for the loss. The customers for which we are seeking protection are identified according to the following criteria: - Customers acquired and kept continuously (some of which for 5 years (1997-2002)), - Customers with whom we have excellent relations not only for 7-wire strand, - Customers that would allow us the right of alignment'*. (emphasis added) The names of the 18 '*customers for which we are seeking protection for the future are set out in a table with their respective volume*'. The table shows the theoretical sales levels for 18 customers, including the reference client (…), to reach the quota of **7 500** tons (1 675 tons down on 2001). The customers and amounts correspond to those which appear in a table found at Tréfileurope (on which 7500 tons also appears)[514].

(322) The internal ITC email of **17.06.2002** regarding an 'interview with (…)' (Tréfileurope), also refers to the customers that have to be protected in France[515]. Another (undated) document found at Fontainunion/Tréfileurope shows a list of French clients and the volume allocated to each of these clients for Italcables, Redaelli, Itas and CB. (…) confirms that this document '**show[s]** ***the quota allocated to each of Italcables, Redaelli, Itas and CB for each French customer****. At the time the Italian producers were found unlikely to be able to 'manage their quota on their own' and the solution was therefore to allocate to each of them a portion of each customer's supply,* ***filling out the higher level agreement***'[516] (emphasis added). On **24.06.2002**, Nedri, WDI, Tréfileurope, ITC, Itas, CB and Tréfileurope Italia met at Federacciai to analyse amongst others the French market. At a meeting between Tycsa, Tréfileurope, WDI, Nedri, Redaelli, CB, Itas and Tréfileurope Italia on **15.07.2002**, it was decided that the figures regarding the French market had to be exchanged between Tycsa and Tréfileurope.

(323) An undated document found at Redaelli[517] and entitled '*Business Francia ripatizione quote'*, sets out a quota allocation proposal for '*France 2003'* for Itas, ITC, SLM, Redaelli and CB. As regards ITC a quota of 6200 tons is proposed with a difference of 1300 tons **(6200+1300=7500)**. An undated document found at Tréfileurope[518] also refers with regard to France to a proposal for 2003, with a list of customers, for wire, 3-wire and 7-wire strand. Hand-written notes give a total of **6200** tons. This indicates that the Italian producers, and ITC and Tréfileurope in particular, were negotiating a

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quota distribution for France for the year 2003. As already stated in recital (319), an agreement regarding the French market was reached with the Italian producers on **06.09.2002**[519].

(324) During the expansion period, the six producers and the Italian producers also continued to discuss clients, sales and quotas, including for France (see for example meetings of 12.07.2001, 25.07.2001, 04.09.2001[520], 27.09.2001, 10.10.2001, 06.11.2001, early November 2001 and 12.12.2001,(…)).

9.1.5.1.5. Further evidence on continued discussions relating to Germany

(325) During the expansion period, discussions regarding the German market also continued (…). For example, on **26/27.09.2000** at a meeting between the six producers, Tycsa expresses that it was prepared to withdraw from the Scandinavian market but requested compensation in amongst others Germany (as well as in Belgium and Luxemburg, see recital (376)).

(326) On **23.07.2001**, the six producers, except Tycsa and Emesa found the Italian producers' proposal to divide the bulk of their exports over Germany, the Netherlands and France inacceptable. Similarly, at a meeting of **04.09.2001** they requested the Italian producers to spread their sales more equally over Europe, in particular to limit sales in amongst others Germany (as well as in France and the Netherlands, see also recitals (284) and (285)).

(327) As agreed at a meeting on **10/11.10.2001**, the German market was discussed in detail at a meeting of **06.11.2001** between the six producers, the Italian producers and (…) (…). Three alternatives of a concrete volume distribution in Germany for Itas, CB, ITC, SLM and Redaelli as well as prices were discussed (see recitals (286) and (290)).

(328) On **04.12.2001**, WDI (co-ordinator for Germany) discussed German customers (and prices) with Itas.

(329) On **01.07.2002**, Tycsa, Nedri, Tréfleurope, WDI and Redaelli, CB, Tréfileurope Italia and Austria Draht (Mr.(…)) agreed on the rules for the expanded Club Europe and on the volume for amongst others Germany. The next day, on **02.07.2002**, WDI, Nedri and the Italian producers again discussed the German market, including clients supplied by the Italian producers, the actual supplies and the Italian producers' quota for Germany (6 200/6 400 tons). On **24.06.2002** WDI, Tréfileurope and Nedri analysed amongst others the German market with Tréfileurope Italia, ITC, Itas, CB, Redaelli and SLM. Finally, at a meeting between Tycsa, Tréfileurope, WDI, Nedri, Redaelli, CB, Itas and Tréfileurope Italia on **15.07.2002**, it was decided that a list had to be drawn up for the customers supplied by the Italian producers in amongst others Germany and an agreement in principle about the volume in Germany was reached.

(330) On several occasions, (some of) the six and the Italian producers also exchanged information on their sales and quotas by country, including for

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[520] (…)

Germany (see for example meetings of 12.07.2001, 25.07.2001, 27.09.2001, 10/11.10.2001, early November 2001 and 12.12.2001, see (…) and fax of 30.05.2002, see also recital (300)).

9.1.5.1.6. Further evidence on continued discussions relating to the Benelux

(331) Discussions regarding the Benelux also continued during the expansion period. For example, at a meeting on **26/27.09.2000** between the six producers, Tycsa expressed that it was prepared to withdraw from the Scandinavian market but requested compensation in amongst others Belgium and Luxemburg (see recital (376)).

(332) On **09.10.2000**, the six producers except Emesa, and the Italian producers discussed quotas in the European markets, including for Belgium. Similar discussions (including Belgium and/or the Netherlands) took place between (some of) the six and Italian producers amongst others on 12.07.2001, 25.07.2001, 27.09.2001, 10.10.2001, 06.11.2001, early November 2001, 12.12.2001, 24.06.2002, 01.07.2002 and 12.09.2002 (…).

(333) (…) mentioned discussions on Belgian clients at a meeting in Brussels of **16.10.2000** between Fontainunion/Tréfileurope (Mr.(…)) and DWK (Mr.(…)), when DWK intended to increase its market share in Belgium. Notes of this meeting first show the situation on the Belgian market (a PS volume of 20 000 tons and listing Fontainunion, Nedri, Tycsa, WDI, DWK, Redaelli and (…)as companies supplying Belgian clients). Then they show twelve clients, listed as exclusively allocated to DWK (list B), allocated to both Fontainunion and DWK (list A) and allocated to Tycsa (under C).[521] (…) also mentions meetings concerning *Belgium*, with WDI, (…) , Fundia and Fontainunion regarding a client, with Tycsa, WDI and Fontainunion regarding another client, with Tycsa and Fontainunion regarding again another client and finally with DWK and Fontainunion regarding yet another client. Similarly concerning *the Netherlands*, there were meetings with Nedri, Fontainunion, CB and another competitor regarding a particular client[522] and with DWK, Fontainunion, Tycsa and WDI regarding another client[523]. The latter two clients also figure on a client list found at Nedri with indications of the current supplier, the tons they supply to each of these clients and the current price per product (to be) charged to these clients as well as the price increase foreseen for the next negotiations[524].

(334) An excel sheet with handwritten notes found at Nedri, inter alia shows for 15 customers in the Netherlands, Nedri's estimate of the volume supplied as well as the estimate of the supplies of the Italian producers regarding strand, the volume per client which the Italian producers wish to supply, information provided by Mr. (…) on supplies by Redaelli and CB and the current main suppliers to these customers. Handwritten notes on top of the document mention '**2nd semester + 1st 2001**'[525].

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(335) As stated before, on **23.07.2001**, the six producers, except Tycsa and Emesa find the Italian producers' proposal to divide the bulk of their exports over Germany, the Netherlands and France inacceptable. Similarly, at a meeting of **04.09.2001** they request the Italian producers to spread their sales more equally over Europe in order to limit sales in amongst others the Netherlands (as well as in France and Germany, see also recitals (284) and (285)).

(336) At a meeting on **27.09.2001** between the six producers and (…) a co-ordinators meeting was fixed for the Netherlands on 14.10.2001.

(337) Undated notes found at Fontainunion show discussions on volume per client on the Belgian market. The Italian producers Redaelli, Itas, ITC and CB, as well as WDI are mentioned. According to (…) this document would date probably between **May and July 2002** and *'is the first attempt to reach an agreement on volumes in Belgium'* in the context of the overall negotiations with Italian producers[526].

(338) Notes from Mr. (…) (Tréfileurope, co-ordinator for Belgium) of a telephone call with Mr. (…) (Nedri) (dating also probably between **May and July 2002**) show that they exchanged views on sales in the Netherlands and in Finland by the Italian producers[527].

(339) On **24.06.2002** WDI, Tréfileurope and Nedri analyze amongst others the Dutch market with Tréfileurope Italia, ITC, Itas, CB, Redaelli and SLM. At a meeting of **02.07.2002** between WDI, Nedri, Tréfileurope Italia, Redaelli, CB, Itas and (…) (Mr.(…)), the clients supplied by the Italian producers in the Netherlands were discussed, as well as their total consumption, the volume supplied by the Italian producers and the volume the latter desired to supply. Finally, at a meeting between Tycsa, Tréfileurope, WDI, Nedri, Redaelli, CB, Itas and Tréfileurope Italia on **15.07.2002**, it was decided that a list had to be drawn up for the customers supplied by the Italian producers in amongst others Belgium and the Netherlands and an agreement in principle about the volume in the Netherlands and Belgium was reached. This followed a range of meetings at which supplies in Belgium, the Netherlands, Luxemburg, (and other countries) were discussed (see for example meetings of 04.09.2001, 10/11.10.2001, 06.11.2001 and fax of 30.05.2002, see sections 9.1.5.1.2. and 9.1.5.1.3. and (…)).

9.1.5.1.7. Further evidence on continued discussions relating to Italy, Spain and Portugal

(340) Also in the expansion period, discussions between (some of) the six producers and the Italian producers on Italy, Spain and Portugal continued multilaterally and bilaterally, including through the co-ordinator. For example, at the meeting of **27.09.2001** between the six producers and (…) , a co-ordinators meeting was fixed for Spain on 02.10.2001. At a meeting of

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24.06.2002 between WDI, Tréfileurope, Fontainunion, Nedri, Redaelli, ITC, Itas, CB, Tréfileurope Italia and SLM, the Spanish market was analysed.

(341) Some non-Italian producers agreed to limit their exports to Italy in exchange for a limitation of the exports of the Italian producers in other European countries. For example, from minutes of a meeting of **09.09.2002** between at least Nedri and Tréfileurope (…) in preparation of a meeting of 12.09.2002, it results that **Nedri had agreed to limit its sales in Italy to 1 000 tons.** This agreement was repeated at the meeting of 12.09.2002[528]. Similarly, **also Tycsa agreed to limit its sales in Italy**; in the **Summer of 2002**, Tycsa debriefed at least Nedri of its discussions with the Italian producers (Tréfileurope Italia and CB), which had proposed Tycsa to reduce its quota in Italy for 2002 and 2003. Tycsa was allowed to sell **7 000 tons** in Italy in **2002** and **6 000 tons**, restricted to listed customers and with a price increase, in **2003**. This volume reduction would still constitute a 50% volume increase '*compared to the previous agreement*'. In exchange, the **Italian producers would reduce their sales in Spain from 2 500 to 1 500 tons**. (Also a gradual three-step price increase from EUR 520 on 01.09.2002 to EUR 570 on 01.07.2003 -through surcharges or so-called extras) was discussed.) The notes further show a conflict between Tycsa and the Italian producers regarding France, where Tycsa lost volume to the Italian producers (see also recital (295)). **Tycsa demanded an overall solution Italy-France-Spain, but agreed to limit its supplies in Italy to 6 000 tons for 2003**. The Nedri notes of this debriefing conclude that amongst others the Italian producers should be contacted and confirm that meetings should take place around 21.07.2002 (or a week later) and on **03. and 12.09.2002**[529]. Also at the meeting of **12.09.2002** between Tycsa, Tréfileurope, WDI, Nedri, Tréfileurope Italia and Redaelli, Tycsa requested an overall solution for Italy-France-Spain and repeated its agreement to limit its supplies in Italy to 6 000 tons for 2003 (…).

(342) During the expansion period, the six producers and the Italian producers also discussed their sales and quotas per country, including for Spain, Portugal and Italy (see for example meetings of 12.07.2001, 25.07.2001, 04.09.2001, 10.10.2001, 25.10.2001, 06.11.2001, early November 2001, 21/26.06.2002, sections 9.1.5.1.2. and 9.1.5.1.3. and (…)). They also fixed prices and discussed the price evolution in these countries (see sections 9.1.5.2 and 9.3.2). Moreover, some of the six producers also regularly attended the Club Italia and/or Club España meetings and directly discussed with the producers concerned on issues of common interest regarding amongst others the Italian, Spanish and/or Portuguese markets (see also section 9.3.2).

9.1.5.2. Continued price fixing

(343) A large amount of documentary evidence in the possession of the Commission shows that in the context of the overall negotiations, participants discussed and continued to discuss prices, and agreed on

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[529] (…)

minimum prices and price increases at European level and/or regional level during meetings as well as on prices to be applied to individual customers. The methodology has already been explained in recitals (199) to (202) on co-ordination on price. These discussions and agreements involved all the participants or part of them depending on the geographic interest. Prices were discussed at least at the meetings of 18.10.2000, 04.04.2001, 11.06.2001, 12.07.2001, 23.07.2001[530], 25.07.2001, 04.09.2001, 27.09.2001, 10/11.10.2001, 06.11.2001, 04.12.2001, 12.12.2001 05/06.02.2002, 05/06.06.2002, 26.06.2002, 02.07.2002, 15.07.2002 and 12.09.2002 (...). The fact that discussion on price occurred during the negotiation meetings on a revised European quota agreement indicates that price continued to be part of the bargaining process. A better balance and the quota sharing in the different countries were justified only if this could stabilise or increase the price (see recitals (298) and (346)). The price discussions were also aimed at ensuring the status quo in terms of quota allocation (see recital (347)).

(344) For example, in preparation of a meeting of **12.07.2001** in Milan between Tréfileurope Italia, Redaelli, Itas, CB, DWK, Nedri, WDI, ITC and SLM, Nedri made some internal notes on **09.07.2001** in which it mentions that the market is currently disturbed because of the price undercutting and that to *'come back to peace*', minimum prices must be fixed per country for the different products, which all producers must respect even if this would be to the detriment of volume. The year 2000 should serve as a basis for the market quotas. The aim is to set the price for the reference product at EUR 250/DM 500. If this is not possible directly, the price increase needs to be realised in steps. The Italian price list should be used for the surcharges for each of the different sizes. It was also considered *' important not to visit new customers with which we have not had a 'historic' relationship of for example 5 years'*.[531]

(345) At the meeting of **12.07.2001**, Tréfileurope Italia, Redaelli, Itas, CB, DWK, Nedri and SLM discussed prices. It was in particular noted that a basic price of DM 1 032 without extras would be problematic for the Italian producers and that the latter supply at 120 FF below the current price in France. Further, internal Nedri notes mention that there is no more consultation in Spain/Portugal (Fapricela), leading to a price decrease in Spain of 6-7 Pesetas. Further, the new prices for a series of clients for the second half of 2001 are listed (…).

(346) At the meeting held in **Malpensa on 04.09.2001** (see recital (285)**)**, the Italian producers present agreed to meet to fix the sales prices in Europe. The typed minutes from SLM state that Tycsa's absence raised fears*. 'Corti, (in the absence of the European partners) stressed that prices were falling and that the situation in Italy was most certainly the best. He therefore wondered what the chances were of increasing exports in Europe without retaliation. (…) described the situation in Europe, where a newcomer would be far from welcome. The European objective is raising the price to*

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1100Dm/T; the current price in Germany is 970DM/T. Unless an agreement was found [on quotas and geographical distribution], *the Italian prices were at risk.'*[532] Notes were found at Emesa and at Tycsa of a Club Europe meeting in Düsseldorf on **27.09.2001** (…) between Nedri, WDI, DWK, Tycsa, Tréfileurope/Fontainunion, (…) and Emesa showing that (…) attended for the first time. The notes show that the aim of the meeting was to 'try to control the central-European market' and that apart from a general discussion on the market situation in Germany and in Europe, the prices of several products in several European countries were discussed in detail. **Concretely, minimum prices were set in euros for the year 2002 for the Netherlands, Belgium, France, Austria, Switzerland, Spain and Portugal per product (according to diameter) with a surcharge in France and Belgium for smaller clients.** Emesa noted that it was mainly interested in the idea of increasing prices by DM 50 to 100 in Germany, to a level above DM 1000 (the reason to be given to the clients is the increase in the price of wire rod and the energy costs). However, Emesa and Tycsa noted that the effective implementation of the agreed prices for 2002 was still dependent on the talks that Nedri was going to have with the Italian and the Hungarian producers on this issue. Emesa noted further that, in any case, *'the indications about prices were interesting in that they revealed the prices of the different diameters'*.[533]

(347) Moreover, Tréfileurope had regularly bilateral price increase discussions with Redaelli and Tycsa and participated in a meeting in **November 2001** with Tycsa, ITC and Nedri at which prices were fixed in France: *"(…)"*.

(348) **At the meeting of 06.11.2001**, it was also discussed that a price list of a basic price plus surcharge should be established for Europe in its entirety and that the Italian producers had such a price list, which led to 70 Liras extra.[534]

(349) A document (…) shows that Itas had a meeting with WDI on **04.12.2001** on the German market (price, Italian presence, clients)[535].

(350) In (…) of a meeting of **05-06.02.2002**, it is clear that the price policy in Italy and the Netherlands was discussed. Mr. (…) moreover asked for ideas to increase the prices in general. This would be discussed at the next meeting. Internal (…) notes report on Redaelli who believed that the high price in Italy was due to the existing tariffs (a basic price with a surplus) and that it would look into this question. From an internal visit report of **25.02.2002** of Nedri to a client, it appears that there **was also a price agreement for the year 2002**, which was not, however always respected.

(351) At a meeting of **06.06.2002** between Tréfileurope Italia, Redaelli, Nedri, Tréfileurope, Tycsa, CB and WDI, it was agreed that prices had to be increased by EUR 30 (see recital (305)). Similar agreements were reached at

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a meeting between Nedri and Tycsa on **26.06.2002** (i.e. Tycsa would follow the price policy by country set by the co-ordinators) and at a meeting of **02.07.2002** between WDI, Nedri, Tréfileurope Italia, Redaelli, Itas and CB. At the latter meeting, prices were discussed and Nedri would receive the price list by client from Mr. (…) by the end of the following week.[536] A list dated 08.07.2002 shows the price proposal for 2002 and 2003 for almost 25 clients. The proposal was to raise the prices by around EUR 30 for the year 2003.[537]

(352) Further, at a meeting in Milan with the Italian producers on **15.07.2002** prices were discussed again and it was agreed that a price concept had to be made for the Netherlands, Germany and Belgium before the end of the next week (see recital (308)).

(353) Also notes of a meeting in the summer of 2002 between at least Nedri and Tycsa show discussions on a price increase for Italy for the year 2003 as well as a gradual three-step price increase from EUR 520 on 01.09.2002 to **EUR 570 on 01.07.2003** (through surcharges or so-called extras), most likely for Spain.[538] This is confirmed by a non-dated note found at Fontainunion[539], mentioning '*price per market + targets* ' and then:

1/01/03	*1/04/03*	***01/07/03***
100€/t	*+20/t*	*+10/t*
540€/t	*560€/t*	***570€/t***

(354) Notes of a meeting between Tréfileurope, Tréfileurope Italia, Nedri, WDI, Tycsa and Redaelli of **12.09.2002**, found at Nedri (…), show discussions on a general price increase of between EUR 80 and 100 for the year 2003. For Germany, it was discussed that this increase should be introduced in three stages. The participants also thought it worth considering a price differentiation by product **according to the Italian example**, where each product has a separate price, which would have led to 'a fantastic price level' in Italy. A co-ordinator was also indicated per country and in conclusion the following priorities were fixed: '*1. price increase, 2. price differentiation, 3. ½ year contracts*.'

(355) Further notes found at Nedri, probably relating to the same meeting,[540] repeat the necessity of a price increase of EUR 80-100 for the year 2003 and mention that contracts which continue until mid 2003 should be 'broken open' as they are now much too low. The notes further observe that such price increase should be possible, **a strong price increase also having been successfully imposed in 1997 – 1998** and that it should be considered whether this price increase can be imposed in one time. For the Netherlands and Germany, an introduction in stages was considered. It was also

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emphasised that an intense contact with the co-ordinator was necessary because the President could not manage Europe in its entirety[541]

(356) Nedri and Tréfileurope met on **09.09.2002** to prepare the meeting of **12.09.2002** between these two companies and WDI, Tycsa, Redaelli and Tréfileurope Italia. A preparatory note for this meeting was found at Nedri showing prices in Spain per product for 2002 and for each quarter of 2003.[542] These figures have been obtained following an email of Nedri to Tycsa/Trefilerías Quijano of **08.08.2002**.[543] In preparation of the same meeting of 12.09.2002, Nedri made a similar table of prices per product for the Netherlands, and sent its prices and volumes per client in Italy to Edilsider (Mr.(…)).[544]

(357) There were also price lists for the Netherlands, Luxembourg, France, Germany, Belgium, for January 2000, January 2001, January 2002 and August 2002[545].

9.1.5.3. Continued client allocation

(358) A large amount of documentary evidence shows that in addition to fixing quotas by country, the participants continued to negotiate the distribution of quotas by customers and to allocate clients. The company that traditionally co-ordinated a country would manage the negotiations for detailed customer quota allocation in that country (see also section 9.1.3.3).

(359) It was first agreed to **respect existing customers** (not to visit new customers with whom the company concerned does not have a historic relation of for example 5 years). In this respect reference can be made to internal (…) notes and an internal (…) fax (see recitals (290) and (321)), internal notes of 09.07.2001 in preparation of the multilateral meeting of **12.07.2001**, the notes of the multilateral meetings of **06.11.2001**[546] and **06.06.2002** (see recital (305)). The report provided by (…) confirms that already by early 1998, the producers agreed to respect each others 'exclusive' clients[547]. This continued to be the case in the expansion period. For example, at a Club Italia meeting of **18.06.2001** between Tréfileurope, Redaelli, ITC, Itas, SLM and CB, the Italian producers were requested not to supply the French reference client, (…) . Similar agreements were reached at a meeting between Nedri and Tycsa on 26.06.2002 (see recital (368)) and at a multilateral meeting in Milan on 15.07.2002 (‘*status quo customers*’ see recital (309)).

(360) To follow up on the client allocation arrangements, detailed information was exchanged. For example a fax of WDI to Nedri of 18.07.2002[548] contains a very detailed 5-page excel spreadsheet with detailed

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sales figures by customer (name of customer, date of supply, price charged at that date as well as rebates and bonuses granted) for the period 27.03.2000 until 09.07.2002. At the meeting of 12.09.2002 between Tycsa, Nedri, WDI, Tréfileurope, Tréfileurope Italia and Redaelli, Nedri (co-ordinator for the Netherlands) supplied detailed data on supplies to clients in the Netherlands for July 2000-July 2001 and it was noted that the sales figures should be checked client by client with Tycsa.

(361) The special form of co-ordination regarding the client (…) also continued during the expansion period (see section 9.1.4).

(362) Finally, documentary evidence also shows that **a customer list by country was established for the Italian producers.** As explained by (…) , '*at the time the Italian producers were found unlikely to be able to 'manage their quota on their own' and the solution was therefore to allocate to each of them a portion of each customer's supply, filling out the higher level agreement'* (see also recital (322)). This sensitive information was exchanged during numerous meetings (see for example recitals (287), (299), (302), (303) and (308)).

9.1.5.4. Meetings among all PS producers/ Negotiation of a general agreement by country for all producers

(363) In the expansion period, there were not only efforts to integrate the Club Italia participants in an enlarged Club Europe, but also (…) and Fundia. The Iberian producers were also meant to be part of it (see further recitals (367) and (369)). The negotiations were, however, interrupted by the Commission's inspections on 19.09.2002.

(364) Nedri played a particularly active role in the expansion negotiations. Thus, in parallel with the Italian negotiations, Nedri was collecting information from all main PS producers on their sales by country together with information on prices and price expectations for 2003. The same reference period (July 2000-June 2001) was upheld as for the collection of the data of the Italian producers (see recital (274)). Documents illustrating this have been copied at Nedri, Emesa and Tycsa[549]. A significant example is Nedri's email to Tycsa of **08.08.2002** in which the latter is not only requested to supply price information on its own sales in the reference period in each European country, but also on the real sales figures or estimates for the various suppliers for Spain and for Portugal. Nedri specified in this email that on the basis of the information collected, a complete chart would be drawn up and distributed to all participants. From the attachment to the email, it seems that the chart compiled sales data for the following countries: the Netherlands, France, Germany, Italy, Belgium, Spain, Portugal, Great-Britain/EIRE, Austria, Switzerland and Scandinavia, and for the following companies inter alia: Austria Draht, CB, DWK, Emesa, Fapricela, Fundia, ITC, Itas, Trame, Nedri, Redaelli, SLM, Socitrel, Tréfileurope, Tycsa and WDI. Not only historical data were requested but also price expectations for the next year.

[549] (…)

(365) (…) confirms that Nedri was collecting information with a particular aim of integrating all PS players[550]: '*After the meetings held in Malpensa, a small group of participants met at the Gare du midi in Brussels* ***on 9 and 12.09.2002*** *to prepare a proposal for the larger group.[…] The participants to this side meeting were* [representatives of Nedri, Tréfileurope, Redaelli, Tycsa. A document (table) found at Fontainunion/Tréfileurope and reproduced in recital (366)] [551] *shows a table with draft allocations of quotas to be presented to the larger group.* ***The reference period of the table is from 7/2000 to 6/2001****;* ***the allocations for the coming year were to be based on this agreed amount.*** *Mrs (…) of Nedri […] seems to be the author of the table'.* A second similar document, *'with minor differences in the figures*[552]*,* the author of which is probably *Mr. (…) or Mr. (…) of Nedri, […] appears to have been drafted at the same time. […] At the time the document was prepared, Mr. (…) was the president of ESIS. The idea behind the preparation of the table was that the major players had to reach an agreement at one of the Brussels meetings in advance of a wider consultation. Once the major players had reached an agreement, the rest of the activity would have essentially consisted in informing smaller players and following up the implementation of the agreement in the various local markets. The arrows next to the names of Austria, DND, DWK, Emesa, Fundia, indicate that these companies were 'bystanders' which had to be informed of the decisions of the main participants. They should have followed the action implemented by the main participants. The second column of the table in page two contains the abbreviations of the names of the contact persons for implementing decisions of the main group in relation to 'bystanders'. They should be read as follows: (…) =(…) ,Nedri*; *(…) = (…), Nedri; (…) =(…) , TFE; (…) =(…) , Nedri; (…)=(…), TFE; (…)= (…) (Tycsa). […] the column 'GB/EIRE' was deleted by common accord of the parties to the meetings at the Gare du Midi of 9 and 12 September 2002 as there was very little information available regarding that market and covering the UK was not viewed as necessary to reaching an agreement'.* (emphasis added)

(366) The following is an abstract of this draft table for a pan-European agreement found at Nedri and Fontainunion (volumes)[553]:

'Strand 7/00-6/01'

Name	Country									
7-wire strand	NL	F	D	I	B/Lux	ES	POR	Austria	Switzerland	Scandinavia
Austria	3500	480	2000	**3000**	1500	0	0	5000	250	5000
[Other,	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

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named]

DWK	4000	420	6000	2500	3200	0	0	0	1000	1000
Emesa	450	0	800	0	0	17000	2900	0	200	5100
Fundia	1000	3170	750	0	700	950	0	0	0	25000
Nedri	23750	960	7250	0	2750	0	0	0	1600	750
TE	7700	22100	2000		8900	4900	900	750	550	5300
Tycsa	844		1228	5024 ?		34775	2458	47	-27	5386
WDI	5420	1450	17850	0	1180	0	0	0	0	1960
Italy Total	7900	14700	6100		1200	1500				
Overige (others)	0		500	0	0	7000	0	0	0	0
Totale markten (Total market)	58594	48632	50478	115524	21548	66125	6258	6547	3573	50696
	58594	43280	50478	10524	19430	66125	6258	6547	3573	50696

Source : (…)

(367) Participants to Club Europe also considered what rules should apply to this expanded Club Europe. Thus, the preparatory (…) notes dated **21.06.2002,** for a discussion with Tycsa on 26.06.2002, amongst others consider how the 'new' Club should be structured (2 Italian producers and 2 Spanish/Portuguese producers, as well as 6 country co-ordinators for 'France/Belgium/Luxembourg, Switzerland, Germany, the Netherlands, Scandinavia, 'Austria' and another competitor, i.e. a total of 10 members) and what the working principles of the Club should be: a minimum price per country for each product; a compensation mechanism; the market share should be determining, not the volume; one should stay with existing customers; max. ½ yearly contracts; communication with the co-ordinator; finally, Nedri would like to consider the exchange of volume (Italy-the Netherlands) with the Italian producers to eliminate transport costs.[554]

(368) In minutes of the meeting of **26.06.2002** between Tycsa and Nedri, the latter wrote about Tycsa: '*<u>Report visit Tycsa</u> As largest PS (…) producer in Europe they are willing to be: -active player in the club, -accepting the reference period, -following the co-ordination the price policy per country, -no visits new customers, -open for discussions and gives figures customised by consumer when others do the same. Their volume in Italy is higher than the agreement achieved. What they lost in France to the Italian producers*

[554] (…)

they do in Italy.' The meeting concerned took place in Barcelona and its purpose was to prepare a meeting of 04./05.07.2002. The same principles as those described in the minutes of the meeting of 26.06.2002 are also reflected as agreed in notes found at Tycsa, dated **01.07.2002**.

(369) The (…) notes of a meeting of **15.07.2002**, among Tréfileurope, Tréfileurope Italia, Redaelli, Nedri, Itas, CB, Tycsa and WDI (already referred to under recital (309)) list the 'Club members' per country: '*Club members: Italy 2, Spain, Portugal 2, Scan/Fundia 1, Neth/Nedri 1, Germany/WDI DWK 1, France/Belgium TE 1 = 8 + chairman/vice chairman*', with a question mark for Austria Draht and another competitor (see also recital (367))[555].

9.1.6. Implementation of the European-wide quota arrangement

9.1.6.1. Monitoring scheme

(370) Contemporaneous documents in the possession of the Commission,(…) [556] and in the recitals above,(...) [557],(…) [558] and (…)[559], show that following the Lyon agreement of May 1997 the six producers conceived and applied a monitoring system to allow verification of respect of the quotas by all producers involved and to request adjustments of sales over the following two quarters, whenever the fixed quotas had been exceeded.

(371) Concretely, the producers involved agreed to submit their sales data for the reference area to a reporting person before the quarterly meetings[560]. That happened mostly orally by telephone. The reporting person had the task of calculating the deviations from the agreed quotas in advance (comparing the 'soll' with the 'ist' figures, see section 9.1.3.4 above). He then communicated its statistics to all producers before the quarterly meeting. First DWK and then Nedri played a key role as reporting officer (see above recital (209)). The Club Europe members also directly exchanged sales data in their meetings, see for example the meetings of **18.12.2000** and **26.03.2001** (…).

(372) The aim of the monitoring (deviation statistics) was to keep track of one another's commercial behaviour, in particular in order to preserve the status quo of the quotas, by requesting compensation in case of deviation from the agreed quota[561].

(373) In order to increase transparency on each others' sales, it is worth noting that the producers submitted data certified by external auditors at least on two occasions (for the periods 4Q1995-1Q1997 and 2Q1997-4Q1997, see section 9.1.3.4 above).

(374) Also the prices were monitored and price increases effectively implemented. Prices were continuously discussed and at the meeting of

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12.09.2002, it was, for example, requested that prices should be increased again, *'a strong price increase also having been successfully imposed in 1997-1998*' (…).

9.1.6.2.Compensation

(375) Whenever conflicts relating to deviations from the fixed quotas occurred, there were no sanctions[562], but mostly (bilateral) compensation arrangements. Country-co-ordinators would generally intervene to try to solve the conflict[563] (see also above recital (200)). The principle of compensation had been agreed at the Lyon meeting and was discussed again on 23.10.1997 (…). Companies had six months to adjust the quota if they were exceeded, otherwise volume compensation was applied regarding specific clients or at a minimum fixed price (see rules fixed on 12/13 May 1997,(…)):

(376) First, (…) describes the compensation mechanism regarding specific clients as follows: '*if a client was shared, the offending member might agree to reduce his sale by an equivalent amount the following quarter. If it was not shared, then the offending member might agree to 'give up' an equivalent tonnage at one of his own clients. Only when no agreement could be reached, would (…) threaten to make up the lost volume by undercutting the offending member at one of its own clients. This typically resolved the problem.'* [564] Club Members also agreed to refrain from supplying each others' clients, as was the case for example between Nedri and Tréfileurope in 1997/1998[565]. As is clear from internal notes of (…) of **09.03.1998**, parties deviating from the agreed quota were expected to answer to the other producers for these deviations and did also propose compensations for deviations from the European-wide quota.[566] Another example is the meeting of **03/04.08.2000** (…) where Tycsa requested compensation on the Italian market for any loss that would be caused by Italian producers supplying European clients which Tycsa had been supplying before. At the meeting of **26/27.09.2000** (…) Tycsa agreed to withdraw from Scandinavia (i.e. not to deliver (…) any longer) under the condition that it would instead be allocated a number of additional tons in the Netherlands, Germany, Belgium (and France) as compensation. At the same meeting, Tycsa itself had been requested to compensate before 31.12.2000 the excess sales it had made in the first semester 2000 (which had been calculated on the basis of its May 1997 quota of 21,47%). At the meetings of **18.12.2000** and **26.03.2001** (…), the Club Europe members tried to convince Tycsa to reduce its sales in Europe as it had surpassed its quota.

(377) Second, instead of the 'offended' company selling directly to a reserved client of the aggressor, producers could agree on selling a number of tons to each other to compensate. Similar compensations occurred in Club Italia (See section 9.2.1.7). As an example, when Nedri had trespassed its quota in Belgium in 1998, it had to give compensation to Tréfileurope (being obliged to

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purchase 500 tons of PS from Tréfileurope).[567] Minutes of a telephone conversation between Nedri and Emesa on 18.09.1998 also seem to refer to an agreement to set a price for a compensation of 200 tons between the companies. (…). Further, Nedri has requested compensation in Spain, to be organised by Tycsa, in view of the 'German problem'[568] and hand-written notes of Nedri of probably summer 2002 mention that Tycsa must compensate for the loss which occurred in France.[569]

9.1.7. Individual participation in the pan-European arrangements

(378) As explained in section 9.1.1.1, the pan-European contacts and anticompetitive arrangements concerned quota allocation, the fixing of prices and payment conditions, customer allocation and the exchange of extremely detailed sensitive commercial information on for example monthly sales by each producer. These contacts started at least from **01.01.1984** for **Nedri** or as it was called at the time Nederlandse Draadindustrie BV (NDI), **WDI** or as it was called at the time Klöckner Draht GmbH, **Tréfileurope** or as it was called at the time Tecnor SA until 1987 and then Tréfilunion SA through its French factory Sainte Colombe.

(379) **Fontainunion** (initially belonging to Bekaert SA, then to Tréfileurope) is considered a participant since its incorporation on **20.12.1984**.

(380) **DWK** is considered a participant only since its incorporation on **09.02.1994**, as it has not taken over the liabilities of the bankrupt company TrefilARBED Drahtwerk Köln GmbH, which itself had been involved in Club Zurich from the start, i.e. 01.01.1984. The Commission considers that the last day that DWK participated in the cartel is **06.11.2001**[570].

(381) They were joined by **Emesa** on **30.11.1992** and by **Tycsa** on **10.06.1993** at the latest. Regarding Tycsa, this was first MRT, at the time called Trenzas y Cables SL, which participated since its incorporation on **10.06.1993**, and then Tycsa PSC since its incorporation on **26.03.1998** (see also section 9.1.1.3)). DWK and Tréfileurope state that Emesa would no longer have participated in the Club Europe meetings as of early 2001, or even earlier, as of the end of 1999[571]. Emesa itself did not formulate a similar claim and this is in fact contradicted by evidence in the possession of the Commission, which shows that Emesa continued to attend Club Europe meetings until at least 05/06.02.2002[572] (as well as the Club España meetings until summer 2002[573], see further section 9.2.2) and that it continued exchanging data on its volume, mostly orally to Mr. (…) and then to Tycsa[574] until at least the date of the inspections. It should also be noted that Emesa has never publicly distanced itself from the cartel.

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(382) As regards the Italian producers, **Redaelli** participated in the Zurich phase of the pan-European arrangement, i.e. from **01.01.1984** onwards and was initially also involved in the crisis period. **ITC and Itas**, directly and through Redaelli, also participated in the Zurich phase of the pan-European arrangement since **24.02.1993** and **CB** since **23.01.1995** (see sections 9.1.1.1 and 9.1.1.4). **Tréfileurope Italia** participated in the pan-European arrangement at the latest in Club Europe, where it was appointed co-ordinator for Italy (see recital (195). Subsequently, Redaelli, together with the other Italian companies, i.e. **Itas, CB, ITC and SLM**, negotiated their integration within Club Europe at the latest as of **11.09.2000** until the date of the inspections (see section 9.1.5.1). At the same time, these companies co-ordinated their behaviour in Club Italia (see section 9.2.1).

(383) Together with the six producers, Fundia and CB moreover co-ordinated (including on volumes and prices) regarding the customer (…) ; **Fundia** from at least 23.10.1997 until 31.12.2001 and **CB** from at least 29.11.1999 until 31.12.2001 (see section 9.1.4.3).

(384) The last documented pan-European meeting took place on 12.09.2002 (…). Documentary evidence shows price agreements for 2003 and also that the quotas were meant to remain effective until at least 2003[575]. The Commission therefore considers that the pan-European arrangement continued at least until the date of the inspection by the Commission (19.09.2002).

9.2. National/Regional Arrangements

9.2.1. Club Italia/ Arrangements relating to the Italian Market including exports from Italy to the rest of Europe

(385) Numerous contemporaneous documents (…) [576],(…)[577], (…) [578],(…) [579],(…) [580], (…) [581] and (…) [582] show that between at least early 1995 until the date of the Commission's inspections on 19 and 20.09.2002 in parallel to the pan-European arrangements (see section 9.1), CB, ITC, Itas, Redaelli, Tréfileurope and Tréfileurope Italia, Tycsa, SLM, Trame and the pan-European producers DWK and Austria Draht, attended anti-competitive meetings at which they engaged in: (1) disclosure and **exchange** of commercially sensitive **information**, in particular relating to customers, pricing and sales volumes[583], (2) market allocation through **quota** fixing both within the Italian market and regarding exports from Italy to the rest of

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Europe[584] (see section 9.2.1.4) (3) **price fixing** reacting to the raw material cost development, including the fixing of minimum prices/price increases in Italy and the other European countries (per customer) and of a surcharge ('extra')[585] (see section 9.2.1.5) and (4) **customer allocation**[586] (see more section 9.2.1.6). A monitoring system through an independent third party, Mr (…), as well as a compensation mechanism were also well in place (see section 9.2.1.7).

(386) The documentary evidence (…) further indicate the existence of earlier arrangements (in the period 1979 until 1994) among Redaelli, ITC, Falck (business unit taken over by Tréfileurope Italia), AFT (later called Tréfileurope Italia), CB and Itas (see section 9.2.1.3).

9.2.1.1. Organisation of Club Italia

(387) The participants in Club Italia held frequent (monthly[587]) meetings to monitor and enforce the agreed quotas, prices, client allocation and market shares. More than 200 meetings between Italian and certain other European producers on the subject of PS have been identified for the period 1979-2002 (more than 150 for 1995-2002, (…)). The Commission has contemporaneous evidence relating to most of the meetings. In addition to these meetings, the parties also maintained regular telephone contacts and held bilateral meetings[588] also listed in (…).

(388) In the 1980s the meetings were normally held at the headquarters of Falck, between 1990 and 1998 at the headquarters of Redaelli and between 1998 and 2002 at the headquarters of Federacciai[589]. From 2000 to 2002 some meetings, bringing together the Italian and European producers, were also held at the Hotel Villa Malpensa, in Milan (see section 9.1.5.1).

(389) The meetings were organised at different levels. The main purpose of the meetings held by the Italian producers at management level was to exchange information on the prices, including of raw material, and on customers, to fix and monitor sales quotas, to allocate customers and to fix sales prices as well as the surcharge[590]. The main purpose of the meetings held at salesperson level was to implement the decisions taken at management level[591].

9.2.1.2. Co-ordination

(390) Redaelli (through Mr.(…)) played a central role in the organisation and inspiration of the arrangement relating to the Italian market until the end of 1997. This is confirmed by the fact that the meetings between 1990 and 1998 were held at Redaelli's head office, that many documents concerning the distribution of market shares were drawn up by Mr. (…) and that he formed

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the link with the foreign producers at the time (see recital (153) onwards and for example the meetings of 01.03.1996, 12.03.1996 and 04.11.1996, set out in (…)). (…) [592].

(391) Towards the end of 1997 this role was effectively taken over by Mr. (…) [593], Tréfileurope's representative in Italy. (…) confirms that Mr. (…) often acted as moderator, that he was called on to intervene in disputes owing to his long experience in the sector and that the management of Tréfileurope was aware of this arrangement[594].(…)[595]. Indeed, for the period 1997 - start 2001 (…) *'was content to inform them of the general outlines of the decisions taken in Continental Europe.*' (see also recital (195) onwards)

9.2.1.3. Background: discussions and agreements from 1979 until 1994

(392) From at least 1983 till 1994, in parallel to the Zurich Club arrangements at the pan-European level (see section 9.1.1), Redaelli, ITC, Falck, AFT, CB, and Itas met at varying points in time regarding the Italian PS market and discussed sales and agreed on prices, quotas and client sharing within Italy. This is confirmed by (…) in its statement on the Zurich Club in recital (138).

(393) (…) also confirmed that well before 1995, Redaelli, CB, Itas and Falck met every month within the Assider association to discuss sales volumes. A tacit co-ordination agreement existed based on the allocation of sales quotas to each competitor[596].

(394) Finally, (…) equally confirmed the existence of anti-competitive contacts. In this respect, the first meeting recalled by Mr. (…) (…) took place on **15.09.1979** probably at the Falck office. According to (…) , the meeting had no immediate follow-up as (…) did not agree with the other companies' proposals[597].

(395) In the period April–October 1983[598], a series of meetings took place at Falck to conclude a new agreement concerning the Italian market so as to adapt to the developments of the market[599].

(396) (…) supplied a typed document dated **27.04.1983** (Milan)[600] containing a draft quota allocation agreement between '*Deriver* (subsequently Redaelli), *Redaelli* and *Falck',* This document includes three very detailed annexes relating to: (i) the quota-monitoring arrangements according to which monthly verifications took place at the premises of the companies concerned by an external inspector, who would then send a report and its invoice for the controls delivered to all the companies concerned. The name of Mr. *(…)* as inspector is hand-written on the document (see also

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recital (450)); (ii) the sales prices and conditions, including minimum prices and the 'extra' for sales in Sicily and Sardinia; (iii) the rules to be followed should quotas be exceeded (a three-monthly compensation system): the company exceeding its quotas was obliged to buy the 'difference'[601], at the price agreed between the companies which had not reached their respective quotas. All the above anti-competitive practices were applied again as of 1995 (see sections 9.2.1.4, 9.2.1.5 and 9.2.1.7).

(397) In the period 1990-1994 several meetings took place between Italian producers Redaelli, ITC[602], Falck –until 1992- CB, Trame and SLM, which exchanged sales figures and proposed sales quotas including export quotas (for example meeting of 24.04.1991), negotiated the allocation of customers and fixed minimum prices. This is confirmed by contemporaneous documents (…).(…) mentions meetings held at least on 12.12.1990, 19.12.1990, 15.02.1991, 24.04.1991, 24.02.1993, 07.05.1993, 12.10.1993, 14.03.1994, 29.03.1994, 11.04.1994, 26.04.1994, and in September 1994[603]. The discussion on export quotas should be understood in the light of simultaneous quota discussions (including regarding Italy) in the Zurich Club (see section 9.1.1 above).

(398) Specific mention can be made of the meeting of **24.02.1993**, between Redaelli, ITC, CB, Itas, AFT (later Tréfileurope Italia), DWK and Tycsa. During that meeting the participants discussed prices and quotas on the Italian market and exchanged information on the other European markets (France, Spain, Germany, Austria, Belgium, and Netherlands)[604], showing close interaction between Club Zurich and Club Italia participants. Mr. (…) was also present as an inspector. This meeting was prepared in the morning by the Italian producers alone.

(399) According to (…), at the start of the 1990s, those producers which had been part of Assider (Redaelli, CB, Itas, Falck) had given up the practice of quota-fixing, in particular because ITC did not agree to join in this initiative[605].

9.2.1.4. Quota fixing: 1995-2002

(400) As from early 1995, ITC, Redaelli, CB, Itas, Tréfileurope/Tréfileurope Italia, Tycsa and as of 1997 also Trame, SLM, Austria Draht and DWK discussed and negotiated the sharing of the Italian market and the allocation of export quotas towards Europe both within Club Italia and with pan-European producers. This practice continued at least until the Commission's inspections.

9.2.1.4.1 December 1995 agreement

(401) Towards the end of the Zurich Club (see above recital (168)), in particular from at least 23.01.1995 and throughout the year 1995, the Italian producers discussed and negotiated within their Club and together with

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Zurich Club producers on quotas in Italy and on their exports in the rest of Europe[606]. Even if the Commission does not have evidence that an agreement was finally reached between the Italian and Zurich Club producers, at least Redaelli, CB, Itas and ITC agreed on 05.12.1995 on a quota agreement for wire, 3-wire strand and 7-wire strand detailing the volume the Italian producers could sell in Italy and the volume they could export in the rest of Europe ('CEE'). During the negotiations regarding this December 1995 agreement, several drafts were drawn up and distributed to the participants throughout the year 1995, as developed below (see recital (402)).

(402) The earliest draft agreement in the possession of the Commission, **dated 23.01.1995** (…) already shows that ITC (i.e. at the time consisting of Italcables S.p.A.and Italcables Sud Srl), Redaelli (i.e. Redaelli Tecna, Redaelli TecnaSud and Deriver), CB and Itas (together the '*Members'*) were discussing a draft agreement on 7-wire strand, 3-wire strand and wire, fixing quotas for the Italian market as well as export quotas for the rest of Europe ('CEE'). The CEE countries involved were Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain. This draft also stipulated that *the members* would agree to discipline the *'productive capacities'* and to *'respect the Italian and European (export) quotas*'. The draft also granted a '*mandate*' and the '*necessary instructions'* to Redaelli to represent the others in negotiations on agreements to be concluded with *'**foreign** members'* (emphasis added). Monitoring arrangements, through a system of systematic controls, were also provided for.[607] Reference can also be made to charts circulated on **30.01.1995** (…) with detailed proposals for quota allocation (expressed in percentages) among the aforementioned companies (Redaelli, CB, Itas and 'ANT (onini)' (i.e. ITC)), on the one hand, and the **foreigners** ('Est(eri)'), on the other hand, on the Italian market and the 'CEE' for 7-wire strand, 3-wire strand and wire. The Zurich Club and Club Italia participants were regularly informed of each others' discussions. For example (…), on **26.01.1995**, Redaelli informed the Zurich Club on the state of play in Italy and on **02.05.1995** , it explained to the Zurich Club how the common Italian quota for Italy and for the 'EC' was split among the Italian producers. On **28.05.1995**, the six producers decided to communicate their agreement to reduce their exports to Italy to Redaelli and the Italian position as presented by Redaelli was further discussed.

(403) A document called '**agreement 19.09.1995'** (…), mentions quota fixing for the participants (Redaelli, CB, Itas, Antonini (i.e. ITC) and Falck, on the one hand, and the '**foreigners**' (i.e. Tréfileurope including Tréfileurope Italia (Falck/Aldé), Tycsa and Austria Draht), Trame and SLM, on the other hand. At the Zurich Club meeting in Paris on 19.09.1995, the six Zurich Club producers and Redaelli extensively discussed the '*total exports by the Italian producers into the Club'* and vice versa (*'which limitation of the activities of Europe into Italy to be proposed?*' (original in Spanish)). The Italian producers requested an export quota of 38 000 tons

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into Europe (which would correspond to a 16% market share of a total (Zurich) Club market of 239 000 tons). In support of their claim they distributed a table entitled '*PC European market basic figures- Italian 'agreement'*'[608]. The European producers, however, set a maximum export quota for the Italian producers of 23 600 tons (possibly to be extended by an additional 6000 tons). Redaelli then made a 'last bid' of 35 200 tons (corresponding to 14.6% of the total Club market). No agreement on the Italian export quota seems to have been reached at that Club Zurich meeting. According to (…) '*the Italian producers had reached a preliminary agreement on the quotas in September but this sort of agreement was not satisfactory to the European producers because the sales it allowed a number of Italian producers (in particular ITAS and CB), were still too high*'[609].

(404) Another draft dated **24.09.1995**[610] distributed at the Club Italia meeting of **12.10.1995** between Redaelli, CB, Itas and ITC (…) compares *'our* [the Italian] *proposal'* with the '*proposal accepted by the foreign producers'* (original in Italian) for the allocation of quotas on the Italian and the 'foreign market'. It also describes for 1990 the sales (expressed in tons and percentages) in Italy by Italian producers (i.e. all Italian producers, with the exception of 'Aldé, Trame and SLM'); the sales in Italy by foreign producers (i.e. 'producers from France, Germany, Austria, Spain, the Netherlands, Belgium and Luxembourg, as well as Aldé'); the sales abroad by the Italian producers; and the sales abroad by the foreign producers. The conclusion was that the Italian producers could sell 96 000 tons in Italy (74% of the Italian market) and 35 500 tons in the other countries (15% of the foreign market); the foreign producers were allowed to sell 33 000 tons in Italy (26% of the Italian market) and 203 500 tons in the other countries (85% of the foreign market).

(405) In a fax from Redaelli (…) to Itas (…), ITC (…) and CB (…) **dated 24.09.1995**[611], the former states '*I have **continued** the negotiations with the foreign producers concerning possibilities with regard to an Italian quota and our external quota; after lengthy discussions a balanced position has been reached*' and proposes 12.10.1995 as a meeting date. It results from the fax that the Italian producers, represented by Redaelli, and the remaining European producers continued the quota negotiations (see also recital (153)).

(406) The volume of sales and the quota proposals, including those of non-Italian producers were also thoroughly discussed among the Italian producers themselves. For example, various tables[612] dated **11.10.1995** set out the sales and quota separately for each producer ('Italcables+ Italcables Sud', CB, Itas, 'external producers+ Aldé Filo', 'Redaelli+Redaelli TecnaSud+ Deriver', 'Trame', 'SLM', 'the English producers'). A text in annex to the tables sets out the rules to be followed by the Italian PS

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producers with respect to their quota agreement: *'Initial duration of 5 years ((…) 3 years tacitly renewable?) or year to year; No increase (substitution) of existing production capacities (violations to be paid for); Setting up of a 'defence and promotion' fund; Payment of guarantees to ensure correct implementation of the agreement; Designation of one representative for relations with foreign producers (one to talk, one as observer); Respect for 'Italy quotas' and 'quotas for countries party to the agreement'; Compliance with the 'sale conditions in force'; Pay the 'differences'*[613]*; Submit to checks on quantities and 'sale conditions'.'*

(407) The same charts were attached to a fax of **13.10.1995**[614] from Redaelli (…) to Itas (…), ITC (…) and CB (…), referring amongst others to the *'discussions on quota from the beginning of the year'* and to the meeting of 12.10.1995 (see recital (404)). Separate charts dated **22.10.1995** also sum up the sales made by Redaelli ('RT-RTS-Deriver'), CB and Itas for every year between 1979 and 1993 and compare the situation in 1990 with that created by the '*final agreement- agreement 1996*'.[615]

(408) It appears from a **letter dated 24.10.1995** from (…) (Redaelli) addressed to (…) (DWK) and (…) (Tréfileurope) that it was difficult to convince CB and Itas of the quota proposals and that participation from the Zurich Club producers in the inner-Italian negotiations was expected. The letter stated '*As agreed I inform you about our negotiations. We have had two meetings, the latest this morning. No way to manage (…) 's 'viscerality' and (…) 's opportunism (they are sure to persuade the other members to renounce to at least 10,000 additional tons with a 6 months- 1 year export pressure period). I disagree; sure, as I am that the European market will be finally destroyed forever. To avoid an irremediable rupture, I asked if they will accept an increase of 5000-6000 tons against an immediate settlement of the whole matter*[616]. Redaelli appended '***Figures regarding the agreement we reached on 19/9/1995***'[617]*; a possible sharing of the tonnage to be granted to (…) and ((…) (*ITC*) and myself we will cover our part: 1700 tons; 4200 tons to be covered by the Members having quotas of 236800 tons= 1.7%). I beg you and (…) (*Tréfileurope*) to solve the problem (possibly without contacting all the other members) and give me confidentially an answer before Tuesday. (…) I apologize for my failure but I assure you that the negotiation was a real battle (my tentative proposal was made at the very end of the meeting when I was sure that there were no other ways out)'* (emphasis added). This proposal was discussed during the Club Zurich meeting of **08.11.1995** but was considered unacceptable and at that meeting it was proposed to set an ultimatum to the Italian producers (…).

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(409) Finally, a contemporaneous table entitled 'Agreement 1996', copied during the inspection[618](…) [619] confirm that on **05.12.1995** ITC, Redaelli, CB and Itas concluded an agreement[620] on the quota allocation of wire and 3-wire and 7-wire strand on the Italian market (a total of 85 000 tons, market share allocation: RED 47,2%, Itas 14,6%, CB 16,9%, ITC 21,3%) and on the assignment of export quotas expressed in tons and percentage in the rest of Europe ('CEE') (a total of 45 000 tons, market share allocation: RED 55,6%, Itas 7,8%, CB 25,6%, ITC 11,1%). The table (original in Italian) has been reproduced below:

Sales		***Tons***			***Quotas***		
Product	Group	***Italy***	***CEE***	***Total***	***Italy***	***CEE***	***Total***
Wire	RED	7.2	10.6	17.8	80.00%	65.00%	70.40%
	C&B	1.3	5.6	6.9	14.40%	34.40%	27.30%
	ITAS	0.5	0.1	0.6	5.60%	0.60%	2.40%
	ICAN (ITC)					0.00%	0.00%
	ICAS (ITC)					0.00%	0.00%
Wire Total		9	16.3	25.3	100%	100%	100%
3-wire strand	RED	4.8	2.1	6.9	36.90%	53.80%	40.80%
	C&B	3.2	1.8	5	24.60%	46.20%	29.60%
	ITAS	2.8		2.8	21.50%	0.00%	16.60%
	ICAN (ITC)	2		2	15.40%	0.00%	11.80%
	ICAS (ITC)	0.2		0.2	1.50%	0.00%	1.20%
3-wire strand Total		13	3.9	16.9	100%	100%	100%
7-wire strand	RED	28.1	12.3	40.4	44.60%	49.60%	46.00%
	C&B	9.9	4.1	14	15.60%	16.50%	15.90%
	ITAS	9.1	3.4	12.5	14.50%	13.70%	14.30%
	ICAN (ITC)	10.1	5	15.1	16.00%	20.20%	17.20%
	ICAS (ITC)	5.8		5.8	9.20%	0.00%	6.60%
7-wire strand Total		63	24.8	87.8	100%	100.00%	100.00%
PS ('CAP')	RED	40.1	25	65.1	47.20%	55.60%	50.10%
	C&B	14.4	11.5	25.9	16.90%	25.60%	19.90%
	ITAS	12.4	3.5	15.9	14.60%	7.80%	12.20%
	ICAN (ITC)	12.1	5	17.1	14.20%	11.10%	13.20%
	ICAS (ITC)	6		6	7.10%	0.00%	4.60%
PS ('CAP') Total		85	45	130	100.00%	100.00%	100.00%

Sources (…)

(410) During the meeting of **18.12.1995**, Redaelli, ITC, Itas and CB reconfirmed their PS export quota to the rest of Europe. Indeed, the document contains a table with 1994 sales, *'actual quotas'* and *'quotas understood'*. The *'quotas understood'* correspond to those referred to in the

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second-last row of the above table, i.e.: R(edaelli) 55,6%, Itas 7,8%, (…) ('CB') 25,6%, (…) 11,1%)[621].

(411) As developed in the next section 9.2.1.4.2, the agreement continued to be applied by Redaelli, ITC, CB and Itas (later on joined by Tréfileurope Italia, Trame, SLM and the pan-European producers Tréfileurope, Tycsa, Austria Draht and DWK) until 2002[622]. As an example, the 85 000 and 45 000 tons, as agreed under the Italian agreement (last row of the above table) are reproduced in a table dated **03.02.1997** on the Southern Agreement[623] (see recital (539)).

(412) (…) states that 'the *Italian producers' primary interest was the Italian market. On the initiative of Mr (…) , an export volume into the ECC by the Italian producers (initially ITC, ITAS, CB and Redaelli) was discussed and agreed as a factor for balance with the big European producers (i.e. in order to limit the latter's imports (*into Italy*)). This volume* ***fixed at 45 000 tons*** *[…] represented 10 to 15 % of the European market.* ***This agreement on the volume of exports had been presented by Mr (…) as a 'peace clause' allowing the agreement to work on the Italian market****. As a result of Mr. (…)'s withdrawal, the volume of exports by the Italian companies into the ECC varied between 45 000 and 50 000 tons. As regards the subdivision of this volume among Italian producers,* [ITC, ITAS, CB, Redaelli and subsequently SLM], *sometimes with the participation of foreign companies, met in the following years to discuss the size of the individual quotas and to exchange information on exports made'*[624] (emphasis added).

(413) A considerable number of meetings devoted to questions of exports and imports and the prices to be applied in other countries then took place, as developed below (see section 9.2.1.4.2).

9.2.1.4.2 Follow-up to the December 1995 agreement

(414) A large amount of contemporaneous documentary evidence copied in the course of the inspection (…) [625] and (…)[626] confirm that, following the 1995 agreement ITC, Redaelli, CB, Itas, Tréfileurope/Tréfileurope Italia, Tycsa and as of 1997 also Trame, SLM, Austria Draht and DWK[627] met regularly and frequently until the inspections in 2002 to determine the rules to be complied with[628] in their 'Club Italia'[629] and to allocate quotas (including on imports and exports). To verify compliance with the agreements, the producers also instructed a third party, Mr.(…) , to carry out checks (see recitals (450) to (453)). The participants were thus able to check

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several times a year actual sales and the difference compared with the agreed quotas both in terms of global figures and of figures per customer. Compensatory arrangements between producers were also envisaged (for an example see recital (454)). In this respect CB points out that on several occasions the participants claimed a need to 'rebalance the quotas'[630] .

(415) Redaelli, ITC, CB and Itas were the core members of Club Italia and were often but not always joined by Tréfileurope, Tréfileurope Italia, Tycsa, Trame, SLM, DWK and/or Austria Draht. It should be repeated that at some meetings the Italian participants (including pan-European producers Tréfileurope/Tréfileurope Italia, Tycsa, Austria Draht and DWK) discussed not only quotas, prices and customers in Italy but also matters relating to imports and exports. They discussed the quotas they wanted to obtain and/or the sales made in export countries, in particular France, Spain, Germany, the Netherlands and Belgium as well as the minimum prices to be applied and the balance between quota compliance and price levels on these markets. In relation to this meetings were held on 18.12.1995, 21.01.1997, 03.02.1997, 10.03.1997, 07.04.1997, 15.04.1997, 16.04.1997, 25.06.1997, 22.10.1997, 16.12.1997, 13.05.1999, 29.11.1999, 17.01.2000, 11.09.2000 and 19.09.2000 (…). Such discussions also continued during the expansion period from September 2000 - September 2002 (see section 9.1.5.1).

(416) A hand-written document dated **16.12.1996**[631] and entitled *'Verification of quotas'* (agreement (for 1996) and estimate 1997) clearly shows that the respect of the December 1995 agreement was verified (Redaelli, CB, Itas, ITC as well as Tréfileurope and Tycsa are mentioned).

(417) Furthermore, at a meeting on **17.12.1996** excel tables were exchanged setting out[632]:

– detailed sales quotas and client allocation on the Italian market in 1997 for the following producers : Redaelli, Itas, CB, ITC, Tréfileurope and Tycsa (the companies Austria Draht, Trame, SLM and DWK were also foreseen in the excel tables but the columns with the identity of their customers and the allowed sales were left blank);

– the appointment of a 'lead producer' for each Italian customer: Redaelli (RT), Tycsa, Tréfileurope, CB, ITC ('ANT'(onini)), Itas.

(418) Tycsa (Mr.(…)) was called on the phone during the meeting of **03.02.1997** and a list of Spanish customers as well as the 'Southern agreement' were thoroughly discussed. At the meetings of **24.02.1997** and **04.03.1997**, it was noted that DWK would join Club Italia. At the latter meeting, the 'Spanish companies' were reported to be absent implying that their presence was expected and that there had been earlier contacts with them. It was further noted that Trame as well had expressed an interest in joining the Club, which was followed by a request for quota at the meeting of **17.03.1997**. On **07.04.1997** volume was allocated among the Italian

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players as well as Tréfileurope, Tycsa, Trame, SLM, DWK and Austria Draht.

(419) Furthermore, a document referring to a meeting of **30.09.1997** indicates that the participants held a discussion on quotas and minimum prices. Regarding the definition of the quotas, this document states that penalties should be applied to companies the sales of which have increased by more than the average, those which sell only in Italy and those which sell at low prices[633].

(420) According to (…)[634], from 1998 onwards the meetings concentrated on analysing the retail market in order to identify in particular the customers of 7-wire strand, their needs and the usual suppliers. In the second half of 1998 the Club Italia participants agreed on a full list of customers on the Italian market, with indications of their consumption and their suppliers and on the distribution of the overall quotas for the producers' sales on the Italian market (see also section 9.2.1.6 on allocation of customers).

(421) Simultaneously, quota allocation continued: note for example the tables dated **13.01.1999** (…) with an estimated volume allocation (including price fixing for some companies) for the months January until March for Redaelli, ITC, CB, Itas, Tréfileurope, SLM, Trame, Austria Draht, Tycsa and DWK. A fax dated **06.05.1999** from (…) (agent for Tréfileurope in Italy), which was sent to at least ITC[635], sets out the **rules applicable in Club Italia** in 12 points, amongst which: point 1) allocation of customers - max total 15: a) **AUST[ria Draht]:** 1200/year; b) **TY[csa]:** 2500 c) **[Sainte] Colo[mbe**, Tréfileurope factory]: 1800/year; point 4) If a dispute arises regarding a shared customer, the parties are obliged to contact each other; point 6) Leader: for each non-exclusive customer, there has to be a leader whom the others must previously consult; point 9) chairman: a chairman should be appointed (for 3 months) which any party can call upon for mediation in case of a problem.

(422) Equally, in 2000, discussions focused mainly on the sales quotas to be assigned to the various producers (see (…) and for example the meetings of 12.01.2000, 17.01.2000, 12.06.2000, 10.07.2000 and 19.09.2000). As regards Tycsa, its quota initially amounted to 2 500 tons[636] but was regularly renegotiated (for example at the meeting of **18.01.2000** between Tycsa and ITC, Tycsa tells ITC that it wants to increase its current quota from 2 500 tons to 2 800 tons). At the meeting of **12.06.2000** it is mentioned that Tycsa sells 4000 tons on the Italian market. Reference should also be made to the Club Italia meetings of **10.07.2000** (*'Club agrees with 4 000 tons'* to Tycsa and also allocation of concrete tons to DWK and Austria Draht), **04.09.2000** (allocation of 4 000 tons to Tycsa), **19.09.2000** (allocation of tons to Tycsa, Austria Draht, DWK, Tréfileurope and all the Italian players) and the Club Europe meeting of **26.09.2000** (*'Tycsa has agreement with Italy).* A

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document dated **09.07.2002** confirms the 4 000 tons agreement (*'we have a quota of 4 000 tons'*)[637].

(423) A table (…) shows a plan for the allocation of the 2001 quotas and forecasts for 2002 for Redaelli, ITC, CB, Itas, AFT (Tréfileurope Italia) SLM, Trame, Tycsa, DWK and Austria Draht[638].(…) [639].

(424) The meetings continued until the inspections by the Commission in September 2002. The last recorded meeting took place on **16.09.2002**, at the premises of Federacciai, Milan, and was attended by Itas, AFT/Tréfileurope Italia, Redaelli, CB, (…) , SLM and Trame (ITC absent). The purpose of this meeting was to distribute the quotas for 3-wire and 7-wire strand. In addition to a discussion on prices, Mr. (…)'s minutes mention *'(…) Discussion concerning the new competitors on the market. (…) refers to the Brussels meeting'*[640].

9.2.1.5. Price fixing (of basic price and extras)

(425) It follows from contemporaneous documentary evidence copied during the inspections[641](…) [642], (…) [643],(…) [644],(…) [645] and (…) [646] that Club Italia participants also discussed and fixed the prices on the Italian market, fixed prices per customer in Italy and compared and fixed the prices to be charged in the rest of Europe. They also fixed a price supplement referred to as an 'extra' for 7- and 3-wire strand on an annual basis and then applied it to the base prices for the products concerned.

(426) Discussions on price fixing were ongoing at least as from 1991 (see (…) and in particular the meeting of 19.12.1990, the price list applicable as of 01.01.1991 and the meeting of 29.03.1994). The 'new' price list applicable as of **01.09.1994** (including a basic price and extras), prepared by Mr. (…) (Redaelli) and circulated to at least ITC, is also significant: the fact that it was a *new* list confirms the previous price discussions among at least Redaelli and ITC. The list included the possibility of introducing the extra for products of several diameters and also for supplies to Sicily and Sardinia[647].

(427) The producers continued to discuss, fix and compare prices in Club Italia between 1994 and the inspections in 2002. It should be recalled that also at European level in Club Zurich/Europe prices were discussed and fixed per country, including for Italy. The pan-European producers Tréfileurope (co-ordinator for Italy), Tycsa and DWK regularly attended the Club Italia discussions, including on prices, and could thus influence these

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discussions taking into account the discussions at European level (see also sections 9.1.3.5 and 9.3.2).

(428) On costs and prices, (…) states that there was no disagreement between the Italian producers and (...) on costs (for wire rod) and prices (for PS) and that between 1996 and 2000, the producers also discussed cost development of the input product wire rod and the appropriate reaction in terms of (increasing) the PS price. (…) did not oppose to the proposed price changes and partly also agreed that the proposal was correct and useful[648].

(429) Thus at the meeting of **18.12.1995**, Redaelli, Itas, CB and ITC fixed the prices to be applied as of 1996 for each quarter. The minutes of the meeting also contain a reference to the fact that **Messrs. (…) (Tréfileurope), (…) (Trame), (…) (DWK) and SLM had to be informed** of these new prices. A comparison was also made with the prices applied in the rest of Europe, i.e. in Spain, France, the Netherlands, Austria and Germany.

(430) At the meeting of **21.01.1997** Redaelli, ITC, Itas and CB discussed the prices applicable to clients in France. The wish was also expressed to be present in Spain. On **15.04.1997**, the same participants and SLM, Tréfileurope, DWK and Austria Draht discussed amongst others the sales prices in France, Spain and Germany as well as the prices charged by Austria Draht (Mr.(...)). At the meeting of **22.10.1997**[649] between Redaelli, ITC, Itas, CB, Mr. (…) and Tréfileurope, the participants exchanged information on prices in Germany, Belgium and the Netherlands. In particular, ITC said that prices must no longer fall. To achieve this, the agreement relating to these countries should not concern quotas but prices.

(431) On **16.12.1997**, Redaelli, ITC, Itas, CB and Tréfileurope agreed to fix the sales prices for their products on the various European markets (the Netherlands, Belgium, Germany, and France)[650].

(432) On **20.01.1998**[651], Redaelli, ITC, Itas, CB and AFT/Tréfileurope Italia met to report to each other on the sales made to the various customers and to discuss the prices to be charged (in Italy) for the first two quarters (1 100 lire in the first, 1 150 lire in the second). **On 24.02.1998, 11.03.1998 and 30.03.1998**, Redaelli, ITC, Itas, CB, AFT/Tréfileurope Italia and Tycsa (at the latter two meetings) repeated that in the second half of l998 prices should have reached 1 150 lire per kilo[652] (…).

(433) At the meeting of **17.04.1998**, Redaelli, ITC, Itas and AFT/Tréfileurope Italia discussed and agreed to introduce a price scale[653]. Several preparatory meetings were needed to determine the price level of the 'extra'[654]. The new extras were applied with effect from 1 July 1998. The

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scales for the diameter surcharges were published[655] by Federacciai in accordance with the producers' indications. This price supplement varied according to the diameter of the 3- or 7-wire strand and was designed to pass on the additional cost incurred in the production of the various products compared with the base product[656]. The published scales also again specified an extra for deliveries to Sicily and Sardinia (see also recital (426)). A document copied during the inspection at ITC containing a *'draft new price list effective from 1998'* mentions an amount of the extras identical to the corresponding list published by Federacciai. The draft also shows the base price *(1100 lire)* and the total amount[657].

(434) (…) confirms[658] that with effect from 01.07.1998 it made use of the extra jointly decided on by the producers. As a general rule, the price billed to the customer increased from the second half of 1998, essentially due to the application of the extra compensating for the fall in base prices. The sale prices rose by around 10% in two years. From 2000 onwards the sales prices remained at the level reached. (…) acknowledges having charged the extra for diameter on the Italian market (7- and 3-wire strand) from 01.07.1999 onwards[659].

(435) In 1999, meetings were held with a view to reaching the level of at least 1 130 lire per kilo, plus extra for diameter (for example **meeting of 18.01.1999**)[660]. On **02.11.1999,** a meeting was held between Redaelli, ITC, Itas, SLM, CB, Tréfileurope, DWK and Tycsa to fix the target prices for 01.01.2000 (…).

(436) The parties were well aware of the illegal character of their discussions. For example, minutes of the meeting of **11.06.2001**, copied during the inspection at the premises of ITC[661], state *'according to (…) the extras are illegal because our products are not on the ECSC list whereas the other steel products are'*.

(437) (…) provided the Commission a table summing up the dates and percentage of the price increases resulting from the implementation of the extra from 01.07.1998 to 01.07.2002[662].

(438) According to (…), the producers used lists concerning the extras, which they circulated among their customers[663].

(439) The pan-European producers, Tycsa, Tréfileurope and DWK not only regularly participated in these price discussions, but also debriefed the other Club Europe producers on these discussions. For example, the effectiveness of the extra to increase the prices was discussed as a model to be followed in

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Club Europe meetings of **06.11.2001**, **05.-06.02.2002**[664] and **12.09.2002**[665] (See (…) , see also section 9.3.2). Moreover, in Club Italia meetings, the prices in Spain were also regularly discussed. See for example the meeting of **29.11.1999** between Redaelli, ITC, Itas, SLM, Austria Draht, Tréfileurope, DWK and Tycsa at which amongst others the prices applied in Spain and Portugal by Emesa and Fapricela are discussed and meeting of **18.01.2000**, in the margin of a meeting between Redaelli, Itas, CB, SLM, AFT/Tréfileurope Italia, Tréfileurope, Nedri, ITC and Tycsa, at which the latter two discuss amongst others the prices applicable on the Spanish market.

(440) According to Mr. (…) (…) at the last recorded Club Italia meeting of **16.09.2002** (see recital (424)) Itas, Redaelli, CB, SLM, AFT/Tréfileurope Italia, Mr. (…) , and Trame (ITC absent) decided that **a minimum price of 560 Euro (base) +extra** had to be applied immediately in Italy and that a letter to customers had to be drafted to prepare them for further increases in 2003 owing to the increase in the cost of the raw material[666].

9.2.1.6. Allocation of customers

(441) Numerous pieces of contemporaneous evidence copied in the course of the inspection,(…) [667], (…) [668],(…) [669],(…) [670],(…) [671] and (…) [672] confirm that, from 1995 at least, the purpose of the meetings between ITC, Redaelli, Tréfileurope, CB, Itas, SLM, and subsequently Austria Draht, Trame and the pan-European producers, Tycsa and DWK was also to exchange information on customers and to allocate customers. (…).

(442) The meetings concentrated on a detailed analysis of the market in order to distinguish in particular the users of 7-wire strand, their requirements and their usual suppliers. These meetings resulted in the drafting of a full list of customers on the Italian market, with their consumption figures and their suppliers. In order to ensure greater compliance with the quotas defined, the companies drew up a list of common customers, and how the participants' respective volumes/deliveries would be allocated (see recital (448)). Controls on the compliance of the customer allocation and quota division were regularly made by an external controller, Mr. (…), as set out in recital (452).

(443) The earliest contemporaneous evidence in the possession of the Commission on customer allocation in Club Italia dates from **03.04.1995** (…). It concerns minutes of a meeting which took place on that date between Redaelli and Tréfileurope/Unimétal (Mr. (…)), with two charts attached. ITC obtained a copy of these minutes from Redaelli the day after the

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meeting, which is the date written on the minutes. These minutes and charts show that clients on the Italian market were allocated in detail for the year 1995 among Redaelli (also referred to in the charts as 'Redaelli + Deriver'), Antonini (also referred to in the charts as 'Italcables'), Itas and Unimétal (also referred to in the charts as 'Tréfileurope'/'T(réfil)U(nion)') . This client allocation had been 'discussed through' with Tréfileurope[673]. At the meeting of **15.04.1997** (…), it was amongst others noted that Austria Draht would refrain from supplying a particular customer (named).

(444) Various other tables, obtained during inspections (…) [674], dating from **1996 to 2001**, list the customers and the volume for Redaelli, Itas, CB, ITC, Tréfileurope (AFT/Tréfileurope Italia), SLM, Trame, Tycsa, DWK and Austria Draht. These documents and the minutes of the meetings show that the participants in the meetings were able to exchange extremely detailed and commercially sensitive information on clients (some lists containing up to 400 Italian customers) and to agree on a common list of customers.

(445) During the meetings, the participants exchanged information on their own customers, assigned '**exclusive customers**' to a given producer or allocated customers to several companies as '**common customers**'[675]. For each non-exclusive customer there had to be a '**leader**' which the others had to consult before contacting/offering to the customer concerned (see recitals (417), (420) and (421))[676]. The meetings also served to verify the quantities sold and to discuss the allocation of sales volume per customer and the prices charged to the customers. For example, on **17.12.1996** quotas were allocated per client for Redaelli, Itas, CB, ITC, Tréfileurope Italia (AFT) and Tycsa (columns were also foreseen for Trame, SLM and the non-Italian companies DWK and Austria Draht, but without entries). CB claims that the document delivered by Redaelli to ITC on 17.12.1996 was not sent to CB, although CB's situation was considered in this document. The Commission notes however that in the document dated 17.12.1996 CB was appointed as lead supplier for a number of customers and it was allocated a quota per client. It is inconceivable that ITC and Redaelli would have agreed on this client allocation without consulting CB. It can moreover be assumed that a follow up was given to this discussion.

(446) Reference is also made to the documentary evidence obtained during the inspection at the Redaelli premises, which contains a 1998 list of (exclusive) customers and customers *'in a quota with others'* for Redaelli, Itas, CB, ITC and Tréfileurope[677].

(447) The purpose was to agree as much as possible on exclusive customers. For example, minutes of the meeting of **11.01.2002** state *'next meeting 22/1. Practical proposal for exchange (reduction of customers in common to the*

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minimum)'[678]. Furthermore, at the meeting of **12.01.2000** the participants agreed on a rule that customers that had been assigned to a particular company could only be contacted after the company to which the customer had been assigned was first contacted.[679] Other documents show that the producers were seeking '*protection for a customer'*. If a supplier was allocated a customer, it was supposed to request the other producers to submit more expensive offers than itself, so that it could win the contract.[680] The minutes of the meeting of **22.01.2002** refer to '*recuperation of own customers and, if appropriate, exchange'*.

(448) (…) also stated that, in the year 1999 the Italian producers transmitted a customer list[681]. This list would not have been the result of a negotiation but would have been established by the Italian producers without the assistance of DWK. In the list the Italian producers estimated the supply volume of the individual producers. The list was meant to be a basis for negotiation for a possible allocation of clients. According to DWK, although the volume allocated to DWK (3 271 tons) seemed high, no agreement was reached with DWK on client allocation.[682] The Commission, nevertheless, notes the very detailed degree to which customers were divided up in categories (exclusive or shared). Some further documentary evidence[683] shows another attempt by the Italian producers in 2002 to draw DWK into a volume and client allocation. Mr. (…) claims that it received the list but that it did not react to it.

(449) It should be noted that the allocation of exclusive/shared clients and the practice of contacting the main supplier of a customer also existed at European level in Club Zurich and Club Europe and that clients were also allocated in several other European countries, such as Germany, the Benelux, Spain, Portugal and France. Moreover, in Club Europe, it was the country-co-ordinator's task to negotiate the allocation of clients and sales quota per client for the country assigned to it in meetings with the supplier(s) active in that country (see recitals (200) and (202) and sections 9.1.3.6 and 9.2.2.4). Tréfileurope, the country co-ordinator for Italy, attended almost every Club Italia meeting and thus participated in any such discussion on client/quota allocation.

9.2.1.7. Implementation

9.2.1.7.1. Monitoring scheme

(450) Ample contemporaneous evidence copied during the 2002 and 2006 inspections (the latter at Mr. (…)'s premises) (…) [684], (…) [685] and (…) [686] show that the meetings at which the Club Italia participants continuously

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exchanged information on prices, clients and quotas, also served the purpose of verifying compliance with the quota arrangement by all participants and of adjusting the volumes and predetermined shares in connection with subsequent orders[687].

(451) For this purpose, AFT (Tréfileurope Italia), CB, Itas, ITC, Redaelli, SLM and TRAME instructed a third person of confidence, **Mr. (…)** (a retired Redaelli employee, at the time independent commercial adviser) to perform checks on their sales data, which they communicated. These data would not have included export sales data[688]. Mr. (…) (or occasionally one of his employees) attended over 10 meetings from 1993 to 2001 and is mentioned in several other meetings[689]. According to (…) the checks started at least from the end of 1995[690]. It is to be noted that Mr. (…) is already mentioned in documents dating back as far as 1983[691] (see recital (396)). This early date is confirmed by Mr. (…) himself[692].

(452) (…) [693] submits that on the basis of Mr. (…)'s monitoring each producer received only data on itself and not on the others. However, the Commission notes that the results of Mr. (…)'s checks were discussed during the Club Italia meetings. Mr. (…) played the role of arbitrator. Being in possession of the information from the participants, he could confirm or disprove the figures that one company communicated to the others where there was any doubt or challenge[694]. (…) indicates that in order to make the system of checks applied by Mr. (…) even more effective, the participants exchanged information on demand from the main customers on the Italian territory. This information enabled Mr. (…) to determine the purchases made by each customer from the producers concerned. After determining the potential represented by each customer, the participants divided the volume to be supplied among themselves[695]. The Commission is in possession of several tables produced by Mr. (…) and faxed to Redaelli. The distribution of volume by customer of 7-wire strand in Italy in 1998 for Redaelli, Itas, CB, ITC, AFT (Tréfileurope Italia) can also be referred to; or the monthly distribution of 7-wire strand supplies in Italy in 1998 in tons for Redaelli, Itas, CB, ITC and AFT.[696]

(453) Various documents found at the 2006 inspection (…) (…) [697] illustrate Mr. (…) 's work. Mr. (…) produced the summary on the spot[698] and addressed an invoice as well as the results of his inspection to the company

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inspected including AFT (Tréfileurope Italia), CB, Itas, ITC, Redaelli[699], SLM and TRAME. Tréfileurope (and Tréfileurope Italia) thus also received the reports from Mr.(…) , which enabled it to closely monitor the quota/supply development of almost all the Italian producers' activities[700].

9.2.1.7.2. Compensation

(454) Compensation also took place between Italian producers when supplies exceeded the quotas. The compensation or possibility of compensation was discussed at meetings such as those of 10.03.1997, 07.04.1997, 15.04.1997, 14.10.1997, 07.09.1998 or 26/27.09.2000[701]. A table entitled '*Summary of deliveries for 1998'* illustrates how the compensation was practised. It shows that, after selling 647 tons more than provided for, Redaelli purchased 500 tons from ITC by way of compensation at the start of 1999. *'647'* appears in the table in the column *'DELTA'*[702].

(455) The participants at the meetings moreover stress the obligation not to accept orders which would cause the quota assigned to a 'Club Italia' participant to be exceeded. A document concerning a meeting of **12.01.2000** between the Italian producers indicated that any producer which exceeded its quota during a given quarter should have his quota reduced the following quarter. The rules on Club Italia also foresaw penalties for failure to comply with quotas (see (…) in particular 13.05.1997).

9.2.1.8. Individual participation in Club Italia

(456) Since **Redaelli, ITC, CB** and **Itas** are parties to the 1995 agreement for which discussions started on **23.01.1995**, this is considered the starting date for these four companies' participation in Club Italia (see recital (402). They continued participating in Club Italia until the date of the inspections. (…).

(457) Itas[703] holds that it would have participated in Club Italia only as of 05.12.1995 because the discussions during the year 1995 which led to the agreement of 05.12.1995 would have been unilateral initiatives of Redaelli. This is not credible in the light of the following facts: (i), the draft quota agreement of 23.01.1995 defines its '*members*' as ITC, Redaelli, CB and Itas. (ii) The same '*members*' appear in later drafts and charts of 30.01.1995, 19.09.1995 and 11.10.1995 with proposals for detailed quota allocation between each of the same four Italian companies and the '*foreigners*' (original in Italian). (iii) On 26.01.1995, 02.05.1995 and 19.09.1995, Redaelli debriefed the European producers in the Zurich Club on the state of play in Italy, on how the common Italian quota for Italy and for the EC was split up among the individual Italian producers and it negotiated the quota for exports of the Italian producers in Europe with the European producers (see also section 9.1.1.4).

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(458) It is inconceivable that Redaelli would have worked out the draft agreement and have detailed discussions with foreign producers on the quota allocation in Italy and for exports towards the rest of Europe without any communication on this topic with the other Italian producers concerned. Moreover in a fax of 24.09.1995 of Redaelli to ITC, CB as well as Itas, which was also discussed between the same companies at a meeting of 12.10.1995, Redaelli first writes '*I have continued the negotiations with the foreign producers*' (original in Italian) and then gives a detailed debriefing of the quota discussions. Also in a fax of 13.10.1995 of Redaelli to the same companies, with further quota proposals, Redaelli refers amongst others to the '*discussions on quota from the beginning of the year*' (original in Italian, emphasis added). All these negotiations finally led to the undisputed[704] agreement of 05.12.1995 (see sections 9.1.1.4 and 9.2.1.4).

(459) In view of this plain evidence, it must be concluded that Redaelli, ITC, CB and Itas started participating in Club Italia on 23.01.1995.[705]

(460) As regards **Tréfileurope** and **Tréfileurope Italia**[706], contemporaneous evidence in the possession of the Commission shows that at the meeting of **03.04.1995** between at least Mr. (…) (Redaelli) and Mr. (…) (Tréfileurope), clients on the Italian market were allocated in detail for the year 1995 among Redaelli, Antonini, Itas and Unimétal (also referred to as 'Tréfileurope' or 'T[refill]U[nion]'). This client allocation had been 'discussed through' with Tréfileurope (see above recital (443)). The Commission is also in the possession of evidence that Tréfileurope and Tréfileurope Italia were informed of the negotiations on the 1995 quota agreement at the latest on 19.09.1995 (see recital (403)). By letter of 24.10.1995 Tréfileurope was also informed of the (difficulties in the) Italian quota negotiations (see recital (404)). At the meeting of 18.12.1995, the participants informed Tréfileurope, Trame, DWK and SLM about the conclusions concerning the new prices to be applied (see recital (429)). Tréfileurope took part in at least two meetings in 1996 concerning amongst other things the Italian market (meetings of 01.03.1996 and 07.10.1996).

(461) Tréfileurope claims that in 1996/1997 the meetings only involved general discussions.[707] The Commission however has documentary evidence showing that as of 1995, Tréfileurope maintained contacts and took part in regular anti-competitive meetings concerning the Italian market with Redaelli, ITC, Itas, CB (see for example letter of 24.10.1995, meetings of 07.10.1996, 27.01.1997 (Tréfileurope called by telephone), 03.02.1997, 04.03.1997, etc. See also footnote 862(…)). Account must also be taken of the following statement[708]: *'Tréfileurope despite being a foreign producer, was already taking part in the meetings between Italian producers as early as* [1995] *having acquired a production unit in Italy from Falck'*. Furthermore, Tréfileurope is mentioned as the leader for certain customers

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on a document exchanged at the meeting of 17.12.1996 (see recital (417)). (…) [709]. As already mentioned in recital (453), Tréfileurope (together with Tréfileurope Italia) attended the meetings of the Italian PS producers and therefore received the reports from Mr. (…) , enabling it to closely monitor the quota/supply activities of the Italian producers. Given the above, the Commission considers that Tréfileurope and Tréfileurope Italia participated in Club Italia from at least 03.04.1995 to 19.09.2002. Tréfileurope Italia did not contest this in the reply to the SO.

(462) Regarding **Tycsa**, reference is made to the Southern Agreement of 28.10.1996 (see section 9.2.3) which provided for a quota for Tycsa in amongst others Italy (see recital (537)) as well as to a document of 16.12.1996, where amongst others Tycsa was mentioned (see recital (416) . Moreover at the Club Italia meeting of **17.12.1996** Tycsa was designated as the leading producer for certain customers and had been allocated specific customers and a sales quota (see recital (417)). Tycsa continued to be regularly allocated customers (see (…) for example the meetings of 10.02.1997, 13.03.2000 and 12.02.2001) as well as quotas on the Italian market (see recital (422)) through its regular attendance to Club Italia meetings, and if it could not be present, by phone (see for example meeting of 03.02.1997 and 21.02.2000). The Commission has (…) evidence of Tycsa's presence at around 30 meetings concerning the Italian market from 17.12.1996 to September 2002 (…). (…)[710], (…) [711] and (…) [712] confirm that Tycsa participated in meetings relating to the Italian market.

(463) Whilst Tycsa was aware of the Italian arrangements since the start (and was involved in the Southern Agreement earlier, see section 9.2.3), the Commission considers that its participation in Club Italia started on 17.12.1996 and ended on 19.09.2002.

(464) From a very early stage, **DWK** was informed of the discussions in Club Italia. For example, at the Club Italia meeting of 18.12.1995, it was decided to inform amongst others DWK of the agreed new prices to be applied in 1996 (see recital (429)). Also, at the meeting of 17.12.1996 (see recital (453)), a table was circulated indicating the allocation of tons per client and the appointment of lead suppliers for a number of clients on the Italian market for 1997. Despite the fact that the columns for DWK were left blank, the fact that DWK was already considered in the table is an indication that discussions between parties must have taken place or were at least envisaged. At the meeting of **24.02.1997,** DWK expresses its desire to join the Italian arrangement, which is confirmed in the meeting of 04.03.1997 (DWK wanted to join with a quota of 2 000 tons). Concrete volume was allocated to DWK amongst others on 07.04.1997 (see recital (418)), 19.09.2000 and 10.07.2000. The Commission has further evidence of **DWK's** participation in several meetings, including on 15.04.1997, 12.07.1999, 02.11.1999, 15.11.1999, 29.11.1999, 17.01.2000, 21.02.2000,

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13.03.2000, 15.05.2000 and 12.06.2000, 09.10.2000, 14/15.05.2001, 11.06.2001, 12.06.2001, 12.07.2001, 23.07.2001, 25.07.2001, 04.09.2001, 11.10.2001 and 06.11.2001 (…).

(465) (…[713]). DWK was, moreover, offered a quota of 1 500 tons. DWK stated that it refused and claimed at least 2 000 tons[714], but that an agreement on the precise quota for DWK was never reached. Documentary evidence however shows that the Italian producers constantly indicated 2 000 tons for DWK in the years 1998, 1999 and 2000[715]. In addition, DWK maintains that it had not given any data to Club Italia participants and that it did not intend to do so[716]. The document dated 07.06.1999, copied during the inspections at ITC[717], however, proves the contrary: it is a detailed table allocating clients among competitors (in Italy) stemming from DWK (with its letterhead), which is an indication of DWK's rather active involvement in the Italian arrangement.

(466) (…) [718] and (…) [719] also confirm DWK's participation in meetings relating to the Italian market. Whilst acknowledging that DWK was aware of the Italian arrangement since the start and attending the meetings (yet less regularly) even at an earlier stage (for example on 04.03.1993), the Commission considers that DWK's participation started only on **24.02.1997**, when contemporaneous notes show that DWK expressed its desire to participate in the Italian arrangement. The Commission's finding is further supported by subsequent contemporaneous notes documenting its presence and the issues discussed. DWK's statement that, despite its presence at the meetings, it did not agree to what had been discussed is of no relevance in the absence of a clear indication that it distanced itself from the cartel. The Commission considers that DWK's participation in Club Italia ended on **06.11.2001**, the last meeting at which its presence was recorded (…).

(467) **Trame**'s participation in the cartel is confirmed by ample inspection documents and by statements from at least four other cartel participants.[720] Even if it did not join the Italian market sharing from the start[721], the participants in the Club Italia meeting of 18.12.1995 decided to inform amongst others Trame of the conclusions reached concerning the new prices to be applied in 1996 (see recital (429)). Also, at the meeting of 17.12.1996 (see recital (453)), a table was circulated indicating the allocation of tons per client and the appointment of lead suppliers for a number of clients on the Italian market for 1997. Despite the fact that the columns for Trame were left blank, the fact that Trame was already considered in the table is an indication that discussions between parties must have taken place or were at least envisaged. The first indication of direct contact with Trame is a

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contemporaneous document regarding the meeting of **04.03.1997**[722]. The document contains hand-written notes of the meeting clearly showing that Mr. (…) (Trame) informed the members of Club Italia of his wish to join the Italian arrangement (*'(…) -Trame wants to participate – comes next time*' – original in Italian). Trame participates in the Club Italia meeting of 10.03.1997. 04.03.1997 is therefore upheld as the starting date of Trame's participation in Club Italia and Trame's claim that its participation only started on 05.10.1998 should be rejected[723].

(468) (…) [724](…) [725].(…) [726](…)[727](…) [728].

(469) However, the Commission has evidence that Trame's participation was never interrupted. Concerning the meetings held between 15.03.1999 and 28.02.2000, even though Trame observes that it did not attend any meetings in this period, the other cartel participants continued to be informed on Trame's data and its case continued to be discussed[729]. Furthermore, its absence was explicitly noted at the meetings of 12.07.1999 and 17.01.2000, implying that its attendance was expected, and there is no proof that Trame distanced itself from the cartel at any moment. The Commission finally notes that Trame's participation at the meetings from 28.02.2000 confirms that it had no intention to end its involvement (…).

(470) In relation to the meetings held after June 2000, contrary to the allegation of Trame, the Commission has evidence that Trame continued to participate in the cartel, not only in the meetings of 10.04.2001 and 16.09.2002 (…) [730], but also in the meetings of 09.10.2000 and 30.07.2002, and it continued to be discussed until the end of the infringement[731].

(471) Trame also refers to the meeting of 30.08.2001 in which it claims to have declared that it *'has chosen not to be part of the cartel'*, to support its claim that it no longer participated in the cartel at that time. The Commission however notes that it is not certain that the 'cartel' referred to in that statement was the PS cartel or Club Italia. In any event, Trame continued to be present and it continued to be considered and discussed in various Club Italia meetings on prices and customer allocation after that date[732]. This declaration can therefore not qualify as public dissociation from the cartel (see also recitals (588)-(589)).

(472) Trame also argues that the Commission cannot simply rely on (…) 's statement in order to prove Trame's cartel participation [733]. The Commission

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however bases its findings not only on (…) [734] but also on contemporaneous documents retrieved during the inspections or obtained from other leniency applicants (see recital (467))[735]. Trame did not provide any specific information which casts doubt on this evidence. Furthermore, also (…) [736] confirms Trame's participation in the meetings held by the Club Italia members and (…) confirms that Trame took part in Club Italia even when tensions arose between it and the other members of the group[737].

(473) As established above, Trame never effectively distanced itself from the cartel, it attended numerous meetings and its case was discussed during the entire period of the infringement. Whilst it was aware of the Italian arrangements since the start (see the decision of the members to inform Trame on 18.12.1995, recital (467)), the Commission thus considers that its participation in Club Italia started at the latest on 04.03.1997 and that it was a continuous participant in this Club until 19.09.2002[738].

(474) As regards **SLM**, there are ample indications that it was aware of the Italian agreement since 18.12.1995 where it was decided to inform amongst others **SLM** of the new prices to be applied in 1996 (see recital (429)). Further, at the meeting of 17.12.1996 (see recital (453)), a table was circulated indicating the allocation of tons per client and the appointment of lead suppliers for a number of clients on the Italian market for 1997. Despite the fact that the columns for SLM were left blank, the fact that SLM was already considered in the table is an indication that discussions between parties must have taken place or were at least envisaged.SLM's case was again discussed at the meetings of 19.01.1997 and 27.01.1997. The first concrete proven quota allocation to SLM occurred at the meeting of **10.02.1997**, which the Commission therefore considers as the starting date of SLM's involvement in the Italian arrangement. Indeed, the hand-written notes from (…) (…)on that meeting show a list of volumes (to be) supplied to certain customers between SLM, on the one hand, and Redaelli, CB, Tycsa, ITC/Antonini, on the other hand. The (…) notes expressly state that CB and ITC had obtained the sale information on SLM from Mr (…) himself, SLM's representative. Also on 07.04.1997, SLM's case was discussed. Furthermore, there is clear evidence of SLM's presence at over 100 meetings relating to the Italian market between 15.04.1997 and September 2002[739]. Where it was not present, SLM's case was discussed amongst the other Club Italia members thus showing its continued contribution and participation in Club Italia.

(475) (…) [740] (…).

(476) (…) [741], however, contests the Commission's findings concerning its starting date in the cartel, (…) First, SLM argues that it would not have been

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present in the meeting of 10.02.1997. The Commission notes, however, that the available documentary evidence on the meeting of 10.02.1997 (…) shows detailed quota allocation concerning certain customers to amongst others SLM. As explained before, the data had been communicated by Mr. (…) himself, SLM's representative (see recital (474)), showing that SLM had shared its information prior to the meeting. Its alleged absence at that meeting is therefore irrelevant.

(477) Even if on 04.03.1997 SLM showed some doubts regarding its future position in the cartel, SLM continued participating in cartel meetings already the next month, i.e. at the meeting of 15.04.1997, at which prices for raw material and sales prices were fixed for France, Spain and Germany and at which there were discussions on sales made by Redaelli to a number of customers and on offers made to customers by SLM and CB. It continued to regularly participate in Club Italia meetings and discuss with the other cartel participants until the date of the Commission's inspections[742]. The 'doubts' of SLM can therefore not be interpreted as an interruption of its cartel participation, as SLM claims.

(478) Although, according to (…) , SLM did not join the agreement on the sharing of the Italian market from the start[743], (…) [744], (…) [745] and (…) [746] confirm SLM's participation in the Club Italia meetings. Whilst being aware of the Italian agreement since the start (decision of the members to inform SLM), the Commission considers, based on the documentary evidence (…) and as explained in recitals (474) to (477), that SLM's continued participation started on 10.02.1997 and ended on 19.09.2002.

(479) As regards **Austria Draht**, the Commission has evidence that it systematically participated in over 40 meetings of Club Italia between 15.04.1997 and 19.09.2002 and at several occasions, its absence was explicitly mentioned, indicating that it was expected to attend the meetings[747].

(480) In 1996 and before, Austria Draht did not participate in the Italian arrangement, as appears from the minutes of a meeting of 13.02.1996[748] (…). However, the Commission has clear proof that Austria Draht started participating in Club Italia as of 1997, and at the latest on **15.04.1997** when it was explicitly reported present through its sales agent Mr (…) (see recital (430)). At that meeting, a quota was allocated to Austria Draht and it was explicitly stated that Austria Draht would not supply a particular group of customers (named) (see recital (443)). This meeting must be seen in the context of the meetings which took place just before and thereafter: (i) at the meeting of 17.12.1996, a table was circulated indicating the allocation of

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tons per client and the appointment of lead suppliers for a number of clients on the Italian market for 1997. Despite the fact that the columns for Austria Draht were left blank, the fact that Austria Draht was considered in the table is an indication that discussions between parties were at least envisaged; (ii) This finds confirmation in the meeting of 04.03.1997 where information on Austria Draht's volume on the Italian market was exchanged; (iii) Even if Austria Draht was not reported present on 07.04.1997, the Commission notes that concrete volume was allocated to Austria Draht; (iv) A report on a visit of Tréfileurope to CB of 24.06.1997 confirms that anti-competitive discussions with Austria Draht were ongoing and that Austria Draht was acting 'through Mr.(…) '[749]. Given this context, the Commission considers 15.04.1997 as the starting date of Austria Draht's participation in Club Italia.

(481) The fact that Austria Draht participated in the meetings in Club Italia via its sales agent, Mr. (…), is confirmed (…) [750] and by contemporaneous documents from (…) [751] and (…) [752]. The cartel participants also perceived Austria Draht as part of the cartel through Mr (…) (see meetings listed in footnote 747 above[753]).

(482) Austria Draht admits that it had entrusted its entire commercial policy on the Italian market to the company (…) (which was represented by its Managing Director Mr.(…)) since 1984[754]. Mr. (…) had a stringent obligation to report to Austria Draht, and he did not bear any financial risks for the transactions and actions undertaken[755], Austria Draht was solely responsible for all risks associated inter alia with non-delivery, defective delivery and customer insolvency[756] and remunerated Mr (…) on the basis of a fixed percentage by reference to the volume (per client) it had sold[757]. Mr (…) had a monthly reporting duty in writing to Austria Draht on its actions, and in particular on the competitors' activities and the 'sales and market relationships' in the representation area (Italy)[758]. All the elements above clearly show Austria Draht's full control over the actions of its agent, Mr (…) (see also recitals (46) above, section 14.5 and recital (774) in particular).

(483) Given the strict agency relationship and Mr. (…) 's regular attendance at the Club Italia meetings on quotas, prices and customers (…), it is clear that Mr. (…) communicated sensitive commercial information on Austria Draht's position to the other Club Italia participants and obtained information at the meetings to the benefit of Austria Draht. The Commission thus considers that Austria Draht participated in Club Italia from 15.04.1997 to 19.09.2002.

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9.2.2. Club España: Iberian arrangements from 1992 to 2002

9.2.2.1. Introduction

(484) Five Spanish companies (Tycsa, Trefilerías Quijano, Emesa, Galycas, Proderac) and two Portuguese companies (Socitrel and Fapricela) agreed on prices and payment conditions, quota fixing by product (PS strand and PS wire) and sometimes by country (Spain and/or Portugal) and client allocation and exchanged extremely detailed sensitive commercial information from 1992 until at least 19.09.2002. The arrangements are commonly referred to as 'Club España' (although they concerned both Spain and Portugal).

(485) It is noted that in view of their respective close structural and personnel links (see sections 2.1.2, 2.1.3 and 2.1.5 and in particular recitals (27), (35), (38) to (40) and (41) to (42)), the four Spanish companies Tycsa/Trefilerías Quijano and Emesa/Galycas were perceived, as from the start of Club España, as being only two unitary groups, represented by their respective shareholders, the Celsa/GSW group and the Ensidesa/Aceralia group. Regarding **Tycsa/Trefilerías Quijano**, quotas, prices and clients were often discussed and allocated to 'Tycsa/Trefilerías Quijano' taken together or to the 'Tycsa group', 'Celsa' or 'GSW'. Moreover the latter two also sometimes directly participated in the meetings. This was not only so at Club España meetings but also at pan-European and Club Italia meetings (see sections 9.1 and 9.2.1)[759]. Similarly, regarding **Emesa/Galycas**, in Club España, Club Italia and pan-European meetings, quotas, prices and clients were also often discussed and allocated to 'Emesa/Galycas' taken together or to the 'Emesa Group', 'Aceralia' or 'Ensidesa'. Aceralia also sometimes directly participated in the meetings[760] .

(486) The Commission is in the possession of a large amount of documentary evidence on Club España, such as numerous inspection documents and company statements, (…).

9.2.2.2. Organisation

(487) The meetings took usually place at the ATA premises, in Madrid, and occasionally in other places such as Barcelona, Lisbon or Porto. More than 100 meetings and contacts among the Club España members have been identified for the period 1992-2002 (…).

(488) **Tycsa** played an important role: it was President of the ATA meetings as of 06.09.1994 (…). As stated by Emesa at a meeting on 03.09.1996 (…), Mr. (…) (Tycsa) also decided everything on the PS market in Spain. The other Club members had to execute in all cases what he had decided. Moreover, Tycsa was also co-ordinator for Spain and Portugal in the pan-European arrangement, thus assuring the co-ordination between the Clubs (see recitals (195) and (562) to (568)).

(489) **Emesa** was the Spanish company most active in Portugal and held regular meetings or contacts with the Portuguese members on issues such as

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prices, payment conditions and clients. This is illustrated by the abundant meetings between Emesa and Portuguese players following the 'withdrawal' of Tycsa from the Portuguese market in 1996 (see recital (497) and (…): meetings of 08.05.1996, 02.10.1997, 27.10.1997, 10.03.1998, 11.05.1998, 10.12.1998, 24.06.1999, 03.09.1999, 01.10.1999, etc.)

9.2.2.3. Starting date of Club España

(490) Meetings with a clear anti-competitive aim among the participants in Club España started at least in 1992. This is clear from the following evidence: (1) the (…) of 26.11.1992, 03.12.1992 and 11.12.1992 indicate clear anti-competitive contacts between Emesa and Tycsa; (2) the detailed (…) on contact with at least Tycsa on 15.12.1992 compare the sales data of Emesa with those of its competitors Tycsa and Tréfilerías Quijano in Spain and Portugal in October/November 1992, thereby referring to a compensation mechanism ('+' and '-'), hence implying that a quota system is already in place; (3) the notes of the meeting of 16.03.1993 clearly indicate participants (at least Galycas, Emesa) and state: *'for wire it was agreed to continue as in 1992*' (emphasis added, original in Spanish). (…) further meetings with a clear anti-competitive aim. **15.12.1992** is therefore considered as the starting date of Club España for Emesa/ Galycas and Trefilerías Quijano. The starting date for Tycsa is **10.06.1993** at the latest.

9.2.2.4. Quota allocation, price fixing and customer allocation

(491) As from 15.12.1992 until the Commission's inspections, the Commission is in possession of abundant (…) evidence that the Club España members divided up the PS Iberian market (wire and strand) among themselves by fixing quota, which were from time to time readjusted when new members joined or on the basis of regularly calculated deviations. Similarly, prices/price increases continued to be regularly discussed/fixed (including regarding specific clients), payment conditions were co-ordinated (including surcharges and discounts) and prices prevailing in other European countries were from time to time discussed[761]. The members further allocated customers (divided into three groups: 'A-B-C') as well as orders from pre-fabricated component producers among them[762]. Finally, they exchanged extremely detailed sensitive commercial information often including the monthly volume sold client by client and by producer. (…).

(492) From the outset, the parties discussed and divided up both the Spanish and Portuguese markets. The Commission has evidence that a balance was sought between the two groups Tycsa/Trefilerías Quijano and Emesa/Galycas as early as on 15.12.1992 (notes of this meeting between at least Tycsa and Emesa indicate, for end October, '-411' for Tycsa and Trefilerías Quijano and '+411' for Emesa), whereby it was aimed to have each hold approximately half of the market. This search for a balance between the two groups is confirmed in the meetings of for example 16.03.1993 (mentioning *'60/40'* and '*50/50*'), 20.04.1993, end of May 1993 and of 16.03.1996 (which shows an approximate division of 50-50% of the

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762 (…)

quotas in % for Spain between the two groups):

Tycsa	35,3%
T.Quijano	15,96%
Galycas	28,55%
Emesa	20,18%

Source: (…)

(493) On 29.03.1993, Tycsa/Trefilerías Quijano and Emesa discussed the volume each of them sold in Spain and Portugal from January to March 1993 as well as the volume to be sold by the same companies in the months April to June 1993 and a large number of clients were allocated between the three companies. The notes also mention 'new proposal', hence implying that there had been earlier proposals.

(494) The first evidence in possession of the Commission of **Socitrel**'s presence at a Club España meeting dates from **07.04.1994** (…). This meeting, at which a price increase was agreed, is considered to be the starting date of the participation of Socitrel in Club España.

(495) The Spanish quota system changed when **Proderac** (and Trefilerías Moreda, belonging to the Celsa group, see recital (37)) were granted a quota at the meeting of **24.05.1994** (…). This date is therefore upheld as the starting date for the participation of Proderac in Club España. That a quota was allocated to Proderac (and Socitrel) already in 1994 is confirmed by Table 5 cited in recital (499) which compares the situation of 1998 with 1994. Overview tables providing volumes and 'compensation' figures for each month of 1995 and 1996 however indicate that between Tycsa/Trefileria Quijano and Galycas/Emesa a 50/50 rule continued to apply.[763]

(496) As regards the **Portuguese** market, it seems that a 60/40 rule applied between the two groups: a quota of approximately 60% was attributed to Emesa and of 40% to Tycsa. This is illustrated in the notes of the meetings of 20.12.1994 and 20.04.1995 between the two groups (…). The existence of a quota/market sharing agreement regarding Portugal is corroborated by the complaint by Tycsa on 08.05.1996 that Galycas sells in Portugal although '*the idea was that only Trefilerías Quijano and Emesa would sell in that market*'. Tycsa asked whether that means that the '*agreement*' had therefore to be re-negotiated (…).

(497) Gradually the allocation of the Spanish/ Portuguese quota changed: at the meeting of **02.07.1996** the Emesa and Tycsa groups decided to fix the Spanish sales in Portugal at 4 500 tons for Emesa and only at 1 500 tons for Celsa and to limit the Portuguese sales in Spain at 3 000 tons (to be allocated between Socitrel and Fapricela). The conclusion was that negotiations would continue with these two latter companies. This new quota allocation between Emesa and Tycsa (a 75-25% distribution) seems to be a preparation of Tycsa's complete withdrawal from the Portuguese market, which the latter confirmed at the meeting between (at least) the two groups and Proderac on

[763] (…)

01.10.1996 (Emesa, however, remained active in that market). Tycsa later on claimed compensation for this withdrawal (see meeting of 22.11.1996 between the two groups, and recital (523) on compensation). At the meeting of **28.02.1998** between the two groups, a 40/40/20 allocation rule is applied for the Spanish market between 'Celsa/Global [Steel Wire], Aceralia' and another undertaking.

(498) An internal report of **11.07.1997** of (…) confirms the existence of several agreements concerning prices and quota in Portugal and Spain: i) it first mentions that in Spain the quota for wire is affected by the presence of new suppliers and that the agreement does not work properly, neither regarding the volume (‘kilos’) nor regarding the prices, mentioning further that in spite of the apparent functioning of the agreement regarding cable and the inconveniences of breaking it, this should be considered in the not too long term; ii) For Portugal, the report notes that by sticking to the price agreements (…) had a drastic reduction in sales, both in terms of tons and number of customers, and that it had already contacted Socitrel and Fapricela warning them about a possible retaliation.[764]

(499) At the meeting of **14.05.1998** between at least Tycsa, Trefilerías Quijano, Emesa, Galycas, Socitrel and Proderac a very detailed quota allocation for Spain and Portugal was made now also including quotas for the Portuguese producers and taking into account the presence of some non-Iberian producers (Tréfileurope, the UK players and 'others'):

Table 5

Situation	**1994**	**1998**
Global [Steel Wire] :	34%	17%
Aceralia:	36%	24%
Socitrel:	21%	27%
Fapricela :	no	18%
[another undertaking]	no	7%
UK (*'Ingleses'*):	2%	-
Tréfileurope:	2%	2%
Proderac:	3%	5%
Others (*'otros'*):	no	-

Source: (…)

(500) Nearly the same quotas as those of the 14.05.1998 meeting appear again in the notes of the meeting of **02.12.1998**. Regarding the latter meeting the Commission has for the first time indisputable evidence of **Fapricela**'s participation. Therefore 02.12.1998 is considered the starting date for Fapricela's participation[765] in Club España (see also recitals (527) and (528)).

(501) At the meeting of **24.06.1999** between at least Socitrel, Fapricela and Emesa, the following allocation of quotas within the Portuguese market is proposed: Socitrel 50%, Fapricela 37% and Emesa 13%.

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(502) At the meeting of **14.12.1999** between Tycsa, Socitrel, Fapricela, Proderac and Emesa, quotas for Spain and Portugal were agreed for wire among the following Spanish and Portuguese players: Aceralia (i.e. Emesa/Galycas), GSW (i.e. Tycsa/Trefilerías Quijano), Socitrel, Fapricela and Proderac. The parties also agreed to regularly verify the respect of these fixed quotas on the basis of comparisons of their real sales for the past month or quarter (comparison - '*ajustadas*'). As for PS strand it seems that the quotas were divided between Emesa, Tycsa and Fapricela only (see recital (504)). Both for wire and for strand the balance between the GSW and Aceralia groups was each time maintained:

Example: ***Quota allocation at meeting of 14.12.1999*** *(…)*

Aceralia	27%
Global [Steel Wire]	27%
Fapricela	15%
Socitrel	27%
Proderac	4%
	=100%

(503) This quota allocation was reconfirmed in later meetings: i.e. at least on **01.06.2000**, **28.07.2000**, **14.11.2001** and **07.06.2002** (…).

(504) As regards the meeting of **01.06.2000** between Tycsa, Socitrel, Fapricela, Emesa and 'Moreda', the parties did not only confirm the existing quota system (as developed under recital (502)) breaking it down in more detail, but also agreed on prices and payment deadlines for Spain and Portugal, as set out below.[766]

Quota allocation

For PS *Wire*:

Emesa (Aceralia)	27%	(32 000t)
Socitrel	27%	(32 000t)
Tycsa (GSW)	27%	(32 000t)
Fapricela	15%	(19 000t)
Proderac	4%	(5 000t)
Total:	100%	(120 000t)

For PS *Strand*:

Emesa:	40%	(25 000t)
Tycsa:	40%	(25 000t)
Fapricela:	20%	(13 000t)
Total	100%	(63 000t)

of which (in tons)

	Portugal	Spain	total Iberia
Fapricela:	6 000	7 000	13 000

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Emesa:	5 000	20 000	25 000
Tycsa:	5 000	20 000	25 000
Total	16 000	47 000	63 000

Prices and payment conditions:

	Portugal	Spain
Price Wire	(…)	(…)
Price Strand	(…)	(…)
Payment Wire (days)	45	60
Payment Strand (days)	90-120	90-120

(505) Apart from some occasional adjustments (for example price changes agreed between the competitors) the quota system and the conditions remained in force until at least June/July 2002 and were meant to remain in force until at least 2003 (see for example meeting of 19.07.2002 between Tycsa, Emesa, Galycas, Socitrel and Fapricelab (…)). This is illustrated by the following documents retrieved during the inspections at Tycsa: (i) several tables show for 'Club España' supplies and quota (percentages) for June to August 2000, comparing these data with the agreed quota[767]. (ii) Excel tables on closed orders '*cartera'* per client for Spain and Portugal for the months June and July 2000[768], for June-December 2000[769] (see also for that period a table with closed orders'[770]) and for January-December 2001[771]. (iii) The table for the first four months of 2001 as well as the table for April and May 2001 show agreed quotas and deviations for Emesa and Galycas (together), GSW (i.e. Tycsa/Trefilerías Quijano), Socitrel, Fapricela and Proderac[772]. (iv) Other tables show for each month of the year 2001 and 2002 Tycsa's total sales and deviations from the agreed quotas in Spain and Portugal[773]. (v) Further, detailed tables for January to June 2002 show aggregate sales (for wire) and per client prices/volumes listed for each Club member in Spain and Portugal as well as total volumes in the Iberian market, followed by a list showing the evolution of PS prices from September to December 2002 (as well as the price evolution of '*postensado*'). (vi) These tables are then further broken down for each producer in detailed client lists, showing per client the tons supplied and the prices charged per ton[774]. The quotas referred to in all the above documents correspond to the quotas (in percentage) for wire agreed upon at least as of 1999 as cited in recital (502).

(506) It is apparent from an (…) report of **21.09.1999**[775] that price discussions among competitors took place regarding sales of wire in Spain,

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which led to an agreement on price increases. Price discussions, leading to a similar agreement on price increases, also took place for strand. Finally, the report indicates that occasionally undesirable price evolutions were discussed with the competitors and common solutions were sought in order to come to an *'explosive evolution (at least of the tons) for the next year*' (original in Spanish).

(507) At the meeting held on **08.09.2000** between Tycsa, Fapricela, Socitrel, Aceralia/Emesa and Proderac, wire sales and quotas for July and August 2000 in Portugal and Spain were discussed. The parties also presented some 'incidents', concerning specific customers that did not buy wire due for example to offers made by another supplier below the new prices (agreed as from June 2000 see recital (504)). A further increase in the price of wire to (…) ptas was proposed even though it was reported that customers suspected the anticompetitive nature of the recent price increases and that some had threatened to act vigorously against these price increases. A follow-up meeting took place on **29.09.2000**.[776] At this meeting the minimum prices agreed seem to differ between A, B and C customers (see also recitals (513) and (514)).

(508) At a meeting of **18.10.2000** between Emesa, Fapricela and Tycsa the strategy to be followed for strand was discussed. The new conditions as agreed in 1999 (see recital (502)) were basically restated, except that the agreed tons for the three Iberian producers were slightly revised downward to accommodate 6 000 tons of strand to be sold by **Tréfileurope** in Portugal and Spain (3 000 tons in each country).[777] (…) 's report dated **December 2000** on commercial plans for 2001 mentions as key points: '*1. Surcapacity of production in 'Iberia'. Price war Spain - agreement increase of prices of prestressing steel. Reach the quota of 27% conceded by the cartel*' (original in Spanish)[778]. This shows the continued implementation of the quota arrangement.

(509) Notes of a meeting of **15.03.2001** between Tycsa, Emesa, Galycas and Socitrel record a list of complaints about alleged supplies that had been made to customers below the agreed price of (…) Pesetas[779]. Sales volumes and prices applied by each competitor in January and February 2001 in Spain and Portugal were also exchanged and a comparison was made with the agreed Iberian quotas (as cited in recitals (502) and (504))[780].

(510) At the meeting on **23.03.2001** between Tycsa, Emesa, Fapricela, Galycas and Socitrel, after a dispute between the first three companies regarding the supplies to a client had been solved, Fapricela 'promised *to continue the agreement which gave such good results*' (original in Spanish).[781] Further, it was decided to keep the price of wire at (…) Pesetas. The parties also discussed, client by client, the offers (volume and price)

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made or to be made, including for strand. The participants complained that Proderac never gave detailed reliable figures of its sales or a list of its clients and concluded that this had to be arranged at the next meeting.

(511) A document found at Tycsa of **April 2001** reports on volume sold in Spain/Portugal and on deviations from the agreed quota[782] for Emesa, Galycas, GSW, Socitrel, Fapricela and Proderac for January, February, March and their sum for the first quarter of 2001.[783]

(512) At a meeting on **28.03.2001** between Socitrel, Tycsa and Emesa, the parties first discussed volumes and prices regarding two clients in Spain and then client by client in Portugal paying particular attention to the orders with prices below (…) Escudos. The aim was to establish the closed orders of each producer (volumes/prices). The parties reaffirmed that there should not be any sales below (…) Escudos and that this agreement should cover all producers. Finally, a discussion took place between Tycsa and Emesa regarding strand sales and prices, observing that Fapricela had complained that it was difficult to sell strand in Spain. It was noted that they had fixed the price at (…) Escudos until June and thereafter at (…) Escudos.[784] Independent handwritten notes found at Tycsa corroborate the main discussions (namely on closed orders -volume/price- client by client in Portugal) held in this meeting[785].

(513) Handwritten notes found at Tycsa of the meeting held in Portugal on **09.04.2001** between Emesa, Fapricela, Socitrel and Celsa/GSW demonstrate discussions on prices and volumes per client as well as on increases in prices in Portugal (per three segments -A,B,C- of customers) and in Spain as from 01.06.2001.[786] It was moreover agreed to establish for the next meeting on 18.04.2001 a '*list ABC Spain Clients/Price/Portfolio*' (original in Spanish).

(514) Documents found at Emesa[787] and Tycsa[788] show that at the meeting of **18.04.2001** Socitrel, Fapricela, Trefilerías Quijano, Tycsa, Proderac and Emesa discussed: (i) sales volumes of wire in Spain and Portugal in March 2001 for each producer as well as the cumulated figures in the first quarter of 2001, followed by calculations of the deviations from the agreed quotas (cited in recitals (502) and (504)); (ii) the Spanish market, client by client, specifying the producer and the prices/volumes supplied or already contracted to be supplied in the months ahead. As at the meeting of 28.03.2001, it was again considered important to know the 'closed orders' (i.e. those for which the price is already fixed) that each producer had until the end of 2001. It was also agreed to establish for the next meeting a list of clients of the past year (names, volume and price) in order to correctly determine the 'portfolio' of each producer and to know which clients were preferential to each producer. For instance, a certain (named) client was

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noted to be the preferential client of Tycsa, and Tycsa and Fapricela had agreed that Tycsa would offer at (…) ptas to this client and Fapricela at (…) ptas, but there was a dispute between the two producers concerning the prices/volumes supplied to this client; (iii) the dividing-up of customers in two groups in view of a price increase to be implemented in Spain as from 30.06.2001: *Group A*, customers currently being supplied or with price contracts below (…) ptas, to whom usually at least 3 trucks per month are delivered; *Group B*, smaller customers supplied at (…) Pesetas or higher. Tycsa stated that in case of a price increase as of 30.06.2001, it would be willing to renegotiate prices with its customers for which it already had closed orders for 2001 at (…) Pesetas and that it would claim (…) Pesetas, provided that the other producers committed to make higher offers to these customers (at (…) Pesetas). At the follow-up meeting of **17.05.2001**, at which Tréfileurope was also present, the 'finalities' for the price increase as of end June 2001 were negotiated[789].

(515) Quota allocation and client allocation for a number of projects were extensively discussed among GSW (i.e. Tycsa/Trefilerías Quijano), Aceralia (i.e. Emesa/Galycas) and Fapricela in the morning session of the meeting of **07.06.2001**[790] between the same companies. The most important producers of prefabricated components in Portugal and Spain were listed by volume of strand consumed (in decreasing order), identifying the current supplier(s) with the aim of allocating these customers between the three producers. It was moreover considered necessary to co-ordinate particularly those projects that required large quantities of strand and that were carried out by a consortium of different companies (UTES: Unión Temporal de Empresas): the first work auctioned by the consortium would be gained by Fapricela, with a certain fixed price per ton, the others offering higher prices; the second work would be artificially assigned to Tycsa, the third to Emesa, and this sequence would be repeated successively. It was concluded that the historical quotas per client should be studied to see whether an agreement could be reached and that it was also necessary to know the pending contracts, volumes and the period covered in the portfolio of each producer. For this purpose a next meeting was planned for 18.06.2001 in Madrid. Socitrel and Proderac joined the afternoon session, where discussions took place on (i) sales and prices, client by client for Spain and Portugal in May 2001; (ii) minimum prices and price increases in Spain and Portugal[791].

(516) Two independent sets of notes confirm a meeting held on **18.06.2001** between GSW/Tycsa, Aceralia and Fapricela, the aim of which, following what had been decided in the previous meeting of 07.06.2001, was to reach an agreement regarding the allocation of customers and orders from Iberian producers of prefabricated components among the three suppliers of strand. To that end, the parties exchanged detailed information on prices/volumes of strand supplied and the portfolio of orders until the end of the year. They did

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this client by client for a list including the most important producers of prefabricated components. The next meeting was planned for 06.07.2001. [792]

(517) Notes of a meeting on **06.07.2001** between Tycsa, Emesa and Fapricela describe an agreement to allocate the customers of strand, clearly identifying the exclusive clients (prefabricated component producers) for Emesa, GSW and Fapricela as well as the corresponding tons and the 'mixed' clients in three groups of two producers (Aceralia+Fapricela, GSW+Fapricela and Aceralia+GSW) dividing the orders by 50% each. The notes also contain a table with volumes of strand and market share allocation in Spain, Portugal and other European countries for GSW, Aceralia and Fapricela (the total of their shares being 100%. The table shows that, at least in this period, only GSW and Aceralia had exports to other European countries, while Fapricela only sold strand in the Iberian countries). Finally, the notes mention that the strand demand stemming from UTES in Spain would be allocated only to Aceralia and GSW, while the consumption of strand by one-off projects in Portugal would be divided as follows: 50% for Fapricela, 25% for Aceralia and 25% for GSW.[793] Exactly the same notes were found at Tycsa, containing only an additional remark that the next 'strand' meeting would take place on 03.08.2001.[794]

(518) Following the agreement reached in previous meetings on the importance of knowing precisely the 'portfolio' and which clients were preferential to each producer (see for example recital (514)), two handwritten tables regarding a 'Club España' meeting on **13.11.2001** between Galycas, Emesa, Tycsa and Socitrel show volumes of wire supplied in Spain and Portugal, the total in both countries and the percentage compared to the agreed quota (for 1999 see recital (502)) of Galycas and Emesa (viewed together as Aceralia), Socitrel, Nueva Montaña Quijano SA and Tycsa (viewed together as GSW), Fapricela, Proderac and 'others' for the years 2000 and 2001 (until October 2001).[795] The same data and tables were found at Tycsa in an electronic version, an excel file saved on a diskette, entitled *'meeting 13-Tuesday/Vitoria'* (original in Spanish).[796] This information is further detailed in several other excel files on the same diskette, containing wire sales volumes client by client in Spain and Portugal by each Iberian producer - except for Fapricela and Proderac- for the period from January 2000 to October 2001[797].

(519) The regular monitoring by Tycsa of agreed quota for GSW until at least **June 2002** is further proven by a series of tables showing volumes of wire sold by 'GSW' (Tycsa and Trefilerías Quijano are here together) in Spain (by region, for example 'LEVANTE', North, Sud,…) and in Portugal in each month from January to June 2002 (the last table includes an estimate of the sales volumes for July 2002 ('prevision')), comparing the sales

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percentage reached with the agreed quota mentioned in recital (502) (‘adjusted’). Moreover, these tables also show that the arrangements were meant to remain effective for the whole year of 2002 since the tables were regularly updated with the sale volumes for each month and included the forecast (original in Spanish: '*POTENCIAL*') of the total wire sales volume in Spain and Portugal ('*GLOBAL*'), the forecast of ('GSW') volumes and corresponding agreed Iberian quota of ('27%') for the whole year of 2002 as well as the corresponding projection of GSW's monthly sales in Spain, Portugal and the Iberian total until December 2002 (original in Spanish: 'OBJETIVO ESP., OBJETIVO POR., OBJETIVO TOTAL').[798]

(520) Notes found at Tycsa dated **07.05.2002** regarding the central region (original in Spanish: 'zona centro') also show the agreed quotas.[799] Further notes, immediately following these notes, show the objective of a volume allocation for Spain and Portugal between GSW, Emesa, Fapricela, Socitrel and 'others', the total volume to be allocated for Spain being 65 000 tons and for Portugal 30 000 tons, which corresponds to the potential volume of sales of wire mentioned in the documents referred to in recitals (518) and (519).[800]

(521) Minutes of an ATA meeting on **07.06.2002**[801] between Fapricela, Emesa and GSW show that strand was the initial topic (quotas, sales in 2001 per clients and zones), followed by a discussion on wire (in which volumes and quotas from January to May 2002 were compared with the agreed quotas, noting that control should be based on lists done by computer and monthly meetings; a price of EUR (…) per ton is also mentioned).

(522) On **22.07.2002** Trefilerías Quijano faxed Tycsa's price list (per diameter of product) and payment and other commercial conditions from **01.08.2002** onwards to Emesa.[802]

9.2.2.5. Implementation: monitoring scheme and compensation

(523) The contemporaneous documents show clearly that the Club España participants conceived and applied a monitoring system to allow verification of the respect of the agreed quotas by all producers involved. Indeed, by informing each other on the real sales of the past months/quarter (see also section 9.2.2.4), cartel members were able to compare such sales with the fixed quotas and thus to verify if an undertaking was respecting the quota[803]. When as a result of the comparisons, deviations occurred, compensations were regularly requested[804]: There are many other clear references where compensations were proposed or decided (see for example meeting of 04.05.1993: '*proposal to adopt monthly compensations*'), 22.11.1996 ('*need to compensate the 'lost' tons as a consequence of the withdrawal of the Spanish companies (except for Emesa) from Portugal*'), 18.11.1997 (on a

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compensation which Tycsa owed Emesa on 31.12.1995), May 1998 ('*accumulated balance: [-1975] due by Emesa*'), 08.09.2000 (where it was also agreed that for the next meeting the participants would bring their list of client orders in order to adjust them to the agreed allocated quotas) etc. (original in Spanish,(…)).

(524) In order to increase transparency on each others' sales, the producers considered a number of times involving **external auditors** who would certify the submitted data (see for example: presence of the auditors in the meeting of 20.04.1993, the topic 'audit' on the agenda of the meetings of 20.12.1994 and 22.11.1996, and the discussion on audited accounts in the meeting of 15.03.1996,(…)). The idea of involving external auditors was inspired by the practice in Club Europe (see section 9.1.3.4) and in Club Italia (see section 9.2.1 and section 9.2.1.7 in particular).

9.2.2.6. Individual participation in Club España

(525) As described in sections 9.2.2.3 and 9.2.2.4(…) , the Club España contacts and anticompetitive arrangements started at least as from **15.12.1992** for Trefilerías Quijano[805] and Emesa/Galycas[806]. The other Tycsa companies, i.e. Trenzas y Cables SL and Tycsa PSC, joined as of the date of their incorporation, on **10.06.1993** and **26.03.1998** respectively. They were also joined by Socitrel, Proderac and Fapricela on **07.04.1994, 24.05.1994** and **02.12.1998** respectively.

(526) These companies continued participating in Club España at least until the Commission's inspections on 19.09.2002. Indeed, even if the last documented meeting (between Socitrel, Tycsa, Fapricela, Emesa and Galycas) took place on 20.08.2002, documentary evidence shows that the quotas were meant to remain effective until at least 2003 (see for example meeting of 19.07.2002, (…)).

(527) **Fapricela**[807] (…) but claims[808] that it should not be held liable for the period prior to 23.06.1999 because it would only have started its activity on the international market in 1999 or, at least, only after having obtained the required certifications[809] and the evidence in the file would not be strong enough to prove Fapricela's involvement in Club España activities before 23.06.1999.

(528) With regards to the meeting of 02.12.1998 which the Commission retains as the starting date of Fapricela's cartel participation (see recital (500)), Fapricela[810] (…) claims that it did not reveal any sensitive information nor have agreed to any quotas or prices. Fapricela continues that, even if quota or prices had been fixed in that meeting, they would have been unrealistic and it would never have respected them. The Commission observes that (…) it is established that at that meeting quota were allocated

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amongst others to Fapricela and prices were discussed between at least Emesa and the Portuguese producers (see also section 12.2.1.1 and in particular recitals (588) and (589). The alleged absence of consent or implementation is therefore irrelevant.

(529) (…) Fapricela also refers to its alleged explicit refusal to attend the meeting of 28.03.2001 and alleges that it did not pay for the ESIS membership fee in 2000. Fapricela concludes that its liability should be excluded as of March 2001 and that the Commission should consider that it did not effectively participate in the cartel in the period August 2001-September 2002[811].

(530) It follows from the evidence described (…) and in sections 9.2.2.1-9.2.2.5 that from 02.12.1998 until the Commission's inspections Fapricela regularly and continuously participated in Club España meetings and that, in its absence, its case was discussed. Fapricela's alleged refusal to attend one meeting on 28.03.2001 cannot be considered as a distancing from a cartel (see recital (589)). On the contrary, Fapricela continued to participate in the cartel meetings less than one month thereafter (i.e. on 18.04.2001, see recital (529) (…)). Furthermore, Fapricela's alleged absence at the meetings between October 2000 and April 2001 is contradicted by the evidence (…) which shows that Fapricela participated in the meetings on 18.10.2000, 23.03.2001, 09.04.2001 and 18.04.2001. Fapricela did not submit any further evidence that it had, at any moment, publicly distanced itself from what was agreed in the meetings and thus from the cartel (see recital (588)). (…) [812](…).[813] Therefore, the Commission concludes that Fapricela participated uninterruptedly in Club España from **02.12.1998** until 19.09.2002.

(531) **Proderac**[814] (…) . It claims however that it did not participate actively in the cartel activities and that it did not participate in quota allocation, client allocation or price fixing[815], nor in the exchange of commercially sensitive information. This was claimed to be proven by the other cartel participants' complaints in this respect (for example at the meeting of 07.06.2001[816]). It also submits that on 01.10.1996 and 07.06.2001 it publicly opposed the cartel[817].

(532) The available evidence, however, clearly shows that Proderac participated uninterruptedly in at least 12 meetings between 24.05.1994 and 30.07.2002 at which quota, prices and client allocation were discussed and agreed and that, during this period, Proderac's data concerning volumes, clients and prices were regularly discussed in its absence by the Club España participants[818]. The claim that other cartel participants complained about Proderac not delivering the requested information is therefore irrelevant:

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internal conflicts and rivalries, or even cheating are typical to any cartel, especially if they have a long duration (see also recital (604)).

(533) To prove its alleged (public) distancing from the cartel, Proderac refers to minutes of an ATA meeting of 01.10.1996, which it submits with its reply to the SO[819], as well as to the meeting of 08.06.2001. However, the minutes of 01.10.1996, (…), only contain a generic reference to Proderac's disagreement in regard of '*the other producers' commercial policy in the last few months*' and a general statement that Proderac should *'take a position on the basis of the presented information and proposed solutions'*. Both statements were recorded under the heading '*market situation*' and followed a description of a price decrease in the market caused by lack of demand. There is no proof whatsoever that these statements relate to the cartel arrangements. It cannot therefore be inferred from this document that Proderac did not participate in or had publicly distanced itself from the cartel. Proderac moreover continued participating in meetings after 01.10.1996 (see for example footnote 818). With regard to the second meeting referred to by Proderac to prove its alleged distancing, i.e. the meeting of 07.06.2001 the Commission notes that the documentary evidence, which reads: *'Proderac must inform of its clients list or no information will be shared with it*' (original in Spanish), is again insufficient to prove its public distancing, in particular in view of its renewed regular participation in the meetings as of 30.07.2001 (see for example footnote 818 and recital (588)) The fact that Proderac did not abide by (some of the) agreements does not relieve it from its responsibility for having participated in the meetings, as participating in anti-competitive meetings already in itself could influence Proderac's commercial behaviour (see recital (584)).

(534) The Commission thus concludes that Proderac continuously and uninterruptedly participated in Club España from **24.05.1994** until 19.09.2002.

9.2.3. Southern Agreement of 28.10.1996

(535) During the Zurich Club crisis period, following the conclusion of the quota agreement of 05.12.1995 (see sections 9.1.2 and 9.2.1.4.1), quota discussions between Italian and pan-European producers simply continued. Several meetings were held in 1996 among the Italian producers (at least Redaelli, CB, ITC and Itas), Tycsa and Tréfileurope, which amounted to the conclusion of the so-called 'Southern Agreement' on 28.10.1996. This agreement consisted of two parts: on the one hand, an arrangement fixing the 'penetration' of each of the parties in the 'Southern' countries (France, Spain, Italy, Belgium and Luxemburg) and, on the other hand, an agreement among the parties to jointly negotiate a 'penetration rate' in the 'Northern countries'. This arrangement thus covered (most of) the territory covered by the Zurich Club (see recital (140)) and illustrates the attempts of the Italian and other Club Zurich participants to overcome the crisis in the Zurich Club.

[819] (…)

(536) A first proposal for a 'Southern agreement' was found during the inspections at Redaelli and was dated **03.07.1996**[820]. It contains several draft tables comparing the sales and penetration rates among 'Southern Europe (save Italy), Italy and Northern Europe'. It is interesting to note that in the margin of one table, it is written that an agreement from 'AD/TU' (Austria Draht/ Tréfileurope) would be possible[821]. A comparison with the 1990 situation, i.e. the Zurich Club quota sharing, is also made.

(537) The **Southern agreement** is described in a fax with annexes sent by Mr. (…) (Redaelli) to Mr. (…) (Tréfileurope) and Mr. (…) (Tycsa) on **28.10.1996**[822]. It shows that Tréfileurope, Tycsa/Trefilerías Quijano[823] and the Italian producers agreed on the carve-up of their markets i.e. France, Belgium and Luxemburg, Spain and Italy ('F', 'UBL', 'SP', 'I'), thereby exchanging information and agreeing on basic data for the calculation of quotas, including compensations, and that they also concluded an agreement on the penetration rate in northern Europe to be negotiated with the Northern producers (most likely DWK, Nedri, WDI and Fundia), whereby any difference between the targets and the actual agreement would be proportionally shared between the parties. Original in English: '*I am sending a summary of our latest understandings. Tables A reports the agreed values based on 1995 market sizes. Table A1 is the agreed table valid for all parties, table A2 is the* ***table valid for the 3 parties concerned****, Table A3 indicates the quantities to be compensated among the 3 parties. Table B wants to confirm the consistency of the agreed values with previously circulated table. Table B1 shows the value referring to 1995 in the form of the previous table, table B2 is the previous table* (1990)*. Based on the agreed tonnage distribution, the relative percentage distribution among the participating members is calculated in table C. Table C1 is the percentage distribution valid for all members, Table C2 is the table valid for the 3 parties concerned, Table C3 indicates the percentage value to be compensated among the 3 parties.* ***It is also agreed that the 3 parties will undertake to jointly negotiate with Northern producers*** *with the aim that the percentages of penetration indicated in table D be accepted (see previous Memorandum of Understanding), any difference between these targets and the actual agreement will be proportionally shared between the parties'* (emphasis added).

(538) A document of **04.11.1996**(…), confirms the general lines of the Southern Agreement and shows its implementation as regards sales in Spain and the setting up of a monitoring and sanction mechanism. Moreover it is clear from this document that prices are also fixed within this arrangement[824]:

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824 (…)

- '*Southern Agreement: TY* [Tycsa] and *TU* [Tréfileurope] *accept the Italians' position and call for only two Italian firms to export to Spain (RT* [Redaelli]-*CB-ITAS believe a solution is possible).*

- *Northern Agreement: Tycsa, Tréfileurope and the Italians undertook to negotiate a precise 'penetration rate' with the Northern European firms. Any difference between the targets fixed and the actual agreement would be shared proportionally between TY, TU and the Italians .*

- *Regarding the Southern Agreement, they agree to inspections by the auditing company and accept the penalties.'*

- Minimum target prices are indicated: from 1 November not less than 1000 (large) + 30 (small); from 1 December not less than 1050 (large) + 30 (small); from 1 January not less than 1100 (large) + 30 (small).

(539) Furthermore, tables dated **03.02.1997** found during the inspections at Redaelli's offices sum up the Italian arrangement (of December 1995,(…)) and the Southern Agreement and combine these two agreements.[825]

(540) It is noted that the 1996 Southern Agreement continued to be applied in the following years. For example, the modalities under which the Italian producers could be present in **Spain** and **France** were discussed at the Club Italia meeting of **21.01.1997** in which CB participated together with Redaelli, ITC, Itas and Tréfileurope ((…) (original in Italian): *'Abroad: we want to be present in Spain and in France. Spain = wire concerns 50.000t according to Tycsa, of which 11% goes to the Italians (5 500t) (…). France = wire concerns 50.000t according to Tréfileurope of which 24% goes to the Italians (12.000). (…)*'. At a Club Italia meeting of **10.03.1997** between CB, Redaelli, ITC, Itas, Trame and Mr. (…) , the need to request quotas for Spain, France and Belgium was discussed. From a document dated **18.01.2000** it appears that at a meeting between ITC and Tycsa, amongst others Tréfileurope's and CB's sales of 7-wire strand in Spain were discussed (TE: 2000 tons. CB: 500 tons) (as well as prices)[826]. There was also an agreement between Tycsa and the Italian producers granting a quota for Tycsa on the Italian market and vice versa, for the Italian producers in Spain (see Club Europe meeting of **26.09.2000** in which Tycsa reported on its agreement with Club Italia *'Tycsa has agreement with Italy*'[827] and recital (462)). In the meeting of **04.09.2001** Tycsa debriefed Club Europe on this agreement with Club Italia ((…))[828]. Later documents also refer directly or indirectly to a previous understanding between Italian, French and Spanish producers, even referring to it as a 'Mediterranean Club'[829].

(541) In Club Italia meetings the market situation in *Spain* and matters of common interest with members of Club España were moreover regularly discussed (see recital (568)).

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(542) CB contests its participation in the Southern Agreement. First, it argues that the Commission has no evidence that the first proposal for a Southern agreement of 03.07.1996 (see recital (536)) was circulated to the other Italian companies[830]. This document was however made in preparation of the agreement of 28.10.1996 involving all the Italian producers (see recital (537)) and must therefore have been discussed with the other Italian producers. CB further argues that the Commission has also no evidence that the document of 04.11.1996, showing implementation of the Southern agreement was circulated to CB[831]. The Commission notes that the document explicitly mentions that Redaelli, Itas and CB believe a solution to be possible, clearly showing that the 'Italians' referred to in this and other documents related to the Southern agreement include CB. Finally CB argues that the Southern Agreement was never discussed in the Zurich Club and that these two agreements were not related. The Commission notes, however, that the Southern Agreement was a continuation of quota discussions between the Italian companies and several Zurich Club participants (Tréfileurope and Tycsa) at a time when these discussions within the Zurich Club proved to be too difficult because of the crisis this Club went through. The Southern agreement is to be seen in this context, as a solution to allow for the continuation of quota allocation and therefore undisputably related to the Zurich Club.

9.3. The pan-European and national/regional arrangements: a complex of practices in pursuit of an identical overall objective

9.3.1. Identical overall objective and mechanisms of the pan-European and the national/regional arrangements

(543) In view of the continuous existing overcapacities, each producer (be it within the pan-European arrangement or in the regional, Italian and Iberian arrangements) shared the desire to ensure stability in the PS sector in order to avoid fierce (price) competition in its home market or in its export market(s). In all arrangements (Club Zurich/Club Europe/expanded Club Europe, Club Italia and Club España) this was done by identical mechanisms: (i) quota sharing[832], (ii) customer allocation[833], (iii) fixing of (target, minimum) prices,[834] and (iv) similar implementation (monitoring and/or compensation) schemes[835]. All arrangements were also organised and referred to as 'Clubs'[836]. All arrangements were moreover interconnected by overlapping territory, membership and common goals.

(544) The operation and the organisation of the cartel were naturally adapted to the structure and national characteristics of the PS market. For the majority of the countries, it is observed that a main historical national producer held an important national market share of around 50%. This producer was very often

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the co-ordinator of the country concerned. The co-ordinator was the reference/contact point for the other suppliers and had to be contacted by the suppliers intending to supply a customer (see section 9.1.3.3 and recital (202)). At this level, the contacts were often bilateral or by telephone. Co-ordination by country or by customer did not follow any single and rigorous plan. These contacts also demonstrate the bilateral relations between cartel members according to specific interests: reference can for example be made to the contacts between Italian and Spanish companies, French and Italian companies, French and Spanish companies, Italian and German companies, (…)

(545) The existence of national/regional arrangements, set-up and implemented in parallel, particularly in Italy, Spain and Portugal, can be explained by the presence in these countries of a number of larger exporting producers together with a number of smaller producers that focused on selling in their country alone (i.e. that did not export). This implied a more elaborated organisation at national level in the framework of what had been agreed at EU level. The co-ordinator in charge informed the national producers of the discussions and arrangements, and vice versa. This information was discussed at meetings (see sections on co-ordination 9.1.3.3, 9.2.1.2, 9.2.2.2, see also section 9.3.2).

(546) As already mentioned in section 8, the **overall rationale of all arrangements was at all times to avoid price decline by maintaining equilibrium in the European market and fixing prices**. Adaptations or evolutions in the arrangements were normally also triggered by (further) pressure on price. Thus, the quota system set up in the Zurich Club in the early eighties was an attempt to counter the strong price decline at that time, based on the example of the quota distribution which was already effectively in place in Italy. The fact that the Spanish producers Emesa and Tycsa joined the Zurich Club in 1992/1993 followed further pressure on the price by amongst others their expansion to Western Europe (in particular to Germany) and the attribution of a quota to them in the Zurich Club was meant to restore an equilibrium in order to avoid further price-undercutting[837]. Simultaneously, the Spanish and Portuguese producers were in search of avoiding price competition and ensuring equilibrium on their Iberian market[838] by using in their Club España the same mechanisms of quota fixing, client allocation and price fixing as applied at European level.

(547) The 1995 negotiations in the Zurich Club on an Italian quota in Europe and on a quota for the pan-European producers in Italy was also an attempt to remedy the disequilibrium on the PS market to ensure an 'adequate return on the invested capital'[839]. As explained in sections 9.1.1.4 and 9.2.1.4.1, no agreement finally reached between the Italian and the other Zurich Club producers, which was among the main reasons for the crisis in the Zurich Club. However as a result of these negotiations, the Italian producers did conclude in their Club Italia the December 1995 agreement, which provided

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for a quota applicable both within Italy and for their exports to the rest of Europe. The agreement, which, according to (…) , applied until at least 1999, was still meant '*as a factor for balance with the big European producers (i.e. in order to limit the latters' imports (into Italy))*' or a '*peace clause*'[840].

(548) Also the other Zurich Club producers, realizing that the maintenance of an equilibrium was essential[841], continued to meet, including during the Zurich Club crisis period, first with Redaelli, which continued to represent the other Italian producers at least during the Zurich Club and initially also during the crisis period (see recital (556)) and then without the Italian producers (while staying in touch with them bilaterally), in an attempt to define a new quota system. In Club Europe, the six producers (i.e. the Zurich Club participants, initially without the Italian producers) agreed on this new quota system, based on historical supplies, in a continued effort to ensure stability of their market shares, in order to counter a further price decline caused by the continued excess production capacity and the penetration of newcomers on the Western European market.[842] For the same reason, meetings in Club Italia also intensified around the year 1998.[843] Through the regular participation of Tréfileurope, DWK and Tycsa in both Club Europe and Club Italia, the information flow in both directions continued to be assured and towards the end of the nineties[844], when the prices were again particularly under pressure amongst others because of the drastic increase of the Italian producers' sales in Western Europe, more intensive negotiations were resumed with the Italian producers in order to redefine a common European-wide equilibrium in an expanded Club Europe.[845] The negotiations continued until the Commission's inspections in 2002.

9.3.2. Close connection between the pan-European and national/regional arrangements and mutual awareness of the arrangements between participants

(549) The continued common objective of stabilizing the market to avoid price deterioration, the history of common attempts to define such equilibrium and continuous combined efforts to find such equilibrium at European and national/regional level, as well as the geographical overlap between the pan-European and regional arrangements render these arrangements closely interconnected. Because of the participation of certain producers in two or even each of the three Clubs and the reporting lines between the producers (see below, recitals (555), (556), (558) and (559)) the participants in the three Clubs were or could at all times be mutually aware of all arrangements which were relevant to them, allowing them to take these arrangements into account in their own behaviour.

(550) First, participants of **the pan-European arrangement and of Club Italia** were **mutually aware** of each others' attempts to establish equilibrium

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and fix prices in the market and, even more, there were efforts to agree on a common equilibrium and to fix prices together.

(551) The pan-European and the Italian arrangements were closely intertwined from the very beginning, since in setting up their quota system in the early 1980s, the Zurich Club members sought inspiration in the Italian quota system which was already successfully in place long before the start of the Zurich Club[846]. They were well informed about the Italian quota system through Redaelli, which was part of both the pan-European and Club Italia meetings from the start of each of these Clubs (see sections 9.1.1 and 9.2.1(…)), and which presented itself as the representative of the other Italian producers and as such passed on information or claims discussed in Club Italia and vice versa.[847]

(552) The **1995 quota negotiations** in Club Zurich and Club Italia (see section 9.2.1.4) should be understood in the context of the quota fixing per country, which was from the outset one of the characteristics of the Zurich Club (see recitals (140) onwards). In the Zurich Club, the Italian producers were attributed a common quota for their exports to the rest of Europe[848]. They normally prepared the Zurich Club negotiations regarding the allocation of their Italian quota in Europe and the allocation of the quota of the other Zurich Club producers in Italy first among themselves in their Club Italia[849]. This was not different in 1995: in accordance with an explicit mandate providing that Redaelli would represent the other Italian producers towards the 'foreign', i.e. the other Zurich Club producers, stipulated in Article 5 of a draft agreement of 23.01.1995, which was prepared by Redaelli and distributed to all other Italian producers, Redaelli continued to represent the other Italian producers in the negotiations with the pan-European participants[850], which led to the December 1995 agreement between Redaelli, ITC, Itas and CB and it regularly debriefed the Italian producers of these negotiations[851]. In order to enable Redaelli to represent them adequately, the Italian producers normally first prepared the quota discussions with the pan-European producers by thoroughly discussing quota proposals amongst themselves.[852] Also the pan-European producers prepared discussions with the Italian producers and discussed the Italian claims and developments amongst themselves.[853]

(553) The Italian producers, Redaelli, ITC, Itas and CB, finally agreed on 05.12.1995 on an inner Italian quota allocation and to respect an export quota of 45 000 tons. Shortly thereafter, on 18.12.1995, they reconfirmed the subdivision of the export quota amongst themselves and also fixed prices for Italy, noting that the 'foreigners' should be warned and that Tréfileurope and DWK needed to be informed. At the last recorded Zurich Club meeting on

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09.01.1996 between the six producers, together with Redaelli and Austria Draht, the Italian quota agreement and the exports and imports between Italy and the rest of Europe were again discussed[854]. However, the export quota agreed between the Italian producers was finally not accepted by the other Zurich Club producers, contributing to the break-up of the Zurich Club and a subsequent **crisis period** (09.01.1996-12.05.1997, when Club Europe started). ct that no profit was derived from the infringement in question[855]. Equally, lack of actual gain from cartel participation can also not qualify as a mitigating circumstance. Yet, this break-up did not imply the end of the co-ordination between the pan-European and Italian producers.

(554) Indeed, even if the Commission has no proof that the exact export figure of 45 000 tons was accepted by the other pan-European producers, ITC, Itas, CB and Redaelli, soon joined by SLM, Trame and Tréfileurope Italia continued, as they did during the Zurich Club, to regularly discuss export and import figures and quota compliance, both in general and regarding specific customers, in Italy and the individual export countries until at least 19.09.2000[856], when these companies resumed regular quota, price and customer allocation negotiations directly with all pan-European producers in the framework of Club Europe's 'expansion period' and this until the Commission's inspections.[857] As a result of these discussions, which make sense only in the context of a continued striving for a European equilibrium, the volume of their exports continued to vary between 45 000 and 50 000 tons[858] and was still (declared to be) around 45 000/47 000 tons in 2001,[859] i.e. similar to the export quota agreed between the Italian producers in December 1995.

(555) Moreover, throughout the crisis period the Italian producers continued to discuss not only export and import quotas, but also other matters of pan-European interest, such as price fixing and client allocation, both regarding export countries and regarding Italy taking into account pan-European producers.[860] DWK, Tréfileurope and Tycsa, three of the six pan-European producers most directly interested in the Club Italia discussions,[861] because they sold in Italy and their home/export markets corresponded with the export markets of the Italian producers, very regularly attended these Club Italia meetings[862]. Tréfileurope and Tycsa were even appointed lead supplier for a number of customers at the Club Italia meetings of 17.12.1996 and 07.04.1997.[863] Moreover, if these pan-European producers could not attend a Club Italia meeting at which issues of common interest were discussed, they

854 (…)

855 Case T-241/01 *Scandinavian Airlines System v Commission* [2005] ECR II-2917, paragraph 146 and Case T-53/03 *BPB v Commission* [2008] ECR II-1201, paragraphs 441-442.

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were called by the Italian producers, even during the meetings.[864] Direct discussions and negotiations between the Italian producers and the three main pan-European therefore simply continued during the Zurich Club crisis period.

(556) The continuation of the contacts and negotiations between the Italian and the pan-European producers was further ensured through Redaelli, which initially during the crisis period continued to represent the Italian producers in quota discussions with pan-European producers at least on 01.03.1996 and 22.11.1996[865] and then through Tréfileurope Italia, who took over this role and which was later on also appointed co-ordinator for Italy by Club Europe.[866] The three pan-European companies directly negotiating with the Italian producers (and in particular Tréfileurope[867]) could moreover at all times inform the other pan-European producers, bilaterally or during the Club meetings, of all issues discussed within Club Italia which could be of interest to them.

(557) Furthermore, at least between 03.07.1996 and 10.03.1997, Redaelli, CB, Itas, ITC and Tréfileurope Italia negotiated and concluded with Tréfileurope and Tycsa the 'Southern agreement', agreeing on quota not only for the 'Southern' countries France, Spain, Italy, Belgium and Luxemburg, but also on quota in the North for their negotiation with the 'Northern' companies (i.e. most likely Fundia and the other pan-European producers, DWK, WDI and Nedri). This also shows that quota negotiations between Italian and pan-European producers simply continued during the Zurich Club crisis phase and even concerned (almost) the same territory as in the Zurich Club and in the later Club Europe.[868]

(558) The close connection between the pan-European and Italian arrangements also continued during the **'Club Europe'** phase. The co-ordination was assured through Tréfileurope, which was very active in both Clubs, hardly ever missing any meetings[869]. Tréfileurope (Italia) was designated co-ordinator for Italy in Club Europe and fulfilled de facto a similar role towards the pan-European producers in Club Italia.[870] Fulfilling its role as co-ordinator[871] for Italy (see recital (391)), it regularly debriefed the members of Club Italia in much detail amongst others on the principles of the new Club Europe.[872] Club Italia participants, almost always in company of pan-European producers (Tréfileurope, Tycsa and/or DWK), thus continued to discuss issues which were also discussed and/or agreed in the pan-European meetings, such as quotas allocated and prices fixed in several (European) export countries and (…) , or other issues of interest to the pan-European producers, such as imports into Italy and quota allocation on the Italian market

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(including between Tycsa, Tréfileurope and DWK)[873]. Italy was part of the reference area on the basis of which quotas were fixed in Club Europe (see section 9.1.3.4) and in Club Europe prices of a reference product were regularly fixed in several countries, including for Italy (see section 9.1.3.5). Tréfileurope, as Club Europe co-ordinator for Italy attending almost all Club Italia meetings, could at all times influence such Italian discussions on prices. For example at a meeting on 13.05.1999 (and prepared by Tréfileurope on 06.05.1999) at least ITC, CB, Redaelli and Itas explicitly confirmed that the foreign prices should be supported and then discussed the price increase foreseen in Germany, Belgium, France, Spain, the Netherlands, Germany, Austria, the United Kingdom and Italy, and (…) notes of 20.07.1999 mention a European price increase of 20%.

(559) Similarly, the Club Europe participants were also debriefed and continued to discuss the relevant developments (in particular on prices) discussed and/or agreed in Club Italia.[874] This was possible not only through Tréfileurope, but also through DWK and Tycsa who continued to attend and actively participate in the discussions and arrangements in the Club Italia meetings on quotas, prices and clients, through Nedri, who started to attend these meetings from 18.01.2000 onwards[875] and through Redaelli, who again started to attend the Club Europe meetings first on 08.11.1999 and then very regularly from at least 11.09.2000 until the date of the inspections. At the same time, these four pan-European companies also continued to discuss, negotiate and agree bilaterally with (some of) the Italian producers in matters of direct common interest, such as price fixing and client allocation in Italy and in other European countries[876]. Between at least December 1996 and 2001, the Italian producers moreover allocated customers and quota between all producers selling in Italy, including the non-Italian companies Tycsa, DWK, Tréfileurope and Austria Draht, and followed up on their supplies in Italy.[877]

(560) At the latest starting on 11.09.2000 until the date of the Commission's inspections, all participants in the two Clubs (including Austria Draht) started to meet very regularly to negotiate not only issues of direct common interest but also the conditions of integrating the Italian producers and Austria Draht in an **expanded pan-European arrangement** with common European quotas per country and (continued) common price fixing and client allocation (see section 9.1.5, recitals (439) and (440) and (…)).

(561) Thus, from the start of the Zurich Club until the date of the inspections, the participants of both the pan-European and Italian arrangements continued to closely co-operate towards a common goal of stabilisation of the market through quota fixing, price fixing and client allocation in all markets where they had a common interest. Moreover, from the year 2000 onwards, they sought to define together, like in the Zurich Club phase, quotas by country for all pan-European and Italian producers, as well as for all other important PS

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producers (mainly Austria Draht and Fundia), in a continued striving to equilibrium and limiting competition on the European market.

(562) Participants of **Club España, Club Italia** and **the pan-European arrangement** were also **mutually aware** of each others' attempts to establish equilibrium and fix prices in the market and endeavoured to agree on a common equilibrium or to fix prices together.

(563) In 1992/1993, around the same time Emesa and Tycsa joined the Zurich Club, these companies, together with Trefilerías Quijano and Galycas[878] started to fix quotas and prices and allocate clients in Club España. In 1994, they were joined by Socitrel and Proderac and in 1998 by Fapricela. At least from 1996 onwards, Tycsa took a lead role in Club España[879] and later on it also became country co-ordinator for Spain and Portugal in Club Europe (see section 9.1.3.3). Emesa and Tycsa attended both the pan-European and the Iberian meetings from the very start and taking into account the strong structural and interpersonnel links of these companies with Galycas and Trefilerías Quijano respectively (see sections 2.1.2, 2.1.3, 2.1.5 and in particular recitals (27), (35), (38) to (40) and (41) to (42) and recital (485)), the main Iberian producers were continuously involved in the discussions and decision-making both at European and Iberian level. The close links and mutual awareness between the two Clubs were thus clear from the outset.

(564) During the Zurich Club period, the Iberian arrangements and developments were regularly discussed and due to the overlapping membership, sometimes negotiated together at pan-European level. For example at a meeting of 16.06.1993 between at least Tréfileurope, DWK, Tycsa and Emesa, the quotas for the sales in Spain, including those of the non-Iberian companies were negotiated and at the Club España meeting of 08.11.1993 between at least Tycsa and Emesa, the quotas allocated during the meeting of 16.06.1993 (including the quota of Tréfileurope on the Iberian market and of Tycsa on the French and Italian markets) were discussed again. Then, following the joining of the Spanish producers in the Zurich Club, an agreement was reached in 1993-1994 between participants of both Clubs on the quota allocation for the Spanish market and on the export quota of the Spanish producers to Europe. In implementation thereof, the Iberian producers agreed in Club España on the export quota for specific European countries (see section 9.1.1.3 and in particular recital (152)).

(565) During the Zurich Club crisis period, the Iberian producers Emesa and Tycsa continued to meet the other pan-European producers in a new Club Europe, in which they also participated, and also the Italian producers continued to meet Tycsa (and Tréfileurope) to negotiate quotas in an attempt to overcome the crisis by agreeing on quota for the 'Southern' countries and a penetration rate for the North (see section 9.2.3). The mechanisms used in Club España to reach the common aims of ensuring equilibrium on the market to avoid price decline, were also again identical to the mechanisms used under

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the pan-European and Italian arrangements: quota fixing, price fixing and customer allocation (see section 9.2.2.4).

(566) Emesa/Galycas and in particular Tycsa, which was co-ordinator for Spain and Portugal and took a lead role in Club España at which it hardly missed any meetings, could at all times bring up the pan-European agreements in the Club España discussions. In such a way, the pan-European producers continued to influence and closely follow up the developments on prices, quota and clients discussed in Club España. Prices being fixed per country in Club Europe, the pan-European producers moreover at several occasions also directly fixed (minimum) prices for Spain.[880] Further, during the Club Italia meetings which Tréfileurope and DWK attended, Iberian issues were also sometimes discussed, allowing these pan-European producers at times also to be informed of interesting Iberian issues and agreements via this channel.[881]

(567) Similarly the Iberian producers also regularly prepared meetings and discussed the main developments and arrangements agreed at the European and/or Italian level[882], of which they were informed through Tycsa and/or through Emesa/Galycas. The non-Iberian pan-European and Italian producers active on the Iberian market were moreover granted quotas.[883] The main Iberian producers furthermore had bilateral contacts with Italian or pan-European producers (whom they regularly met in any event at European level) to discuss Iberian or European matters of common interest, such as price (increases), quota or client allocation.[884] These meetings were also used to verify compliance at regional level of what was agreed at pan-European level (see for example meeting of 27.07.2000 at which Emesa communicated to Nedri the applicable prices in Spain, which appeared to be lower than the price mentioned by Tycsa in Club Europe).

(568) The Italian producers were also informed about the Iberian arrangements. Indeed, Tycsa not only participated in the pan-European and Club España meetings but also in those of Club Italia[885], and could at any time debrief the Italian producers of the discussions in Club España. This enabled the Italian producers at all times to discuss any Iberian matters of interest to them and to agree directly with Iberian producers where there was a direct common interest.[886] Conversely, Tycsa could also at all times debrief Club España on the discussions in Club Italia.[887]

(569) Regarding individual participation of the companies Nedri, WDI, Tréfileurope, DWK, Emesa, Galycas, Tycsa, Trefilerías Quijano, Fapricela, Socitrel, Proderac, Redaelli, Itas, CB, ITC, SLM, Trame, Tréfileurope Italia, Fundia and Austria Draht in the pan-European arrangements (including (…)) and in the regional arrangements, reference is made to sections 9.1.7, 9.2.1.8

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and 9.2.2.6. Regarding individual awareness of each cartel participant of its participation in a larger scheme, reference is made to section 12.2.2.4.

V. APPLICATION OF ARTICLE 101(1) OF THE TFEU AND ARTICLE 53(1) OF THE EEA AGREEMENT

10. RELATIONSHIP BETWEEN THE TFEU AND THE EEA AGREEMENT

(570) The arrangements described in this Decision applied to Norway, which is an EFTA State party to the EEA Agreement, and to the territory of the (then) EU 15 with the exception of Greece, Ireland and the United Kingdom. The cartel members had sales throughout this territory.

(571) The EEA Agreement, which contains provisions on competition analogous to those of the TFEU, entered into force on 01.01.1994.

(572) Insofar as the arrangements affected competition and trade between Member States, Article 101 of the TFEU is applicable; as regards the operation of the cartel in EFTA States which are part of the EEA and its effect upon trade between the EU and EEA Contracting Parties or between EEA Contracting Parties, this falls under Article 53 of the EEA Agreement.

11. JURISDICTION

(573) In the present case, the Commission is the competent authority to apply both Article 101 of the TFEU and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement, since the cartel had an appreciable effect on trade between Member States (see section 12.2.4). The TFEU (and the EEA Agreement since 1994) are applicable at all relevant times as the product which is the subject of the cartel, prestressing steel, does not figure in Annex I to the Treaty establishing the European Coal and Steel Community ('ECSC')[888], which was in force at the time of the infringement. PS, therefore, did not fall under the ECSC Treaty.

12. APPLICATION OF ARTICLE 101 OF THE TFEU AND ARTICLE 53 OF THE EEA AGREEMENT IN THE PRESENT CASE

12.1. Article 101(1) of the TFEU and Article 53 (1) of the EEA Agreement

(574) Article 101(1) of the TFEU prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.

[888] PS did not figure in Annex I to the ECSC Treaty, which defines 'coal' and 'steel' for the purpose of the application of the ECSC Treaty (see also Article 81 of the ECSC Treaty).

(575) Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) of the TFEU) contains a similar prohibition. However the reference of 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'*.

12.2. The nature of the infringement in this case

12.2.1. Agreements and concerted practices

12.2.1.1.Principles

(576) Article 101 of the TFEU and Article 53 of the EEA Agreement prohibit anticompetitive agreements, concerted practices between undertakings and decisions by associations of undertakings.

(577) 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 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 TFEU, for the participants to have agreed in advance upon a comprehensive common plan. The concept of *agreement* in Article 101(1) of the TFEU 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.

(578) In its judgment in PVC II case[889], the EU 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(1) EC of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way'*[890].

(579) Although Article 101(1) of the TFEU (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 properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.[891]

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889 Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II) [1999] ECR II-931, recital 715.

890 The case law of the Court of Justice and the General Court in relation to the interpretation of Article 101 TFEU applies equally to Article 53 of the EEA Agreement. See recitals No 4 and 15 as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement, as well as Case E-1/94 of 16.12.1994, recitals 32-35. References in this text to Article 101 therefore apply also to Article 53.

891 Case 48/69, *Imperial Chemical Industries v Commission* [1972] ECR 619, recital 64.

(580) The criteria of co-ordination and co-operation laid down by the case law of the Court of Justice of the European Union, 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. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market[892].

(581) Thus, conduct may fall under Article 101(1) of the TFEU as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour[893]. 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.[894]

(582) Although in terms of Article 101(1) of the TFEU 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 101(1) TFEU even in the absence of anti-competitive effects on the market[895].

(583) Moreover, it is established case law that the exchange, between undertakings, in pursuance of a cartel falling under Article 101(1) TFEU, 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[896].

(584) In the case of a *complex infringement* of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one

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892 Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663.

893 See also Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, recital 256.

894 Case T-148/89 *Tréfilunion v Commission* [1995] ECR II-1063, paragraph 82; Case T-54/03 *Lafarge v Commission* [2008] ECR II-120* (summary publication), paragraph 391.

895 See also Case C-199/92 *P Hüls v Commission* [1999] ECR I-4287, recitals 158-166.

896 See, in this sense, Cases T-147/89, T-148/89 and T-151/89, *Société Métallurgique de Normandie v Commission, Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission*, respectively, recital 72.

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 an agreement and a concerted practice at the same time. Article 101 of the TFEU lays down no specific category for a complex infringement of the present type[897].

(585) In its PVC II judgment[898], the General Court stated that *'[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty*'.

(586) An agreement for the purposes of Article 101(1) of the TFEU 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 the Court of Justice has pointed out it follows from the express terms of Article 101(1) of the TFEU that agreement may consist not only in an isolated act but also in a series of acts or a course of conduct[899].

(587) The Commission must show precise and consistent evidence to establish the existence of an infringement of Article 101(1) of the TFEU. It is not necessary, however, for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement. It is in fact normal that agreements and practices prohibited by Article 101 of the TFEU assume a clandestine character and that associated documentation is fragmentary and sparse. In most cases therefore, 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.[900]

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897 See again Case T-7/89 *Hercules v Commission*, recital 264.

898 See recital 696 of PVC II judgment referred to in footnote 889 above.

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

900 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 and others v Commission*, [2004] ECR p. I-123, paragraphs 53-57 and joined cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61/02 OP *Dresdner Bank AG and*

(588) Also, if an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed.[901] Indeed, *'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'*.[902] Such distancing should take the form of an announcement by the company, for instance, that it would take no further part in the meetings (and therefore did not wish to be invited to them).

(589) It is thus sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs.[903]

(590) The Court of Justice of the European Union has established that there is a presumption that *'the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. That is all the more true where the undertakings concert together on a regular basis over a long period (…)'*.[904] This presumption can be rebutted. However, in order to do so, the undertaking must show that it did not engage in any activities linked to the concertation and that it did not in any way take into account the commercial information it had learned at the meeting.[905]

12.2.1.2. Application to the case

(591) The facts described in Chapter IV demonstrate that, during the relevant period, the undertakings subject to this procedure entered into agreements and concerted practices within the meaning of Article 101 of the TFEU and Article 53 of the EEA Agreement concerning the sale of PS in the EEA and implemented them. In particular, they took part and adhered to arrangements at pan-European and/or national/regional levels. In parallel, cartel members agreed on a co-ordination scheme allowing information flows between the

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Others v Commission, judgment of 27 September 2006 [2006] ECR II-3567, paragraphs 59-67.

901 Case T-334/94 *Sarrió v Commission* [1998] ECR II-01439, paragraph 118.

902 Case T-56/99 *Marlines v Commission*, [2003] ECR II-5225, paragraph 61.

903 See Case C-199/92 P *Hüls* v *Commission* [1999] ECR I-4287, paragraph 155, and Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 96.

904 See for example Case C-199/92 P *Hüls v Commission*, [1999] ECR 1-4287, paragraph 162. See also Case C-8/08 *T-Mobile Netherlands*, judgment of 4 June 2009 (not yet reported), paragraph 51.

905 See Case C-199/92 P *Hüls AG v Commission*, [1999] ECR 1-4287, paragraph 167.

different levels (see sections 9.1.3.3, 9.2.1.2). As regards the different levels, the arrangements contained:

The Pan-European Arrangement:

(592) Starting with the Zurich Club in 1984, the participants agreed on quotas divided per country (Germany, Austria, Benelux, France, Italy and Spain), shared clients and fixed prices (see section 9.1.1). From 1992, the initial members started discussing with the Spanish companies Emesa and Tycsa on a re-allocation of the quota. Whilst it cannot be proven that an overall quota agreement was reached, partial agreements on quotas for the Spanish, French and Italian markets, as well as price agreements, were clearly reached (see sections 9.1.1.2 to 9.1.1.4). After a period of re-negotiation evoked by the disputes among the stakeholders at the end of 1995/beginning of 1996 (see section 9.1.2) during which parties continued to discuss prices and quotas, a revised agreement between the permanent members (called Club Europe) involving also, at times, some other PS producers was concluded and adhered to until September 2002. This revised agreement had a similar modus operandi as the one of Club Zurich (see recital (187)) but covered a larger reference area: the same countries as the Zurich Club and, in addition, Portugal, Sweden, Denmark, Finland and Norway. The participants regularly met to monitor the implementation of the agreed quota in the reference area (see section 9.1.3.4 and 9.1.6), allocate customers (see sections 9.1.3.6), including the client (…) (see section 9.1.4) and fix prices at the European and/or national levels (see section 9.1.3.5).

(593) From the outset, the pan-European arrangement was closely intertwined with the Italian arrangement, 'Club Italia' (see section 9.3.2). Moreover, multilateral meetings took place in 2000-2002 between Club Europe and Club Italia participants in a continued striving to ensure a European-wide equilibrium/status quo in the PS sector by integrating the Italian producers into the European-wide quota sharing agreement (see section 9.1.5.1). During these meetings, the producers agreed on a global export quota from Italy (see section 9.1.5.1 and in particular recitals (268) to (315)) as was the practice in the Zurich Club and on specific quotas in some countries (see recitals (288) to (342)), discussed client allocation (see for example recitals (293), (302), (303), (308) and section 9.1.5.3) and fixed prices (see section 9.1.5.2). During the same period they also started to negotiate a revised general quota agreement by country for all producers as was the practice in the Zurich Club but these negotiations could not be finalised before the Commission's inspections in September 2002 (see section 9.1.5.4). In addition, the participants exchanged sensitive commercial information in order to achieve an agreement on the above issues, thus also exercising influence on each others' commercial behaviour during the entire period (see for example recitals (145), (209) and (210)).

National/regional arrangements:

(594) *Italian arrangement*: The Italian arrangement or 'Club Italia' started at the latest with the quota sharing agreement originally concluded in December 1995 by four Italian PS producers, Redaelli, CB, ITC and Itas,

after a one-year negotiation period, covering quotas for the Italian market and export quotas for the remaining European countries (see section 9.2.1). SLM, Trame, Tréfileurope Italia and Tréfileurope, Tycsa, DWK and Austria Draht joined this arrangement at a later stage, and together, they regularly met to monitor the agreed quota allocation (see recitals (414) to (424)). These companies also discussed and fixed prices (including a surcharge, see section 9.2.1.5) and shared clients (see section 9.2.1.6). Moreover, a sophisticated monitoring scheme was implemented and compensations were applied (see section 9.2.1.7). The arrangement lasted until September 2002. In addition, the participants exchanged sensitive commercial information in order to achieve an agreement on the above issues, thus exercising influence on each other's commercial behaviour during the entire period.

(595) *Iberian arrangement* (or 'Club España'): this is the agreement between Spanish and Portuguese PS producers between 15.12.1992 and September 2002 covering Spain and Portugal, whereby these producers regularly met to fix quotas, allocate clients and fix prices and payment conditions. In addition, the participants exchanged sensitive commercial information in order to achieve an agreement on the above issues thus exercising influence on each others' commercial behaviour during the whole period (see section 9.2.2).

(596) *Southern Agreement:* this is the agreement reached in December 1996, negotiated during the Zurich Club crisis period, in parallel with the renegotiation of the European-wide quota arrangement (of Club Europe), between Italian producers (at least Redaelli, CB, ITC and Itas), Tréfileurope and Tycsa on quota for a certain number of 'Southern countries' as well as for the joint negotiation with Northern producers on their penetration in the North, whereby any difference between these penetration targets and the actual agreement with the Northern producers would be proportionally shared between the parties (see section 9.2.3).

(597) There were also bilateral contacts between participants in these different arrangements to implement and monitor the agreements (see section 9.3.2 and for example recitals (341) and (349)).

(598) Most of the complex of collusive arrangements in this case presents the characteristics of an agreement within the meaning of Article 101 of the TFEU in the sense that during the multilateral and bilateral meetings and contacts, the undertaking concerned expressed their joint intention to conduct themselves on the market in a specific way. This behaviour consisted in following a jointly preconceived quota system at European and/or national level, price co-ordination and refraining from competition with regard to customers allocated to the other participating competitors.

(599) Some factual elements of the illicit arrangements could also aptly be characterised as a concerted practice. For example, the continuous exchange of commercially sensitive information complemented and supported the cartel agreement at all its levels (pan-European, Italian and Iberian). The operation of the arrangements through the actual regular exchange of sales volume information between the undertakings could be regarded as

adherence to a concerted practice to facilitate the co-ordination of the parties' commercial behaviour. Furthermore, based also on the case-law referred to in section 12.2.1.1, the Commission considers that the participating undertakings in such co-ordination have taken into account the information exchanged with competitors while determining their own conduct on the market, all the more so because the co-ordination occurred on a regular basis and over a long period involving several hundreds of meetings as summarised in Annexes 2, 3 and 4.

(600) However, as explained in paragraph (584), it is not necessary for the Commission, particularly in the case of a complex infringement of long duration, to characterise conduct as exclusively one or the other of these forms of illegal behaviour.

(601) Based on the foregoing, the different elements of behaviour of the undertakings subject to this procedure can be considered to form part of an overall scheme to share the market, allocate clients and co-ordinate prices of PS in the EEA. According to the above mentioned case-law, such behaviour can be qualified as an agreement and/or concerted practice within the meaning of Article 101 of the TFEU and Article 53 of the EEA Agreement.

12.2.2. Single, complex and continuous infringement

12.2.2.1. Principles

(602) 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* cartel 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[906]. 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 TFEU and Article 53 of the EEA Agreement.

(603) It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in agreements and/or concerted practices.

(604) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more participants may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or even cheating may occur, but this will not prevent the arrangement from constituting an agreement or a concerted practice for the purposes of Article 101 of the TFEU and Article 53 of the EEA Agreement where there is a single common and continuing objective.

[906] Joined Cases T-25/95 and others, *Cement*, [2000] ECR II-491, paragraph 3699.

(605) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive 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 or been aware of them and was prepared to take the risk[907].

(606) In fact, as the Court of Justice stated in its judgment in Case *Commission v Anic Partecipazioni*[908], the agreements and concerted practices referred to in Article 101 (1) TFEU necessarily result from collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows that infringement of that Article 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 an infringement of Article 101 of the TFEU. When the different actions form part of an 'overall plan', because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole. 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.[909]

(607) Although Article 101 of the TFEU does not refer explicitly to the concept of single and continuous infringement, it is constant case-law of the Courts 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'*.[910]

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907 See judgment of the Court of Justice in case C-49/92 *Anic Partecipazioni* mentioned above (footnote 903), at recital 83.

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

909 See Joined Cases C-204/00 and others, *Aalborg Portland a.o.*, [2004] ECR I-123., paragraph 258 . See also Case C-49/92, *Commission v Anic Partecipazioni*, paragraphs 78-81, 83-85 and 203.

910 See Joined Cases T-147/89, T-295/94, T-304/94, T-310/94, T-311/94, T-334/94, T-348/94, *Buchmann v Commission, Europa Carton v Commission, Gruber + Weber v Commission, Kartonfabriek de Eendracht v Commission, Sarrió v Commission* and *Enso Española v*

(608) The fact that an 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 of the TFEU and Article 53 of the EEA Agreement. Such a circumstance may nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed.

12.2.2.2. Application to the case

(609) The Commission considers that the complex of arrangements in this case presents the characteristics of a single and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement.

A coherent set of measures to pursue a single purpose of restricting competition for PS at European and national level

(610) The Commission considers that the arrangements and concerted practices described in Chapter IV of the present Decision were part of an overall scheme which laid down the lines of action of the cartel members in all the geographic areas. They restricted their individual commercial conduct in order to pursue an identical anti-competitive object and a **single identical anti-competitive economic aim**, namely to distort or eliminate normal competitive conditions for PS in the EEA and to establish an overall equilibrium, notably by fixing quotas and prices, allocating customers and exchanging sensitive commercial information (see also section 9.3).

(611) Most of the discussions, negotiations and agreements were subordinated to the achievement and respect of a **general balance** between all the arrangements, whether at national or pan-European level: in this regard the numerous references to the respect of a ***status quo*** should be noted (see for example recitals (209), (226), (247), (258), (268), (275), (309), (311), (343), (347) and (359)). This balance was not the result of free competition, but rather was achieved through ***co-operation*** as results from the various historical phases of the cartel and the compensation measures taken by the cartel members (see sections 9.1.1 on setting up of the Zurich Club, joining of the Spanish and Italian producers and rising tensions, 9.1.2 on the Zurich Club crisis, 9.1.3 on the setting up of Club Europe, 9.1.4 on the (…) co-ordination, 9.1.5 on the Club Europe expansion, 9.2.1 on the setting up of Club Italia and the quota evolution in Club Italia, 9.2.2 on the setting up of Club España and the quota evolution therein and 9.2.3 on the Southern Agreement during the pan-European crisis phase). Whilst this balance was not always achieved, there were, at all times, efforts and continuous discussions to (re-)establish the balance, mainly with the aim of avoiding price decline in a sector characterized by excess capacities (see section 9.3).

(612) The plan, which was subscribed to by DWK, WDI, Tréfileurope, Nedri, Tycsa, Emesa, Fundia, Austria Draht, Redaelli, CB, ITC, Itas, SLM, Trame, Proderac, Fapricela, Socitrel, Galycas and Trefilerías Quijano (not all

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Commission, paragraphs 121, 76, 140, 237, 169 and 223, respectively. See also Case T-9/99, *HFB Holding and Isoplus Fernwärmetechnik v Commission*, paragraph 231. See also Case C-49/92P *Commission v Anic Partecipazioni*, [1999] ECR I-4125, paragraph 83.

at the same time), was developed and implemented over a period that lasted at least eighteen years, through a complex of collusive arrangements, specific agreements and/or concerted practices, pursuing the same common purpose of restricting competition between them and using similar mechanisms to pursue this common purpose (see section 9.3.1). Even at times when an arrangement did not work smoothly, other arrangements continued to function normally.

(613) The **Zurich Club and Club Europe phases** of the pan-European arrangement are part of **one single infringement**, which was not interrupted by the crisis period from 09.01.1996 to 12.05.1997. This clearly follows from: (i) the continued participation in meetings during which discussions focus on 'the situation after ending of [Zurich club]' and on 'prices, quota and prospects of contracts', at least on 01.03.1996, 08.10.1996, 04.11.1996, 04.12.1996, 03.04.1997 and 09.04.1997 (…); (ii) more in general, the immediate start of discussions on how an amended scheme could operate following the break-up of the Zurich Club; (iii) the emphasis at the last recorded Zurich Club meeting to maintain the quota system (repeating the agreement on 08.11.1995 'to maintain the system of quotas and the information exchange if the Club would break down'); (iv) the existence of contracts concluded with clients during the Zurich phase, which continued to have their effects even during the crisis period, given that such contracts were not very regularly renewed (mostly only yearly, see recital (216)) and (v) the continued quota discussions during the crisis period (at least from 03.07.1996 to 10.03.1997, when the 'Southern agreement' was concluded between at least Redaelli, CB, ITC, Itas, Tycsa and Tréfileurope, see section 9.2.3). Also, like in Club Zurich, Club Europe participants continued to fix quotas, allocate clients and fix prices. Their anticompetitive discussions and agreement concerned the same territory as in the Zurich Club, but expanded with several additional countries (see recitals (140) and (188)).

(614) **The organisation of the cartel itself** (and in particular the **co-ordination system**, see sections 9.1.3.3, 9.2.1.2, 9.2.2.2) and its practical operation (see recital (615)), show that the pan-European, Iberian and Italian arrangements constitute a single infringement. The major decisions, such as the fixing of the European quotas covering a **reference area,** which evolved over time (see for example recitals (140) and (188)), based on sales volumes for a **reference period**, which was updated over time (see for example recitals (207) and (274)), were taken at management level during multilateral meetings between the six Club Europe producers (see for example recital (191)(…)). The management also dealt with the allocation of certain (reference) clients (for example (…) and (…) , see recital (217) and section 9.1.4) or the fixing of minimum prices for certain countries and certain reference clients. Some permanent members of the pan-European arrangement were entrusted, at the salespersons' level, firstly with monitoring the implementation of the agreements achieved at European level in one or more countries, in particular on price and client co-ordination (including in Italy, Spain and Portugal, which are part of the reference area and the home countries of the Club Italia and Club España participants) and secondly to maintain contacts with the other interested producers operating in the respective geographical areas (including those of the Club Italia and

Club España arrangements and for example Fundia as regards the co-ordination concerning the client (…)).

(615) Also the **practical operation of the cartel** shows that the pan-European and national arrangements constitute one single infringement: the Italian and Iberian arrangements were from the outset closely intertwined with the pan-European arrangement. The Club Italia quota system served as a model in setting up the Zurich Club quota system, and during the Club Zurich phase and the crisis period, Club Zurich and Club Italia participants negotiated and agreed together on quota arrangements, prices and client allocation both regarding Italy and other European markets of the reference area. Although the Italian producers were no longer permanent members in Club Europe, the co-ordination between the two Clubs continued to be ensured through Tréfileurope, the co-ordinator for Italy who was attending almost all Club Italia and Club Europe discussions and could as such also influence the negotiations and discussions in one Club, allowing all participants to take into account the plans and agreements reached in the other Club. The same is true for DWK, Tycsa and later on Nedri, pan-European producers who were also regularly attending Club Italia meetings and meeting Italian producers bilaterally. Similarly Club Zurich/Europe and Club España producers negotiated and agreed together on quotas, prices and client allocation, both within the Clubs and bilaterally. Tycsa (co-ordinator for Spain and Portugal) and Emesa, which were participating in both Clubs, could again influence the negotiations in one Club taking into account the aspirations and agreements reached in the other Club. Discussions in all three Clubs also regularly concerned negotiations, agreements or decisions taken in the other Clubs. From 11.09.2000 onwards, negotiations between the main PS producers moreover intensified in an effort to expand the Club Europe quota system to all important PS producers. In this respect, particular reference is made to section 9.3.2 which explains in detail the close connection between the different arrangements and the mutual awareness of the arrangements between the participants.

(616) The measures agreed and taken at the national or regional levels (Iberian, Italian and/or Southern) are therefore one coherent set of measures together with the arrangements at the pan-European level. From the facts described above in Chapter IV, it is clear that all participants in the anticompetitive arrangements adhered and contributed, to the extent they could (i.e. to the extent they were active in one or more of the arrangements) to a common anti-competitive plan.

Continuity of purposes and of key features

(617) Concerning the period of 1984 until the end of 2002, the activities within the cartel never stopped even if changes occurred. Spanish companies started negotiations with Club Zurich members to enter the pan-European quota agreement at least in 1992, which shows at least Tycsa's and Emesa's awareness of the pan-European agreement. In the same year, they started their collusive contact relating to the Spanish market (see section 9.2.2). Also the Italian producers were aware of the pan-European arrangement.

Redaelli was one of the founding members of Zurich Club and several other Italian producers joined in 1993 and 1995, through Redaelli. The Zurich Club discussions were moreover prepared and followed up in Club Italia which ran in parallel at least as of 1995 (see section 9.1.1 and 9.2.1).

(618) While the Zurich Club allegedly ended at the beginning of 1996 (see recital (167)), the participants, initially including Redaelli, CB, Itas and ITC, continued their collusive contacts, from January 1996 to April 1997, leading to a revised pan-European quota agreement (see section 9.1.2), which the Italian companies were aware of. In the same year (1995) and in parallel, the Italian companies negotiated among themselves an agreement to share the PS market in Italy, including the import volume and the export quota. They involved the European producers. This shows their intention to maintain a system of agreements and concerted practices governing the European territory and to negotiate the conditions with the other European PS producers. The 'Southern Agreement', concluded at the end of 1996 also illustrates the same intention from the Italian companies, Tycsa and Tréfileurope.

(619) Finally, the very intense phase of multilateral meetings from October 2000 to 2002 (see section 9.1.5.1) documents firstly the common will of the European and Italian PS producers to agree on a revision of the *existing status quo* by means of *co-operation* and not by means of *free competition*, and consequently on a further integration of the Italian companies into the European wide system allowing all the European producers to increase their control on the market. Secondly, it indicates that the cartel, well stabilized at the European and national level, reached such a degree of maturity that it enabled the participants to increase its sophistication by refining the overall quota divided by company into a distribution broken down by company and by country as was the case during the phase from 1984 to early 1996 (see section 9.1.1 on the Zurich Club).

(620) It is obvious that arrangements agreed upon over such a long period involved organisational changes, a modification of some companies' membership, of their respective role within the cartel, of the frequency and of the regularity of participation in the meetings. Such a scheme necessarily entails certain tensions between the cartel members. However, the infringement showed throughout its entire duration a consistent pattern of continuous collusive contacts aimed at restricting competition: the object of the infringement remained the same (ensuring equilibrium and avoiding price decline by quota and price fixing and customer allocation); contacts and meetings took place at both management and sales level, both at European and national level; a co-ordination scheme was implemented; compensation mechanisms were applied; confidential information was regularly exchanged; and the individuals and companies participating in the cartel showed a high degree of continuity.

(621) Given these elements, and in particular the identical overall objective and the similar mechanisms of the pan-European and the national/regional arrangements as summarised in more detail in section 9.3, it would be artificial to split up such continuous conduct, characterised by a single aim,

by treating it as consisting of several separate infringements, when what was involved was a single and common plan which manifested itself in the various agreements and concerted practices.

Continuity of membership

(622) All addressees of this Decision participated in the cartel which lasted over 18 years and several of them simultaneously participated at different levels of this cartel. The fact that an undertaking concerned did not participate directly in all the constituent elements of the overall cartel cannot relieve it from the responsibility for the infringement of Article 101 of the TFEU and/or Article 53 of the EEA Agreement. In the present case, the fact that certain companies did not participate in all of the pan-European or national meetings in no way detracts from the assessment of their participation in the cartel, since all were in a position to be informed and take account and advantage of the information exchanged with their competitors when determining their commercial conduct on the market[911]. As described above, for most participants the overall scheme was subscribed to and implemented over a period of several years employing similar mechanisms and pursuing the same common purpose to restrict competition. As follows from section 12.2.2.4, all addressees were also aware of their participation in an overall scheme with different levels, even though for some this awareness could only be established at a rather late stage in the infringement.

(623) However, the intensity of each undertaking's participation in the cartel is not identical, taking into account the duration of their individual participation in the cartel (see also Chapters VI and VII), their geographic presence (production and sales area) and their respective size (big or small players). All these elements are taken into account in Chapter VIII below.

12.2.2.3. Arguments of the Parties on the single, complex and continuous nature of the infringement

(624) In their reply to the SO, (…) the parties do not contest the Commission's conclusion on the nature of the infringement as a single, complex and continuous scheme with a pan-European, Italian and Iberian level[912].

(625) Several undertakings[913], however, contest that **Club Zurich and Club Europe were part of a single pan-European infringement**. They argue that these two Clubs had a different objective and time dimension, different participants which started independently from each other[914], as well as a different geographical scope. They claim that the pan-European arrangements were interrupted with the 'break-up' of the Zurich Club on

911 See judgment of the Court of Justice,joined Cases C-204, 205, 211, 213, 217 and 219/00, *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraphs 55-57, 86, 230 and 249.

912 (…)

913 (…)

914 (…)

9.01.1996 and restarted only with Club Europe[915] and refer to the case law according to which an *'anti-competitive agreement cannot be regarded as a means of implementing another agreement which has come to end*'. They conclude that Club Europe was not a continuation of Club Zurich and that the Commission's power to impose fines regarding Club Zurich would be time-barred.

(626) With regard to the common objective, the parties in particular claim that the Commission failed to ascertain that the two Clubs are complementary to each other[916]. The Tycsa companies in particular argue that the Club Zurich's objective was limited to tonnage allocation for certain countries (to maintain a status quo) without any price agreements, whereas Club Europe would have been a more complex agreement at 2 levels (directors and salespersons), with quarterly meetings, quota sharing, price increase per country and a Europe-wide client sharing (amongst others regarding (…)[917]. WDI argues that the methods and practices of the two Clubs were different. It refers in particular to the different membership (the Italian producers no longer being part of Club Europe and amongst others Fundia becoming part of it), the different method of fixing quotas (Europe-wide on the basis of certified figures in Club Europe versus by country in Club Zurich), the fact that the 'Meldestelle' of Club Zurich was given up in Club Europe and the new name of the Club[918].

(627) The Commission recognises that Club Zurich and Club Europe did not overlap in terms of time: they were **consecutive phases** of the same pan-European arrangement. The **same core participants**, namely DWK, WDI, Nedri, Tréfileurope, Tycsa and Emesa, participated in the pan-European arrangements, from their start in the Zurich Club in 1984 until the date of the inspections on 19.09.2002,[919] often with the same physical persons.[920] The Italian producers, Redaelli, ITC, Itas and CB directly participated in the Club Zurich phase and at the beginning of its crisis period, as well as in the expansion phase of the pan-European arrangement. During the 4.5 year period of the 18-year cartel in which they did not directly participate in the pan-European (i.e. Club Europe) meetings (02.03.1996 to 11.09.2000) they kept discussing and negotiating quotas, prices and clients with the core participants as well as in their own Club (see also sections 9.1, 9.1.2, 9.1.3, 9.2.1, 9.2.3, 9.3, recital (613) (…)). Their cartel participation was thus never interrupted. The fact that certain (core and other) participants joined or left (certain parts of) the cartel earlier than others is recognised in chapters VI and VII. This is typical of any cartel of a long duration and not relevant in assessing the single, complex and continuous nature thereof.

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915 (…)

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

917 (…)

918 (…)

919 (…)

920 (…)

(628) The Commission also recognises that the **geographical scope of the pan-European arrangement expanded** from 8 countries in the Zurich Club phase[921] to 14 countries (the same countries and 6 additional countries) in the Club Europe phase and the expansion period[922]. Evolutions in geographical scope are also a common feature to cartels showing their adaptation to prevailing circumstances. The evolving territorial scope of the cartel is taken into account in section 19.1 and is again not relevant in assessing the single, complex and continuous nature of the infringement.

(629) In addition, Club Zurich and Club Europe had a **common objective and common methods**. Club Zurich had as an objective to avoid price decline by maintaining equilibrium in the European market, mainly through quota fixing, client allocation and by fixing prices (see section 9.1.1.2). These continued to be the objective and mechanisms of Club Europe (see section 9.1.3). Also the implementation mechanisms remained similar: during the Zurich Club, participants followed up on the respect of the quota by reporting their figures to a 'Meldestelle', which compared actual sales with the quota, after which these figures were discussed in quarterly meetings (see recitals (142) onwards). Contrary to what WDI claims, this continued to be the practice in Club Europe (see recitals (209) onwards). It is true that the Commission has no evidence that the Zurich Club was already organised on a two level system (directors and salespersons) like Club Europe. However, this merely shows the increased sophistication of the cartel over time. Moreover, regarding the Europe-wide client sharing regarding (…) , which was also organised on a two-level system, there are indications that coordination regarding the Nordic market was already taking place as of 1991/1992 (see section 9.1.1.6), i.e. during the Zurich Club period, and continued until 2002 (See also sections 9.1.2, 9.1.4 and 9.3 and recital (613)). Finally, the fact that in Club Europe quotas were fixed on a European-wide basis (rather than by country as in the Zurich Club) and on the basis of certified figures, merely shows that the parties adapted the cartel in an attempt to render it more easily manageable and less susceptible to cheating. The European-wide quota fixing in Club Europe (rather than per country) was moreover considered a temporary measure. This is illustrated in contemporaneous notes of the kick-off meeting of Club Europe on 12/13.05.1997, which show that it was decided to *'provisionnally work with European-wide quota. Later on per country*' (see also recital (206)). During Club Europe's expansion period, quota discussions were again focused per country, like in the Zurich Club. Also the change of name from Club Zurich to Club Europe is a mere reflection of the fact that as of the nineties, meetings were no longer systematically taking place in Zurich, but mainly in Düsseldorf and other European cities (see also recital (136) (…)).

(630) Finally, it should be repeated that **the pan-European arrangements were not interrupted by the 'break-up' of the Zurich club on 09.01.1996**. As already spelled out in recital (613), as of this meeting and even before, the pan-European producers agreed that a quota allocation system should be

921 (…)
922 (…)

maintained and preparatory discussions for the new quota system were started right away. These preparatory discussions culminated in the agreement between the six core producers on the new quota system on 12/13.05.1997 and therefore all together constitute an agreement/concerted practice (see also recital (581)). In the same meetings during the crisis period the parties moreover also continued the same anti-competitive discussions (on prices, clients, sales and quota) as they had in Club Zurich and as they would continue to have in Club Europe. Moreover, in parallel, quota negotiations continued with the Italian producers, which culminated in the December 1995 quota agreement between these Italian producers and in the Southern agreement of October 1996 (see sections 9.2.1.4, 9.2.3, 9.3 (…)).

(631) Consequently, it cannot be inferred from a brief period of disagreement between the participants at the beginning of 1996 that the collusion had ended, since not only did the meetings continue to be held regularly but, in addition, they were specifically intended to continue collusion on quota, prices and clients.[923] Given the clear continuity of membership, objectives, method and practice between Club Europe and the earlier Club Zurich, these two Clubs must be considered as being part of a single, complex and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement.[924]

(632) **WDI** admits that the crisis period should *not* be regarded as an interruption of the cartel break, as activities and contacts continued among the Italian producers, the Spanish producers and the (former) Club Zurich members[925]. It claims, however, that such continuation of activities would only have concerned the other participants but not itself as it publicly distanced itself from the Zurich Club at the meeting of 09.01.1996, in which it said that it did '*not see any sense for the Club at this moment*'[926]. WDI admits that this is the only explicit proof of its alleged public distancing from the cartel and that it continued to participate in meetings during the crisis period after this statement[927]. However, it claims that it continued to behave autonomously in the Zurich Club crisis period failing any consensus among the members and that these meetings were merely 'preparatory', without any exchange of sensitive data and without the stage of an agreement or concerted practice being reached.

(633) It should first be noted that WDI's statement that it did not see any sense for the Club at that moment cannot be considered public distancing from the cartel. This statement was made in the context of a general malaise which all participants shared at the meeting of 09.01.1996 when they concurred that the Zurich Club was in crisis and that the crisis had to be overcome. Rather than leaving the meeting immediately after its statement, WDI continued to participate in detailed discussions on a modified quota allocation, including for WDI, later on at the same meeting. Further, WDI

923 Case T-279/02, Degussa v. Commission, 5.04.06, paragraph 129.
924 (…)
925 (…)
926 (…)
927 (…)

admits that also thereafter, it continued to regularly take part in crisis meetings and later on in Club Europe. Other cartel participants also did not perceive WDI as having left the cartel after the meeting of 09.01.1996 (…).

(634) Further, the meetings during the crisis period in which WDI participated clearly had an anti-competitive object as they were specifically intended to maintain a quota system by all means in order to protect the parties against falling prices (see paragraph (174)). Also price discussions were never interrupted[928]. WDI has thus not put forward any evidence that it clearly and openly distanced itself from the activities of the cartel since 09.01.1996[929] nor that it adopted a fully autonomous and unilateral strategy on the market.

(635) The **Tycsa companies** admit that from Club Europe onwards, the pan-European, Iberian and Italian agreements were interlinked and that they could be qualified as a single, complex and continuous infringement[930]. They contest, however, that *during the Zurich Club phase*, these three constituent parts of the cartel constituted a single, complex and continuous infringement. They in particular contest the common objective of the three Clubs. According to the Tycsa companies, Club España had its own objectives, which were the sharing of the Spanish market, and later on the Portuguese market between Spanish and later Portuguese producers through allocation of traditional clients. They claim that there were not any price agreements as the prices in Spain were the lowest in Western Europe. Similarly, they claim that the main objective of Club Italia was price fixing in order to have high prices in Italy, including a series of agreements which fixed minimum prices and supplements, and which reflected the price of raw materials and that this contrasts with the fixing of a '**basic price**' as in Club Zurich, Club Europe and Club España.

(636) Tycsa participated in all three levels of the cartel; in the pan-European arrangement, Club España and Club Italia. As already explained in section 9.3.1, the Zurich Club, Club España and Club Italia were interconnected by the common objective to stabilize the market to avoid price competition. In all three Clubs this was done by the same mechanisms: quota sharing, customer allocation, price fixing and monitoring and compensation schemes. The three Clubs moreover had an overlapping territory (Spain and Italy being part of the geographical scope of Club Zurich[931] and Club Italia also concerning quotas for exports to other areas of Club Zurich).

(637) In particular regarding Club España, the Commission moreover has evidence on detailed discussions, when Tycsa and Emesa joined the Zurich Club in 1992, between these two Spanish undertakings and the other Zurich Club participants, on their quotas for exports to Zurich Club countries as

928 (…)

929 Case T-62/02 *Union Pigments* v *Commission* [2005] ECR II-5057, paragraph 94; also see Case T-303/02 *Westfalen Gassen Nederland* v *Commission*, [2006] ECR II-4567, paragraphs 138-139; Case T-329/01 *Archer Daniels Midland v Commission*, [2006] ECR II-3255, paragraph 247.

930 (…)

931 (…)

well as on the quota of the other Zurich Club participants in Spain (see section 9.1.1.3). It is inconceivable that Emesa and Tycsa would have negotiated and agreed on these quotas without taking into account their simultaneous quota discussions in Club España. Moreover, in these negotiations in the Zurich Club, Emesa conditioned its agreement to the quota allocation to its full exclusivity in Portugal, a country which was strictly speaking not part of the geographical scope of the Zurich Club but was of Club España (see end of recital (148)). The Commission also notes that contrary to what the Tycsa companies allege, in Club España there were also detailed discussions and agreements on prices and payment conditions (including on surcharges, discounts etc.) both regarding Spain and Portugal and on the prices prevailing in Zurich Club countries such as France, Italy and Germany (see for example meeting of 8.11.1993, see also recital (491), footnote 761 and Annex 4). Also in the Zurich Club, prices were discussed and fixed, including for Spain, in the presence of Tycsa and Emesa (see recital (145) and Annex 2). It is therefore clear that Club España and Club Zurich were intrinsically linked as of the time when Emesa and Tycsa joined the Zurich Club[932].

(638) Regarding in particular Club Italia, the Commission notes that this Club inspired the Zurich Club participants in setting up their Club (see recital (137)) and that Redaelli participated in the Zurich Club from its start, so that it could help shaping it. In Club Zurich, all Italian producers were allocated a common quota for their exports into Club Zurich territory. Therefore, they always prepared the Zurich Club quota discussions first in their own Club Italia before joining in the Zurich Club discussions (directly or through Redaelli). This continued to be the case until the end of 1995 when the Italian producers could no longer agree with the other Zurich Club producers and concluded their own December 1995 quota agreement, which was the culmination of a long discussion within Club Italia and Club Zurich producers on the (revised) quotas for the Italian producers into Zurich Club territory and of the other Zurich Club producers into Italy. During the Zurich Club crisis phase Italian producers also continued to negotiate and agree on quotas with several Zurich Club participants, culminating in the conclusion of the Southern Agreement in October 1996. Tycsa was involved in all these discussions and agreements (see sections 9.1, 9.2.1, 9.2.2 and 9.2.3).

(639) It is therefore clear that the pan-European arrangements, Club Italia and Club España were from the outset intertwined and complementary to each other and that they formed a single, complex and continuous infringement (see section 12.2.2).

(640) Finally, a few undertakings[933] contest for the entire cartel period that the **pan-European and Italian arrangements** are **two parts of one single and continuous infringement**. In particular Redaelli[934] refers to the conflicting interests between the pan-European and the Italian arrangements. It explains that the break-up of the Zurich Club was caused by the

[932] (…)
[933] (…)
[934] (…)

negotiations on an Italian quota in Europe and on a quota for the pan-European producers in Italy that followed the disequilibrium on the PS market in the middle of the 1990's. (…) . Redaelli claims that after the break-up of the Zurich Club until the beginning of Club Europe, the European PS market was highly competitive and no multilateral meetings were held between the pan-European producers. It adds that the Southern agreement was an attempt of the pan-European producers to enter the Italian agreement and that the Italian producers in this context had discussions on imports and exports on foreign markets. Redaelli, however, claims that a 'Northern agreement' should have followed, but that no negotiations were started because shortly after the Southern agreement, the Club Europe agreement was concluded, which did not involve the Italian producers and which had a different 'reference area'. The Southern Agreement would therefore not prove that negotiations between Italian and pan-European producers continued during the Zurich Club crisis phase, but would have to be considered a separate arrangement. Redaelli finally holds that the coexistence of two different agreements, Club Europe and Club Italia, generated tensions due to the increased pressure of the Italian producers on the EEA market. This would explain the expansion discussions of September 2000. It finally adds that it did not participate in Club Europe and that therefore it cannot be considered to have agreed with the arrangements in that Club.[935] According to Redaelli and SLM[936], the Commission should therefore have distinguished three different infringements: the Zurich Club, Club Europe and Club Italia.

(641) The Commission refers to sections 9.1.1.4, 9.3 and 12.2.2 and to recitals (636), (637) and (638) above, in which it is sufficiently established that the pan-European and Italian arrangements formed one single and continuous infringement. At least during the Zurich phase and the pan-European expansion phase, Redaelli moreover played an important role at both levels of the cartel. The Commission further notes that conflicts and rivalries are natural in a cartel of a long duration and that the Italian and the other pan-European producers have shown many efforts to overcome these conflicts together.

(642) Indeed, first, the Italian producers, through Redaelli, participated in the last Zurich Club meeting of 09.01.1996, where it was underlined that a common solution on a quota system had to be found. They also participated, again through Redaelli, in one of the Zurich Club crisis meetings (on 1.03.1996), in which a solution for the crisis was sought (see section 9.1.2). Moreover,(…) . The fact that, according Redaelli, no additional Northern agreement was concluded because of the start of Club Europe in the meantime, only confirms that the Southern arrangement served as bridge between the Zurich Club and Club Europe at a time when it was difficult to agree within the Zurich Club forum. During the Club Europe phase, the pan-European and Italian producers moreover continued to discuss and negotiate

935 (…)
936 (…)

bilaterally and multilaterally on quotas, prices and clients and that several Club Europe participants also regularly participated in Club Italia (see sections 9.2.1 and 9.3). (…) It is therefore sufficiently established that the pan-European arrangement and Club Italia formed one single and continuous infringement.

(643) Finally, SLM and Itas[937] claim that Tréfileurope's role as a link between the European and the Italian companies is not sufficiently established. The Commission notes, however, as set out in sections 9.1 and 9.3 and section 9.1.3.3, that since the start of the Zurich Club until the date of the inspections, the participants of both the pan-European and Italian arrangements closely co-operated with Tréfileurope, which fulfilled a decisive role in this co-operation. The Commission first recalls that Tréfileurope participated very actively in the pan-European arrangements, Club Italia and the Southern Agreement. Together with DWK and Tycsa, it was among the three pan-European producers that were most directly interested in the Club Italia discussions as they sold in Italy and their home/export markets corresponded with those of the Italian producers. Besides directly negotiating with the Italian producers and debriefing them about the issues discussed in the pan-European arrangements, Tréfileurope could moreover at all times inform the other pan-European producers, bilaterally or during the Club meetings, of all issues discussed within Club Italia which could be of interest to them. Its role of link between the pan-European and Italian arrangements was furthermore enhanced during the 'Club Europe' phase when Tréfileurope (Italia) was designated co-ordinator for Italy in Club Europe and fulfilled de facto a similar role towards the pan-European producers in Club Italia. For example, in the meeting of 05-06.06.2002 it was established that all communications with the Italian producers should take place via Mr. (…) (Tréfileurope Italia) (see recital (305)). As a co-ordinator for Italy, it regularly debriefed the members of Club Italia in much detail amongst others on the principles of the new Club Europe and, similarly, the Club Europe participants were also debriefed and continued to discuss the relevant developments (in particular on prices) discussed and/or agreed in Club Italia. (…)

12.2.2.4. Individual awareness of participation in a larger scheme

(644) Several parties[938] contest that they were aware of the different levels of the single, complex and continuous infringement and hold that they should therefore not be held liable for the entire cartel.

(645) The Commission repeats that 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 or been

937 (…)
938 (…)

aware of them and was prepared to take the risk[939]. It is therefore not necessary to demonstrate that an undertaking involved in a single and complex infringement had direct knowledge of the offending conduct of the other participants in the context of the same infringement if it is established that it could have reasonably foreseen it and that it was prepared to take the risk (see section 12.2.2.1).

(646) In this case, the awareness of the majority of the undertakings of the fact that they were part of a larger cartel with several levels and their readiness to take the risk of the offending conduct of the other participants can be established on the basis of a number of strong indicia related to the close connection between the pan-European and national/regional arrangements, the overlapping participation of certain producers in all or some of the Clubs and the existing reporting lines between the producers (see section 9.3).

(647) This is in particular so for **DWK, Tycsa, Emesa, Tréfileurope/Tréfileurope Italia**[940] and **Redaelli**, which participated simultaneously in several Clubs (see sections 9.3.2 and 14). Also **WDI** and **Nedri** were among the founding members of the Zurich Club, which was inspired from Club Italia. Redaelli moreover presented itself in the Zurich Club as the representative of the other Italian producers and continuously debriefed the other Zurich Club participants on the discussions and agreements in Club Italia[941]. Also during the Club Europe phase, WDI and Nedri continued to be debriefed on the discussions and agreements in Club Italia (see recitals (559)-(560)) and as of the expansion phase they participated in the efforts to integrate Club Italia and Club Europe (see sections 9.3 and 14). Therefore, DWK, Tycsa, Emesa, Tréfileurope, Redaelli, WDI and Nedri were aware or should have been aware that their cartel behaviour was part of a larger scheme, including Club Italia (and/or Club España).

(648) **ITC, Itas** and **CB** were clearly aware of the pan-European arrangements as they participated in Club Zurich and shared the objectives of this Club, including initially in its crisis period, they were regularly debriefed in Club Italia on the developments at European level and they were in particular debriefed in detail on the rules applicable in Club Europe at the meeting of 16.12.1997. Moreover, they had numerous anticompetitive contacts with participants of the pan-European arrangements throughout the duration of the cartel and finally, they participated in the pan-European expansion discussions (see sections 9.1, 9.3, 14 and Annexes 2, 3 and 4). CB moreover admits that it was aware of Club Europe as of 16.12.1997[942].

(649) As regards **SLM**, besides participating in Club Italia as of **10.02.1997** (see section 9.2.1.8 and in particular recital (474)), it also participated in the Club Europe's expansion discussions as of **11.09.2000** (see section 9.1.5 and recital (382))**.** SLM does not contest its presence in the meeting of 11.09.2000.

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939 See judgment of the Court of Justice in case C-49/92 *Anic Partecipazioni* mentioned above, at paragraph 83.

940 (…)

941 (…)

942 (…)

However, even before that date, SLM was or should have been aware that Club Italia, in which it participated, was part of a larger scheme with also a pan-European-level. First, the Commission has proof that SLM, at an early stage of its participation in Club Italia, met with companies that participated in the other Clubs, like DWK, Tréfileurope (that participated in the pan-European arrangement) and Tycsa (that participated in the pan-European arrangement and in Club España), and it discussed with them the conditions on the European market. For example, at a meeting between these companies on **15.04.1997**, prices in several European countries (France, Spain and Germany) and imports and exports were discussed (see recital (430)). Further, on **29.11.1999** (see recitals (245) and (439)), SLM had a meeting with Redaelli, (…) , Tréfileurope, Tycsa and DWK at which not only the prices applied in Spain and Portugal by two of the companies participating in Club España, i.e. Emesa and Fapricela were discussed, but also (…) , the biggest client in the Scandinavian market around whom the 'Scandinavian Club' was organised (see section 9.1.4). SLM also participated in a discussion on the situation and the problems inherent to the European market on **18.01.2000** (with Redaelli, ITC, Itas, AFT/Tréfileurope Italia, CB, Nedri, Tycsa and Tréfileurope). On **21.02.2000**, SLM met with Redaelli, ITC, Itas, Tréfileurope Italia, CB, Tréfileurope, DWK and Tycsa (the latter over the phone) and discussed amongst others volume in Spain and a price increase in Germany (see footnote 873). At a meeting on **13.03.2000** between SLM, Redaelli, ITC, Itas, CB, Tréfileurope Italia, DWK, Tycsa and Trame the situation in the Netherlands and Switzerland was discussed. On **15.05.2000**, in the presence of SLM, ITC, Itas, Tréfileurope Italia, CB, SLM, Trame and DWK, Tréfileurope stated that Club Europe and Club Italia were both in crisis. Finally, on **12.06.2000**, SLM attended a meeting with Redaelli, ITC, Itas, Tréfileurope Italia CB, Trame, Tycsa and DWK, at which it was mentioned that Club Europe is complaining about Tycsa (see (…) recital (463)).

(650) It is therefore sufficiently established that at least as of **29.11.1999** SLM was aware or should reasonably have been aware that while participating in Club Italia, it was part of a larger scheme with several levels.

(651) **Trame** in its reply to the SO did not raise any question regarding its awareness of other arrangements. In any event, the Commission has evidence that Trame was aware or should reasonably have been aware of the different levels of the cartel. For example at the meeting of **15.05.2000** in which Trame participated, Tréfileurope stated that Club Europe and Club Italia were both in crisis (see footnote 836). Also, on **12.06.2000**, Trame attended a meeting with Redaelli, ITC, Itas, Tréfileurope Italia, CB, SLM, Tycsa and DWK, at which it was mentioned that Club Europe was complaining about Tycsa, which was also a Club España member. The names of other Club España members such as Socitrel and Fapricela were also mentioned in this meeting (see footnote 872). Moreover, on **09.10.2000**, Trame attended a meeting at which the participants in Club Europe and in Club Italia started to look for a joint solution for the increasing exports by the Italian producers to Europe. In particular, at this meeting the European market was analysed and the percentages of interpenetration were discussed between the six producers (except Emesa) and the Italian producers (see recital (278)). Therefore, the

Commission concludes that at least as of **15.05.2000** Trame was aware or should reasonably have been aware that it was part of a larger pan-European scheme with several levels. In any case, Trame during the entire period of the infringement did not sell outside Italy[943], which is reflected in chapter IX.

(652) **(…)** [944], (…)Austria Draht should not be held liable as a direct participant in the Zurich Club or Club Europe (see section 14.5). There are, however, clear indications that Austria Draht was sporadically involved in anti-competitive discussions at pan-European level and therefore was aware of the pan-European level of the cartel as of an early stage.

(653) In 1995-1996, thus well before the date upheld by the Commission as the starting date of Austria Draht's participation in the infringement (15.04.1997), Austria Draht participated in meetings of the Zurich Club where amongst others the possible organisation of a new European quota arrangement was discussed[945]. Also, in the Club Italia meeting of 16.12.1997 it was noted that Austria Draht *'was not part of that Club [Europe] but wanted to be kept informed*'. In several other subsequent Club Italia meetings, which Mr.(...) , representative of Austria Draht, attended, participants were debriefed on the discussions and agreements in Club Europe (see section 9.3 and in particular recitals (558) *onwards*). (…) There are further several indications that during the pan-European expansion period (see recitals (316)-(342)), Austria Draht was involved in quota and customer allocation discussions regarding particular countries and was present through Mr (…) /(…) in at least six Club Europe expansion meetings[946] including at the meeting of 06.11.2001 at which Mr (…) was moreover indicated as possible country-co-ordinator for Italy together with Mr. (…) of Itas and Mr. (…) of CB.

(654) The Commission concludes that Austria Draht, while participating in Club Italia, was or should have been aware that the collusion in this Club was part of an overall plan to stabilize the PS market in order to avoid price decline, which Club Italia shared with the pan-European arrangements.

(655) **Fapricela**[947] **and Proderac**[948] claim that they would not have participated in any other meetings than in Club España nor in meetings at which non-Spanish and non-Portuguese companies were present, such as in the framework of ESIS or ATA[949]. Therefore, they could not have been aware of the broader pan-European discussions. Fapricela further argues that it would not have had any interest in knowing about the existence of '*parallel Clubs'* (original in Portuguese) because it was not selling outside the Iberian market[950]. Proderac finally argues that even if Tycsa was aware of the European arrangements, this does not mean that Proderac would also have been aware.

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(656) **Socitrel**[951] merely submits that it would not have participated in the *'anticompetitive movements*' (original in Portuguese) in Europe. The Commission has, however, evidence that **Socitrel** participated in discussions on the European market regarding quotas, clients and prices in 2 Club Europe meetings held on 28.02.2000 and on 05-06.02.2002 (…). Apart from the Club Europe core participants, Redaelli and ITC were also present in those meetings. In particular, in the meeting of **05-06.02.2002** Redaelli stated that it believed that the high price in Italy was due to the existing tariffs. Nedri informed the other participants that a similar system of a base price (including rebates) was also applied in the Netherlands. Further there were discussions on quotas and clients in Europe. It should also be noted that Socitrel never contested its awareness of the pan-European and the Italian arrangements.

(657) Socitrel was also present in a Club España meeting that took place in Madrid on **17.05.2001** (…) between the Portuguese and Spanish producers, including Fapricela and Proderac which Tréfileurope also attended. In this meeting the Iberian producers explained to Tréfileurope that their Iberian arrangement worked perfectly well (with cross-reference to Italy, regarding client lists, volume per client and total volume). This shows again the awareness of the Club España participants of Club Italia's working methods and that the Club España participants were also ensuring the flow of information on their Club to Club Europe.

(658) The Commission therefore concludes that Socitrel, in view of its participation in Club Espanã and in some pan-European meetings, at least as of **17.05.2001**[952] was aware or should reasonably have been aware that the collusion in Club España was part of a larger pan-European Scheme with several levels.

(659) Fapricela was present in the meeting in Madrid on **17.05.2001** (…).[953] In this respect, Fapricela claims that the evidence in the Commission's file is not sufficient to prove Fapricela's awareness of the other cartel arrangements. In particular, referring to a meeting of 06.07.2001 (it is probably intended to refer to the meeting of 17.05.2001), it claims that there is no clear reference to a comparison with Club Italia. The Commission however observes that the contemporaneous notes of this meeting read *'[t]he subject of this meeting for the Spanish and Portuguese producers was to explain to Tréfileurope that their Iberian agreement concerning prestressing steel worked perfectly well (as in Italy: client lists, volumes per client and total volumes).'*[954]

(660) The Commission concludes that Fapricela, while participating directly in Club Espanã, at least as of **17.05.2001** was aware or should reasonably have been aware that the collusion in Club España was part of a larger scheme. In any event, Fapricela during the entire period of the infringement did not sell outside Spain and Portugal[955]. This is reflected in section IX.

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(661) Proderac was also present in the same meeting as Socitrel and Fapricela on **17.05.2001** (…) The Commission therefore concludes that also Proderac, while participating in Club Espanã, at least as of **17.05.2001**[956] was also aware or should have been aware of the larger scheme that Club Espanã was part of. In any event, Proderac during the entire period of the infringement did not sell outside Spain[957] and this is duly taken into account in chapter IX.

(662) **Ovako** and **Rautaruukki**[958] claim that, since Fundia has not taken part in all aspects of the cartel, it was not or could have not been aware of the overall objective of the cartel. The Commission notes that Fundia was present at the pan-European meeting of 14/15.05.2001 at which there were discussions on the integration of the Italian producers into the pan-European arrangements. At least as of 14.05.2001, Fundia must therefore have been aware that the (…) co-ordination was part of a larger scheme. In any event, the Commission acknowledges the late stage of this (quite limited) awareness and that Fundia was only directly involved in the co-ordination of (…) and of some other big customers. This is taken into account in section IX (see in particular recitals (935) and (962)).

(663) **Galycas** did not raise any argument regarding its lack of awareness of the single and complex infringement. Galycas and Emesa belonged to the same economic entity and formed a single undertaking at the time of the infringement. This is reflected amongst others in the fact that competitors continuously perceived the behaviour of the two companies as co-ordinated within the group and their sales and prices were often discussed or quotas and clients allocated for Emesa/Galycas taken together or of 'Emesa Group', 'Aceralia' or 'Ensidesa' (see sections 2.1.3 and 14.2).

(664) Emesa participated continuously in the pan-European arrangement as of 30.11.1992 until the date of the inspections, including in the (…) co-ordination. In parallel, during the same period (i.e. from 15.12.1992 until the date of the inspections), Emesa participated in Club España (see section 9.2.2, recital (525) and (…)).

(665) Emesa's simultaneous participation in several Clubs shows that Emesa was aware that its cartel behaviour was part of a larger cartel scheme (see also recital (647)). Galycas, forming a single undertaking with Emesa, was therefore also aware or should have been aware that its cartel behaviour in Club España was part of a larger cartel scheme.

(666) Galycas' awareness of the entire cartel is moreover confirmed by the fact that Galycas attended the Zurich Club meeting of **15.11.1993** with Tréfileurope, DWK, Tycsa and Emesa at which discussions took place on prices applicable in the Scandinavian and Spanish markets (see recital (145)).

(667) Therefore, Galycas was aware or should reasonably have been aware that the collusion in Club España was part of a larger scheme at pan-European level, since the beginning of its participation in Club Espanã on **15.12.1992.**

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(668) The same reasoning applies to **Trefilerías Quijano**, which moreover has not argued its lack of awareness of other Clubs. Trefilerías Quijano and Tycsa belonged to the same economic entity and thus formed a single undertaking at the time of the infringement. This follows amongst others from the fact that Trefilerías Quijano was closely linked with the other Tycsa companies through overlapping personnel, unique management since the end of 2001 onwards, a common sole administrator in their respective boards and also the fact that it was perceived by competitors as belonging (together with Trenzas y Cables SL, Tycsa PSC and GSW) to one and the same entity (see sections 2.1.5 and 14.3).

(669) The Tycsa companies' overlapping presence in all three Clubs (see section 14.3) shows that this undertaking was aware that its cartel behaviour was part of a larger cartel scheme (see also recital (647)). Trefilerías Quijano, forming a single undertaking with these Tycsa companies was therefore aware or should have been aware that its cartel behaviour in Club España was part of a larger cartel scheme.

(670) Moreover, there is evidence that other cartel participants, even if not participating in Club España, would contact indifferently either Tycsa or Trefilerías Quijano in order to obtain the necessary data to prepare the pan-European cartel meetings. For instance, in preparation of the Club Europe meeting of 09.09.2002, Nedri sent an email to Trefilerías Quijano on 08.08.2002 asking amongst others for the Tycsa sales in the period of the second half of 2000 and of the first half of 2001 of 7 wire strand in the various countries (…). The email concerned reads *'after having collected this information we will make a complete chart which will be distributed to all the participants'*, thus showing that Trefilerías Quijano was associated to or at least aware of the pan-European arrangement.

(671) Therefore, Trefilerías Quijano was aware or should reasonably have been aware that the collusion in Club España was part of a large scheme at pan-European level, since the beginning of its participation in Club Espanã on **15.12.1992.** In any event, Trefilerías Quijano during the entire period of the infringement sold almost exclusively in Spain and Portugal [959]. This is taken into account in section IX.

(672) The Commission concludes that all addresses of this Decision, while participating in one or several levels of the cartel, knew or should have known that they participated in a complex scheme with different levels.

12.2.3. Restriction of competition

(673) Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which[960] directly or indirectly fix selling prices or any other trading conditions; share markets or sources of supply.

(674) These are the essential characteristics of the horizontal arrangements under consideration in the present case. Price being the main instrument of

[959] (…)

[960] The list is not exhaustive.

competition, the various collusive arrangements and mechanisms adopted by the producers were all ultimately aimed at inflating prices to their benefit or at least keeping a status quo of the prices and thus limiting the negative effects of price drops. By fixing quotas, the producers were prevented from competing for market share and gradually succeeded in increasing the market price or reducing the risk of price drops. Furthermore, on several occasions, the producers shared customers (by allocation or sometimes by non-aggression agreements or other special forms of client allocation) and regularly exchanged sensitive commercial information in order to monitor that the cartel was respected by everyone. This enabled them to adapt their commercial behaviour compared to a situation of free competition. Price fixing, allocation of quotas and customer allocation by their very nature restrict competition within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement.

(675) The cartel has to be considered as a whole and in the light of the overall circumstances. The principal aspects of the complex of arrangements and concerted practices considered in this case which can be characterised as restrictions of competition are (i) quota-fixing (via pan-European and/or national/regional arrangements); (ii) price-fixing; (iii) customer allocation; (iv) exchange of commercially sensitive information on customers, pricing and sales volumes; and (v) reporting and monitoring system (via country co-ordinators and regular meetings) and occasionally compensation to ensure the implementation of the restrictive agreements.

(676) This complex of agreements and concerted practices had the **object** of restricting competition within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement. They are described in detail insection IV. The parties involved in the infringement showed a consistent pattern of collusive contacts (through participation in frequent meetings and bilateral contacts) which were aimed at restricting competition and monitoring the implementation of the agreements, even if their regional focus and duration might have varied.

(677) It is settled case-law that for the purpose of application of Article 101(1) of the TFEU 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 proven[961].

(678) In the present case, however, there is evidence that the cartel decisions were (at least partly) **implemented** and that therefore actual anti-competitive **effects** of the cartel arrangements are likely to have taken place. In particular, in some instances and at least at the regular (mostly quarterly) meetings cartel participants exchanged information in order to check whether the agreed strategy was being respected (see for example Zurich Club recital (142); Zurich Club crisis, recitals (174)-(175); Club Europe,

[961] Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, recital 178.

sections 9.1.3.2 and 9.1.3.4 and in particular recitals (207) to (209); Club Italia, sections 9.2.1.1, 9.2.1.2, 9.2.1.4 to 9.2.1.6; and Club España, sections 9.2.2.1 to 9.2.2.4 (for example recitals (495), (505) and (509) to (522)); see also in particular sections 9.1.6, 9.2.1.7 and 9.2.2.5 on monitoring). Sometimes they complained about other participants' lack of compliance. Even if no retaliation system existed, compensations were made in the pan-European arrangement (during the Zurich Club see for example recital (143); in Club Europe see section (374); during the expansion phase in Club Europe, see for example recitals (312), (325), (331) and (367)); and in the regional arrangements (see for example section 9.2.1.7 for Club Italia and recitals (495), (497), (523) and section 9.2.2.5 for Club España). There were also particular co-ordination efforts for some larger customers in at least Club Europe (for example regarding (…) in section 9.1.4) and Club España (see for example recital (515)). These are also a form of implementation of the client allocations made. Furthermore, it has been established that the members of the cartel covered over 80% of the PS sales in the EEA and that they devoted considerable efforts to organising, following up and monitoring the implementation of the agreements of the cartel[962]. There is also concrete evidence that price arrangements in Club Italia were implemented (see section 9.2.1.5).

(679) Whilst the competition-restricting object of the arrangements is sufficient to support the conclusion that Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement apply, the likelihood of the competition-restricting effects of those arrangements has also been established and leads to the same conclusion.

(680) The fact that the participants occasionally may have deviated from the arrangements does not imply that they did not implement the cartel agreement. Indeed, as the General Court stated in *Cascades*: '*an undertaking which, despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit*'[963]. Moreover, renegotiations took place in order to ease frictions (see for example recital (611) referring to the different phases of re-negotiation). Further, it should be recalled that a cartel affects all market participants, i.e. all clients and also all companies that do not take part in a cartel, by way of a higher price level. Therefore, deviating from an agreement (at the expense of the other participants in a cartel) cannot be rewarded in assessing the participation in the cartel, as long as the agreement (to the detriment of the consumers) is still in place. The Commission considers that as long as a party does not clearly distance itself from the agreement, refrains from attending the illicit meetings and from exchanging sensitive data, it remains party to that agreement.

(681) By its very nature, the implementation of a cartel agreement of the type described above automatically leads to a significant distortion of competition, which is of exclusive benefit to producers participating in the

962 Case T-329/01 *Archer Daniels Midland v Commission* [2006] ECR II-3255, paragraphs 180-181.

963 T-308/94 *Cascades v Commission* [1998] ECR II-925, recital 230.

cartel and is highly detrimental to customers and, ultimately, to the general public.

12.2.4. Effect upon trade between EU Member States and between EEA Contracting Parties

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

(683) The application of Articles 101 TFEU and 53 of the EEA Agreement to a cartel is not, however, limited to the 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[964].

(684) The agreements between the PS competitors were liable to have an appreciable effect on trade between Member States and between EEA Contracting Parties.

(685) Indeed, as explained in section 5 on interstate trade the market for PS was characterised by a substantial volume of PS trade between Member States during the period of the infringement. There was also a considerable volume of PS trade between the EU and Norway, an EFTA country (see for example (…) at recital (230).

(686) In the present case, the cartel arrangements covered all PS trade throughout 15 Member States, with the exception of the UK, Ireland and Greece, and it included Norway, as an EFTA Contracting Party. Hence, with regard to PS, the existence of a price-fixing and market sharing mechanism and status quo agreements must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed in the EEA[965].

(687) The restriction of competition concerning Norway constitutes a violation of Article 53 of the EEA Agreement and the restriction of competition concerning the EU 12 (the reference area) violates Article 101 of the TFEU.

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964 See the judgment of the General Court in Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, at recital 304.

965 See the judgment of the Court of Justice in Joined Cases 209 to 215 and 218/*78 Van Landewyck and others v Commission* [1980] ECR 3125, at recital 170 and Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, at recital 64 published in OJ C 101, 27.4.2004 pages 81-96, in particular, paragraph 53, 64 and 65.

12.2.5. Non-application of Article 101(3) TFEU and Article 53(3) of the EEA Agreement

(688) The provisions of Article 101(1) of the TFEU and Article of 53(1) of the EEA-Agreement may be declared inapplicable pursuant to Article 101(3) and Article 53(3) respectively where an agreement or concerted practice 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) Restriction of competition being the sole object of the price-fixing and market sharing arrangements which are the subject of this Decision, there is no indication that the agreements and/or concerted practices between the PS suppliers entailed any efficiency benefits or otherwise promoted technical or economic progress. Hardcore cartels, like the one which is the subject of this Decision, are, by definition, the most detrimental restrictions of competition, as they benefit only the participating suppliers but not consumers.

(690) Accordingly, on the basis of the facts, there are no indications that suggest that the conditions of Article 101(3) of the TFEU or Article 53(3) of the EEA Agreement are fulfilled in this case. In addition the agreements in question were never notified to the Commission and, therefore, in accordance with Article 4 (1) of Regulation No 17, they cannot benefit from an exemption for the period prior to the entry into force of Regulation No 1/2003, on 1 May 2004.

VI. ADDRESSEES AND INDIVIDUAL DURATION OF LIABILITY

13. PRINCIPLES

(691) The subjects of EU 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 TFEU. The case law has confirmed that Article 101 of the TFEU is aimed at economic units which consist of a unitary organisation of personal, tangible and intangible elements which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision.[966]

[966] See Case T-11/89 *Shell International Chemical Company v Commission* [1992] ECR II-757, recital 311 and Case T-352 *Mo Och Domsjö v Commission* [1998] ECR II-1989, recital 87-96.

(692) Despite the fact that Article 101 of the TFEU 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 its infringement.[967] Measures enforcing EU competition rules must thus be addressed to a legal entity.

(693) It is accordingly necessary to define the undertaking that will be held accountable for the infringement of Article 101 of the TFEU by identifying one or more legal persons to represent the undertaking. According to case law, *'Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 EC and 82 EC if the companies concerned do not determine independently their own conduct on the market'*.[968] If a subsidiary does not determine its own conduct on the market independently, the company which directed its commercial policy forms a single economic entity with the subsidiary and may thus be held liable for an infringement on the grounds that it forms part of the same undertaking.

(694) Concerning the principle of personal liability, Article 101 of the TFEU is addressed to 'undertakings' which may comprise several legal entities. The principle of personal liability is not breached as long as different legal entities are held liable on the basis of their own behaviour and their conduct within the same undertaking. In the case of parent companies, liability is established on the basis of their exercise of effective control on the commercial policy of the subsidiaries which are materially implicated by the facts. According to established case-law, the Commission can presume that a wholly-owned (or almost wholly-owned) subsidiary essentially follows the instructions given to it by its parent company without needing to check whether the parent company has in fact exercised decisive influence.[969] However, the parent company can rebut this presumption by demonstrating that it exercised restraint and did not influence the market conduct of its subsidiary which '*decided independently on its own conduct on the market*

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967 Although an 'undertaking' within the meaning of Article 81 (now Article 101 TFEU) 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 or natural personality to be the addressee of the measure. Case T-305/94 PVC II [1999] ECR II-931, paragraph 978.

968 See Case T-203/01 *Michelin v Commission* [2003] ECR II-4371, recital 290.

969 Case 107/82 *AEG v Commission* [1983] ECR 3151, paragraph 50; Case C-310/93 P *BPB Industries & British Gypsum v Commission* [1995] ECR I-865, paragraph 11; Case T-354/94 *Stora Kopparbergs Bergslags v Commission* [1998] ECR II-2111, paragraph 80; Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/*94 LVM a.o. v Commission* (PVC II), [1999] ECR II-931, paragraphs 961 and 984; Case T-203/01 *Michelin v Commission*, [2003] ECR II-4371, paragraph recital 290; Joined Cases T-71, 74, 87 and 91/03 *Tokai Carbon a.o. v Commission* [2005] ECR II-10, paragraphs 59-60; Case T-325/01, *DaimlerChrysler v Commission* [2005] ECR-II 3319, paragraph 219; Case T-30/05 *Prym and Prym Consumer v Commission* [2007] ECR II-107*, Summ.pub., paragraph 146; Case T-112/05, *Akzo Nobel a.o. v Commission* [2007] ECR II-5049. See also Case C-97/08 *Akzo Nobel a.o. v Commission:* opinion of advocate general Kokott of 23.04.2009 and judgment of 10.09.2009, not yet reported; Case T-85/06 *General Quimica v Commission*, judgment of 18.12.2008, not yet reported.

rather than carrying out the instructions given to it by its parent company'.[970]

(695) In response to the SO and referring to case law[971], several addressees of the SO[972] argue that 100% ownership does not, on its own, create any presumption, but that additional elements are required. This is contradicted by the case law described in recital (694). Additional indicia can be used to corroborate the presumption of exercise of decisive influence but are not necessary. Consequently a 100% parent company is liable for the (infringing) behaviour of its subsidiary unless the presumption is rebutted by evidence that the subsidiary acts autonomously. To prove autonomy, more must be shown than merely independence in commercial policy in the narrow sense[973]. The same principles hold true, *mutatis mutandis*, for the purposes of the application of Article 53 of the EEA Agreement. Any such presumption does not conflict with fundamental principles of law (such as the principle that liability for fines must be based on personal responsibility and the presumption of innocence as enshrined in the European Convention on Human Rights).

(696) Concerning the principle of personal liability, Article 101 of the TFEU is addressed to 'undertakings' which may comprise several legal entities. Where an infringement of Article 101 of the TFEU is found to have been committed, it is necessary to identify the natural or legal person who was responsible for the operation of the undertaking at the time when the infringement was committed so that it can answer for it.

(697) The considerations set out in recital (694) relate to the existence of a single economic entity based on parent-subsidiary relations. A single economic entity can also be deemed to arise on the basis of contractual relations freely entered into by legal entities which have no ownership relationship. In *Suikerunie*, the Court held that, where an agent works for the benefit of its principal, the agent may in principle be treated as an auxiliary organ forming an integral part of the principal's undertaking that must carry

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970 Case T-91/03 *Tokai Carbon Co. Ltd and others v Commission* [2005] ECR II-10, recital 61. Case T-30/05 *Prym and Prym Consumer v Commission* [2007], II-107*, Summ.pub., recital 146-147.

971 In particular joined cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, *Bolloré and others v Commission* [2007] ECR II-947, Case T-325/01, *DaimlerChrysler v Commission* [2005] ECR-II 3319 and Case T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich and Others v Commission* [2006] ECR II-5169.

972 (…)

973 See also the opinion of the Advocate General in the Akzo Nobel case: the importance of the 'economic and legal organisational links' between parent and subsidiary must be emphasised. Even a company's mere membership of a group may influence its market conduct, in relation, for example, to the question of with whom that company should actively compete. See also Case C-97/08 *Akzo Nobel NV and others v Commission:* opinion of advocate general Kokott of 23.04.2009 and Case C-97/08P *Akzo Nobel v Commission,* judgment of 10.09.2009, not yet reported.

out his principal's instructions and thus, like a commercial employee, forms an economic unit within this undertaking[974].

(698) Finally, the exercise of decisive influence on the commercial policy of a subsidiary does not require day-to-day management of the subsidiary's operation. The subsidiary's management may well be entrusted with the subsidiary, but this does not rule out that the parent company imposes objectives and policies which affect the performance of the group and its coherence and to discipline any behaviour which may depart from those objectives and policies[975].

(699) When an undertaking that has committed an infringement of Article 101 of the TFEU 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.[976] If the undertaking which has acquired the assets carries on the violation of Article 101 of the TFEU, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets, each undertaking being responsible for the period of the infringement in which it participated through these assets in the cartel. However, if the legal person initially answerable for the infringement ceases to exist and loses its legal personality, being purely and simply absorbed by another legal entity, that latter entity must be held answerable for the whole period of the infringement and thus liable for the activity of the entity that was absorbed.[977] The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow it to evade liability.[978] Liability for a fine may thus pass to a successor where the corporate entity which committed the violation has ceased to exist in law.

(700) Different conclusions may, however, be reached when a business is transferred from one company to another, in cases where transferor and transferee are linked by economic links, that is to say, when they belong to the same undertaking. In such cases, liability for past behaviour of the

974 See also Joined Cases C-40/73 etc *SuikerUnie and Others v Commission* [1975] ECR 1663, paragraph 480, most recently confirmed in T-66/99 *Minoan Lines SA v Commission* [2003] ECR II, 5515, paragraph 125.

975 See judgment of 12 December 2007 in case T-112/05, *Akzo Nobel and Others v. Commission* [2007], ECR II-5049, paragraph 83.

976 Case T-6/89 *Enichem Anic v Commission (Polypropylene)* [1991] ECR II-1623; Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, par. 47-49.

977 See Case C-279/98 P *Cascades v Commission* [2000] ECR I-9693, par. 78 and 79: *'It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertaking ... Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as its subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it'*, and also Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich and Others v Commission* [2006] ECR II-5169, paragraphs 319-336.

978 See General Court in Case T-305/94 PVC II [1999] ECR II-931, paragraph 953. This point was confirmed by the Court of Justice in Joined Cases C-238/99 P etc., [2002] ECR I-8375.

transferor may transfer to the transferee, notwithstanding the fact that the transferor remains in existence[979].

14. APPLICATION TO THIS CASE

14.1. ArcelorMittal Wire France SA, ArcelorMittal Fontaine SA, ArcelorMittal Verderio Srl and ArcelorMittal

(701) As described in sections 9.1, 9.2.1 and 9.2.3, Tréfileurope SA (now **ArcelorMittal Wire France SA**), directly participated in the cartel from 01.01.1984 until 19.09.2002 and in particular in the pan-European arrangements, Club Italia and the Southern Agreement.

(702) As described in section 9.1.1.1 (…) Tréfileurope participated directly in the Zurich Club from 1984 (mostly via its employees Messrs. (…) , (…) ,(…). From 29.01.1993 until 01.09.1995, the sales of Tréfileurope went through the JV Tréfileurope Sales Sàrl. in which each of ArcelorMittal France SA (at the time called Usinor Sacilor SA), Arbed SA and Saarstahl AG had a one third stake (see recital (12)).

(703) As set out in recital (12), from 29.01.1993 until at least 31.07.1993, the JV co-ordinated de facto the PS sales on behalf of the Usinor Sacilor group only. Thereafter, from 01.08.1993 until 01.09.1995, the JV de facto co-ordinated the sales of both the Usinor Sacilor and the Saarstahl groups (Arbed not having any PS activity at the time).

(704) By outsourcing the commercialisation of their PS interests to the JV (without transferring their respective production facilities), Tréfileurope and Saarstahl (via its subsidiary DWK) were in effect using the JV as a vehicle to continue their long standing involvement in the cartel. The JV had no effect in practice on the operation of the cartel and, on the contrary, the parent companies continued to be directly involved in the anti-competitive arrangements as they had been already before their JV. The Commission draws this conclusion from the following elements:

(705) **(a)** separate quotas were attributed in the Zurich Club to DWK, Fontainunion and Sainte Colombe (the French factory of Tréfileurope), and not to the JV as such (see for example recitals (149)-(151)); **(b)** the parent companies Tréfileurope and TrefilARBED/DWK continued to directly participate in the cartel during the JV period from 01.08.1993 until 01.09.1995 (see recital (12) and footnote 20); **(c)** On the presence list of the ESIS meetings, Mr. (….) identified himself as representative of 'TEDK', 'TrefilARBED (Drahtwerk Köln)' and 'TrefilEUROPE Drahtwerk Köln', respectively[980] (i.e. all references to denominations of (predecessors of) DWK (see recital (57)), whereas Messrs. (…) and (…) were present at these meetings as representatives of 'Fontainunion' or 'Tréfileurope'; **(d)** contemporaneous evidence shows that the JV as such is never mentioned

[979] See judgment in Joined Cases C-204/00 P (and others), *Aalborg Portland a.o. v Commission* [2004] ECR I, 267, paragraphs 354-360. See also case T-43/02 *Jungbunzlauer AG v Commission*, [2006] II-3435, par. 132-133.

[980] (…)

and that DWK and Tréfileurope never present themselves in the cartel meetings as representatives of the JV (for example (…) only mention 'Tréfileurope/Fontainunion/Bekaert (represented by (…)).see for example Club España meeting of 08.11.1993 in which reference is made to 'Tréfileurope/Fontainunion' (Annex 4) and of 15.11.1993 in which reference is made to 'Tréfileurope/Bekaert', (Annex 2). There was also a fax sent by Mr. (…) (with letter heading 'TréfilEUROPE Drahtwerk Köln GmbH') to Mr. (…) (CB) on 15.03.1995 inviting CB to attend a Club Zurich meeting on 27.03.1995 together with, amongst others, himself and Tréfileurope (…).

(706) From 01.09.1995 onwards, when Usinor Sacilor SA stepped out of the JV and Tréfileurope resumed its sales activities (see recital (13)), Tréfileurope (via Messrs.(…)) continued participating in the meetings and discussing the future operational mode for the pan-European arrangements. Later Tréfileurope became a permanent member of Club Europe. Its presence at the cartel meetings is substantiated by numerous direct contemporaneous documentary evidence and by corroborative statements of several companies, (…) (see sections 9.1 and 9.2 and(…)). Tréfileurope also participated in the co-ordination towards the (…) (see section 9.1.4), in Club Italia (see section 9.2.1 and recital (460) in particular) and in the Southern Agreement of 1996 (see section 9.2.3). Tréfileurope was moreover acting as country co-ordinator for France, Belgium and Luxembourg and *de facto* also for Italy through its regular participation in the Club Italia meetings and through its subsidiary, Tréfileurope Italia, which was designated country co-ordinator for Italy in Club Europe (see recital (195)). The Commission therefore concludes that ArcelorMittal Wire France SA directly participated in the infringement from 01.01.1984 until 19.09.2002.

(707) **ArcelorMittal Fontaine SA** (previously **Fontainunion SA**) was founded on 20.12.1984 (see recital (9)) and is considered to have participated from that date onwards in the Zurich Club (see recital (139)). It continued participating in the pan-European arrangement during the crisis period and Club Europe, as confirmed by numerous contemporaneous evidence and corroborative statements of several companies. Since the acquisition of Fontainunion by Tréfileurope on 30.05.1989 (see recital (9)) Fontainunion's PS commercial interests were advocated and represented in the cartel meetings by its new mother company. For example Mr.(…) , employee of Fontainunion (and also of Tréfileurope and Tréfileurope Italia, see footnote 10), attended the meeting on 08.10.1996. There was also a frequent presence at the cartel meetings later on in Club Europe of Messrs (…) , (…) , (…) , (…) all employees of Fontainunion at certain points in time (…).. The Commission therefore concludes that ArcelorMittal Fontaine SA directly participated in the infringement from 20.12.1984 until 19.09.2002.

(708) **ArcelorMittal Verderio Srl** (previously **Tréfileurope Italia Srl**) exists since 15.03.1988 (see recital (10)). Since **03.04.1995** it participated directly in the cartel, in particular in Club Italia, which is confirmed by contemporaneous documentary evidence (see section 9.2.1 and in particular recitals (443) and (460)…). Moreover it was designated co-ordinator for

Italy in Club Europe (see recital (195)). It did not interrupt its participation until the inspections by the Commission. Therefore the Commission concludes that ArcelorMittal Verderio Srl directly participated in the infringement from 03.04.1995 until 19.09.2002.

(709) Moreover, as described in recitals (8) and (9), Tréfileurope was the 100% parent company of Fontainunion since 30.05.1989. Fontainunion had close ties with Tréfileurope, their staff overlapped (see footnote 10), and they presented themselves and were conceived by competitors as a unitary actor. Therefore, Tréfileurope (now ArcelorMittal Wire France SA) exercised decisive influence on Fontainunion SA (now ArcelorMittal Fontaine SA) from 30.05.1989 until 19.09.2002 and ArcelorMittal Wire France SA should therefore be held jointly and severally liable for the behaviour of this company during this period.

(710) Similarly, Tréfileurope Italia was directly and indirectly entirely owned by Tréfileurope since 28.02.1994, as described in recitals (8) and (10). Tréfileurope Italia also had close ties with Tréfileurope, their staff overlapped (see footnote 10), and they presented themselves and were conceived by competitors as a unitary actor. In this respect, it can for example be noted that Tréfileurope Italia was appointed country co-ordinator for Italy in Club Europe. Therefore, the Commission concludes that Tréfileurope (now ArcelorMittal Wire France SA) exercised decisive influence on Tréfileurope Italia (now ArcelorMittal Verderio Srl) and ArcelorMittal Wire France SA should therefore be held jointly and severally liable for the behaviour of this company from 03.04.1995 until 19.09.2002.

(711) Since the acquisition of the Unimétal Group as of 01.07.1999, **ArcelorMittal** (formerly Mittal Steel Company NV, formerly Ispat International NV) became directly and indirectly the 100% parent company of Tréfileurope via Mittal Steel Gandrange SA (formerly Ispat Unimétal SA, formerly Unimétal SA) (see recitals (14), (16) and (17)). ArcelorMittal is therefore presumed to have exercised decisive influence on Tréfileurope from 01.07.1999 to 19.09.2002.

(712) The ArcelorMittal companies[981] (…). (…) contest, however, that ArcelorMittal exercised decisive influence on Tréfileurope before the first quarter of 2001. They claim that when Unimétal SA was acquired and until the first quarter of 2001, Tréfileurope was considered a business to be divested. To preserve the value of the entity and a functioning and independent management team and because it did not have the relevant experience ArcelorMittal did not involve itself in the business of Tréfileurope until the first quarter of 2001. Until then, while formally being able to exercise decisive influence, ArcelorMittal always avoided doing so. The ArcelorMittal companies further sum up a number of indications that they claim show that Tréfileurope remained autonomous at administrative, commercial and marketing level and at the level of the board members[982].

981 (…)
982 (…)

(713) A parent company may exercise decisive influence on its subsidiaries 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[983].

(714) ArcelorMittal (…)[984]. It also (…) Tréfileurope had quarterly reporting obligations on budgetary and financial information. Furthermore, the ArcelorMittal companies (…) the staff overlap between the management levels of Tréfileurope and ArcelorMittal. In the period from 01.07.1997 until the end of the infringement, not less than six persons were simultaneously member of the Board of Tréfileurope and had an executive management position in Ispat International NV, now ArcelorMittal (and/or in its subsidiary Ispat Europe BV). Among these six persons, Mr. (…) was CEO of Tréfileurope from 01.07.1999 until 25.05.2004 (from 04.09.2000 until 05.05.2004 CEO '*Président Directeur Général*') and CEO of Ispat International NV from 1997 onwards. Similarly, Mr. (…) was Chairman and then ordinary member of the Board of Tréfileurope from 01.07.1999 to 20.04.2001 and simultaneously Chief Operating Officer of Ispat International NV until 19.02.2001 (see recitals (18) to (20)).

(715) The ArcelorMittal companies claim that the functions of the CEO (*'Président Directeur Général'*) were modified to become solely that of a non-executive chairman of the board, whereby the Board delegated substantially all its executive powers to an executive officer (*'Directeur Général'),* to which the sales and marketing operations of each business division reported directly. They claim that although the French law until 2001 did not permit formal separation of the position of Chairman of the Board and that of the executive officer (*'Directeur Général'),* this separation of functions was already a reality at Tréfileurope, where Messrs (…) ArcelorMittal's nominees who acted as CEO (*'PDG'*) from 01.07.1999 until 19.09.2002, were not actively involved in the decision making process of Tréfileurope.

(716) The legal and economic links between ArcelorMittal and Tréfileurope were undeniably such as to allow for a single commercial policy within the group,(…). Also from 1.07.1999 until the first quarter of 2001, ArcelorMittal had an interest in a good commercial operation of Tréfileurope in view (…). It followed up on the financial and budgetary results of Tréfileurope through the quarterly reporting and through its 100% ownership and the overlap in management position, it had all legal possibilities to intervene in that commercial operation should this be considered necessary, even if executive powers were allegedly delegated. In those circumstances, a conscious decision not to intervene in the commercial operation and management of Tréfileurope cannot disqualify ArcelorMittal from its liability for the behaviour of Tréfileurope.

(717) Therefore, the presumption that ArcelorMittal exercised decisive influence on the behaviour of ArcelorMittal Wire France SA and its

983 (…)

984 (…)

subsidiaries, ArcelorMittal Fontaine SA and ArcelorMittal Verderio Srl in the period from 01.07.1999 until 19.09.2002 is not rebutted.

(718) For these reasons, this Decision should be addressed to ArcelorMittal Wire France SA (previously Tréfileurope SA), ArcelorMittal Fontaine SA (previously Fontainunion SA), ArcelorMittal Verderio Srl (previously Tréfileurope Italia Srl) and ArcelorMittal (previously Mittal Steel Company NV). ArcelorMittal Wire France SA should be held liable for its participation in the cartel from 01.01.1984 until 19.09.2002, ArcelorMittal Fontaine SA from 20.12.1984 until 19.09.2002 and ArcelorMittal Verderio Srl from 03.04.1995 until 19.09.2002.

(719) ArcelorMittal Wire France SA should be held jointly and severally liable with ArcelorMittal Fontaine SA and ArcelorMittal Verderio Srl from 30.05.1989 and 03.04.1995 onwards respectively, until 19.09.2002. ArcelorMittal should be held jointly and severally liable with ArcelorMittal Wire France SA, ArcelorMittal Fontaine SA and ArcelorMittal Verderio Srl for the period 01.07.1999 until 19.09.2002.

14.2. Emesa-Trefilería S.A., Industrias Galycas S.A., ArcelorMittal España S.A. and ArcelorMittal

(720) As described in sections 9.1 and 9.2.2, **Emesa-Trefilería S.A.** directly participated in the cartel, and in particular in the pan-European arrangements and in Club España, from 30.11.1992 until 19.09.2002.

(721) Emesa started participating in the pan-European arrangement (Zurich phase) at the latest as of the end of November 1992, i.e. 30.11.1992 (see section 9.1.1.3). Throughout the entire duration of the cartel, it participated directly in the meetings, mostly through its employee, Mr. (...) , or if it was not present, it contributed to the negotiations by providing information (…) including during the crisis period 1996 – May 1997 (see section 9.1.2) and in Club Europe (see section 9.1.3, including in the (…) co-ordination and during the expansion period, see sections 9.1.4 and 9.1.5).

(722) Similarly, during most of the period referred to in recital (721) (i.e. from 15.12.1992 until the date of the inspections), Emesa participated in Club España (see section 9.2.2, recital (525) (…)).

(723) Emesa should therefore be held liable for its direct participation in the cartel from 30.11.1992 until 19.09.2002.

(724) Similarly to Emesa, **Industrias Galycas S.A.** participated in Club España as from 15.12.1992 until the date of the inspections (see section 9.2.2, recital (525) (…)).Galycas should therefore be held liable for its direct participation in Club España from 15.12.1992 until 19.09.2002.

(725) **ArcelorMittal España S.A.** (previously Arcelor España SA, previously Aceralia Corporación Siderúrgica SA, previously CSI Planos SA) was directly and indirectly the sole ultimate owner of Emesa and Galycas (see recitals (22) to (25) and (30)) from 23.07.1997 until 19.09.2002. In addition, Aceralia as successor of CSI Corporación Siderurgica SA assumes liability for the acts of Emesa and Galycas for the period 02.04.1995 until

23.07.1997 when CSI Corporación Siderurgica was the sole shareholder of Emesa and Galycas.

(726) The ArcelorMittal companies[985] argue that ArcelorMittal España S.A. acquired (indirect) ownership over Emesa and Galycas only on 02.09.1997 and assumed the role of parent with decisive influence only as of 10.12.1997. They conclude that ArcelorMittal España should only be held liable for the cartel behaviour of Emesa and Galycas as of 10.12.1997.

(727) The ArcelorMittal companies thereby disregard that on 02.09.1997, CSI Corporación Siderúrgica SA, which was since 02.04.1995 the 100% owner of Emesa and Galycas through CSI Productos Largos SA, dissolved into CSI Planos SA, which had changed its name into Aceralia (now ArcelorMittal España S.A., see recitals (23)-(24)). Therefore, ArcelorMittal España S.A., is liable as legal successor of CSI Corporación Siderúrgica SA, which was the 100% owner of Emesa and Galycas as of 02.04.1995 and hence can be presumed to have exercised decisive influence on Emesa and Galycas as of that date.

(728) To rebut this presumption, the ArcelorMittal companies claim that from 02.04.1995 to 02.09.1997, CSI Corporación Siderúrgica SA was only an intermediate company between the state-owned AIE/SEPI[986] and Emesa/Galycas. It would have been AIE/SEPI's duty, as ultimate parent, to direct the commercial operation and strategy of Emesa and Galycas. CSI Corporación Siderúrgica SA was not involved in the management or control of Emesa and Galycas because its principal activity was to sell the long and flat products businesses separately to different potential buyers. Only on 10.12.1997, when the negotiations failed and the Spanish state sold the majority of the shares in Aceralia (previously CSI Corporación Siderúrgica SA, now ArcelorMittal España S.A.) to private investors, Aceralia became the ultimate controlling entity of Emesa and Galycas.

(729) These arguments are not convincing. It is established that Aceralia owned 100% of Emesa and Galycas from 02.04.1995 to 02.09.1997. The fact that CSI Corporación Siderúrgica SA/Aceralia itself had a (state-owned) parent company and that it was trying to sell several businesses, among which Emesa and Galycas, during a period of over two years and – at least for the latter two companies - without success, does not exclude its exercise of decisive influence on Emesa and Galycas, in particular in view of the following additional elements, which reinforce the presumption of decisive influence: (i) Aceralia directly appointed Emesa's and Galycas' management (see recital (27)), (ii) Emesa and Galycas had reporting duties to Aceralia concerning financial issues (see recital (27)) and (iii) competitors continuously perceived the behaviour of the two companies as co-ordinated within the group and their sales and prices were often discussed or quotas and clients allocated for Emesa/Galycas taken together or of 'Emesa Group', 'Aceralia' or 'Ensidesa' (see also recital (485)).

985 (…)

986 (…)

(730) Also after 10.12.1997, date as of which the ArcelorMittal companies (…) the exercise of decisive influence of Aceralia over Emesa and Galycas, documentary evidence shows that quotas for Aceralia/Emesa and Galycas were mentioned together (see for example recitals (499), (502) and (504)) and Emesa sometimes represented Galycas at meetings with competitors, who assumed that Emesa was authorised to speak and decide on behalf of Galycas (see for example Club España meeting of 01.06.2000, attended by Emesa but not by Galycas, at which sales/quotas were discussed for amongst others Aceralia, i.e. Emesa and Galycas, Annex 4).

(731) ArcelorMittal España S.A. should therefore be held liable for the conduct of Emesa and Galycas during the period 02.04.1995 until 19.09.2002.

(732) Arcelor SA (now ArcelorMittal) owned more than 95% of Aceralia (now ArcelorMittal España) from 18.02.2002 onwards (see recitals (17) and (25)) and is therefore also presumed to have exercised decisive influence on Emesa and Galycas, through Aceralia, from 18.02.2002 until 19.09.2002. This is not seriously contested by the ArcelorMittal companies.[987]

(733) Consequently, the Decision should be addressed to Emesa-Trefilería S.A., Industrias Galycas S.A., ArcelorMittal España S.A. and ArcelorMittal. Emesa-Trefilería S.A. should be held liable for the period from 30.11.1992 until 19.09.2002 and Industrias Galycas S.A. for the period from 15.12.1992 until 19.09.2002. ArcelorMittal España S.A. should be held jointly and severally liable with Emesa-Trefilería S.A. and Industrias Galycas S.A. for the period from 02.04.1995 until 19.09.2002 and ArcelorMittal should be held jointly and severally liable with ArcelorMittal España S.A., Emesa-Trefilería S.A. and Industrias Galycas S.A. for the period from 18.02.2002 until 19.09.2002.

14.3. Moreda-Riviere Trefilerías S.A., Trenzas y Cables de Acero P.S.C., SL, Trefilerías Quijano S.A. and Global Steel Wire S.A.

(734) As described in sections 9.1 and 9.2, **Moreda-Riviere Trefilerías S.A.** (previously Trenzas y Cables SL, see recitals (34)) and **Trenzas y Cables de Acero P.S.C., SL** directly participated in all levels of the cartel and in particular in the pan-European arrangements, including the (…) co-ordination, Club España, Club Italia and the Southern Agreement from 10.06.1993 and 26.03.1998, respectively, until 19 September 2002. **Trefilerías Quijano S.A.** directly participated in the cartel and in particular in Club España from 15.12.1992 until 19.09.2002. The participation in the cartel of these companies is substantiated by ample direct and contemporaneous documentary evidence (See section 9 (…)) and by corroborative statements of several companies.

Moreda-Riviere Trefilerías S.A.

(735) **Moreda-Riviere Trefilerías S.A.** (or Trenzas y Cables SL at the time of the infringement, hereafter MRT), joined the pan-European cartel meetings (Zurich phase, see section 9.1.1.3) as of its incorporation on

[987] (…)

10.06.1993, being represented at the meetings by its employees Messrs. (…) and (…) (….) and as of 01.04.1994 also by Mr. (…) (see recital (39)). Trenzas y Cables SL continued to participate in the meetings during the crisis period (1996 – May 1997) through its employee Mr.(…) , and to discuss the future operational mode for the pan-European arrangement. Although there are no contemporaneous documents pointing at the names of the Tycsa representatives involved in the Southern Agreement (see section 9.2.3), the legal entity which was indisputably involved is also considered to be Trenzas y Cables SL in view of the participation of its staff in the other cartel meetings during the same period (1996- May 1997).

(736) Trenzas y Cables SL then became a permanent member in Club Europe (see section 9.1.3.1(…)) and also participated in the co-ordination towards the Nordic client (…) (recital (232)). It regularly attended the cartel meetings mainly through its employees Messrs. (…) (who attended meetings from May 1997-2002), (…) (who attended mainly meetings in 1997 and 1999), (…) (in 1999-2002) and (…) (mainly in 2000-2002) until the date of the inspections, i.e. 19.09.2002. Trenzas y Cables SL was also involved in Club España as of 10.06.1993 until 19.09.2002 (see recitals (525), (526) and (…)) and attended meetings through its employees, Messrs. (…) (at least 1993-2001), (…) (1993-1995), (…) (1994-1997), (…) (1998-2000) and (…) (2000-2002). Finally, Trenzas y Cables SL also participated in Club Italia at least as of 17.12.1996 until 19.09.2002 (see recital (462) (…)) through its employees Messrs. (…) (1996-2001), (…) (1997-1999), (…) (1999-2000), (…) (2000-2002), (…) (2000-2001) and Ms. (…) (2002). In view of the continued participation of its staff in the cartel meetings as described above, Trenzas y Cables SL remained a direct participant in the cartel even after Tycsa PSC stopped subcontracting its sales to it as of March 2002 (see recital (34)).MRT (formerly Trenzas y Cables SL) should therefore be held liable for its direct participation in the cartel from 10.06.1993 until 19.09.2002.

(737) MRT argues that it cannot be held liable for any part of the infringement as it was only incorporated after the end of the infringement, i.e. on 27.12.2002. MRT disregards that on 27.12.2002 Trenzas y Cables SL, the company involved in the infringement, was actually dissolved into a company called Trefilerías Moreda SA, which changed its denomination into MRT (see recital (37)). Therefore, MRT is the legal successor of Trenzas y Cables SL and should therefore be held liable for the cartel behaviour of Trenzas y Cables SL.

(738) MRT further argues that it can also not be held liable as economic successor of Trenzas y Cables SL as the cartel infringement by Trenzas y Cables SL had ceased before MRT was created in December 2002[988]. Rather, Tycsa PSC should be considered as economic successor of Trenzas y Cables SL and thus the only company liable for the infringement[989]. MRT claimed that any other decision would conflict with fundamental principles

[988] (…)
[989] (…)

of law such as the presumption of innocence (the principle *'in dubio pro reo')*, the principle of non-discrimination and proportionality, the principle that liability for fines must be based on personal responsibility[990] and the principle of legal certainty. The Commission considers that the alleged lack of economic succession is irrelevant as, in any case, liability for the acts of the dissolved Trenzas y Cables SL are imputed to MRT as the sole legal successor of that company[991]. Even if the Commission had been able to address the decision to the economic successor (which is alleged to be Tycsa PSC), this does not liberate the company which actually committed the infringement of its own liability.[992]

(739) MRT (or Trenzas y Cables SL at the time) was directly owned 100% by Global Steel Wire SA (previously Trenzas y Cables de Acero SA) from 10.06.1993 until the end of 2002 (See above recitals (34) and (37)). MRT confirms in its reply to the SO that GSW controlled 100% of the shares of Trenzas y Cables SL until 27.12.2002, but argues that GSW's full ownership only started as of the date of its incorporation (i.e. 19.10.1996). Before that date, not GSW but Trenzas y Cables de Acero SA was the 100% owner of Trenzas y Cables SL. The Commission observes that MRT disregards that on 22.06.1996 (and not on 19.10.1996, as it erroneously states, see recital (35)) Trenzas y Cables de Acero SA, after a merger with another company, dissolved into a newly created company, which subsequently changed its denomination into GSW. Hence, GSW is regarded as the legal successor of Trenzas y Cables de Acero SA for the period 10.06.1993-22.06.1996, and should therefore also for that period be considered the 100% owner of MRT (or Trenzas y Cables SL at the time).

Trenzas y Cables de Acero P.S.C., SL

(740) **Trenzas y Cables de Acero P.S.C., SL** (Tycsa PSC) was founded on 26.03.1998 as a separate production entity. From that date it was active in the PS business and participated in Club Europe, Club España and Club Italia (see sections 9.1, 9.1.5 and 9.2) through the following employees: in Club Europe through Messrs. (…) (1998-2002), (…) (2002) and (…) (2002); In Club Italia through Messrs. (…) (1998-2001), (…) (2002), (…) (2002) and (…) (2002); and in Club España through Messrs. (…) (1998-2001), (…) (2001-2002) and (…) (2002). Therefore it should be held liable for its direct participation (in Club España, Club Italia and Club Europe) from 26.03.1998 until 19.09.2002.

(741) Tycsa PSC was owned 100% by Trenzas y Cables SL from 26.03.1998 until the end of 2002 and decisive influence by the latter (and thus by MRT as its legal successor, see recital (736)) on the former can therefore be presumed. This presumption is strengthened by the fact that Trenzas y

990 See T-340/03 *France Telecom v Commission* [2007] ECR II-107, paragraph 66 and T-62/02 *Union Pigments* [2005] ECR II-5057, paragraph 119, principle according to which penalties must be specific to the offender

991 Joined Cases 40/73 etc *Suiker Unie v Commission* [1975] ECR-1663; and Joined Cases 29/83 and 30/83 *CRAM and Rheinzink v Commission* [1984] ECR-1679, paragraph 7-9

992 Judgment of 31 March 2009, *ArcelorMittal Luxembourg SA and others* v *Commission*, T-405/06, paragraphs 112-113.

Cables SL was responsible for the sale of the PS produced by Tycsa PSC between March 1998 and end February 2002 (see recitals (34) and (736)). It also continued attending meetings with competitors even after Tycsa PSC's incorporation.

Trefilerías Quijano S.A.

(742) As described in section 14.3, **Trefilerías Quijano S.A.** also directly participated in the cartel and in particular in Club España from 15.12.1992 at the latest until 19.09.2002.

(743) Trefilerías Quijano S.A. was mostly represented at the meetings by Messrs (…) , (…) , (…) , (…) , (…) and (…) ((…)). It was involved in quota allocation (often common with the other Tycsa companies), customer allocation, price-fixing and in the exchange of confidential information (in particular regarding its sales) throughout the duration of Club España (see section 9.2.2.(…)).

(744) Trefilerías Quijano S.A. claims that the Commission's file does not sufficiently prove Trefilerías Quijano S.A.'s involvement in Club España[993]. It contests amongst others that Mr (…) represented Trefilerías Quijano S.A. at the cartel meetings, as the latter was a mere external consultant without any representation power. It further argues that since most meetings took place at the ATA premises, its presence at these meetings was justified[994]. Finally, the Commission's file failed to specify in some meetings the exact identity of the person representing Trefilerías Quijano S.A. and failed to demonstrate that information on certain tables came from Trefilerías Quijano[995].

(745) Trefilerías Quijano S.A.'s involvement in anti-competitive discussions is, however, sufficiently demonstrated: First, the claim that Mr (…) was an independent consultant is irrelevant given that he was working uninterruptedly for Trefilerías Quijano from 1990 until at least the end of 2002, regularly billing his services (…) and effectively representing Trefilerías Quijano at the cartel meetings[996]. In any event, as already stated in recital (743), Trefilerías Quijano S.A. attended the anti-competitive meetings not only through Mr (…)but also regularly via its own employees[997]. Second, even if the ATA meetings are not considered anti-competitive (see recital (97)), the cartel meetings took place in the margin of ATA and their anti-competitive nature follows from the content of the meetings (discussions and agreements on quotas, prices and customers)[998]. Finally, the Commission does not need to prove for each and every meeting which exact person was representing Trefilerías Quijano S.A. as the body of evidence relied upon by the Commission, and in particular the abundant

993 (…)
994 (…)
995 (…)
996 (…)
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998 (…)

contemporaneous notes[999], show that Trefilerías Quijano S.A. was regularly and uninterruptedly involved in the cartel: Trefilerías Quijano S.A. not only regularly participated in the meetings, but its case was also regularly discussed during its absence and it was allocated quota and customers throughout the period of the infringement until the date of the inspections (see (…) recital (746) below)[1000]. It should also be noted that in the periods 1998-2002, 2000-2002 and 2001-2002, Messrs (…),(…) and (…) , respectively, were employed both by Tycsa and Trefilerías Quijano S.A. Trefilerías Quijano S.A. should thus be considered present at the meetings at which these persons are mentioned in these periods even if the participants' list (…) only mentions Tycsa.

(746) As described in recitals (41) and (42), Trefilerías Quijano S.A. was part of the GSW group from 15.12.1992 until 19.09.2002. From at least 16.06.1997 to 25.12.2000, GSW held 100% of the shares in Trefilerías Quijano S.A., was the latter's sole and common administrator and in several ways influenced the latter's policy. However, even as of 15.12.1992 GSW/Tycsa/Celsa and Trefilerías Quijano S.A. were perceived as one undertaking by competitors and common quotas were attributed to this undertaking. The exercise of decisive influence by GSW on Trefilerías Quijano S.A. can therefore be presumed from 15.12.1992 to 25.12.2000. Thereafter, and until the end of the infringement, GSW was a minority owner (of 45%) of Trefilerías Quijano S.A. However, in view of the specific circumstances of the case, and in particular the fact that Trefilerías Quijano S.A. was closely linked with the other Tycsa companies (MRT and Tycsa PSC) through overlapping personnel, unique management as of the end of 2001, a common sole administrator in their respective boards (i.e. GSW as 'administrator único'), the division of production and sale of wire/strand between Trefilerías Quijano and Tycsa PSC (see recital (42)) and the fact that it was perceived by competitors as belonging (together with MRT, Tycsa PSC and GSW) to one and the same entity (see also (i)-(v) of recital (752)), GSW is considered also to have exercised decisive influence on Trefilerías Quijano S.A. during the period 25.12.2000 until 19.09.2002.

(747) Trefilerías Quijano S.A. confirms that it was owned by GSW but only as of 19.10.1996 – the date on which it claims that GSW was founded – when it was 90,61% owned and as of 16.06.1997 until 25.12.2000 when it was 100% owned. As explained in recital (35), GSW is a legal successor of Trenzas y Cables de Acero SA. GSW should therefore be held liable also for the period prior to 19.10.1996, i.e. as of 15.12.1992.

Global Steel Wire SA

(748) The companies Trenzas y Cables SL (now MRT), Trenzas y Cables de Acero P.S.C, SL. and Trefilerías Quijano S.A. form one economic entity and are thus to be regarded as a single undertaking. They also acted as such because they were under joint management of **Global Steel Wire SA** (or Trenzas y Cables de Acero SA at that time, hereafter GSW). Given that

[999] (…)
[1000] (…)

GSW (indirectly) held the (quasi) entirety of shares in these subsidiaries (see with regard to Trefilerías Quijano S.A. recital (744)) during the relevant period, it is presumed that GSW in fact exercised decisive influence over its subsidiaries' commercial policy[1001]. In any event, even if a presumption of exercise of control were not to apply for certain periods, there are sufficient additional indicia of exercise of decisive influence (see recital (752)) to hold GSW liable for the infringement also for those periods.

(749) GSW contests that it is the successor of Trenzas y Cables de Acero SA, with the consequence that the direct participation of the latter company during the first period of the infringement is not be attributable to GSW. However, the Commission considers that the alleged specificities of the creation of GSW cannot negate the existence of continuation, since, as explained by GSW itself, Trenzas y Cables de Acero SA and Nueva Montaña Quijano Siderúrgica SL merged into a company which changed its denomination into GSW (see recital (35)). The fact that GSW was publicly quoted in the stock exchange or generally that its shares may have been sold to different persons is irrelevant to decide whether it is the successor of Trenzas y Cables de Acero SA.[1002] It is equally irrelevant that, as a result of the merger of Trenzas y Cables de Acero SA with Nueva Montaña Quijano Siderúrgica SL, GSW ended up developing its own industrial activity, whereas Trenzas y Cables de Acero SA had allegedly become a purely holding company after the creation of Trenzas y Cables SL in June 1993[1003].

(750) The Tycsa companies further contest that they form a single economic entity and thus are the same undertaking within the meaning of Article 101 of the TFEU. In this context, they argue that 100% ownership does not, on its own, create any presumption of exercise of decisive influence and that any such presumption conflicts with fundamental principles of law.

(751) The Commission recalls that it is settled case law (see recitals (694) and (695)) that the exercise of decisive influence can be presumed in case of

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1001 Case C-294/98 *Metsä-Serla Oyj and others v Commission* [2000] ECR I-10065, paragraph 27; Joined Cases C-189/02 P etc. *Dansk Rørindustri v Commission* [2005] ECR I-5425, paragraph 117 *'the anti-competitive conduct of an undertaking can be attributed to another undertaking where it has not decided independently upon its own conduct on the market but carried out, in all material respects, the instructions given to it by that other undertaking, having regard in particular to the economic and legal links between them'.*

1002 (…)

1003 The Court of Justice has held, when an entity that has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor that infringed the competition rules, when, from an economic point of view, the two are identical (see, to that effect, Joined Cases 29/83 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraph 9, and 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 59). In accordance with that case-law, the legal forms of the entity that committed the infringement and the entity that succeeded it are irrelevant. Imposing a penalty for the infringement on the successor can therefore not be excluded simply because, as in the main proceedings, the successor has a different legal status and is operated differently from the entity that it succeeded (Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraph 43).

100% ownership, without having to prove additional indicia, and that such a presumption does not conflict with general principles of law.

(752) In any case, in the case of the Tycsa companies additional elements are available, for example: **(i)** at least one cartel meeting between Trenzas y Cables SL and a competitor (Nedri) took place in Barcelona at the '*premises of Global Steel Wire, mother company of Tycsa'*. This was noted down as such by Nedri and shows the implication of GSW in the infringing behaviour of its subsidiaries and thus its exercise of direct influence on them (meeting of 26.06.2002,(…))[1004]. On top of this, **(ii)** there was a strong overlap of personnel, including in management positions. Reference is made, in particular, to the involvement of Mr (…) in the 4 undertakings (Trenzas y Cables SL, Trenzas y Cables de Acero, P.S.C., S.L., Trefilerías Quijano S.A. and GSW) (see recital (39)) **(iii)** Global Steel Wire S.A. was, in nearly the same periods, the sole administrator *('administrador único')* of Trenzas y Cables SL (from at least 1997 until the end of 2002), of Trenzas y Cables de Acero, P.S.C., S.L. (from 26.03.1998 until the end of 2002) and of Trefilerías Quijano S.A. (from at least 1997 until the end of 2002) (see recital (42)). Moreover, **(iv)** competitors perceived the Tycsa companies as one and the same entity describing them together (often as 'GSW/Celsa' or 'Tycsa/Celsa', Tycsa/Trefilerías Quijano, 'Tycsa group', 'Celsa' or 'GSW')[1005]. Also, the allocation of *a single quota*, negotiated for Trefilerías Quijano S.A., Trenzas y Cables de Acero, P.S.C., SL. and Trenzas y Cables SL together, is a clear signal that the commercial interests of the undertaking and its subsidiaries were identical. **(v)** Finally, there are indications in the Commission's file that in the period between 10.06.1993 and 01.11.2001, GSW continued to be directly involved in the cartel meetings, as a quota was from time to time allocated directly to it[1006] and GSW is mentioned as participant[1007]. It participated in the cartel meetings especially through Mr (…) who was appointed Director General for GSW as of 01.11.2001.

(753) The Tycsa companies argue that such additional factors are not (sufficiently) identified and thus maintain that GSW has never exercised decisive influence on its subsidiaries. This would follow from the fact that it was a mere (financial) holding company since its 'incorporation' on 19.10.1996, holding only participations, making it thus impossible to deal with the daily management and commercial decisions of the individual companies in which it held the participations. The presumption of liability cannot be rebutted by a general statement that the parent company acted as a holding company and was as such far removed from the daily life of its

1004 (…)
1005 (…)
1006 (…)
1007 (…) of that time, at least until MRT (or at the time called Trenzas y Cables SL) was founded on 10.06.1993.

subsidiaries[1008]. This is moreover contradicted by the elements described in recital (752), such as GSW's occasional direct involvement in the cartel.

(754) GSW further observes that the SO fails to provide proof of any *concrete* instructions of GSW to its subsidiaries. In this context, it holds that, despite the fact that it was the sole administrator in the board of its subsidiaries, it could not influence their market conduct, as in fact, under Spanish law it was common practice not to grant executive powers to a sole administrator ('*administrador único'*), if it does not have the same activity as its subsidiary[1009]. To support this, GSW submits proof that it had in practice delegated some of its powers as sole administrator to the respective directors-general of its subsidiaries[1010]. While admitting that it supervised the commercial management of its subsidiaries, GSW claims that such supervision occurred only *a posteriori* in conformity with Spanish commercial law[1011], and that it never intervened in financial or other equally important decisions concerning the subsidiaries[1012]. Finally, GSW submits in its defence statements from directors-general of its subsidiaries that GSW never exercised decisive influence on them and that they therefore at all times acted autonomously[1013].

(755) The Commission first notes that the Tycsa companies have largely limited themselves to making assertions about their autonomy, and providing a series of written statements by some of their managers[1014] without however, in their replies to the SO providing any contemporaneous pieces of evidence which would support the statements made by the managers (or former managers) of the companies. All the statements admit that GSW supervised the commercial management of its subsidiaries, even if *a posteriori*. Case law does not require that parent companies define themselves the business plans, the budgets or recruitment policies of the subsidiaries in order to be held liable. Indeed, normally business plans and budgets are prepared by subsidiaries in most company groups and only supervised *ex post*. Moreover, as to the alleged common practice not to grant executive powers to a sole administrator if it does not have the same activity as its subsidiary, the Commission notes that GSW in fact produced wire rod for the Tycsa companies (see recital (42)) and that they thus had the same commercial interests. Also, while citing examples of its delegated powers as a sole administrator to the directors-general of its subsidiaries, GSW has not

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1008 See, to that effect, Case T-69/04 *Schunk and Schunk Kohlenstoff-Technik v Commission* [2008] ECR II-2567, paragraph 70, and Case T-174/05 *Elf Aquitaine v Commission*, judgment of 30.09.2009, not yet reported, paragraph 160.

1009 GSW, Reply to SO, Annex 4 (legal opinion of a Spanish professor): According to that legal opinion, it would be common practice in Spain *not* to grant executive powers to an 'administrator único', if it does not have the same activity as its subsidiary.

1010 GSW, Reply to SO, page 34 and Annex 6: notarial certificate containing the powers-of-attorney. GSW cites as examples of powers it delegated to the respective directors-general: representations of the company in court or outside, signature of contracts with third persons, the realisation of credits operations etc.

1011 (…)

1012 (…)

1013 (…)

1014 (…)

brought any evidence that *de facto* it did not have any executive powers[1015]. More fundamentally, even if Mr (…) declares in its written statement not to have given instructions to the subsidiaries, such instructions are unnecessary to hold GSW liable, as Mr (…) (and therefore, GSW), having participated before in many cartel meetings, was fully aware of the existence of the cartel, and did nothing to prevent its continuation.[1016]

(756) As to the fact that minutes of the Board of GSW do not contain decisions about the commercial strategy of subsidiaries, it suffices to say that such minutes limit themselves to report what is legally necessary to report, and are not supposed to contain a full description of the discussion.[1017]

(757) In any event, GSW, as a 100% shareholder, had nominated itself as a common and sole administrator in the board of its subsidiaries, and as such was or could have been involved in their commercial strategy. Whether in practice it intervened or not in financial or other equally important decisions concerning the subsidiaries, or had sub-delegated its powers to a lower level is irrelevant, as it could at all times decide to intervene and revoke such delegated powers. The exercise of decisive influence on the commercial policy of a subsidiary does moreover not require day-to-day management of the subsidiary's operation (see recital (698)). What matters is that GSW was able to direct the conduct of its subsidiaries to such an extent that they must be regarded together as one economic entity.

(758) Also, GSW[1018] claims that the overlap of personnel was not strong: Mr (…) stopped working at Trefilerías Quijano S.A. and then started with Tycsa PSC, Messrs (…) and (…) were simultaneously in Trefilerías Quijano and Tycsa PSC but only for one year (out of ten years of infringement); Mr.(…) , though being formally sole administrator via GSW, never represented Trefilerías Quijano at any meeting nor intervened in its commercial policy. The Commission refers to recitals (38)-(39) where it is sufficiently established that Mr (…)was simultaneously active in Trefilerías Quijano and Tycsa PSC and where other important personnel switches and the role of Mr. (…) are described. The fact that Mr. (…) via GSW did not de facto intervene in Trefilerías Quijano's commercial policy is thereby irrelevant, in view also of the fact that Mr (…) knew that Trefilerias Quijano S.A. was involved in the cartel and did not prevent such participation when he was manager of GSW.

(759) Further, GSW argues that the fact that it had consolidated accounts with its subsidiaries only stems from an obligation under Spanish commercial law and does not alter the fact that the subsidiaries behaved at all times autonomously. The Commission observes that these subsidiaries' profits and losses, even if marginal as compared to the total result of the GSW/Celsa group, are reflected in the profit and loss of that whole group

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1016 (…)
1017 (…)
1018 (…)

and that it is established that GSW could and did exercise influence on its subsidiaries. It even directly participated in some of the cartel meetings.

(760) As regards the competitors' perception that the Tycsa companies formed a unitary group, the Tycsa companies find that this cannot be a sufficient proof of participation of GSW itself in the infringement and that moreover such finding are only based on (…) . The Commission notes that it is not simply relying on subjective perceptions. First, there is contemporaneous evidence in the Commission's file in which the Tycsa companies were considered as a unity (for example with nearly systematic allocation of a common quota). The fact that a single quota was, for many years, allocated to the Tycsa companies is not simply a "perception", but a fact which reveals that the Tycsa companies acted as one in the market, since it is not plausible that quotas are allocated to several companies if no central decision making structure exists as regards those companies, which would ensure that such quota is respected. Second, GSW's occasional direct participation in the cartel meeting through Mr (…) (who in turn had participated in several meetings when he was employed by other companies within the group) is established by ample contemporaneous evidence and by references in cartel-related documents to 'GSW' (see recital (752) and in particular footnotes 1005 to1007). The fact that notes on the meetings use sometimes the name "GSW" or "Celsa" to refer to the quotas allocated to the Tycsa companies is not just a coincidence. It is an indication that the market considered that the companies were controlled by GSW or Celsa. Indeed, in the meeting of 06.09.1994, early in the development of the participation of the Tycsa companies, it was reported that Mr (…) had to talk Mr (…) , which clearly conveyed the impression to the other participants that Mr (…) had to talk to the owners of the company.[1019] As regards the evidentiary value of (…) , the Commission notes that these notebooks were drafted before the end of the infringement (*'in tempore non suspecto'*) and contain detailed and precise evidence on discussions with other participants rather than pure personal perceptions. These factors and also taking into account the other circumstances of this case (as developed above under (751)), support the presumption based on the 100% (or almost 100%) shareholdership and sufficiently establish GSW's exercise of decisive influence on its subsidiaries.

(761) Therefore GSW should be held jointly and severally liable with Trenzas y Cables SL, Trenzas y Cables de Acero, P.S.C., S.L. and Trefilerías Quijano S.A..

Conclusion

(762) For these reasons, the Decision should be addressed to Moreda-Riviere Trefilerías S.A. (as successor of Trenzas y Cables SL), Trenzas y Cables de Acero P.S.C., SL, Trefilerías Quijano S.A. and Global Steel Wire S.A. Moreda-Riviere Trefilerías S.A. (as successor of Trenzas y Cables SL) should be held liable for its direct participation in the infringement for the period 10.06.1993-19.09.2002, Trenzas y Cables de Acero P.S.C., SL for the

[1019] (…)

period 26.03.1998-19.09.2002 and Trefilerías Quijano S.A. for the period 15.12.1992-19.09.2002. Global Steel Wire SA should be held jointly and severally liable with Moreda-Riviere Trefilerías S.A. for the period 10.06.1993-19.09.2002, with Trenzas y Cables de Acero P.S.C., SL for the period 26.03.1998-19.09.2002 and with Trefilerías Quijano S.A. for the period 15.12.1992-19.09.2002. Moreda-Riviere Trefilerías S.A. should be held jointly and severally liable with Trenzas y Cables de Acero P.S.C., SL for the period 26.03.1998-19.09.2002.

14.4. SOCITREL - Sociedade Industrial de Trefilaria, S.A. and Previdente - Sociedade de Controle de Participações Financeiras, S.A.

(763) As described in section 9.2.2, **SOCITREL - Sociedade Industrial de Trefilaria, S.A.** (hereafter **Socitrel**) directly participated in the cartel and in particular in Club España from 07.04.1994 (see recital (494)) until 19.09.2002 (see section 9.2.2, recital (525)(…)).

(764) Socitrel[1020] admits that it participated in the cartel meetings as described in the SO. It only submitted arguments regarding the exclusion or reduction of the fine, which are dealt with in section IX.

(765) Between 1994 and the end of 1998, **Companhia Previdente - Sociedade de Controle de Participações Financeiras, S.A.** directly owned 21,2% of Socitrel and 70% of Preside, SGPS which, in turn and throughout the same period, owned 70,6% of Socitrel[1021]. Between 30.12.1998 and the end of 2002, Companhia Previdente owned 100% of Preside, SGPS and through Preside, SGPS, it directly and indirectly owned 91,8 % to 93,7 % of Socitrel. As explained in recital (32), at least between the beginning of 1994 and the end of 2002, there were numerous and strong personnel links between Socitrel and Companhia Previdente.

(766) Companhia Previdente[1022] claims that it should not be held jointly and severally liable with Socitrel because it did not have decisive influence on Socitrel's behaviour. First, it submits that the Commission did not present concrete facts from which Companhia Previdente's decisive influence on Socitrel could be deduced. Further, it argues that until 1999 - when Socitrel became its almost wholly-owned subsidiary - the presumption of decisive influence could not apply. The two companies were separate entities, with different activities and Socitrel was autonomous in its commercial activity and stategy. This was illustrated by the fact that after buying Socitrel, the latter's Executive Administration would not have been changed and would have remained totally independent. Also, Companhia Previdente limited itself to exercising its social rights and obligations, such as the approval of Socitrel's financial statements and deciding on the dividend and capital structure policy. Companhia Previdente finally argues that its Board members participated in Socitrel's Board with a non-executive function and that, according to the Portuguese company law, this participation in

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1021 (…)
1022 (…)

Socitrel's Board was personal and not in representation of the parent company.

(767) While the Commission considers that the presumption of exercise of decisive influence applies for the period between 30.12.1998 and the end of 2002, when Companhia Previdente owned 91,8 % to 93,7 % of Socitrel, in any event Companhia Previdente's arguments cannot be upheld in view of the numerous and strong personnel links existing between the two companies between at least the beginning of 1994 and the end of 2002, as described in recital (32). In particular, the Commission emphasises that not only Messrs.(…) , (…) and (…) were members of both companies' Board of Directors but they were also regularly and continuously attending the cartel meetings for Socitrel[1023]. Therefore, the Commission considers that Companhia Previdente exercised decisive influence on the conduct of the Socitrel undertaking for the entire duration of the latter's participation in the cartel (see recital (694)).

(768) Consequently, the Decision should be addressed to SOCITREL - Sociedade Industrial de Trefilaria, S.A. and Companhia Previdente - Sociedade de Controle de Participações Financeiras, S.A. SOCITREL - Sociedade Industrial de Trefilaria, S.A. should be held liable for its direct participation in the cartel in the period 07.04.1994 until 19.09.2002. Companhia Previdente -Sociedade de Controle de Participações Financeiras, S.A. should be held jointly and severally liable with SOCITREL - Sociedade Industrial de Trefilaria, SA for the same period.

14.5. voestalpine Austria Draht GmbH and voestalpine AG

voestalpine Austria Draht GmbH

(769) Voestalpine Austria Draht GmbH directly participated in the cartel and in particular in Club Italia (described in section 9.2.1) through its sales agent in Italy, the company (…) (which was represented by its (…)) from 15.04.1997 onwards until 19.09.2002 (see also recital (479) onwards (…)).

(770) Austria Draht admits that (…) was its agent in Italy[1024], but **contests that (…) represented it at the cartel meetings**. It submits in its defence a statement from Mr (…) himself (who denies that he represented Austria Draht at Club Italia meetings) as well as a statement from Tréfileurope Italia's agent, Mr (…) (who believes that Austria Draht was not a member of Club Italia and that at the meetings in which Mr (…) participated, Mr (…) did not participate in cartel agreements in the name of Austria Draht, which would also have been clear to the other participants). Austria Draht also observes that allegedly only 5 out of the over 60 Club Italia meetings (…) specify that Mr (…) acted on behalf of Austria Draht and that in the other meetings Mr (…) was reported as representing CB (without an express reference to also Austria Draht) or was referred to without specification as to the company he represented. Austria Draht concludes that this is

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contradictory to the introduction (…) of the SO which states that Mr (…) is to be seen as representing CB and Austria Draht in all meetings.

(771) Austria Draht's involvement in the anti-competitive discussions via its sales agent Mr (...) is, however, sufficiently demonstrated: First, the two statements submitted by Austria Draht are not credible: Mr (…) statement is given *post-factum*, merely prepared in the context of Austria Draht's reply to the SO, and Mr (…) statement only gives his personal opinion limited to meetings in which he participated himself. Both statements are moreover contradicted by the evidence[1025].

(772) Indeed, (…) ((…) see recital (479)) confirm that Austria Draht participated in the cartel meetings through its sales agent, Mr (…) . This is also clear from contemporaneous notes from (…) and corroborated by a considerable amount of contemporaneous evidence. As described in recital (479) and in footnote 747 in particular, Austria Draht's case was regularly discussed and it was allocated quotas and customers throughout the period of the infringement until the date of the inspections. Mr (…) was present in at least 14 meetings where Austria Draht's case was discussed, in another 16 meetings, Mr (…) was absent but Austria Draht's data were nevertheless discussed and, finally, in 9 meetings, Mr (…) was explicitly reported to participate for Austria Draht. The other cartel participants also clearly perceived Austria Draht as part of the cartel through Mr (…) [1026] and insisted on the necessity of Austria Draht's 'compliance' with the cartel[1027]. The fact that Mr (…) was also representing CB in some or several of the meetings listed in Annex 3 does not alter the evidence that he was (also) representing Austria Draht. It should be noted that in most of the meetings, CB itself attended with its own employees so that the role of Mr (…) as representative of CB can be considered of lesser importance than his role as representative of Austria Draht, which did not directly attend but left its entire commercial activity in Italy to Mr (…)[1028].

(773) Austria Draht further claims that it cannot be held liable for Mr (…) behaviour because there was **no economic entity** between Austria Draht and (…) / Mr (…) as the latter was an independent and non-exclusive sales agent, for which Austria Draht lacked any possibility of control[1029].

(774) It is clear from the agency contract between Austria Draht and Mr (…) /(…) and from statements from Austria Draht itself (see recital (482)) that Mr (…) was a genuine agent of Austria Draht. First, his financial risks were very limited. It was Austria Draht as a principal which contractually took the decision to accept or to reject the orders negotiated by the agent. Contracts were therefore only concluded directly between Austria Draht and the client. Second, the principal was solely responsible for all risks associated *inter alia* with non-delivery, defective delivery and customer insolvency. The

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1027 (…)
1028 (…)
1029 (…)

remuneration occurred on the basis of a fixed percentage by reference to the volume (per client) sold[1030]. Given that the agent did not bear financial or commercial risks, Mr (…) /(…) should be considered an auxiliary organ forming an integral part of Austria Draht's undertaking and thus like a commercial employee forms an economic unit with this undertaking[1031]. This is also entirely in line with the Guidelines on Vertical Restraints[1032]. Hence, Austria Draht should be held liable for Mr. (…) participation in the cartel meetings.

(775) The fact that Mr. (…) was also acting on behalf of another cartel participant, CB, and that the agency was therefore not exclusive does not alter this conclusion. Indeed, according to settled case law, if the agent has a '*very considerable amount of business for its own account, as an independent dealer, on the product market in question*', there is no such exclusivity and hence no economic unit with the principal[1033]. This is not the case here. Mr (…) was not active on his own behalf on the market in question, did therefore not conduct a considerable amount of business for his own account as an independent dealer and did not bear significant financial risks, but rather represented two competitors in the cartel meetings at the same time.

(776) In the Commission's view, the fact that two competitors used the same representative in the cartel meetings constitutes a co-ordination enhancing factor, facilitating the cartel behaviour, rather than discharging the principals from their responsibility. A different conclusion would allow companies participating in a cartel through an agent an easy route to escape liability simply by sharing their agent with another cartel participant. In any event, in this case one should also note that CB was mostly present itself at cartel meetings and that, therefore, Mr (…) / (…) generally acted as representative of Austria Draht.

(777) The Commission finally notes that the lack of control, awareness or (retroactive) approval of the cartel participation of its agent, which Austria Draht invokes[1034], cannot be valid arguments to escape liability. Austria Draht forms an economic unit with its agent (see also recitals (697) and (481)-(482)) and is therefore liable for the latter's cartel participation irrespective of Austria Draht's (lack of) awareness, control or approval thereof.[1035] If an undertaking decides to delegate its commercial activity in a particular country or market to a genuine agent, it is its obligation to put in place the necessary mechanisms to ensure its control.

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1031 See Joined Cases 40/73 etc *Suiker Unie v Commission* [1975] ECR 1663, paragraph 480.

1032 Commission notice of 13.10.2000, O.J. C 291/1, paragraphs 13-17.

1033 *Suiker Unie and Others* v *Commission*, cited above (footnote 1036), paragraph 544. See also section 13.

1034 (…)

1035 See Cases T-71/03, T-74/03, T-87/03, and T-91/03 *Tokai Carbon v Commission*, [2005] ECR II-10, paragraph 54. See also Case C-97/08 *Akzo Nobel NV and others v Commission:* opinion of advocate general Kokott of 23.04.2009 and judgment of 10.09.2009 in Case C-97/08P *Akzo Nobel v Commission*, not yet reported.

(778) Furthermore, even if there is no direct proof of instructions/debriefings on anti-competitive meetings between Austria Draht and Mr (...) , Austria Draht's behaviour was influenced by its agent's participation in the anti-competitive meetings. Indeed, Mr. (…)regularly attended the Club Italia cartel meetings where it provided amongst others sensitive commercial information on quotas, prices and customers of Austria Draht to competitors[1036] and received similar commercially sensitive information from its competitors and where he also agreed with these competitors on prices, client and quota allocation (see sections 9.2.1.4, 9.2.1.5 and 9.2.1.6). This information must have influenced Austria Draht's commercial operation in Italy (through Mr (…)). Moreover, it is clear from the agency contract and the internal reports submitted by Austria Draht, that Mr (…) kept Austria Draht regularly informed about the developments on the Italian market[1037], including as regards competitors and the sales and market relationships in Italy (see recitals (482) and (483)). It can therefore be expected that Mr (…) passed on at least the most relevant commercially sensitive information obtained during cartel meetings to Austria Draht.

(779) In conclusion, Mr (…) / (…) and Austria Draht should be regarded as a single economic entity and Austria Draht should be held liable for Mr (…) cartel participation.

(780) **Austria Draht furthermore generally contests its participation in the cartel meetings**. The evidence available in the Commission's file sufficiently shows that Austria Draht was involved in Club Italia on a continuous basis, without interruption, as described in recital (772) (see also sections 9.2.1.4, 9.2.1.5, 9.2.1.6 and recital (604)). Moreover, between September 1998 and summer 2002 Austria Draht was at several occasions explicitly reported as absent, implying that its presence had been expected by the other cartel participants[1038]. Also, at the meeting of 30.04.2002, the cartel participants threatened that Austria Draht would be 'kicked out' of the cartel if it failed to guarantee volume 'by Summer (2002)', clearly showing that Austria Draht was still participating in the cartel.

(781) Austria Draht further observes that most contemporaneous documents relating to quotas/prices/customers in Club Italia mention the core Italian players but not Austria Draht, and those which do, do not conclusively show Austria Draht's involvement. It further submits that references to its supply data in the documents in the Commission's file could have constituted mere estimations by the other parties, information on its past supplies, information released by clients or information derived from publicly (nationally) available information, in particular because market transparency was allegedly high and figures on 'Austria' could only concern itself as it was the only Austrian producer. Austria Draht finally observes that there is no proof in the file that Mr (…) ever controlled Austria Draht's figures.

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1037 (…)
1038 (…)

(782) Not all documents related to Club Italia show Austria Draht's participation in the meetings. This can be easily explained by the fact that Austria Draht was not a core member of that Club like Redaelli, ITC, CB and Itas (see above recital (415)) and therefore attended Club Italia meetings to a less regular extent that these core Club Italia participants. Still, Austria Draht's cartel participation was never interrupted between 15.04.1997 and 19.09.2002 (see recital (483) and Annex 3). Furthermore, Austria Draht's argument that the information exchanged was publicly available or were mere estimations is not credible given the detailed, confidential and recent nature of the sensitive commercial information on Austria Draht that was exchanged during the entire period of participation (for example volume allocation with indication of clear number of tons and calculation of the quota in percentage, concrete names of clients that Austria Draht would supply or refrain from supplying (see footnote 747 and recital (479)). Such information could thus have come only from Austria Draht directly or through its sales agent Mr (…) [1039]. Finally, the absence of controls by Mr (…) cannot be taken as being a significant, let alone decisive factor, to rebut Austria Draht's participation in the meetings in light of the evidence against Austria Draht and the fact that Austria Draht was not regarded as a core member of Club Italia so that controls by Mr. (…) may have been considered less relevant for it[1040].

(783) Austria Draht should therefore be held liable for its cartel activities, and in particular for its participation in Club Italia from 15.04.1997 until 19.09.2002.

voestalpine AG

(784) In the period from 15.04.1997 until 19.09.2002, **voestalpine AG** was the sole (in)direct owner of voestalpine Bahnsysteme GmbH (now voestalpine Bahnsysteme GmbH & Co. KG) and thus Austria Draht (see recital (45)). In addition, the Board of Directors of voestalpine AG is composed, amongst others, of representatives of its main subsidiaries ('*Divisionsleitgesellschaften*'), such as voestalpine Bahnsysteme GmbH. Also, Austria Draht has to report quarterly and monthly on its (general) financial figures to the supervisory board of voestalpine AG (see recital (45)). Therefore, the Commission concludes that voestalpine AG exercised decisive influence on Austria Draht and should be held liable for the latter's cartel participation.

(785) Voestalpine AG insists[1041] that the operational businesses falling under the *'Divisionsleitgesellschaften*', such as Austria Draht, acted independently from the voestalpine group. As such, neither voestalpine AG nor voestalpine Bahnsysteme GmbH & Co KG gave any instructions as regards the strategic or operative business of Austria Draht. Also, they hold that Austria Draht always acted autonomously and that it did not report its concrete PS figures to voestalpine AG but only its (general) financial data. Finally, they claim

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1040 (…)
1041 (…)

that the SO fails to show additional elements to the 100% shareholding, such as overlapping personnel.

(786) As explained above (see recital (694)), it is established case law, as recently confirmed by the General Court[1042], that the Commission can presume that parent companies exercise decisive influence on their wholly-owned subsidiary. In such a case it is for the undertaking concerned to rebut the presumption, by adducing evidence demonstrating that the subsidiary decided independently on its conduct on the market. Failure to provide sufficient evidence on the part of the undertaking concerned amounts to a confirmation of the presumption and provides a sufficient basis for the imputation of liability.

(787) With regard to the argument that Austria Draht would have acted autonomously, it is observed that the exercise of decisive influence on the commercial policy of a subsidiary does not require day-to-day management of the subsidiary's operation (see recital (698)). The subsidiary's management may well be entrusted to the subsidiary, but this does not rule out that the parent company imposes objectives and policies which affect the performance of the group and its coherence[1043]. In fact, voestalpine indirectly admits that it had an interest and role over its subsidiary as a shareholder to protect its financial ownership interest, since Austria Draht had to report to it its (general) financial figures on a quarterly and even monthly basis[1044]. Moreover, the fact that Austria Draht's board contained only representatives from its immediate mother company voestalpine Bahnsysteme Gmbh & Co KG is irrelevant, since the latter had in its turn reporting duties (as speaker/ '*Sprecher*') in the board of voestalpine AG. Finally[1045], the absence of a management overlap cannot be taken, under the circumstances of this case, as being a significant, let alone decisive factor, to rebut the presumption.

(788) Therefore, the Commission considers that voestalpine AG exercised decisive influence on voestalpine Austria Draht GmbH and should be held liable for voestalpine Austria Draht GmbH's cartel activities from 15.04.1997 until 19.09.2002.

(789) Consequently, voestalpine Austria Draht GmbH should be held liable for the period from 15.04.1997 until 19.09.2002. Voestalpine AG should be held jointly and severally liable with voestalpine Austria Draht GmbH for the same period.

1042 General Court in Case T-30/05 *Prym Consumer v Commission*, [2007] ECR II-107* (summary publication) paragraphs 146-148, judgment of 12 December 2007 in case T-112/05, *Akzo Nobel and Others v Commission* [2007], ECR II-5049 and case T-85/06, *General Quimica v Commission*, judgment of 18 December 2008, not yet reported.

1043 See judgment of 12 December 2007 in case T-112/05, *Akzo Nobel and Others v. Commission* [2007], ECR II-5049, paragraph 83. See also Case C-97/08 *Akzo Nobel and Others v Commission:* opinion of advocate general Kokott of 23.04.2009, paragraph 92 (which confirms the cited paragraph) and Case C-97/08P *Akzo Nobel v Commission*, 10.09.2009, not yet reported.

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1045 (…)

14.6. Fapricela - Indústria de Trefilaria S.A.

(790) As described in section 9.2.2, **Fapricela - Indústria de Trefilaria S.A.** directly participated in the cartel and in particular in Club España from 02.12.1998 until 19.09.2002 (see section 9.2.2.6 and recital (500)).

(791) Consequently, the Decision should be addressed to Fapricela - Indústria de Trefilaria S.A. and the company should be held liable for the period from 02.12.1998 until 19.09.2002.

14.7. Proderac Productos Derivados del Acero S.A.

(792) As described in section 9.2.2, **Proderac Productos Derivados del Acero S.A.** directly participated in the cartel and in particular in Club España from 24.05.1994 until 19.09.2002 (see in particular recitals (495), (525) and Annex 4).

(793) Proderac[1046], while admitting its participation in a few sector meetings, claims that it should not be held liable for any national or local arrangement because it did not participate actively in Club España and it did not implement any of its agreements. Proderac moreover argues that it depended on its competitors, which were also its raw material suppliers. Therefore, it would not have had autonomy to fix its prices or to increase its quota and thus to actively participate in the cartel. Moreover, it argues that its attendance at the cartel meetings did not imply its consent with the agreements as it had no free will due to *'an insuperable fear*' (original in Spanish) under Spanish law of losing its business.

(794) Liability for the infringement does not depend on the undertaking's more or less active role in the cartel arrangements or on the implementation of the agreements (see recitals (604)-(606) and sections 19.2.2.3 and 19.2.2.5). It is sufficiently established that Proderac participated in anti-competitive meetings without manifestly having opposed against the discussions and agreements. It is therefore proven to the requisite legal standard that Proderac participated in the cartel (see recital (589)). Proderac has not demonstrated that it lacked freedom to decide on its business behaviour or on its participation in the cartel. Should Proderac have considered itself a cartel victim, it could moreover have brought the issue to the attention of the competition authorities, rather than starting and/or continuing its participation in the anti-competitive meetings. Therefore, there is no reason to exclude Proderac's liability for participating in the cartel.

(795) Consequently, the Decision should be addressed to Proderac Productos Derivados del Acero S.A., which should be held liable for its cartel participation in the period from 24.05.1994 until 19.09.2002.

14.8. Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co.KG and Pampus Industriebeteiligungen GmbH & Co.KG

(796) As described in section 9.1, **Westfälische Drahtindustrie GmbH (WDI)** participated directly in the cartel and in particular in the pan-

[1046] (…)

European arrangements from 01.01.1984 until 19.09.2002. WDI, at the time called Klöckner Draht GmbH, participated directly in the Zurich Club since 01.01.1984 (see recitals (139) onwards). During the period 1996 – May 1997, it continued to participate in the meetings and to discuss the future operational mode for the pan-European arrangements and it became permanent member of Club Europe (see section 9.1.3.1). It also participated in the co-ordination towards the (…) (see section 9.1.4) and in the discussions on the expansion of Club Europe (see section 9.1.5). Moreover WDI was acting as country co-ordinator for Germany (see recital (195)). Its presence at the cartel meetings is substantiated by ample contemporaneous documentary evidence and by corroborative statements of several companies, including of WDI itself (see section 9.1(…)). WDI also expressly admits that it was involved in the preparatory meetings of April 1997 of which it explicitly admits their anti-competitive nature[1047].

(797) With regard to the (…) co-ordination, WDI claims that it did not take an active role therein and that it stopped delivering to (…) as of 1999[1048]. The Commission observes, however, that WDI fails to provide any evidence to substantiate this claim and refers to the abundant evidence that WDI continued to participate in anti-competitive meetings regarding (…) even after 1999[1049]. In any event, WDI also participated in Club Europe at that time, of which the (…) co-ordination is only one aspect.

(798) Further, with respect to WDI's claim that it publicly distanced itself from Club Zurich and that therefore this period should be regarded as time-barred, the Commission refers to its reasoning under recitals (633)-(634).

(799) WDI should therefore be held liable for its involvement in the entire pan-European arrangement, including for its participation in the (…) co-ordination, from 01.01.1984 until the date of the inspections on 19 September 2002.

(800) Since 03.09.1987 WDI has been owned 98 % by **Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co.KG**, which in turnhas been two-thirds owned since 01.07.1997 by **Pampus Industriebeteiligungen GmbH & Co. KG** (owned by Mr. (…) and his family). Mr. (…) is simultaneously Managing Director ('Geschäftsführer') of Pampus Industriebeteiligungen GmbH & Co. KG and WDI and he participated directly in several pan-European cartel meetings: for example on 09.04.1997 and on 23.01.1998 (see section 9.1 and (…))). Furthermore, it results clearly from the documents submitted by the Bundeskartellamt to the Commission that Mr. (…) was fully aware of the anti-competitive character of the arrangements with competitors[1050] and gave direct instructions to its employees, and in particular to Mr.(…) [1051]. Moreover, although the German court case, in which Mr. (…) must have learnt at the

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1049 (…)
1050 (…)
1051 (…)

latest about the anti-competitive arrangements, was closed in September 2001, the latter never distanced himself from the cartel. Therefore, the Commission considers that Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co.KG and Pampus Industriebeteiligungen GmbH & Co. KG exercised decisive influence on Westfälische Drahtindustrie GmbH. This is not contested by WDI or its parents companies in their reply to the SO.

(801) Consequently, the Decision should be addressed to Westfälische Drahtindustrie GmbH, to Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co.KG and to Pampus Industriebeteiligungen GmbH & Co. KG. Westfälische Drahtindustrie GmbH should be held liable for the period 01.01.1984 until 19.09.2002. Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG should be held jointly and severally liable with Westfälische Drahtindustrie GmbH for the period 03.09.1987 to 19.09.2002. Pampus Industriebeteiligungen GmbH & Co. KG should be held jointly and severally liable with Westfälische Drahtindustrie GmbH for the period 01.07.1997 to 19.09.2002.

14.9. Nedri Spanstaal BV, Hit Groep BV

(802) As described in section 9.1, **Nedri Spanstaal BV** directly participated in the cartel and in particular in the pan-European arrangements from 01.01.1984 until 19.09.2002. Nedri and HIT Groep BV have not contested this in their reply to the SO.

(803) Nedri, at the time called Nederlandse Draadindustrie BV, participated directly in the Zurich Club as from 01.01.1984 (see sections 9.1.1 and in particular recital (139), 9.1.2 and 9.1.7). During the crisis period (1996 – May 1997), it continued to participate in the meetings and to discuss the future operational mode for the pan-European arrangement and it became permanent member of Club Europe (see section 9.1.3.1). Nedri was also co-ordinator towards the (…) client (…) and country co-ordinator for the Netherlands (see recital (195) and section 9.1.4). This is substantiated by ample direct contemporaneous documentary evidence and by corroborative statements of several companies, including of Nedri itself.

(804) **Hit Groep BV** was directly and indirectly sole owner of Nedri from 01.05.1987 until 01.05.1994 and from 31.12.1997 until 17.01.2002. In the period in between, Nedri was owned by a joint-venture, Nedri Draht Beteiligungs GmbH, which was 70 % controlled by Hit Groep BV and 30% by Thyssen Draht AG. During this joint venture period, the Commission does not have sufficient evidence that HIT Groep BV could or would have exercised decisive influence over Nedri (see recital (52)). Therefore, HIT Groep BV should not be held liable for the cartel behaviour of Nedri during the period from 01.05.1994 to 31.12.1997.

(805) Regarding the period after the joint venture, i.e. from 01.01.1998 to 17.01.2002, it is sufficiently established and HIT Groep BV admits[1052] that it

[1052] (…)

owned Nedri 100%. The exercise of decisive influence can therefore be presumed.

(806) HIT Groep BV argues that it has never exercised decisive influence on Nedri. This would follow from the fact that it was a mere (financial) holding company, having only very few employees of its own and holding participations in an important number of companies, making it impossible to deal with the daily management and commercial decisions of the individual companies in which it held participations, including of Nedri. Rather, it confined itself to managing its participation in the different companies and in acquiring and selling companies, which, for the rest remained autonomous[1053].

(807) It must be recalled that the mere fact that a company is a financial holding does not exclude that it exercises a decisive influence on its subsidiaries[1054]. Moreover, HIT Groep BV's arguments are contradicted by the wording of the 1994 Directors' Instruction (*'Directie-Instructie'*) signed by HIT Groep BV and Nedri and regulating the relations between them, which shows that prior approval of HIT Groep was necessary for key decisions relating to Nedri's operation. According to the same Directors' Instruction, Nedri was also obliged to report at least monthly on commercial development, the progress of projects, financial results and liquidity (see recital (54)).

(808) Even if, as HIT Groep claims, the formal meaning of this Directors' Instruction was not clear[1055], it was a document signed by both companies and that there is no proof that they decided to revoke or not to apply it. The Directors' Instruction moreover clearly allowed HIT Groep BV to exercise decisive influence on Nedri. Whether it actually made use of this right is therefore not relevant (see also recital (695))[1056].

(809) Moreover, HIT Groep BV admits that in practice the steering group, with representatives of both HIT Groep BV and Nedri (see recital (54)), met regularly and that at least issues such as market prospects, personnel, investments and financial results were discussed. It also admits that its employees discussed the general course of business and other issues of importance to it as a holding company with the boards of the individual companies it controlled, including of Nedri[1057]. Also Nedri states that all commercial aspects were discussed in the steering group meetings and that HIT Groep BV's General Director (Mr. (…)) and Controller/Financial Director (Mr. (…), who were sitting in the steering group, were aware of Nedri's cartel behaviour[1058]. There are therefore ample indications that HIT Groep BV did in fact make use of its right to exercise decisive influence on Nedri.

1053 (…)
1054 (…)
1055 (…)
1056 (…)
1057 (…)
1058 (…)

(810) Hit Groep BV was also active in the steel business itself, thus Nedri's commercial activities were related to its own business. Hence Hit Groep BV, as sole owner of Nedri was continuously able to influence Nedri's business behaviour through the steering group, the reporting lines and necessary prior approvals provided for in the Directie-Instructie and the appointment and reappointment of key managing staff.

(811) Contrary to what it argues, HIT Groep BV is therefore not simply an investment vehicle which serves merely to invest capital in companies, the commercial operations of which it then leaves to those companies, withdrawing capital as soon as it considers that an investment in other companies, possibly not belonging to the group, would provide a better return[1059]. The rights conferred to HIT Groep BV in the Directie-Instructie go much further than the simple exercise of pure legal rights of appointment and supervision/information, which may be conferred to a pure holding company, that HIT Groep held Nedri for over 14 years (01.05.1987-17.01.2002) and that Nedri was among HIT Groep BV's most important participations[1060].

(812) HIT Groep BV has not demonstrated that it exercised restraint and did not influence the market conduct of Nedri, and Nedri itself contests[1061] that it would have '*decided independently on its own conduct on the market rather than carrying out the instructions given to it by its parent company*' (see recital (694)). Therefore, the Commission considers that Hit Groep BV has not rebutted the presumption of exercise of decisive influence on its subsidiary, Nedri, in the period from 01.01.1998 to 17.01.2002.

(813) Consequently, the Decision should be addressed to Nedri Spanstaal BV and to Hit Groep BV. Nedri Spanstaal BV should be held liable for the period 01.01.1984 until 19.09.2002. Hit Groep BV should be held jointly and severally liable with Nedri Spanstaal BV for the period 01.01.1998 to 17.01.2002.

14.10. DWK Drahtwerk Köln GmbH and Saarstahl AG

(814) As described in sections 9.1 and 9.2.1, **DWK Drahtwerk Köln GmbH** directly participated in the cartel and in particular in the pan-European arrangements and Club Italia from 09.02.1994 (and 24.02.1997 respectively) until 06.11.2001 (see recitals (380) and (464)).

(815) DWK participated directly in the Zurich Club from its incorporation on 09.02.1994 (see sections 9.1 and in particular recital (139), 9.1.2. and 9.1.7), (…). The contemporaneous evidence in the possession of the Commission also shows that individual quotas were allocated to DWK in 1994 (see for example recitals (149)-(150)). As regards Saarstahl/DWK's continued participation in the cartel through the JV during the period 09.02.1994 until 01.09.1995, see recitals (702) to (705)). Also during the crisis period (1996 – May 1997), DWK continued to participate in the meetings and discuss the

[1059] Commission Decision, 9 December 2004, Case COMP/37.553 – Choline Cloride, recital 172.
[1060] (…)
[1061] (…)

future operational mode for the pan-European arrangements and it became a permanent member of Club Europe (section 9.1.3), in which it was also acting as country co-ordinator for Switzerland and Austria (see recital (195)). At several meetings in which DWK participated, the (…) co-ordination was also discussed (see section 9.1.4). This is substantiated by ample contemporaneous documentary (…) .

(816) In addition, DWK was aware of Club Italia from the beginning and started participating in Club Italia at the latest on 24.02.1997. The last recorded meeting with Italian companies it attended took place on 06.11.2001 and concerned the integration of the Italian producers into Club Europe (see section 9.2.1 and, in particular, recitals (464)-(466)). These findings are not contested by DWK and Saarstahl AG.

(817) From 09.02.1994 until 06.11.2001, **Saarstahl AG** was directly and indirectly the sole owner of DWK (see recital (58)). Additionally, the Board of Directors of Saarstahl AG discussed every year the business plan with DWK's management and gave it its final approval. DWK also had to provide quarterly and monthly reports on the execution of this business plan (see recital (58)). Furthermore, Saarstahl AG is active in the steel business. Its commercial activities were thus related to those of DWK.

(818) On the basis of the 100% ownership, the yearly approval mechanism and regular reporting obligations from DWK to Saarstahl AG and on the basis of Saarstahl's (similar) business activities, the Commission considers that Saarstahl AG exercised decisive influence on DWK and holds it liable for DWK's cartel activities.

(819) Consequently, the Decision should be addressed to DWK Drahtwerk Köln GmbH and to Saarstahl AG. DWK Drahtwerk Köln GmbH should be held liable for the period from 09.02.1994 until 06.11.2001. Saarstahl AG should be held jointly and severally liable with DWK Drahtwerk Köln GmbH for the same period.

14.11. Ovako Hjulsbro AB, Ovako Dalwire Oy Ab, Ovako Bright Bar AB and Rautaruukki Oyj

(820) As described in section 9.1.4, the Commission considers that Fundia was involved in the cartel and in particular in the (…) co-ordination at least as of the early nineties. However, given the rather sporadic nature of the evidence in that early period, Fundia's participation in the cartel is upheld only as from 23.10.1997 until 31.12.2001.

(821) All references to the undertaking made by the cartel participants are references to Fundia without further specification of the legal entity/-ies concerned, implying that the legal entities Ovako Hjulsbro AB and Ovako Dalwire Oy Ab were considered to constitute a single economic entity. Moreover, both companies (then Fundia Dalwire and Fundia Hjulsbro) supplied (…) (see recital (66)). Hence, **Ovako Hjulsbro AB and Ovako Dalwire Oy Ab** were direct participants in the (…) co-ordination from 23.10.1997 until 31.12.2001.

(822) The Ovako companies[1062] submit that Fundia's participation in the (…) meetings was not conclusively established, arguing that the vast majority of the evidence relating to the (…) meetings from 1992 until 2001 did not refer to Fundia or indicate that Fundia was present in those meetings[1063]. With regard to the meeting of 27.01.2000, Rautaruukki, while not contesting Fundia's presence, contests that this meeting proves Fundia's alleged role in the cartel and claims that, if anything, it rather shows that Fundia was competing fully in Germany and that this was not appreciated by the competitors. Also, Fundia's role was limited to receiving information from the core cartel members and its involvement was unintentional. Fundia moreover considers that there was not any evidence proving that Fundia actually disclosed any sensitive information. In Ovako's view, given the high transparency of the market and (…) active role in the cartel, the information on Fundia could well have emanated from (…) itself.

(823) These arguments cannot be accepted. The Commission first notes that three leniency statements and documents from the Bundeskartellamt confirm independently of each other that Fundia was involved in anti-competitive discussions with regard to (…) and other customers (see recital (258)). Moreover, contemporaneous documentary evidence shows several references to regular contacts between Fundia and other cartels members and its case was regularly discussed in the meetings regarding (…) (see section 9.1.4 and (…)). It is not credible that the information pertaining to Fundia and discussed in these meetings would have been publicly known or emanated from (…) considering the level of detail of the information and considering the fact that this information does not exclusively concern (…) and would not normally be known by (…). Fundia was moreover present at the meetings of 27.01.2000 and of 14/15.05.2001 with at least WDI, Nedri and DWK[1064] as well as at the meeting of 05/06.02.2002 and could thus correct or confirm the information related to it even if it came from another source.

(824) Article 101(1) of the TFEU strictly precludes any direct or indirect contact between operators the object or effect whereof is either to influence each other's conduct on the market or to disclose to each other the course of conduct which they themselves would adopt on the market (see recital (580)), even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour[1065] and that the condition of reciprocity of a concerted practice is met where one competitor discloses its future intentions or conduct on the market to another and the latter requests it or, at the very least accepts it[1066] (see also recital (582)).

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1063 (…)

1064 (…)

1065 See also Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, recital 256.

1066 Joined cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 1849.

(825) The Commission acknowledges that Fundia as a 'bystander' (see meeting of 09.09.2002) had to be informed s of the main participants and that its participation in anti-competitive meetings was therefore less regular than the participation of the other members of the cartel. In any event, this does not alter the Commission's finding that, taking into account all evidence as described in section 9.1.4, Fundia's participation in the (…) co-ordination as of 23.10.1997 is sufficiently established.

(826) Rautaruukki, parent company of Fundia at the time of the infringement, also claims[1067] that Fundia did not participate in cartel meetings. It argues that this was confirmed by (…) (see footnote 374) and by the fact that the evidence regarding the meetings where Fundia is mentioned as a subject is exclusively based on the (…), which in Rautaruukki's view could have been mere reflections from (…) and are therefore not enough to conclude that Fundia participated in cartel meetings.

(827) Contrary to Rautauruukki's allegations, it clearly results from recital (258) onwards that (…) has confirmed that Fundia was a participant in the anti-competitive arrangement, that it had exchanged information on prices and volumes concerning a number of clients and that the contacts with Fundia took essentially place via Mr. (…) and Mr. (…). The Commission moreover underlines the high probative value of the contemporaneous (…) which were drafted before the end of the infringement (*'in tempore non suspecto')* and clearly reflect discussions with other cartel participants rather than personal conclusions. Therefore, the Commission considers that Fundia participated in the cartel and that Ovako Hjulsbro AB and Ovako Dalwire Oy Ab should be held liable for their participation in the cartel from 23.10.1997 until 31.12.2001.

(828) **Ovako Bright Bar AB** has been the owner of 100% of Ovako Hjulsbro AB and Ovako Dalwire Oy Ab since 01.01.1996 and its Managing Director, Mr.(…) , was also the Managing Director of Ovako Dalwire Oy Ab at least between 01.01.1998 and 2003 (see recitals (63) and (65)). On the basis of the 100% ownership and the management overlap, the Commission considers that Ovako Bright Bar AB exercised decisive influence on Ovako Hjulsbro AB and Ovako Dalwire Oy Ab and that it should be held liable for Ovako Hjulsbro AB's and Ovako Dalwire Oy Ab's direct participation in the cartel from 23.10.1997 until 31.12.2001.

(829) As described in section 2.1.12, **Rautaruukki Oyj** was indirectly the ultimate 100% parent company of Ovako Bright Bar AB, Ovako Hjulsbro AB and Ovako Dalwire Oy Ab from 01.04.1996 until the end of their participation in the infringement on 31.12.2001. On the basis of the 100% ownership and its implied rights, for example the restructuring activities it undertook in 2005 (see recital (68)), the Commission considers that Rautaruukki Oyj exercised decisive influence on Ovako Bright Bar AB, Ovako Hjulsbro AB and Ovako Dalwire Oy Ab and that it should be held jointly and severally liable with Ovako Hjulsbro AB and Ovako Dalwire Oy

[1067] (…)

Ab for the latter two companies' direct participation in the cartel in the period from 01.04.1996 until 31.12.2001.

(830) The Ovako companies[1068] state that, since they are no longer part of the Rautaruukki group, they do not constitute a single economic entity for the purposes of Article 101 of the TFEU and that thus Rautaruukki does not exercise decisive influence over their conduct. Consequently, Ovako submits that the possible fine should be directed exclusively to Rautaruukki which was the parent company at the time of the infringement and which received the potential financial gains improperly made as a result of the cartel activities. Ovako claims that, if the Ovako companies and Rautaruukki are to be held jointly and severally liable by the Commission, the fine should be allocated *inter partes* entirely and ultimately to Rautaruukki as the parent company of Fundia at the time of the infringement. In the Ovako companies' view any fines imposed on them would harm their current parent, which is not an addressee and has not received any financial gains from the infringements.

(831) The direct involvement of the Ovako companies in the cartel, and thus their liability, is established. The fact that their parent company at the time of the infringement, Rautaruukki, is also held liable does not exonerate the Ovako companies from their liability, not even from part of it. Any financial consequences for their current parent company would be indirect and would constitute a normal feature in those cases where a new shareholder acquires part or all of the infringing undertaking, which remains liable for its participation.

(832) As to Rautaruukki, it confirms that it owned the three Ovako companies to 100% from 01.04.1996 until the end of the latter's participation in the infringement, i.e. 31.12.2001[1069]. Decisive influence on the Ovako companies can therefore be presumed during that period (see recital (695)). For the purpose of holding Rautaruukki liable for the Ovako companies' behaviour from 01.04.1996 to 31.12.2001, it is irrelevant that Rautaruukki ceased to be the parent company of the three Ovako companies later on.

(833) Rautaruukki[1070] contests that it exercised decisive influence on the (then called) Fundia companies. It considers that this follows from the fact that there is no evidence of its participation in or awareness of an infringement. This argument is based on the erroneous premise that a parent company can only be held liable for the infringements committed by its subsidiaries if it can be established that it was aware of the infringement or it was directly involved in its organisation and implementation. To the contrary, attribution of liability to a parent company for the infringement committed by its subsidiary flows from the fact that a parent and a subsidiary constitute a single undertaking for the purposes of the EU rules on

1068 (…)
1069 (…)
1070 (…)

competition[1071] and not from proof of the parent's participation in or awareness of the infringement.

(834) Rautaruukki also notes that it has a strict compliance programme in place since 1994[1072]. The existence of such a programme is irrelevant in this context as it is not capable as such of distancing the parent company from the wrongdoings of its subsidiary. Rautaruukki has not been able to show that its instructions to comply with competition law proved effective. The participation of the Ovako companies in the infringement seems to prove the contrary. If anything, Rautaruukki's anti-trust compliance instructions to the Ovako companies show an attempt by the mother company to exercise influence over its subsidiary's day-to-day conduct.

(835) Further, Rautaruukki claims that the presumption of decisive influence should be considered as rebutted because Fundia would have at all times independently decided on its own conduct and thus acted autonomously on the market[1073]. This was due to the fact that the two companies had a very different business culture[1074] and that Rautaruukki had no experience in the business operated by Fundia and thus would have had no basis on which to instruct Fundia on its conduct in the market[1075]. One of the reasons for the disposal of Rautaruukki's shares in Fundia was precisely the latter's independent position and non-integration within the group. Rautaruukki concludes that it was a mere holding company, and that Fundia was considered as a pure investment target, making it impossible to deal with Fundia's management[1076]. In that context, Rautaruukki contests also that the 'implied rights' referred to in recital (68) with regard to the Fundia restructuring in May 2005 could constitute evidence of control going 'beyond normal financial rights' of any financial shareholder to dispose of its shares.

(836) The mere fact that a company is a financial holding does not exclude that it exercises a decisive influence on its subsidiaries[1077] and that the exercise of decisive influence on the commercial policy of a subsidiary does not require day-to-day management of the subsidiary's operation (see recital (698)). The subsidiary's management may well be entrusted to the subsidiary, but this does not rule out that the parent company imposes objectives and policies which affect the performance of the group and its coherence and to discipline any behaviour which may depart from those objectives and policies.[1078] In fact, Rautaruukki implicitly admits that it had

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1072 (…)

1073 (…)

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1076 (…)

1077 See, to that effect, Case T-69/04 *Schunk and Schunk Kohlenstoff-Technik v Commission* [2008] ECR II-2567, paragraph 70, and Case T-174/05 *Elf Aquitaine v Commission*, judgment of 30.09.2009, not yet reported, paragraph 160.

1078 Case T-112/05, *Akzo Nobel and Others v. Commission* [2007], ECR II-5049; Case T-85/06 *General Quimica v Commission* judgment of 18.12.2008, not yet reported. See also Case C-97/08 *Akzo Nobel and Others v Commission:* opinion of advocate general Kokott of

an interest and role over its subsidiaries as it gave instructions/guidelines as a shareholder to protect its financial ownership interest[1079]. This follows also from the fact that the Ovako companies' accounts were consolidated with Rautaruukki. Consequently these subsidiaries' profits and losses, which counted for at least a quarter of the group, are reflected in the profit and loss of that whole group[1080]. Contrary to what it argues, Rautaruukki is therefore not simply an investment vehicle which serves merely to invest capital in companies which commercial operations it then leaves to those companies[1081].

(837) Further, Rautaruukki, while admitting that it was represented in the Board of Directors of the Fundia companies, argues that no decisions concerning the operational management of Fundia were made at this level[1082] but instead at a separate Management Committee of Fundia, in which it was not represented. The Management Committee was responsible for all the major decisions regarding the operational management of Fundia. The absence of an overlap at the level of the Management Committee cannot be taken, in the circumstances of this case, as being a significant or decisive factor, in order to rebut the presumption.

(838) Finally, Rautaruukki argues that in the light of the case law on succession, as long as the legal entity which participated in the infringement is still in existence, albeit under a different name, liability for its possible actions rests firstly with that entity[1083]. The Ovako companies should be held liable for their direct participation in the cartel and in any case the concept of joint and several liability implies that both the Ovako companies and Rautaruukki should be held liable, whichever entity will ultimately pay the fine.

(839) Rautaruukki has not rebutted the presumption of exercise of decisive influence on its subsidiaries, the Ovako companies, and it should be held jointly and severally liable with the Ovako companies for their direct participation in the cartel in the period 01.04.1996 until 31.12.2001.

(840) Consequently, the Decision should be addressed to Ovako Hjulsbro AB, Ovako Dalwire Oy Ab, Ovako Bright Bar AB and Rautaruukki Oyj. Ovako Hjulsbro AB and Ovako Dalwire Oy Ab should be held liable for their direct participation in the cartel from 23.10.1997 until 31.12.2001. In view of its 100% ownership and the management overlap, Ovako Bright Bar AB should be held jointly and severally liable for the infringing behaviour of Ovako Hjulsbro AB and Ovako Dalwire Oy Ab for the same period. In view of its 100% ownership and its implied rights, Rauatruukki Oyi should be held held jointly and severally liable with Ovako Bright Bar AB, Ovako

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23.04.2009 and Case C-97/08P *Akzo Nobel v Commission*, judgment of 10.09.2009, not yet reported.

1079 (…)

1080 (…)

1081 (…)

1082 (…)

1083 (…)

Hjulsbro AB and Ovako Dalwire Oy Ab, for the infringing behaviour of the latter two companies, for the same period, i.e. 23.10.1997 until 31.12.2001.

14.12. Italcables S.p.A.and Antonini S.p.A.

(841) As described in sections 9.1.1.4, 9.2.1, 9.1.5.1 and 9.2.3, **Italcables S.p.A.**directly participated in the cartel and in particular in Club Zurich (including initially during its crisis phase and in the Southern Agreement), Club Italia and the integration of the Italian producers in Club Europe from 24.02.1993 until 19.09.2002.

(842) In the period from at least 01.01.1995 to 31.12.2002, **Antonini S.p.A.** was the owner of (nearly) 100% of Italcables S.p.A.(see recital (70)). At least in the same period there was an important personnel overlap between both companies and several employees working for both companies, including in management positions (or working for one while being paid by the other), were participating in the cartel meetings (see section 2.1.13 (…)). In particular Ms. (…) and thereafter also Mr. (…) and Mss. (…) regularly participated in the cartel meetings from at least 13.01.1997 until the date of the inspections. Members of the Antonini family also participated in the cartel meetings before 13.01.1997 (…).

(843) ITC and Antonini [1084] agree with the main findings and conclusions reached by the Commission and confirm that the SO is in line with the statements and accounts of the facts provided in their leniency application and subsequent communications with the Commission. However, considering Antonini's limited PS and global turnover, the undertaking pleads for the Commission not to hold Antonini S.p.A. jointly and severally liable with ITC for the latter's cartel behaviour. The size of the turnover is not a criterion which establishes or excludes liability, but it is taken into account in section IX.

(844) Consequently, the Decision should be addressed to Italcables S.p.A.and Antonini S.p.A.. Italcables S.p.A.should be held liable for its direct participation in the cartel from 24.02.1993 until 19.09.2002. In view of the nearly 100% ownership, the close personnel interlinks and its close involvement in the cartel, Antonini S.p.A. should be held jointly and severally liable for the infringing behaviour of Italcables S.p.A.for the period from 24.02.1993 until 19.09.2002[1085].

14.13. Redaelli Tecna S.p.A.

(845) As described in sections 9.1.1, 9.1.2, 9.1.5.1, 9.2.1 and 9.2.3, **Redaelli Tecnasud SpA** directly participated in the cartel from 01.01.1984 until 19.09.2002, and in particular in the Zurich Club, including initially in Zurich Club crisis meetings and the Southern Agreement, Club Italia and in the discussions during the Club Europe expansion period.(…) [1086].

[1084] (…)
[1085] (…)
[1086] (…)

(846) **Redaelli Tecna S.p.A.**absorbed Redaelli Tecnasud SpA on 31.12.2003 and before, it owned it to 100% from 20.12.1985 (see recitals (78) and (79)). Therefore, it should be held liable both as the legal successor of the direct participant Redaelli Tecnasud, for the entire period of the infringement, and because it can be presumed that it exercised decisive influence over it, as from 20.12.1985. Moreover, Mr.(…) , who held high level responsibilities at Redaelli Tecna S.p.A.from 18.09.1981 until 20.02.1998 (while simultaneously being President of the Board of Directors in Redaelli Tecnasud SpA from 1995 to 1998, see recital **Error! Reference source not found.**) participated in the cartel meetings between at least 12.12.1990 and 24.02.1998. Mr. (…) - at that time employed by Redaelli Tecna S.p.A.– also attended a Club Italia meeting on 02.11.1999. Data originating from Redaelli Tecna S.p.A.were also discussed at a Club Italia meeting of 18.01.1999 (…).

(847) It should also be noted that employees of Redaelli Tecnasud SpA represented Redaelli Tecna S.p.A.at ESIS meetings (see recital (81)) and there was communication between Redaelli Tecnasud SpA and Redaelli Tecna S.p.A.regarding the cartel: for example Mr. (…), Director (…) of Redaelli Tecnasud SpA informed Mr. (…) Director General of Redaelli Tecna S.p.A., about the cartel meeting of 01.03.2002 (…).

(848) Consequently, the Decision should be addressed to Redaelli Tecna S.p.A., which should be held liable for its direct participation in the cartel in the period 12.12.1990 to 20.02.1998 and for the infringing behaviour of Redaelli Tecnasud SpA, which it absorbed in 2003, for the period 01.01.1984 to 19.09.2002.

14.14. CB Trafilati Acciai S.p.A.

(849) As described in sections 9.1.1, 9.1.2, 9.1.4, 9.1.5.1, 9.2.1 and 9.2.3 (…) , **CB Trafilati Acciai S.p.A.** directly participated in the cartel and in particular in Club Zurich (at least initially, also during its crisis period, and including in the Southern Agreement), the (…) co-ordination, Club Italia and the integration of the Italian producers into Club Europe, from 23.01.1995 (see section 9.1.1.4) until 19.09.2002.

(850) (…) [1087], CB states that it did not take part in the Zurich Club. It claims that the Commission has not sufficiently established that CB expressed its will to participate in a pan-European agreement[1088]. It further adds that it did not contribute to overcome the Zurich Club crisis nor to the Southern Agreement negotiations and that Redaelli had 'auto-nominated' itself as representing the other Italian producers in the pan-European Club meetings. CB further claims that it only received a draft agreement with the foreign producers in October 1995 and that it is not certain that it was informed of the existence of Club Europe prior to the meeting of 16.12.1997. Therefore, at least until that date, it could not be considered member of the pan-European agreement since it did not express its will to join[1089]. CB also refers to the *Cement* cartel case according to which *'the fact that [a*

[1087] (…)
[1088] (…)
[1089] (…)

company] had contacts with certain undertakings whose participation in the [general] agreement is established is not sufficient to demonstrate that it was aware of that agreement'[1090].

(851) These arguments, however, must be rejected. The Commission has sufficiently demonstrated the interdependence of the Zurich Club and Club Italia and in particular that the Club Italia discussions prepared, summarized or followed up on the discussions in the Zurich Club. It is also established that Redaelli continuously represented CB and the other Italian producers as of 23.02.1993 and that at least as of 23.01.1995, CB was aware of this (see sections 9.1.1.4, 9.3 and 12.2.2).

(852) CB was itself present at a Zurich Club meeting of 24.02.1993 between Redaelli, ITC, Itas, Tréfileurope Italia, DWK and Tycsa, where not only prices and sales on the Italian market were discussed but also PS consumption on the European market (by country). Redaelli also attended on behalf of CB (and the other Italian producers) the last Zurich Club meeting of 9.01.1996, at which the new quota system to be developed (for the future Club Europe) and a tentative allocation of quotas were discussed (see sections 9.1.1 and 9.1.2). In addition, it was present at the meeting of 12.10.1995 together with Redaelli and Itas, where Redaelli produced a draft agreement that compared *'the Italian proposal'* with the *'proposal accepted by the foreign producers'* for the allocation of quotas on the Italian and the *'foreign market'*. It is therefore established that CB was aware of the pan-European agreement both through Redaelli and by its participation in certain pan-European meetings and in meetings of the Italian producers where common positions were established or where it was informed of the outcome of pan-European meetings.

(853) According to settled case law, *'to prove to the requisite standard that an undertaking participated in a cartel, it is sufficient for the Commission to establish that the undertaking concerned participated in meetings during which agreements of an anti-competitive nature were concluded, without manifestly opposing them'*[1091]. In addition, CB has not distanced itself from the cartel or manifestly opposed it in such a way that the other participants are aware that it does not subscribe to the conclusions of meetings and will not act in conformity with them or is participating in the meetings in a spirit which is different from theirs[1092].

1090 Joined Cases T-25/95 and others, *Cement*, [2000] ECR II-491, paragraph 4112

1091 See judgment of 19 March 2009 in case C-510/06P *Archer Daniel Midland v. Commission*, not yet reported, paragraph 119.

1092 Case T-7/89, *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 232, Case 12-89, *Solvay et Compagnie v Commission* [1992] ECR II-907, paragraph 98, Case T-141/89, *Tréfileurope Sales v Commission* [1995] ECR II-791, paragraphs 85 and 86, Case T-15/89, *Chemie Linz v Commission* [1992] ECR II-1275, paragraph 135, Case T-61/99, *Adriatica di Navigazione v Commission* [2003] ECR II-5349, paragraph 135, Joined Cases T-25/95 etc, *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 3199. See also Case C-199/92, P *Hüls v Commission* [1999] ECR I-4287, paragraph 155 and Case C-49/92 P, *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 96, Case C-204/00 *Aalborg Portland and others v Commission* [2004] ECR I-123, paragraphs 81-86 and Joined Cases T-

(854) It must therefore be concluded that at least as of 23.01.1995, date which the Commission upholds as starting date for CB's participation in the cartel, CB was participating in the cartel at pan-European and Italian level or at least it was aware that, while participating in Club Italia, it participated in a larger cartel of pan-European dimension.

(855) Consequently, the Decision should be addressed to CB Trafilati Acciai S.p.A. and this company should be held liable for its cartel participation for the period from 23.01.1995 until 19.09.2002.

14.15. I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.

(856) As described in sections 9.1.1, 9.1.2, 9.1.5.1, 9.2.1 and 9.2.3 and Annexes 2 and 3, **I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.** directly participated in the cartel and in particular in Club Zurich (including its crisis period and the Southern Agreement), Club Italia and the integration of the Italian producers into Club Europe from 24.02.1993 (see section 9.1.1.4) until 19.09.2002.

(857) Itas[1093] (…) submits, first, that its participation in specific meetings regarding countries for which Itas did not have the required certification was the result of negligence. It further argues that the discussions in these meetings were mostly not anticompetitive, and finally that it never replied to its competitors' questions on prices and client allocation as its objective was to increase its number of clients.

(858) The Commission first observes that alleged negligence does not allow an undertaking to escape liability for participation in a cartel. Moreover, contemporaneous documentary evidence shows that the discussions in which Itas participated clearly had an anti-competitive nature[1094]. Finally, contrary to Itas' allegations, this company did reply to its competitors' questions on prices and clients allocation. For instance, the documentary evidence relating to the meetings of 14.05.2001 and 22.01.2001 clearly show discussions on precise prices for Itas. Moreover in November/December 2001 and on 06.12.2001 there were contacts and/or meetings on a given client (named) of Itas. Itas moreover admits that its objective was to increase its number of clients.

(859) Itas[1095] further invokes that Club Italia's agreements were not implemented. This was proven by the large difference between the agreements and the reality. It is sufficient to note that implementation of the cartel agreements do not need to be proven to establish liability for participation in the cartel. In any event, the agreements in Club Italia were in fact implemented through, for instance, a monitoring scheme (see section 9.2.1.7).

259/02 etc *Raiffeissen Zentralbank Österreich and others v Commission* (Lombard Club) [2006] ECR II-5169, paragraph 486.

1093 (…)

1094 (…)

1095 (…)

(860) The Commission therefore concludes that Itas should be held liable for its cartel participation from 24.02.1993 until 19.09.2002.

(861) Consequently, the Decision should be addressed to I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.., which should be held liable for its cartel participation for the period from 24.02.1993 until 19.09.2002.

14.16. Siderurgica Latina Martin S.p.A. and ORI Martin S.A.

(862) As described in sections 9.2.1 and 9.1.5.1, Siderurgica Latina Martin S.p.A. directly participated in the cartel and in particular in Club Italia and the integration of the Italian producers into Club Europe from 10.02.1997 (see recitals (474)-(478)) until 19.09.2002.

(863) SLM[1096] contests its participation in the cartel and in particular in Club Italia until the end of 1999. Its participation in Club Italia as of 10.02.1997, however, is clearly established on the basis of documentary evidence and (…) (see recitals (475) onwards). SLM also invokes that, despite its participation in certain Club Italia meetings, it adopted an aggressive commercial policy, it did not agree to any illicit agreement and that when it shared data with competitors, these data, although credible, were never real or true.[1097] In this respect, it is sufficient to repeat that any direct or indirect contact between competitors the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market is prohibited (see section 12.2.1.1). The mere participation in meetings with an anti-competitive content is therefore sufficient to trigger liability. The fact that SLM would not have respected the cartel arrangements is irrelevant. Indeed, cheating is an inherent element to any cartel, in particular of long duration (see recital (604)). Moreover, SLM itself admits that its objective in participating in the meetings was to increase its clients or at least maintain them[1098].

(864) SLM further contests that it participated in the integration of Italian producers in Club Europe from 11.09.2000 to 19.09.2002. In this respect, SLM submits that it participated only in nine of the 51 Club Europe meetings, at a very late stage and only at the insistent request of the other Italian producers. SLM also claims that it had no interest in participating in Club Europe as it did not have the required certifications for most of the countries involved. Finally, its participation in Club Europe meetings was the result of negligence.

(865) Over a period of only two years (between 11.09.2000 and 19.09.2002) SLM participated at regular intervals in 9 Club Europe meetings (see section 9.1.5 (…)). SLM's presence was moreover expected in 2 more meetings (23.07.2001 and 25.07.2001). Hence it is established that SLM was a regular participant in Club Europe as of its expansion phase. In those circumstances,

1096 (…)
1097 (…)
1098 (…)

the reasons why SLM joined the cartel meetings, or the fact that it would not have had certifications for some or most of the countries, are not relevant. Even if SLM did not have certification for all countries covered in the cartel, it can be presumed that participation in the meetings has influenced its behaviour both in Italy or other countries where it was present and in deciding for which countries it would apply for a certificate (see recital (582)). In any event Club Europe covered Italy and several other countries[1099] where SLM sold so that SLM certainly had an interest in the discussions. Finally, alleged negligence does not allow an undertaking to escape liability for participation in a cartel. The Commission therefore concludes that SLM participated in Club Europe from 11.09.2000 until 19.09.2002.

(866) In any event, it is also established that as of 10.02.1997 SLM participated in Club Italia (see section 9.1.1.4). SLM should therefore be held liable for its cartel participation from 10.02.1997 to 19.09.2002.

(867) Since 01.01.1999 SLM has been controlled 100% by ORI Martin S.A. (which ceded 2% to ORI Martin Lux SA on 31.10.2001).

(868) On the basis of the (almost) 100% ownership of SLM by ORI Martin S.A. from 01.01.1999 to 19.09.2002), the Commission considers that ORI Martin S.A. exercised decisive influence on Siderurgica Latina Martin S.p.A..

(869) ORI Martin S.A., in its reply to the SO, does not contest the facts assessed by the Commission, but claims that it cannot be held jointly and severally liable with SLM. In particular, it holds that the Commission did not sufficiently show that it exercised a decisive influence on SLM. It claims that such a presumption would breach the principle of personal liability and argues that the Commission did not prove any direct or indirect involvement of ORI Martin S.A. in the infringement.

(870) It is established case law, as recently confirmed by the Court of Justice[1100], that the Commission can presume that parent companies exercise decisive influence on their wholly-owned subsidiary. Where such a presumption applies it is for the parent company to rebut it, by adducing evidence demonstrating that its subsidiary decided independently on its conduct on the market. Failure to provide sufficient evidence on the part of the parent company amounts to a confirmation of the presumption and provides a sufficient basis for the imputation of liability.

1099 (…)

1100 General Court in Case T-30/05 *Prym Consumer v Commission*, judgment of 12 September 2007, not yet reported, paragraphs 146-148, judgment of 12 December 2007 in case T-112/05, *Akzo Nobel and Others v. Commission* [2007], ECR II-5049 and case T-85/06, General Quimica v Commission, judgment of 18 December 2008, not yet reported. Court of Justice in Case C-97/08P *Akzo Nobel NV and others v Commission*, Opinion of Advocate General Kokott of 23.04.2009 and judgment of 10.09.2009, not yet reported.

(871) The claim of absence of direct involvement of the parent company in the anti-competitive conduct and their alleged lack of awareness is therefore irrelevant. Attribution of liability to a parent company for the infringement committed by its subsidiary flows from the fact that the two entities constitute a single undertaking for the purposes of EU rules on competition[1101] and not from proof of the parent's participation in or awareness of the infringement.

(872) Finally, in relation to the principle of personal liability, Article 101 of the TFEU is addressed to 'undertakings' which may comprise several legal entities. In this context the principle of personal liability is not breached as long as different legal entities are held liable on the basis of circumstances which pertain to their own role and their conduct within the same undertaking. In the case of parent companies, liability is established on the basis of their effective control on the commercial policy of the subsidiaries which are materially implicated by the facts (see section 13).

(873) ORI Martin S.A. further claims that it did not exercise decisive influence on SLM, which always carried out autonomously its activity in the PS sector. This was proven by the fact that it had no obligation to report to ORI Martin S.A., which was moreover a financial holding company and therefore did not decide on its commercial policy.

(874) The Commission observes that the mere fact that a company is a financial holding does not exclude that it exercises a decisive influence on its subsidiaries[1102]. ORI Martin S.A. also had an interest and role over its subsidiary SLM as a shareholder to protect its financial ownership interest. Finally, while ORI Martin S.A. claims that it was not active in the sector covered by the cartel, the Commission notes that its subsidiary, ORI Martin SpA, was active in the steel business itself[1103], thus SLM's commercial activities were related to the group's business[1104]. In those circumstances, ORI Martin S.A. cannot be qualified as a pure holding company and in any event should not escape liability.

(875) Consequently, the Decision should be addressed to Siderurgica Latina Martin S.p.A. and ORI Martin S.A.. Siderurgica Latina Martin S.p.A. should be held liable for the period from 10.02.1997 until 19.09.2002. ORI Martin S.A. should be held jointly and severally liable for the infringing behaviour of Siderurgica Latina Martin S.p.A. for the period from 01.01.1999 until 19.09.2002.

14.17. Emme Holding S.p.A.

(876) As described in section 9.2.1 **Trafilerie Meridionali SpA** ('Trame', now Emme Holding S.p.A.) directly participated in the cartel and in

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1101 See Cases T-71/03, T-74/03, T-87/03, and T-91/03 *Tokai Carbon v Commission*, [2005] ECR II-10, paragraph 54.

1102 See, to that effect, Case T-69/04 *Schunk and Schunk Kohlenstoff-Technik v Commission* [2008] ECR II-2567, paragraph 70, and Case T-174/05. *Elf Aquitaine v Commission*, judgment of 30.09.2009, not yet reported, paragraph 160.

1103 (…)

1104 (…)

particular in Club Italia from 04.03.1997 (see section 9.2.1.8) until 19.09.2002.

(877) Trame[1105] refers to a statement of the other cartel participants (in particular at the meeting of 20.07.1997) that '*Trame was going everywhere*' (original in Italian) to claim that it publicly distanced itself from the cartel. Such statement by the competitors cannot qualify as a public dissociation from the cartel in particular since Trame's continued participation in the cartel is established (see section 9.2.1.8). It should also be repeated that if an undertaking is present at meetings in which the parties agree on certain behaviour on the market, it may be held liable for an infringement even where its own conduct on the market does not comply with the conduct agreed (see recital (588)). Indeed, by taking part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective, Trame 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. The fact that it might not have respected the arrangements in all instances does not mean that it did not implement the cartel agreement. As the General Court held in *Cascades*[1106] '*an undertaking which, despite colluding with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit*'.

(878) Trame also argues that it has never expressed its wish to subscribe to a common plan with the other Club Italia members and that it would never have taken away market uncertainties by disclosing sensitive commercial information or by implementing the agreement. It states in particular that even if there was exchange of information, Trame did not reveal the course of conduct it intended to adopt. It concludes that the information was not exchanged in order to reach an agreement between the parties and that therefore the information exchange was not anticompetitive.[1107]

(879) This is, however, contradicted by the evidence as described in section 9.2.1 (…). Even if – as Trame argues - there were no discussions on Trame's data at each and every Club Italia meeting, there is ample evidence that sensitive commercial information relating to Trame was discussed throughout the cartel period both in Trame's presence[1108] and in its absence (implying that it must have communicated this information prior to the meeting)[1109].

(880) Furthermore, conduct may fall under Article 101(1) of the TFEU as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their

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1105 (…)

1106 Case T-308/94, *Cascades v Commission* [1998] ECR II-925, paragraph 230.

1107 Case T-52/03, *Knauf Gips v Commission,* recitals 187-188 and 256 (under appeal) and Case C-238/05, Asnef-Equifax [2006] ECR I-11125.

1108 (…)

1109 (…)

commercial behaviour[1110]. Although Trame claims that it only participated in the meetings to receive information and not to conclude any cartel arrangement, it is established that it participated in the cartel meetings (see section 9.2.1) and it can therefore be presumed that it complied with the overall objective of the cartel. In addition the condition of reciprocity of a concerted practice is met where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least accepts it[1111] (see also recital (582)).

(881) Moreover, it has been sufficiently established that Trame regularly disclosed sensitive commercial information regarding customers, sales and prices, which necessarily had consequences for the functioning of the cartel (see section 9.2.1 and in particular recitals (467) to (473)). In accordance with the case-law, it can also be presumed that Trame took account of the information exchanged with its competitors for the purposes of determining its conduct on the market.[1112] Trame has not rebutted this presumption by showing that it did not engage in any activities linked to the concertation or that it did not in any way take into account the commercial information disclosed at the meetings.[1113]

(882) Consequently, the Decision should be addressed to Emme Holding S.p.A. and the undertaking should be held liable for its cartel participation for the period from 04.03.1997 until 19.09.2002.

VII. DURATION OF THE INFRINGEMENT

15. DURATION OF INDIVIDUAL PARTICIPATION OF THE ADDRESSEES

(883) On the basis of the considerations set out in section VI, it is concluded that the duration of the individual participation in the cartel of the various undertakings concerned was as follows:

(a) ArcelorMittal Wire France SA

(884) The undertaking formed by ArcelorMittal (from 01.07.1999 to 19.09.2002), ArcelorMittal Wire France SA (from 01.01.1984 to 19.09.2002), ArcelorMittal Fontaine SA (from 20.12.1984 to 19.09.2002) and ArcelorMittal Verderio Srl (from 03.04.1995 to 19.09.2002).

(b) Emesa/Galycas

(885) The undertaking formed by Emesa-Trefilerías S.A. (from 30.11.1992 to 19.09.2002), Industrias Galycas S.A. (from 15.12.1992 to 19.09.2002),

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1110 See also Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, recital 256.

1111 Joined Cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 1849.

1112 See for example Case C-199/92 P *Hüls v Commission*, [1999] ECR 1-4287, paragraph 162. See also Case C-8/08 *T-Mobile Netherlands*, judgment of 4 June 2009 (not yet reported), paragraph 51.

1113 See Case C-199/92 P *Hüls AG v Commission*, [1999] ECR 1-4287, paragraph 167.

ArcelorMittal España S.A. (from 02.04.1995 to 19.09.2002) and ArcelorMittal (from 18.02.2002 to 19.09.2002).

(c) Tycsa

(886) The undertaking formed by Moreda-Riviere Trefilerías S.A. (from 10.06.1993 to 19.09.2002), Trenzas y Cables de Acero P.S.C., SL (from 26.03.1998 to 19.09.2002), Trefilerías Quijano S.A. (from 15.12.1992 to 19.09.2002) and Global Steel Wire SA (from 15.12.1992 to 19.09.2002).

(d) Socitrel

(887) The undertaking formed by SOCITREL - Sociedade Industrial de Trefilaria, S.A. and Previdente - Sociedade de Controle de Participações Financeiras S.A. (both from 07.04.1994 to 19.09.2002).

(e) Austria Draht

(888) The undertaking formed by voestalpine Austria Draht GmbH and voestalpine AG (both from 15.04.1997 to 19.09.2002).

(f) Fapricela

(889) The undertaking Fapricela - Indústria de Trefilaria S.A. (from 02.12.1998 to 19.09.2002).

(g) Proderac

(890) The undertaking Proderac Productos Derivados del Acero S.A. (from 24.05.1994 to 19.09.2002).

(h) WDI

(891) The undertaking formed by Westfälische Drahtindustrie GmbH (from 01.01.1984 to 19.09.2002), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG (from 03.09.1987 to 19.09.2002) and Pampus Industriebeteiligungen GmbH & Co. KG (from 01.07.1997 to 19.09.2002).

(i) Nedri

(892) The undertaking formed by Nedri Spanstaal BV (from 01.01.1984 to 19.09.2002) and Hit Groep BV (from 01.01.1998 to 17.01.2002).

(j) DWK

(893) The undertaking formed by DWK Drahtwerk Köln GmbH and Saarstahl AG (both from 09.02.1994 to 06.11.2001).

(k) Fundia

(894) The undertaking formed by Ovako Hjulsbro AB (from 23.10.1997 to 31.12.2001), Ovako Dalwire Oy Ab (from 23.10.1997 to 31.12.2001), Ovako Bright Bar AB (from 23.10.1997 to 31.12.2001) and Rautaruukki Oyj (from 23.10.1997 to 31.12.2001).

(l) ITC

(895) The undertaking formed by Italcables S.p.A.and Antonini S.p.A. (both from 24.02.1993 to 19.09.2002).

(m) Redaelli

(896) The undertaking Redaelli Tecna S.p.A.from 01.01.1984 until 19.09.2002.

(n) CB

(897) The undertaking CB Trafilati Acciai S.p.A. from 23.01.1995 to 19.09.2002.

(o) Itas

(898) The undertaking I.T.A.S. - Industria Trafileria Applicazioni Speciali - S.p.A.. from 24.02.1993 to 19.09.2002.

(p) SLM

(899) The undertaking formed by Siderurgica Latina Martin S.p.A. (from 10.02.1997 to 19.09.2002 and ORI Martin S.A. (from 01.01.1999 to 19.09.2002).

(q) Trame

(900) The undertaking Emme Holding S.p.A. from 04.03.1997 to 19.09.2002.

16. CLAIMS REGARDING EQUAL TREATMENT RELATED TO DURATION

(901) **Itas**[1114] claims that the Commission would violate the principle of equal treatment if it were to hold Itas liable for participating in the crisis period of Club Zurich, despite the fact that it was never present in these crisis meetings, if the Commission at the same time were not to hold Austria Draht liable for its participation in Club Zurich notwithstanding its presence in these meetings.

(902) **WDI**[1115] brings a similar claim, but holds that the Commission would fail to treat WDI and the Italian companies (ITC, CB and Itas) equally if it were to hold WDI liable for its cartel behaviour as of 01.01.1984, despite the fact that the Commission does not have contemporaneous evidence for Club Zurich prior to November 1992, if at the same time the Italian producers were to be held liable only as of 24.02.1993 (CB as from 23.01.1995), notwithstanding the fact that between 1983 and 1994 several contemporaneous documents show their involvement in a cartel in Italy. WDI's express admission of its participation as of 1984 should also not be held against it.

(903) The Commission first observes that it enjoys a margin of discretion in deciding which undertaking to hold liable and for what period. This assessment is done on a case-by-case basis, based on all relevant facts and the available evidence.

(904) The Commission further notes in particular regarding Itas' claim, that its decision not to hold Austria Draht liable for the Zurich Club follows from

1114 (…)
1115 (…)

the fact that the body of evidence against this undertaking for the period prior to 15.04.1997 was not as strong as for the period thereafter. To the contrary, the body of evidence of Itas' participation through Redaelli, in the Zurich Club, including initially during the crisis period, is sufficiently strong for it to be liable as of 24.02.1993.

(905) Finally, in particular regarding WDI's claim, while there is some documentary evidence regarding Club Italia as of 1983, the body of evidence in the Commission's possession was not sufficiently strong to uphold an earlier starting date than 23.01.1995 for the participation of the (first) Italian producers in Club Italia (see section 9.2.1.8). The involvement of WDI in Club Zurich is, in contrast, sufficiently established and moreover expressly confirmed by WDI itself (see section 9.1.1.1).

VIII. REMEDIES

17. CLAIMS REGARDING LIMITATION PERIOD

(906) Pursuant to Article 25(1)(b) of Regulation (EC) No 1/2003, the power of the Commission to impose fines or penalties for infringements of the substantive rules relating to competition is subject to a limitation period of five years. For continuing or repeated infringements, the limitation period begins to run on the day the infringement ceases[1116]. Any action taken by the Commission for the purpose of the investigation or proceedings in respect of an infringement interrupts the limitation period and each interruption starts time running afresh[1117].

(907) Several parties[1118] claim that there was a break in the cartel between the end of the Zurich Club and the start of the Club Europe arrangement in May 1997 so that actions in relation to the Zurich Club should be considered as time-barred, and the starting date of the cartel should be set at May 1997 (see section 12.2.2.3). However, as explained in recitals (187), (613) and section 12.2.2.3, the Zurich Club and Club Europe phases of the pan-European arrangement are part of one single and continuous infringement, which was not interrupted by the crisis period from 09.01.1996 to 12.05.1997. The Zurich Club phase of the pan-European arrangement is therefore not time-barred.

(908) Alternatively, the Commission considers that the addressees of this Decision were involved in repeated infringements within the meaning of Article 25(2) of Regulation 1/2003. There was no interruption of five years or more between these repetitions. In fact, there is no interruption whatsoever between the end of the Zurich Club arrangement on 09.01.1996 and the start of the negotiations on the Club Europe quota system.These negotiations started at the last Zurich Club meeting on 09.01.1996 with a first discussion on a tentative allocation of quotas and culminated in the conclusion of the Lyon agreement in May 1997. Even discounting this

[1116] Article 25(2) of Regulation No 1/2003.
[1117] Article 25(3) to (5) of Regulation No 1/2003.
[1118] (…)

period of negotiations, the period between the end of the Zurich Club arrangement and the Lyon agreement was less than 17 months. The repeated infringements committed between 01.01.1984 and 19.09.2002 had the same objective, namely to prevent competition by fixing quotas, allocating clients and fixing prices. A same system of regular meetings to exchange information and to monitor and enforce the agreements was applied and a compensation scheme was a common feature. Moreover, the participants were largely identical and to a large extent, even the same physical persons[1119] were participating.

(909) Several parties[1120] further claim that the proceedings are time-barred for them, since the SO was filed more than five years after the date of the inspections and the requests for information on the assessment of the infringement sent out the same day to companies inspected (19.09.2002). They argue that the limitation period started as of the latter date as all requests for information after that date concerned merely the companies' structure and turnover and/or were as such not relevant to find an infringement. They conclude that the limitation period would have ended on 19.09.2007.

(910) It follows from Article 25(3), of Regulation 1/2003 that any action taken by the Commission for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments[1121.] From the date of the inspections until the date of adoption of the SO, the Commission has continuously taken relevant investigative actions, including sending several requests for information, receiving and acting on several leniency requests and conducting further inspections[1122], which each time interrupted the limitation period towards all addressees of this Decision.

(911) Ori Martin also argues that the *Organic Peroxides* case-law[1123], which provides that the interruption of the limitation period brought about by the notification of a request for information to an undertaking also applies to the other participants in that arrangement, even though they were not the addressee of the request, would not be applicable to ORI Martin S.A. because ORI Martin S.A. was not a *'participant'* in the arrangement since it was not held directly responsible for the infringement, but only as SLM's parent company.

(912) In accordance with the Article 2(2) of Regulation No 2988/74[1124] and established case law, the interruption of the limitation period applies for all

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1119 (…)

1120 (…)

1121 See also case T-405, ArcelorMittal v Commission, judgment of 31 March 2009, not yet reported, paragraph 143-145.

1122 (…)

1123 See Case T-120/04, *Peróxidos Orgánicos* v *Commission* [2006], ECR II-4441, paragraph 47.

1124 Regulation No 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the EEC rules relating to transport and competition (OJ L 319, 29.11.1974).

the *undertakings* which participated in the infringement in question[1125]. It has been sufficiently established that ORI Martin S.A. and SLM were part of the same undertaking at the time of the infringement (see section 14.16). Therefore, no difference should be made between a parent company and the direct cartel participant which is part of the same undertaking.

(913) Therefore, the proceedings in this case are not time-barred for any of the addressees of this Decision.

18. ARTICLE 7 OF REGULATION (EC) NO 1/2003

(914) Where the Commission finds an infringement of Article 101 of the TFEU or of Article 53 of the EEA Agreement it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.

(915) In the present case, it is not possible to declare with absolute certainty that the infringement has ceased for all the participants. There were indications that at least on the Iberian Peninsula some of the undertakings may have continued organising meetings after the inspections were carried out, during which commercially sensitive information was both exchanged and discussed, price increases were decided and customers were allocated[1126]. In addition, given the secret nature of the meetings it is not possible to establish with certainty that there were no further meetings or contacts after the inspections.

(916) It is therefore necessary for the Commission to require the undertakings to which the present Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

(917) The prohibition should apply not only to secret meetings and multilateral or bilateral contacts but also to the activities of the undertakings in so far as they involve, in particular, collecting and distributing individualised sales and/or price statistics from each other.

19. ARTICLE 23(2) OF REGULATION (EC) NO 1/2003

(918) Under Article 23(2) of Regulation (EC) No 1/2003[1127], the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the TFEU and/or Article 53 of the EEA Agreement. Under Article 15(2) of Council

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1125 See case T-276/04, Judgment of 01/07/2008, *Compagnie maritime belge v Commission*, not yet reported, paragraph 31 and Case T-120/04 *Peróxidos Orgánicos* v *Commission* [2006] ECR II-4441, paragraph 47

1126 (…)

1127 Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area *'the Community rules giving effect to the principles set out in Articles 85 and 86 of the EC Treaty […] shall apply* mutatis mutandis' (OJ L 305/6 of 30.11.1994).

Regulation No 17 which was applicable at the time of the infringement, the fine for each undertaking participating in the infringement can not exceed 10% of its total turnover in the preceding business year. The same limitation results from Article 23(2) of Regulation (EC) No 1/2003.

(919) In the present case, the Commission considers that, based on the facts described in this Decision and the assessment (see recital (918)) above, the infringement has been committed intentionally (see for example recital (193)) or negligently. The infringement described above consists of quota-fixing, price fixing, customer allocation and exchange and disclosure of commercially sensitive information concerning PS.

(920) Pursuant to both Article 15(2) of Regulation No 17 and Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine, have regard to all relevant circumstances and particularly to both the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission refers to the principles laid down in the 2006 Guidelines on fines[1128].

(921) In their reply to the SO, the Tycsa companies argue that any fine imposed on them should be determined according to the 1998 Guidelines on fines[1129] rather than the 2006 Guidelines on fines, as the former were applicable when the infringement ended in 2002 and would moreover be more favourable to them[1130]. The Tycsa companies rely in this respect on the principles of legitimate expectations[1131], non-retroactivity[1132] and legal certainty[1133].

(922) The Commission refers to paragraph 38 of the 2006 Guidelines on fines which stipulate that the 2006 Guidelines on fines apply to all cases where a SO is notified after their publication in the Official Journal. It is settled case law that in determining the amount of the fines, the Commission has wide discretion. It is also settled case law that the fact that the Commission imposed fines of a certain level for certain types of

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1128 OJ C 210, 01.09.2006, p. 2. See also footnote 203.

1129 Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (OJ C 9, 14.01.1998, p. 3-5).

1130 (…)

1131 Arguing that undertakings are entitled to expect that the more favourable law, which was applicable at time of infringement, is to be applied. The Tycsa companies refer a.o. to Case C-310/04 *Spain v Council* [2006] ECR I-7285, paragraph 81.

1132 The Tycsa companies refer to Article 7 of the European Convention on Human Rights, which prohibits imposing more severe sanctions than those applicable at the time of the infringement.

1133 Arguing that the rules and the consequences of a violation of law must be clear, precise and foreseeable and any fine must be based on rules existing at the time of the infringement. According to the Tycsa companies, only in 2005, i.e. after the end of the infringement, the new 2006 Guidelines were publicly announced and they were thus not foreseeable at the time of the infringement. The Tycsa companies also invoke that the application of the 1998 or 2006 Guidelines on fines totally depends on the duration of the Commission's investigation and the sending of the SO. Because of the Commission's large discretion with regard to the timing of the end of the investigation, they argue that the more severe 2006 Guidelines should not apply retroactively, or, in any case, fines imposed on the basis of the 2006 Guidelines should not be higher than when imposed on the basis of the 1998 Guidelines.

infringements in the past does not mean that it cannot increase that level to ensure the implementation of EU competition policy. The proper application of the EU competition rules requires that the Commission may at any time adjust the level of fines to the needs of that policy.[1134] The Commission is entitled to increase the general level of fines if, for example, it believes that such an increase is necessary to achieve a deterrent effect in the light of the frequency of contraventions of the competition rules.[1135] Moreover, the Commission's practice in previous cases does not serve as a legal framework for fines in competition matters[1136] and the undertakings involved in an administrative procedure in which fines may be imposed cannot acquire a legitimate expectation that the Commission will not exceed the level of fines previously imposed or in a method of calculating the fines.[1137] Finally, the Commission can change the weight that it gives to particular factors in its assessment of gravity of the infringement.[1138]

(923) The principles of non-retroactivity, legal certainty and legitimate expectations are not violated by the application of the 2006 Guidelines on fines. The principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*) implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable[1139]. It also implies that a heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed.

(924) The Court of Justice of the European Union has had the opportunity to address similar issues in the past as regards the application of the 1998

1134 See, *inter alia*, Joined cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission* [1983] ECR 1825, paragraph 109 and Joined Cases C-189/02P, C-202/02P, C-205/02P to C-208/0P and C-213/02 P *Dansk Rørindustri and others v Commission* [2005] ECR I-5425, paragraph 227; Case T-303/02 *Westfalen Gassen Nederland v Commission* [2006] ECR II-4567, paragraph 151; Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2003] ECR II-2597, paragraph 56 referring to Case T-150/89 *Martinelli* v *Commission* [1995] ECR II-1165, paragraph 59.

1135 See for example Joined Cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission* [1983] ECR 1825 paragraphs 105-108; Case T-334/94 *Sarrió v Commission* [1998] ECR I-1439, paragraph 331.

1136 Case T-52/02 *SNCZ v Commission* [2005] ECR II-5005, paragraph 77.

1137 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 228. See also judgment of 8 October 2008 in Case T-73/04 *Le Carbone-Lorraine v Commission*, [2008], ECR II-2661, paragraph 205.

1138 See for example Case T-347/94 *Meyr-Melnhof v Commission* [1998] ECR II-1751, paragraph 368; *See* also Case T-241/01 *SAS v Commission* [2005] ECR II-2917, paragraph 132.

1139 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, paragraphs 215 to 219. See also Joined Cases 100/80 to 103/80 Musique Diffusion française *a.o.* v Commission [1983] ECR 1825, paragraphs 105 and 109, and Case C-196/99 P *Siderúrgica Aristrain Madrid v Commission* [2003] ECR I-11005, paragraph 81.

Guidelines on fines[1140]. On the assumption that those Guidelines had the effect of increasing the level of the fines imposed, the Court has held that the Guidelines and, in particular, the new method of calculating fines contained therein, were reasonably foreseeable for undertakings at the time when the infringements were committed. The fact that the Court's findings were made in a context where there were no previous guidelines of fines does not render such findings inapplicable to the present case[1141], since in its judgment the Court of Justice addressed generally the issue of a change in 'enforcement policy'. Taking into account that case law has consistently admitted that turnover with the product to which the infringement relates can be relevant in the setting of the fine,[1142] that element of the calculation cannot be considered to be unforeseeable[1143].

(925) As regards the contention that the new policy results in a higher fine than that imposed on the basis of the former practice, it should be noted that this is not necessarily so. The Commission could have also increased the level of fines under the 1998 Guidelines on fines. Insofar as the Commission could at any time revise its own Guidelines, and proceed, as it was the case as regards the 1998 Guidelines on fines, to apply them to cases in the past, undertakings could not have any specific legitimate expectation that the fine to be imposed would be based on the 1998 Guidelines on fines. Finally, as regards comparison with fines set in previous decisions under the 1998 Guidelines on fines, each infringement is necessarily different as regards its nature and scope, as well as the markets, the products, the undertakings and the periods concerned.[1144]

(926) Consequently, the undertakings must take account of the possibility that the Commission may decide at any time to raise the level of the fines by

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1140 See for example Joined Cases C-189/02P, C-202/02P, C-205/02P to C-208/0P and C-213/02 P *Dansk Rørindustri and others v Commission* [2005] ECR I-5425, paragraphs 222-230; Case C-397/03P *Archer Daniels Midland v Commission* [2006] ECR I-4429, paragraphs 15-36; T-15/02 *BASF AG v Commission* [2006] ECR II-497, paragraph 250; T-101/05 and T-111/05 *BASF and UCB v Commission* [2007] ECR II-4949, paragraphs 233-234. *See* also, more generally, Case T-279/02 *Degussa v Commission* [2006] ECR II-897, paragraphs 34-98.

1141 The Tycsa companies claim that the current situation would deviate from the *Dansk Rørindustri* case-law because the parties in Dansk Rørindustri could not have any legitimate expectations at the time of the infringement given that there were no Guidelines on fines to draw expectations from. With the adoption of the 1998 Guidelines on fines, however, the Commission would have auto-limited its discretion, thus causing legitimate expectations. Therefore the Commission would no longer be free to change its practice regarding the level of fines at any time, without violating legitimate expectations.

1142 Judgment of 8 July 2008, *BPB* v *Commission*, T-53/03, paragraph 278, and case law cited therein.

1143 Specially since the scope of the notion of foreseeability depends to a considerable degree on the content of the text in issue, the field it is designed to cover and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation (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 219).

1144 Case T-329/01 *Archer Daniels Midland* v *Commission* [2006] ECR II-3255, paragraph 112..

reference to that applied in the past, as long as the Commission respects the 10% cap. The 2006 Guidelines on fines and, in particular, the new method of calculating fines contained therein, even on the assumption that this new method would have had the effect of increasing the level of the fines imposed, were reasonably foreseeable for undertakings at the time when the infringements concerned were committed[1145]. The principles of legitimate expectation, non-retroactivity and legal certainty are not violated and the 2006 Guidelines on fines are applicable in this case.

19.1. The Basic Amount of the Fines

19.1.1. Methodology

(927) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales.

(928) According to the 2006 Guidelines on fines, the basic amount of the fine consists of an amount of between 0% and 30% of a company's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the company's participation in the infringement, and an additional amount of between 15% and 25% of the value of a company's sales, irrespective of duration[1146].

19.1.2. The Value of Sales

(929) In determining the basic amount of the fine to be imposed, the Commission starts from the value of the undertaking's sales of the goods or services to which the infringement relates in the relevant geographic area within the EEA. It will normally take the sales made by the undertaking during the last full business year of its participation in the infringement (point 13 of the 2006 Guidelines on fines).

(930) In accordance with the findings on the duration of the involvement in the infringement (see Chapters VI and VII), the last full business year of participation in the infringement is 2000 for DWK and 2001 for all other undertakings addressed by this Decision.

(931) The **goods** to which the infringement relates in the present case are prestressing steel, including both wire and strand. As submitted by the ArcelorMittal group and Emesa/Galycas, the sales value of special strands (galvanized, sheathed - greased or waxed) and of stays must be stripped out of the relevant turnover because there is not sufficient proof that these products were part of the cartel discussions. Most of the cartel participants did not even produce or sell these products. The goods to which the infringement relates are therefore prestressing steel, excluding special strands and stays (see also section 1).

1145 Joined Cases C-189/02 and others, *Dansk Rørindustri a.o. v Commission* [2005], ECR I-5425, paragraph 228-231. See also Case C-350/88 *Delacre a.o. v Commission* [1990] ECR I-395, paragraph 33 and the case-law cited.

1146 (…)

(932) The **relevant geographic area** evolved over time. From 1984 to 1995 (Zurich Club period), it included Germany, France, Italy, the Netherlands, Belgium, Luxemburg, Spain and Austria. It also included Portugal as from 1992 (under the Club España arrangements). From 1996 to 2002 (Zurich Club crisis period (when the Club Europe quota arrangement was prepared), Club Europe period and expansion period), the geographic area covered the same countries as during the Zurich Club period, including Portugal, and in addition Denmark, Sweden, Finland and Norway (see sections 9.1.1 to 9.1.5). This is taken into account in the calculation of the value of sales by excluding the sales in Portugal before 15.12.1992 and excluding the sales in Denmark, Sweden, Finland and Norway before 09.01.1996.

(933) The Commission further notes that the value of sales in Spain, Austria, Finland, Sweden and Norway cannot be taken into account for the entire duration of the infringement since Spain only joined the EU on 01.01.1986 and the EEA Agreement only entered into force on 01.01.1994. Hence, the sales in those countries before 01.01.1986 and 01.01.1994 respectively are excluded in the calculation of the value of sales. This is taken into account in section 19.1.6.

(934) The Tycsa companies[1147] claim that the only countries for which the Commission has proof of anticompetitive conduct are Germany, Belgium, the Netherlands, Luxembourg, Austria, Switzerland, France, Italy, Spain, Portugal and possibly Norway in relation to (…). Therefore, only the turnover in these countries affected should be taken into account and not the EEA turnover. The Tycsa companies disregard Denmark, Sweden and Finland which were part of the (…) co-ordination from 1993 and part of the reference territory of the pan-European arrangements as of 1996 (see recital (932)).

(935) Fundia's cartel participation being exclusively limited to the co-ordination regarding the client (…) and as its awareness that this co-ordination took place in the context of a cartel of a larger, pan-European dimension could only be established at a very late stage (see section 12.2.2.4), Fundia should be held liable only for its participation in the (…) co-ordination and the sales taken into account in establishing the value of sales are exclusively those to (…) . Similarly, as Socitrel, Fapricela and Proderac were only active in one regional branch of the cartel (Club España) and their awareness of a cartel of a larger, pan-European dimension could only be established at a very late stage (see section 12.2.2.4), their sales taken into account in establishing the value of sales are exclusively those of Spain and Portugal (for Socitrel and Fapricela) and those of Spain alone (for Proderac, as it did not have any sales outside Spain). This results in the following values of sales withheld for the different undertakings:

Undertaking	**Period**	**Value of Sales**
1. Tréfileurope	01.01.1984-31.12.1985	37 587 652
	01.01.1986-14.12.1992	39 818 179

[1147] (…)

Reply dated 16 October 2009	15.12.1992-31.12.1993	40 433 820
	01.01.1994-08.01.1996	40 890 020
	09.01.1996-19.09.2002	42 554 752
2. Emesa-Galycas	30.11.1992-14.12.1992	21 752 010
	15.12.1992-31.12.1993	25 682 902
(…)	01.01.1994-08.01.1996	25 682 902
	09.01.1996-19.09.2002	28 853 095
3. TYCSA-Trefilerías Quijano	15.12.1992-31.12.1993	37 221 544
(…)	01.01.1994-08.01.1996	37 310 373
(…)	09.01.1996-19.09.2002	39 553 282
4. Socitrel	07.04.1994-08.01.1996	12 016 516
(…)	09.01.1996-19.09.2002	12 016 516
5. Austria Draht	15.04.1997-19.09.2002	18 207 306
(…)		
6. Fapricela	02.12.1998-19.09.2002	21 613 839
(…)		
7. Proderac	24.05.1994-08.01.1996	1 104 472
(…)	09.01.1996-19.09.2002	1 104 472
8. WDI	01.01.1984-31.12.1985	12 997 000
	01.01.1986-14.12.1992	12 997 000
(…)	15.12.1992-31.12.1993	12 997 000
	01.01.1994-08.01.1996	12 997 000
	09.01.1996-19.09.2002	13 978 000
9. Nedri	01.01.1984-31.12.1985	30 157 611
	01.01.1986-14.12.1992	30 389 997
(…)	15.12.1992-31.12.1993	30 389 997
	01.01.1994-08.01.1996	30 389 997
	09.01.1996-19.09.2002	30 584 561
10. DWK	09.02.1994-08.01.1996	9 056 779
(…)	09.01.1996-06.11.2001	9 056 779
11. Ovako	23.10.1997-31.12.2001	5 271 515
(…)		
12. ITC	24.02.1993-31.12.1993	21 099 285
	01.01.1994-08.01.1996	21 165 937
(…)	09.01.1996-19.09.2002	21 165 937

13. Redaelli	01.01.1984-31.12.1985	23 679 237
	01.01.1986-14.12.1992	23 679 237
(…)	15.12.1992-31.12.1993	23 937 731
	01.01.1994-08.01.1996	24 030 341
	09.01.1996-19.09.2002	24 030 341
14. CB	23.01.1995-08.01.1996	19 662 561
(…)	09.01.1996-19.09.2002	20 877 959
15. ITAS	24.02.1993-31.12.1993	15 309 742
	01.01.1994-08.01.1996	15 386 712
(…)	09.01.1996-19.09.2002	15 386 712
16. SLM	10.02.1997-19.09.2002	15 863 362
(...)		
17. Emme	04.03.1997-19.09.2002	8 231 277
(…)		

19.1.3. Gravity

(936) The gravity of the infringement determines the level of the value of sales taken into account in setting the fine. As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30%. In order to decide whether the proportion of the value of sales should be at the lower or at the higher end of the scale, 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 whether or not the infringement has been implemented.

(937) **ITC** and **Antonini** [1148] invoke that the Commission should take into account the following circumstances when assessing the gravity of the infringement: They first refer to the fact that ITC, as results from its turnover, was a minor player in the cartel. Moreover, as ITC was active almost exclusively in PS, it risked being penalized more heavily compared to other addressees whose economic power and role within the cartel was markedly more important. They also invoke the alleged particular economic characteristics of PS and of the market concerned and in particular the fact that PS is not a high-value product but has a low unit price and low profit margins. Finally, the companies submit that the substantial increase of their turnover over the years was the result of a strong increase in the price of raw materials.

[1148] (...)

(938) The different size and economic power of the addressees is taken into account by increasing the fine for undertakings which - different from ITC/Antonini/CB - have a particularly large turnover beyond their PS sales (see section 19.2.4). The fact that PS is a low-value product with a low unit price is reflected in the value of sales and thus in the basic amount of the fine and therefore does not require futher adjustments to the fine. Finally, when setting the fine, the existence or absence of profits is of no relevance (see also section 19.2.2.7). Equally, it is of no relevance that the increase in turnover was allegedly the result of an increase of the price of the raw materials.

19.1.3.1. Nature

(939) All undertakings except Fundia were involved in market sharing (quota fixing), customer allocation and horizontal price fixing (see section 9 and Annexes 2–4). These arrangements are among the most harmful restrictions of competition, distorting the main parameters of competition. Fundia's participation in the cartel was limited to the (…) client co-ordination.

(940) Proderac contests that it participated in Club España meetings on quota allocation, client allocation and price fixing[1149]. As regards quota allocation in particular, it argues that it did not participate in most of the Club España meetings at which such quotas were assigned, confirmed and/or monitored. Proderac further claims that the main producers fixed quotas for the small producers, which does not prove the latters' participation in the cartel. Moreover, it did not respect the quota arrangements. This is contradicted by the evidence[1150], from which it is clear that Proderac participated in numerous Club España meetings at which quotas were discussed and assigned to it. For instance, (…) in the meeting of 14.12.1999, at which not only quotas for Spain and Portugal were allocated to it, but at which it was also agreed to regularly verify the respect of the fixed quotas on the basis of comparisons of their real sales for the past month or quarter (comparison - '*ajustadas*') (see also recital (502) and section 9.2.2.5). This proves that Proderac also agreed with the implementation scheme. Such comparisons were made in several meetings at which Proderac was present[1151] but also during its absence[1152].

(941) As regards price fixing, (…) [1153] Proderac claims that it was not involved in any price-fixing. To support its claim, it refers to the fact that the other companies complained that Proderac never communicated its data (on prices and on its clients). According to Proderac, this also proves the non-implementation of the price agreements and Proderac's deviations from the fixed prices in the cartel. The Commission, however, notes that Proderac participated in at least 6 meetings at which prices were discussed and/or

1149 (…)
1150 (…)
1151 (…)
1152 (…)
1153 (…)

fixed among competitors: see for example meetings of 04.12.1998, 08.09.2000, 20.09.2000, 18.04.2001, 17.05.2001 and 07.06.2001.

(942) Finally, Proderac also submits that it did not participate in client allocation as it never provided a list of its clients despite the other cartel members' requests until the very end of the cartel. In any case it never respected any client arrangements having had itself only small-sized undertakings as clients. The Commission, however, notes the presence of Proderac in at least five meetings at which clients were discussed and allocated to amongst others Proderac: 08.09.2000, 20.09.2000, 18.04.2001, 17.05.2001 and 30.07.2002 (…).

(943) Therefore, the Commission maintains that Proderac uninterruptedly and continuously participated in quota fixing, price fixing and client allocation and moreover exchanged sensitive commercial information on volume, prices and clients in Club España from 24.05.1994 to 19.09.2002 (see also recital (525)-(526)).

(944) It should also be repeated that by taking part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective, each cartel participant 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, by which they fix quotas, prices or allocate clients.

(945) The addressees of this Decision participated in a single, complex and continuous infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement by setting up a secret and institutionalised scheme designed to restrict competition in the PS sector. The cartel arrangements operated entirely to the benefit of the participants and to the detriment of their customers and ultimately the general public.

19.1.3.2. Combined Market Share

(946) The combined market share of the undertakings for which the infringement is established in the EEA is estimated to be around 80%, as explained in recital (98).

19.1.3.3. Geographic Scope

(947) The geographic scope of the infringement consisted of the then 15 Member States except for Greece, the United Kingdom and Ireland and including Norway as an EEA Contracting Party, but evolved over time as explained in recital (932). From 1984 to 1995, it included Germany, France, Italy, the Netherlands, Belgium, Luxemburg, Spain and Austria. From 1996 to 2002, the infringement covered the same countries and Portugal, Denmark, Sweden, Finland and Norway. This geographic scope includes the territory covered by the pan-European arrangements, Club Italia and Club España, which form one single and continuous infringement.

(948) Contrary to what Emesa and Galycas claim, there should therefore not be a separate calculation of the fine for Club España and the pan-European arrangements, excluding the sales in some countries for the companies' non-

participation in some sub-arrangements of the single and continuous infringement. Similarly, contrary to what Austria Draht claims, Austria Draht's turnover in Spain and Portugal should not be excluded from the value of sales on the basis of it not being active in Club España, as these two countries were also part of the geographic scope of Club Italia (see for example recitals (409) 'CEE', (415) and (439)), in which Austria Draht participated.

(949) However, for Socitrel, Proderac, Fapricela and Fundia, undertakings which were participating exclusively in Club España (covering Spain and Portugal only) or – for the latter undertaking – in the (…) co-ordination, and for which awareness of the single and continuous infringement could only be established at a very late stage of the infringement (17.05.2001 and 14.05.2001 respectively, see section 12.2.2.4), the Commission takes into account the more limited geographical scope in determining the proportion of the value of the sales. The situation is different for the other Club España participants (Emesa/Galycas, Tycsa/Trefilerías Quijano) who participated simultaneously at several levels of the cartel and/or for which awareness of the single and continuous infringement is established at a much earlier stage. Also for the Club Italia participants the situation is different from Socitrel, Proderac and Fapricela as the geographic scope of Club Italia largely overlaps with that of the pan-European arrangements and is thus much larger than the geographic scope of Club España (Spain and Portugal).

19.1.3.4. Implementation

(950) As regards the implementation of the arrangements, as explained in sections 9.1.6, 9.2.1.7 and 9.2.2.5, although not always completely successful or effective, the arrangements were implemented.

(951) The ArcelorMittal companies[1154] argue that the PS agreements were not implemented and that the proportion of the value of the sales should therefore be set at the lower end of the scale. They submit a report of economists of LECG Consulting, allegedly proving the absence of implementation. The report includes on the one hand results of an econometric study, allegedly showing that cost reductions were not less likely to be passed on following the cartel meetings than if there had been no such meetings, which is inconsistent with the existence of an effective cartel. On the other hand, it includes an analysis of the price agreements reached at a meeting of 27.09.2001, which shows that Tréfileurope's Ste Colombe plant sold most of the products under the agreed minimum prices.

(952) The fact that Tréfileurope mostly did not respect the price agreements reached during two meetings does not mean that the cartel as a whole, which moreover also included quota fixing and client allocation, was not implemented, nor that Tréfileurope did not implement any of the agreements reached during its participation of over 18 years in the cartel. Cheating frequently occurs in cartels, in particular if they have a long duration, but this does not exclude their implementation. The system of monitoring set up

[1154] (…)

at all levels of the cartel and the compensation schemes set up at pan-European and Italian level as well as the exceptionally frequent meetings and contacts at all levels of the cartel and Tréfileurope's regular attendance of the meetings at pan-European and Italian level (see recital (950), sections 9.1 and 9.2.1 and Annexes 2 and 3 to the Decision), show that the cartel was implemented and that Tréfileurope contributed to this implementation. It is also inconceivable that a cartel would continue for over 18 years, if it was never implemented.

19.1.3.5. Conclusion on Gravity

(953) Given the specific circumstances of this case, taking into account the criteria discussed above relating to the nature of the infringement (see section 19.1.3.1) and the geographic scope (see section 19.1.3.3), the proportion of the value of sales to be taken into account should be 16% for the Fundia undertaking, 18% for the undertakings Socitrel, Fapricela and Proderac and 19% for all other undertakings.

19.1.4. Duration

(954) Point 24 of the 2006 Guidelines on fines provides that '*in order to take fully into account the duration of the participation of each undertaking in the infringement, the amount determined on the basis of the value of sales (see points (20) to (23) above) will be multiplied by the number of years of participation in the infringement.*'

(955) WDI claims in this respect that, if the Commission considers Club Zurich and Club Europe as one single and continuous infringement, the crisis period should be substracted from the total period for purposes of calculating the fine[1155]. The Commission observes that in view of WDI's (and several other cartel participants') uninterrupted participation in the pan-European arrangements, including during the Zurich Club crisis period, when price and quota discussions continued, resulting in a revised quota agreement in Club Europe (see sections 9.1 and 12.2.2.2 - and in particular recital (613)- and section 14.8), there is no reason to substract the crisis period from the total duration of the infringement for purposes of calculating the fine.

(956) Rather than rounding up periods as suggested in point 24 of the 2006 Guidelines on fines, the Commission will take into account the actual duration of participation in the infringement, expressed in years and full months, of the undertakings involved in the present case as summarized in section VII, rounding down on the month. This leads to the following multipliers:

Undertaking formed by:	**Period of liability**	**Number of years and months**	**Multiplier**

[1155] (…)

	Undertaking formed by:	Period of liability	Number of years and months	Multiplier
1.	a) ArcelorMittal Wire France SA	01.01.1984 to 19.09.2002	18 years and 8 months	18,66
	b) ArcelorMittal Fontaine SA and	20.12.1984 to 19.09.2002	17 years and 8 months	17,66
	c) ArcelorMittal Verderio Srl	03.04.1995 to 19.09.2002	7 years and 5 months	7,41
	d) ArcelorMittal	01.07.1999 to 19.09.2002	3 years and 2 months	3,16
2.	a) Emesa-Trefilería S.A.	30.11.1992 to 19.09.2002	9 years and 9 months	9,75
	b) Industrias Galycas S.A.	15.12.1992 to 19.09.2002	9 years and 9 months	9,75
	c) ArcelorMittal España S.A. and	02.04.1995 to 19.09.2002	7 years and 5 months	7,41
	d) ArcelorMittal	18.02.2002 to 19.09.2002	7 months	0,58
3.	a) Moreda-Riviere Trefilerías S.A.	10.06.1993 to 19.09.2002	9 years and 3 months	9,25
	b) Trenzas y Cables de Acero P.S.C., SL	26.03.1998 to 19.09.2002	4 years and 5 months	4,41
	c) Trefilerías Quijano S.A. and	15.12.1992 to 19.09.2002	9 years and 9 months	9,75
	d) Global Steel Wire S.A.	15.12.1992 to 19.09.2002	9 years and 9 months	9,75
4.	SOCITREL - Sociedade Industrial de Trefilaria, S.A. and Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A.	07.04.1994 to 19.09.2002	8 years and 5 months	8,41
5.	voestalpine Austria Draht GmbH and voestalpine AG	15.04.1997 to 19.09.2002	5 years and 5 months	5,41
6.	Fapricela Industria de Trefilaria SA	02.12.1998 to 19.09.2002	3 years and 9 months	3,75
7.	Proderac Productos Derivados del Acero S.A.	24.05.1994 to 19.09.2002	8 years and 3 months	8,25

	Undertaking formed by:	Period of liability	Number of years and months	Multiplier
8.	a) Westfälische Drahtindustrie GmbH	01.01.1984 to 19.09.2002	18 years and 8 months	18,66
	b) Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG	03.09.1987 to 19.09.2002	15 years	15
	c) Pampus Industriebeteiligungen GmbH & Co. KG	01.07.1997 to 19.09.2002	5 years and 2 months	5,16
9.	a) Nedri Spanstaal BV	01.01.1984 to 19.09.2002	18 years and 8 months	18,66
	b) Hit Groep BV	01.01.1998 to 17.01.2002	4 years	4
10.	DWK Drahtwerk Köln GmbH and Saarstahl AG	09.02.1994 to 06.11.2001	7 years and 8 months	7,66
11.	Ovako Hjulsbro AB, Ovako Dalwire Oy Ab, Ovako Bright Bar AB and Rautaruukki Oyj	23.10.1997 to 31.12.2001	4 years and 2 months	4,16
12.	Italcables S.p.A. and Antonini S.p.A.	24.02.1993 to 19.09.2002	9 years and 6 months	9,50
13.	Redaelli Tecna S.p.A.	01.01.1984 to 19.09.2002	18 years and 8 months	18,66
14.	CB Trafilati Acciai S.p.A.	23.01.1995 to 19.09.2002	7 years and 7 months	7,58
15.	I.T.A.S. - Industria Trafileria Applicazioni Speciali - S.p.A..	24.02.1993 to 19.09.2002	9 years and 6 months	9,5
16.	a) Siderurgica Latina Martin S.p.A. and	10.02.1997 to 19.09.2002	5 years and 7 months	5,58
	b) ORI Martin S.A.	01.01.1999 to 19.09.2002	3 years and 8 months	3,66
17.	Emme Holding S.p.A.	04.03.1997 to 19.09.2002	5 years and 6 months	5,5

19.1.5. The Percentage to be Applied for the Additional Amount

(957) Point 25 of the 2006 Guidelines on fines provides that '*irrespective of the duration of the undertaking's participation in the infringement, the Commission will include 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, market-sharing and output limitation agreements*'.

(958) **Austria Draht** argues that since it was not aware of the overall pan-European arrangement, the Commission should not apply deterrence in the form of an entry fee to it, or if it does so, the percentage concerned should be set at the lower level (15%)[1156].

(959) This claim should be rejected: as explained in recitals (652) to (654), Austria Draht was in fact aware of the overall pan-European arrangement. Moreover, it is established that Austria Draht participated in Club Italia in meetings where prices were fixed, clients allocated and quotas shared (see recitals (479) onwards), so that the percentage for Austria Draht should not be different from other undertakings participating in similar practices.

(960) **Rautaruukki** equally submits that there is no need or justification to apply an increase in order to deter it from taking part in future infringing activity under point 25 of the 2006 Guidelines on fines arguing that it was not involved in this cartel nor in any cartel in the past and that its former subsidiaries only disclosed information on their past sales[1157].

(961) Whether or not a company has been involved in anticompetitive practices in the past is taken into account under the aggravating circumstances (recidivism, see section 19.2.1) and the absence of past anticompetitive behaviour is not a factor to be taken into account additionally in establishing the percentage to be applied for the additional amount. It is established that the Ovako companies participated in the (…) client co-ordination and that Rautaruukki formed one undertaking with these companies at the time of the infringement. Therefore, point 25 of the 2006 Guidelines on fines should be applied to the Ovako companies and Rautaruukki.

(962) Taking into account the circumstances of the case and, in particular, the factors discussed in section 19.1.3, it is concluded that an additional amount of 16% of the value of sales is appropriate for the Fundia undertaking, 18% for the undertakings Socitrel, Fapricela and Proderac and 19% for all other undertakings.

19.1.6. Calculation and Conclusion on Basic Amounts

(963) Applying (downward) rounded figures pursuant to point 26 of the Guidelines on fines, the basic amount of the fine to be imposed on the addressees of this Decision is to be calculated as follows:

1156 (…)

1157 (…)

	Total basic amount	**Undertakings**
1.	a) (…) b) (…) c) (…) d) (…)	ArcelorMittal Wire France SA ArcelorMittal Fontaine SA ArcelorMittal Verderio Srl ArcelorMittal
2.	a) (…) b) (…) c) (…) d) (…)	Emesa –Trefilería SA Industrias Galycas S.A. ArcelorMittal España S.A. ArcelorMittal
3.	a) (…) b) (…) c) (…) d) (…)	Moreda-Riviere Trefilerías S.A. Trenzas y Cables de Acero P.S.C., SL Trefilerías Quijano S.A. Global Steel Wire SA
4.	(…)	Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A., and SOCITREL - Sociedade Industrial de Trefilaria, S.A.
5.	(…)	voestalpine AG, and voestalpine Austria Draht GmbH
6.	(…)	Fapricela-Indústria de Trefilaria SA
7.	(…)	Proderac Productos Derivados del Acero S.A.
8.	a) (…) b) (…) c) (…)	Westfälische Drahtindustrie GmbH Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG Pampus Industriebeteiligungen GmbH & Co. KG
9.	a) (…) b) (…)	Nedri Spanstaal BV HIT Groep BV
10.	(…)	Saarstahl AG, and DWK Drahtwerk Köln GmbH
11.	(…)	Rautaruukki Oyj, and Ovako Bright Bar AB, and Ovako Hjulsbro AB, and Ovako Dalwire Oy Ab
12.	a) (…) b) (…)	Italcables S.p.A. Antonini S.p.A.
13.	(…)	Redaelli Tecna S.p.A.
14.	(…)	CB Trafilati Acciai S.p.A.
15.	(…)	I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.
16.	a) (…) b) (…)	Siderurgica Latina Martin S.p.A. ORI Martin S.A.
17.	(…)	Emme Holding S.p.A.

19.2. Adjustments to the Basic Amount

19.2.1. Aggravating Circumstance : Recidivism

(964) Point 28 of the 2006 Guidelines on fines provides that *'the basic amount may be increased where the Commission finds that there are aggravating circumstances, such as: 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 81 or 82: the basic amount will be increased by up to 100% for each such infringement established (…).'* Recidivism shows that previously imposed sanctions were not sufficiently deterrent and therefore justifies an increase of the basic amount of the fine[1158].

(965) Prior to or during the infringement which is the subject of the present Decision, Tréfilunion SA (now ArcelorMittal Wire France SA), Fontainunion SA (now ArcelorMittal Fontaine SA), Saarstahl AG and Unimétal SA (now Mittal Steel Gandrange SA) had already been or were addressees of previous Commission decisions concerning cartel activities[1159].

(966) Fontainunion SA and Tréfilunion SA were addressees of the Decision in *Welded Steel Mesh* of 02.08.1989. Unimétal SA (Mittal Steel Gandrange SA) and Saarstahl AG were addressees of the Decision in *Steel Beams* of 16.02.1994. Unimétal SA was a parent of Fontainunion SA (now ArcelorMittal Fontaine SA) and Tréfilunion SA (now ArcelorMittal Wire France SA) both at the time of the infringement and decision in *Steel Beams* of 16.02.1994 (see above recital (11)) and at the time of the present Decision. Hence Fontainunion SA and Tréfilunion SA should be held liable as recidivist for two previous decisions finding an infringement of the competition rules. ArcelorMittal did not control this group at the time of the past infringements and should therefore not be held liable as recidivist. The Saarstahl group was involved in one previous decision finding an infringement of the competition rules.

(967) Several companies of the ArcelorMittal Wire France undertaking (in particular ArcelorMittal Wire France SA and ArcelorMittal Fontaine SA) as well as Saarstahl AG were involved in the infringement which is the subject of this Decision since 1984 and 1994 respectively and this until 2002 and 2001 respectively. The two groups thus continued their participation in the cartel subject to this Decision during many years after the previous decisions

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1158 See Case T-203/01 *Michelin v Commission* [2003] ECR II-4071, paragraph 293.

1159 See, in particular, Commission decision 89/515/EEC of 02.08.1989 relating to a proceeding under Article 85 of the EEC Treaty, IV/31.553- *Welded Steel mesh*, OJ L 260, 06.09. 1989, p.1-44, where **Fontainunion SA** and **Tréfilunion SA** (previous denominations of ArcelorMittal Fontaine SA and ArcelorMittal Wire France SA) were involved; Commission decision 94/215/ECSC of 16.02.1994 relating to a proceeding under Article 65 of the ECSC Treaty, *Steel Beams*, OJ L 116, 06.05.1994, p.1-62, where **Saarstahl AG** and **Unimétal SA** (now Mittal Steel Gandrange SA) were involved.

in which they were found to have infringed the competition rules (see recital (966)).

(968) The ArcelorMittal companies[1160] argue that decisions adopted under Article 65 of the ECSC Treaty cannot be the basis for a finding of repeat infringements, insofar as these decisions do not establish that there was any infringement of Article 101 of the TFEU or Article 53 of the EEA Agreement. The Commission notes, however, that the ECSC Treaty and the EC Treaty belong to the same legal order. This single legal order is founded on the Treaties establishing the European Union and the various Communities; it is characterised by common objectives (see Article 3 of the Treaty on European Union ('TEU')), common legal subjects (the Member States and citizens of the European Union), common rules and procedures (see Articles 7, 48 and 49 of the TEU) and common institutions. When the ECSC Treaty expired on 23 July 2002, the general law contained in Article 101 of the TFEU took the place of the specific law, namely Article 65 of the ECSC Treaty[1161].

(969) Article 101 of the TFEU and Article 65 of the ECSC Treaty are moreover inspired by identical legal concepts and both prohibit cartels. It must, therefore, be accepted that, once the Commission has established by way of a decision, in accordance with the competence which is granted to it by the legal order of the European Union, that an undertaking participated in a cartel, that decision may serve as the basis for assessing, in the context of a new decision under EU law, the propensity of that undertaking to infringe EU rules on cartels[1162]. Therefore, the Commission takes decisions adopted under Article 65 of the ECSC Treaty into account in its finding of repeat infringements.

(970) In view of the above, the basic amount of the fines shall be increased by 60% for ArcelorMittal Wire France SA and ArcelorMittal Fontaine SA and by 50% for Saarstahl AG.

1160 (…)

1161 See for example Case T-25/04 *González y Díez v Commission* [2007] ECR II-3121,, paragraphs 53 et seq. (and further references there): '*The Community Treaties put in place a unique legal order […] in the context of which, as st reflected in Article 305(1) EC, the ECSC Treaty constituted a specific regime derogating from the general rules established by the EC Treaty. Pursuant to Article 97 thereof, the ECSC Treaty expired on 23 July 2002. Consequently, on 24 July 2002, the scope of the general scheme resulting from the EC Treaty was extended to the sectors which were initially governed by the ECSC Treaty. Although the succession of the legal framework of the EC Treaty to that of the ECSC Treaty has led, since 24 July 2002, to a change of legal bases, procedures and applicable substantive rules, that succession is part of the unity and continuity of the Community legal order and its objectives.*' See also for example Commission Decision 2007/486/EC of 20.12.2006 relating to a proceeding under Article 65 of the ECSC Treaty, Case No COMP/F/39.234 - Alloy surcharge – readoption, OJ L 182, 12.07.2007, p. 31; Case T-405/06 *ArcelorMittal Luxembourg a.o. v Commission*, judgment of 31 March 2009, unreported; Case T-24/07 *ThyssenKrupp Stainless v Commission*, judgment of 1 July 2009, unreported and Communication concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, OJ C 152 from 26.6.2002, p. 5.

1162 Case T-122/*04 Outokumpu Oyj a.o. v Commission*, 6.05.2009, recitals 55-59.

19.2.2. Mitigating Circumstances

19.2.2.1. Termination of the infringement

(971) A number of parties[1163] claim that the Commission should take into account as an attenuating circumstance the fact that they ceased to participate in the cartel immediately following the inspections. **Itas** adds that it behaved fully competitively after that date. Austria Draht claims that it never entered into cartel behaviour and *a fortiori* not after the inspections.

(972) Point 29 of the 2006 Guidelines on fines provides that: *'[t]he basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as: (…) where the undertaking concerned provides evidence that it terminated the infringement as soon as the Commission intervened'.* The 2006 Guidelines on fines continue: *'this will not apply to secret agreements or practices (in particular cartels).*'

(973) Even if Socitrel, Fapricela, Itas and Austria Draht terminated the infringement after the inspections (which cannot be declared with absolute certainty for all the parties (see recital (915)), this can therefore not qualify as a mitigating circumstance[1164]. The Commission does not see in the particular case of cartels the adherence or re-adherence to the law as a conduct which merits any reward as it is rather the normal obligation of undertakings.

(974) Consequently, no attenuating circumstance can be retained on the ground of termination of the infringement.

19.2.2.2. Negligence

(975) Some parties[1165] submit that their participation in the infringement, or in at least part of the infringement, was a result of negligence or ignorance. **Itas** and **SLM** claim in particular that they did not have any interest in participating in certain of Club Europe's expansion meetings at which there were discussions on the exports to countries for which they did not have a certification. They conclude that their participation in those meetings would have been a result of negligence. Similarly, **Austria Draht** argues that the participation of its sales agent in the cartel, for which it allegedly lacked any control, was a result of negligence and should therefore be upheld as a mitigating circumstance.

(976) The Commission notes that Itas' and SLM's representatives extensively participated in Club Europe's expansion meetings at which there were discussions on prices, quotas and at which clients were allocated and commercially sensitive information exchanged, including regarding Itas and SLM. The discussions and agreements directly concerned sales in Italy and in export countries of Itas and SLM (see section 9.1.5). Such continuous

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1163 (…)

1164 See also Judgment of 19 March 2009, *Archer Daniels* v *Commission*, C-510/06 P, paragraphs 144-150. As regards termination before the Commission intervention, see judgment of 15 June 2005 in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others* v *Commission* [2005] ECR II-10, paragraph 292.

1165 (…)

cartel participation cannot have taken place 'negligently'. The fact that they would also have participated in some meetings during which no issues of *prima facie* direct relevance to them were discussed is therefore irrelevant. As regards Austria Draht, the Commission notes its frequent and continuous participation in the cartel (see recitals (479) and (772)(…). The allegation that Austria Draht would not have been able to control its agent is not credible in light of the fact that Mr. (…) (…) was a genuine agent and had reporting obligations towards Austria Draht(see also recitals (46), (482) and (777)).

(977) Also **Proderac** and the **Ovako** companies submit that they committed the infringement negligently rather than intentionally as they would not have had any awareness of participating in a forbidden agreement.

(978) This argument must be rejected. The Courts have consistently held that for an infringement to be regarded as having been committed intentionally it is not necessary for an undertaking to have been aware that it was infringing the EU 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[1166]. Proderac's representatives participated in meetings at which there were discussions on prices, quotas and at which clients were allocated and commercially sensitive information exchanged, including regarding Proderac (see section 9.2.2, in particular recital (531) (…)). Also Fundia participated in anti-competive meetings regarding the client (…) and certain other clients (see recital (257) onwards). Such participation in cartel meetings cannot have been the result of negligence.

(979) Furthermore, documentary evidence shows that Proderac was fully aware of the illicit nature of its activities. For instance, Proderac was present in the meeting of 08.09.2000[1167] at which it was reported that customers suspected the anti-competitive nature of the recent price increases and that some had threatened to act vigorously against those price increases.

(980) More generally, the Commission does not accept the argument that participants in very serious infringements such as cartels may not have been aware of the illicit nature of their conduct. These infringements are among the most serious infringements of Article 101 of the TFEU and undertakings must be aware that such conduct is illegal.

(981) Consequently, no attenuating circumstance can be retained on the ground of negligence.

19.2.2.3.Minor and/or passive role

(982) Several companies[1168] invoke their limited participation or their minor and/or passive role in the cartel in order to claim a reduction of the fine.

1166 See Court of Justice in Case 19/77 *Miller* v *Commission* [1978] ECR 131, paragraph 18, and Case C-279/87 *Tipp-Ex* v *Commission* [1990] ECR I-261.

1167 See Annex 4.

1168 (…)

(983) Although the 1998 Guidelines on fines[1169] recognised that the fine could be reduced if the undertaking had taken '*an exclusively passive or 'follow-my-leader' role in the infringements'*, the 2006 Guidelines on fines, applicable in this case, do not include this as an attenuating circumstance. The exclusion of the passive role as an attenuating circumstance in the 2006 Guidelines on fines is based on the consideration that the mere fact that an undertaking takes a passive role should not be rewarded by a reduction in the applicable fine. Even if an undertaking only adopts a passive or '*follow-my-leader*' approach, it still participates in the cartel. This means that, on the one hand, it derives its own commercial benefits from its participation in the cartel and, on the other hand, it encourages the other participants in the cartel to participate and to implement the arrangements. Therefore, a passive or '*follow-my-leader*' role should not in any way be condoned. The 2006 Guidelines on fines, however, do reward a 'substantially limited' involvement in the infringement, if the company concerned *'actually avoided applying [the offending agreement] by adopting competitive conduct in the market'* (see section 19.2.2.5). None of the addressees could sufficiently prove this.

(984) In any case, even under the 1998 Guidelines on fines, none of the parties would have merited a reduction of the fine due to a passive role. In *Cheil Jedang*, the General Court held that '*A passive role implies that the undertaking will adopt a low profile, that is to say not actively participate in the creation of any anti-competitive agreements*'.[1170] In *Bolloré*, the General Court required that the undertaking in question adopted an '*exclusively passive role*' or '*total passivity*'.[1171] Other cases also show that the Courts have interpreted the passive role element in a strict manner.[1172]

(985) **Socitrel** and **Companhia Previdente** argue, in this context, that Socitrel only participated in Club España, the activities of which were less important than the activities of other Clubs and that Socitrel was not a founding member of Club España. They also claim that regarding the Portuguese market, the cartel activities started without Socitrel, although this was its main market. Socitrel moreover produced only wire and not strand, allegedly the main cartel product and its illegal behaviour only affected a small part of the European market. Also **SLM** and **ITC** invoke that they did not participate in the cartel from the start.

(986) The Commission first observes that Socitrel was a regular participant in the Club España meetings, systematically participating and contributing to over 40 meetings between 07.04.1994 and the date of the Commission's inspections.[1173] It fully participated in the quota and client allocation

1169 1998 OJ C 9/3.

1170 Case T-220/00, *Cheil Jedang*, paragraph 167.

1171 Case T-109/02, *Bolloré v Commission*, [2007] ECR II-947, paragraph 612.

1172 See for example Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon a.o. v Commission*, cited above (footnote 969), paragraphs 295 and 296, and Case T-73/04 *Le Carbone-Lorraine v Commission*, paragraph 179, confirmed on appeal in Case C-554/08 P *Le Carbone-Lorraine v Commission*, judgment of 12.11.2009, unreported.

1173 Socitrel has also participated in 2 Club Europe meetings on 28.02.2000 and on 05-06.02.2002 (see also recital (656) and Annex 2).

arrangements, in fixing prices and in sharing commercially sensitive information with the other Club España participants as described in section 9.2.2. Its role can therefore not be qualified as 'substantially limited' under the 2006 Guidelines on fines, nor as passive or one of a mere follower even under the 1998 Guidelines on fines. Also the fact that Socitrel did not, while participating in Club España, simultaneously regularly participate in the pan-European meetings is of no relevance, in particular since Socitrel only sold in Spain and Portugal[1174], the territory covered by Club España and therefore fully participated in the cartel at the level most interesting to it. In any event, there is no evidence that Socitrel avoided applying the agreement by adopting competitive conduct in the market. Finally, the claim that Socitrel's behaviour affected only a limited part of the European market (mainly Spain and Portugal) and that it only sold wire, and the claim that Socitrel, SLM and ITC did not join the cartel from its start, but only several years later, are already taken into account in the calculation of the basic amount of the fine (see section 19.1) and cannot therefore in addition serve to grant a reduction of the fine.

(987) Also **Fapricela, Redaelli, SLM, Itas, Proderac** and **Trame**[1175] claim that they participated to a limited extent in the cartel and refer to their attendance at a limited number of meetings and/or to interruptions in their participation in the cartel meetings for several periods. Fapricela also invokes that it never exercised any co-ordination activities.

(988) The Commission notes that Fapricela systematically participated in and contributed to over 30 Club España meetings between 1998 and 2002, in which it fully participated in the quota and client allocation arrangements and in fixing of prices and in which it shared commercially sensitive information with the other Club España participants, (…) [1176]. In 2001 Fapricela also explicitly *'promised to continue the agreement which gave such good results'*, showing its satisfaction with the cartel after a dispute was resolved (see recital (510)). Its role can therefore not be qualified as 'substantially limited' under the 2006 Guidelines on fines, nor as passive or one of a mere follower under the 1998 Guidelines on fines, even if it did not act as co-ordinator. Finally, as already explained in recitals (527) onwards and in particular in recital (530), Fapricela's allegation that it interrupted its participation in the cartel during certain periods is contradicted by the evidence.

(989) Redaelli was co-ordinator until the end of 1997 (see recitals (390) and (391)) and consistently, regularly and actively participated at several levels of the cartel during its entire duration, from 01.01.1984 to 19.09.2002. The fact that it did not attend the meetings during a few months from the end of 2000 to the beginning of 2001 does not call into question its continuous involvement in the infringement. The frequency of its contacts with the other producers throughout the entire period of the infringement, as described in sections 9.1.2, 9.1.3, 9.1.4 and 9.2 (…) and in particular its regular

1174 Socitrel, 30.06.2009.

1175 (…)

1176 (…)

participation in cartel meetings, in the Zurich Club, including at least initially in the Zurich Club crisis meetings, as well as in the Southern Agreement, Club Italia and in Club Europe during its expansion period shows that Redaelli was far from a marginal player. Finally, while Redaelli argues that it went through a difficult period starting from the end of 1995, it provides no evidence that it avoided applying the agreement by adopting competitive conduct in the market.

(990) SLM continuously and regularly participated in and contributed to the quota fixing, client allocation and price fixing and exchange of sensitive commercial information in over 100 Club Italia meetings between 1997 and 2002 (see sections 9.1.5 and 9.2.1 and footnote 739, recital (474)(…) . Furthermore, contrary to SLM's allegation, (…), confirm SLM's participation in the cartel in their statements (see recital (478)). SLM's role in the cartel can therefore not be qualified as substantially limited, exclusively passive or minor.

(991) Itas was one of the core members of Club Italia (see recital (415)) and it participated simultaneously in several phases of the pan-European arrangements, including in the Zurich Club and the expansion of Club Europe (see section 9.1). It attended around 200 meetings, participating and contributing to quota fixing, client allocation and price fixing and exchanging sensitive commercial information between 1993 and 2002. Itas, therefore, certainly did not play a substantially limited, exclusively passive and/or minor role in the cartel.

(992) To the contrary, the Commission acknowledges that the role of Proderac and Trame was substantially more limited than that of the other cartel participants and that a reduction of the fine should therefore be granted to these companies (see section 19.2.2.5).

(993) **ITC** and **Antonini** claim that ITC's role was mostly focused on the national level, that ITC rarely participated directly in Club Zurich meetings (or other negotiations at European level) and that it limited its role to implementing or supporting the decisions already taken by the pan-European participants.

(994) The Commission notes that ITC was one of the core members of Club Italia (see recital (415)) and that it simultaneously participated in several phases of the pan-European arrangements such as the Zurich Club, including initially its crisis phase (through Redaelli), and the expansion of Club Europe. Altogether, ITC participated in over 200 meetings with competitors, contributing to quota fixing, client allocation and price fixing and exchanging sensitive commercial information between 1993 and 2002 at European and Italian level (see sections 9.1.7 and 9.2.1.8 (…) . Therefore, ITC's role was clearly not limited to implementing or supporting decisions taken by the pan-European participants.

(995) ITC's claim that its role was mostly focused on the national level is contradicted by the fact that ITC was not only selling in Italy but also in several other European countries and by its active participation in Club Italia and in pan-European meetings at which exports to Europe were discussed by

the cartel participants. In any event, the fact that ITC mainly sold in Italy is reflected in the value of the sales (see section 19.1.2) and therefore in (the basic amount of) the fine. While ITC and Antonini claim that they have not completely respected the cartel agreements, they do not provide evidence that they generally avoided applying the agreements by adopting competitive conduct in the market.

(996) Also **Austria Draht, Moreda-Riviere Trefilerías** (MRT)[1177], **Trefilerías Quijano**[1178] and **GSW**[1179] claim that they participated in the cartel to a minor extent, having been involved only in some parts of the cartel. **WDI**[1180] claims that it acted as a mere follower.

(997) The Commission notes that it is sufficiently established that Austria Draht, the Tycsa companies (MRT, Tycsa PSC and Trefilerías Quijano), and WDI regularly and continuously participated in the cartel arrangements: Austria Draht systematically and continuously participated in particular in Club Italia (see section 9.2.1, 14.5 and recital (1003)) and was moreover aware of the overall pan-European arrangement (see section 12.2.2.4); the Tycsa companies (MRT and Tycsa PSC) were involved in all levels of the cartel (see section 14.3); except for Tréfilerías Quijano which was essentially active in Club España (see section 14.3 and recital (742) onwards); and, finally, WDI participated in the pan-European arrangements (see section 14.8). The fact that Austria Draht, Trefilerías Quijano and WDI were not active in all parts of the cartel, but rather only in the parts of most interest to them, does not mean that they had a substantially limited, exclusively passive or minor role and therefore does not qualify them for a reduction of the fine. Moreover, MRT, Trefilerías Quijano[1181], and WDI do not even claim and in any event do not provide any evidence that they generally avoided applying the agreements by adopting competitive conduct in the market.

(998) Austria Draht further points to the fact that its own personnel was never involved in cartel meetings but only, if at all proven, its sales agent for whom it claims it lacked any possibility of control[1182]. The Commission observes that a sales agent is to be regarded as an auxiliary organ forming an integral part of Austria Draht's undertaking and thus like a commercial employee for which Austria Draht is fully responsible (see section 14.5). This can therefore not qualify as a mitigating circumstance.

(999) Austria Draht[1183] as well as **WDI**[1184] further argue that their small market share on the EEA PS market in 2001 (about 5,5% and 5% respectively) is an indication that they must have been minor players. WDI in addition points to the fact that (…) more than 50% of the PS sales

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occurred in Italy, Portugal and Spain, countries in which it was itself not active. Similarly, **Trefilerías Quijano** argues that it was a minor player as it had very limited PS (export) activity and **Trame** refers to its small dimension/economic size and to the fact that it operated only on the Italian market.

(1000) The small market share on the EEA market in 2001 and the fact that an undertaking is active only in a limited amount of countries is reflected in the value of the sales and therefore in the calculation of the basic amount of the fine (see section 19.1.2). The dimension and economic size of the addressees may be taken into account by increasing the fine for undertakings which - different from for example Trame - have a particularly large turnover beyond their PS sales (see section 19.2.4). It is not a relevant factor when establishing the substantially limited, minor or exclusively passive role of an undertaking of smaller dimension. These elements cannot therefore serve as mitigating circumstances.

(1001) **Ovako** and **Rautaruukki**[1185] claim that Fundia played a limited role in the (…) co-ordination, because it was not involved in quota sharing, customer allocation or price-fixing but only, if at all proven, in the disclosure of past information. Rautaruukki also refers to (…) description of Fundia as a 'bystander' and passive member[1186] and invokes that Fundia was never aware of the overall plan of the cartel.

(1002) The Commission notes that Fundia was itself present in the anti-competitive meetings of 27.01.2000, 14/15.05.2001 and 05/06.02.2002 and that also in other meetings, competitors took Fundia into account in their (…) discussions, discussing its supplies, quotas and prices continuously until at least 31.12.2001 and even agreeing in November 2001 on a sales quota for Fundia towards (…) (see section 9.1.4.3). Fundia thus continuously contributed to and participated in the (…) co-ordination and not only in the exchange of commercially sensitive information. The fact that Fundia participated less regularly in the meetings than other cartel members and was therefore considered a 'bystander' or a passive member is explained by its involvement in the (…) co-ordination only, which took place mainly by phone and which did not require regular contacts, the tenders taking place only on a yearly basis. In those circumstances, Fundia's role cannot be qualified as substantially limited or as one of a 'follow-my-leader' or an exclusively passive member.

(1003) Moreover, the fact that Fundia's awareness of the single and continuous infringement could only be established at a late stage (see section 12.2.2.4 and recital (662) in particular) and its more limited cartel participation, is already duly reflected in the calculation of the basic amount of the fine (see in particular sections 19.1.3.1, 19.1.3.3 and 19.1.3.5) and cannot therefore in addition serve as a mitigating circumstance.

1185 (…)
1186 (…)

(1004) Several parties[1187] also argue that they did not apply or implement the agreements, had a disruptive behaviour and/or that they adopted competitive behaviour on the market. These arguments are addressed in section 19.2.2.5.

19.2.2.4. Co-operation outside the scope of the Leniency Notice

(1005) Point 29 of the 2006 Guidelines on fines provides that: *'[t]he basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as: (…) where the undertaking concerned has effectively co-operated with the Commission outside the scope of the Leniency Notice and beyond its legal obligation to do so.*'

(1006) Several companies[1188] invoke this attenuating circumstance, referring to their co-operation in the proceedings outside the scope of the Leniency Notice. To substantiate this claim, **Austria Draht** refers to its active co-operation with the Commission. **SLM, GSW**, **MRT** and **Tycsa PSC** submit that in case the Commission does not accept a reduction of the fines under the Leniency Notice, the voluntary information provided in its replies to the Commission's requests for information[1189] should be considered under Point 29 of the 2006 Guidelines on fines. **GSW**, **MRT** and **Tycsa PSC** refer to past Commission practice where such reduction of the fine for co-operation outside the scope of the Leniency Notice was granted[1190]; **Trame** argues that it did not contest its participation in certain meetings and **Socitrel, Fapricela**, **SLM** and **Itas** refer to the fact that they replied promptly and precisely to the Commission's requests for information.

(1007) The Commission has assessed whether a reduction of fines was justified, in line with the case-law, with regard to the question whether the co-operation of any of the undertakings concerned enabled the Commission to establish the infringement more easily[1191]. As it is generally the case for cartels, that assessment has in fact been carried out in application of the Leniency Notice (see section 19.4 below). In this context, the Commission notes that Austria Draht, Trame, Socitrel, Fapricela, Proderac, the Ovako companies, Itas and CB did not formally apply for leniency and did not provide information constituting significant added value.

(1008) Taking into account the arguments of the parties and the limited scope and value of their co-operation, no other circumstances are present that would lead to a reduction of the fines outside the Leniency Notice, which, in secret cartel cases, could in any event only be of an exceptional nature[1192]. A

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1188 (…)

1189 (…)

1190 In particular to the Commission's Decision of 21.02.2007 in *COMP/38823 Elevators and escalators*.

1191 See judgment of the General Court of 6.12.2005, Case T-48/02 *Brouwerij Haacht v Commission*, at paragraph 104 and the case law cited therein.

1192 See for example Commission Decision of 20.10.2005, Case COMP/38.281: *Italian Raw Tobacco*, paragraphs 385 *et seq.* With respect to Case COMP/38823 *Elevators and escalators*, invoked by the Tycsa companies, the Commission notes that the reduction granted in that case was exceptional and followed an announcement in the SO that a reduction of the fine could

prompt and precise reply to the Commission's request for information does not in itself constitute an attenuating circumstance, since the parties were obliged to reply to such questions within the given deadlines[1193].

(1009) Also the non-contestation of the facts does not in itself suffice to qualify for a reduction of the fine under Point 29 of the 2006 Guidelines on fines, particularly when the facts are established on the basis of ample evidence. The Commission is not bound by its earlier practice,[1194] and the reward for non-contestation of facts which was provided for in the 1996 Leniency Notice[1195] has subsequently been abandoned. The simple non-contestation, outside some exceptional situations, does not facilitate the work of the Commission, as the Court of Justice[1196] has found that even in that situation the Commission will have to prove those facts and the undertaking is free to put forward, at the appropriate time and in particular in the procedure before the Court, any plea in its defence which it deems appropriate. The opposite is only true where the undertaking at issue acknowledges the facts[1197]. Insofar as the applicable Leniency Notice, i.e. that of 2002, does not provide for any reduction for the simple acknowledgement of facts (nor, a fortiori, for a non-contestation of those facts) no legitimate expectation has been created as to the granting of any reduction on that basis. To the extent that certain parties have acknowledged certain facts, this has not facilitated the Commission's task, insofar as the Commission had a sufficient body of evidence in order to prove the facts in question. No reduction of the fine for non-contestation of the facts should therefore be granted.

(1010) (…)

(1011) Under the circumstances, and in view of the need to maintain the appropriate incentives for companies to provide material information to the Commission and assist them to comply with the competition rules, it is appropriate to grant a reduction of the fines for co-operation outside of leniency corresponding to a percentage of 15% of the fine imposed on ArcelorMittal España S.A. in respect of its liability for the direct participation of its (former) subsidiaries Emesa/Galycas in the infringement. This reduction of the fine can only be granted to ArcelorMittal España S.A. and not to ArcelorMittal Wire France SA, ArcelorMittal Fontaine SA, ArcelorMittal Verderio Srl (…). This reduction of the fine can equally not

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follow if the companies would co-operate further under the circumstances specified for that case. The circumstances of this case are different.

1193 Judgment of the General Court of 10 March 1992 in Case T-12/89 *Solvay* v *Commission* [1992] ECR II-907, paragraphs 341 and 342.

1194 Case T-347/94 *Mayr-Melnhof Kartongesellschaft v Commission*, [1998] ECR II-1751, para. 368; Case T-23/99 *LR AF 1998 v Commission* [2002] ECR II-1705, paragraph 337.

1195 OJ C 207, 18.7.1996, p. 4.

1196 Case C-297/98 P *SCA Holding* v *Commission* [2000] ECR I-10101, paragraph 37.

1197 Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2003] ECR II-2597, paragraph 227; 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; '*Tokai I*', paragraph 108; judgment of 8 October 2008, *Schunk* v *Commission*, T-69/04, paragraph 84.

benefit Emesa/Galycas, which was no longer part of the ArcelorMittal España undertaking at the time of the submission on (…).

(1012) Consequently, a reduction of 15% of the fine imposed in respect of liability for the direct participation of Emesa/Galycas in the infringement should be granted to ArcelorMittal España S.A.. No other attenuating circumstance can be retained on the grounds of co-operation outside the scope of the Leniency Notice.

19.2.2.5. Non-implementation/Substantially limited role

(1013) Point 29 of the 2006 Guidelines on fines stipulates: *'The basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as: (…) where the undertaking provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market (…).*'

(1014) Entitlement to a reduction of the fine for lack of implementation therefore requires that the circumstances show that, during the period in which an undertaking was party to the offending agreements, it actually avoided implementing them by adopting competitive conduct on the market or, at the very least, that it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation.[1198]

(1015) Various companies[1199] argued in their replies to the SO that they did not implement the quota allocation, client allocation and/or price fixing arrangements, that they were disruptive to the cartel and/or that they adopted competitive behaviour on the market.

(1016) To substantiate this claim, **SLM** and **Itas** argue that their agents were entitled to - and in fact did - apply different prices to different customers, allegedly showing their competitive behaviour regarding prices. To prove this, they submitted and/or referred to some invoices. SLM furthermore argues that it increased its turnover. **Austria Draht** submits sales figures for the period 1998-2001 which would deviate from the quota agreed in Club Italia and it gives figures for 2001-2002 allegedly showing that it did not repsect the price agreements[1200]. **Fapricela** claims that on at least one occasion it succeeded in gaining a client from Emesa by applying a lower price than Emesa. **ITC** and **Fapricela** moreover refer to conflicts with the other cartel members. Also the **Tycsa** companies refer to documents in which Tycsa is described as cheating, being an aggressive player or undercutting (agreed) prices[1201]. They further argue that in the absence of a sanction mechanism, the non-implementation of the agreements was a fact.

1198 T-26/02, *Daiichi v Commission*, para 113 [2006] ECR II – 497.

1199 (…)

1200 (…)

1201 (…)

(1017) **Redaelli** claims that the cartel did not have any prejudicial effect on the market. This was proven by the competitiveness and price drop in the French market at the end of 2001, the fierce competition between the Italian producers on the European market from 1999-2000 and the fact that in the Club Europe meeting of 04.09.2001 the participants mentioned a price war. Also Fapricela claims that between 1996 and 2002 it triplicated its national sales and duplicated its exports, which would be incompatible with a market sharing agreement and that the average prices decreased by 10% between 1996 and 2002, which would contradict the existence of price agreements.

(1018) The Commission first notes that most of the evidence submitted consists mainly of data certified only by the submitting company itself. In any event, occasional cheating regarding fixed prices and/or quotas or clients allocation does not in itself prove that a party has not implemented the cartel agreements. Internal conflicts, rivalries and cheating are typical of any cartel, in particular if they have a long duration (see also recitals (604) and (680)). The circumstance that a company would not have respected certain of the agreements does therefore not mean that it did not implement any of the cartel agreements and adopted a fully competitive behaviour on the market.

(1019) The implementation of the cartel agreements was ensured through the monitoring scheme (see sections 9.1.6.1, 9.2.1.7 and 9.2.2.5) and the very frequent cartel meetings among competitors at which confidential information was regularly exchanged, allowing the parties to compare their figures and agree on and/or revise quotas, prices and the allocation of customers[1202]). It is established that Proderac, the Tycsa companies (MRT, Tycsa PSC and Trefilerías Quijano), SLM, Itas, Fapricela, ITC, Trame, CB, Redaelli and Austria Draht - like all other addressees of this Decision - participated regularly in meetings at which prices, quotas and clients were discussed and monitored (see also section 9, section 14(…)). Moreover, for ITC, Itas, CB, Redaelli, SLM and to a more limited extent also for Trame, reference is made to the verification of their sales made by the external auditor, Mr. (…) (see recitals (450) to (453) and Annex 5 to the Decision). There is also evidence of Austria Draht's involvement in monitoring discussions[1203].

(1020) Reference is further made to a document of 04.11.1996 with respect to the Southern Agreement (see recital 543) in which it is stated with respect to Tycsa and the Italian companies: '*Regarding the Southern Agreement, they agree to inspections by the auditing company and accept the penalties.*' Tycsa's alleged competitive conduct is moreover contradicted by ample evidence showing its nearly systematic presence in cartel meetings where the respect of the agreed quotas was often verified (see recital (524)), and showing its reputation with competitors as a leader and co-ordinator among the various Clubs (see recital (488).

1202 (…)
1203 (…)

(1021) As regards the arguments on the lack of prejudicial effect of the cartel on the market, the cartel had the objective of avoiding price decline by maintaining equilibrium in the European market through quota allocation, price fixing and client allocation and a system of monitoring compliance. By its very nature, the implementation of a cartel of this type leads to a significant distortion of competition (see also recitals (677) to (681)). In any event, the actual impact of the cartel is impossible to measure in this case and is therefore not relied on in the calculation of the fine.

(1022) In conclusion, it is apparent that none of the parties proved that it actually avoided implementing the offending agreements by adopting competitive conduct on the market or that it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation. Consequently, no attenuating circumstance can be retained on the grounds of non-implementation/substantially limited role.

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

(1024) During a time frame of over eight years (between 24.05.1994 and 19.09.2002) **Proderac** participated in only around 12 (Club España) cartel meetings and its case was discussed amongst the other Club España members in its absence at only around 7 further occasions. Moreover, on 01.10.1996, Proderac complained – according to contemporaneous (…) notes *'with reason'* - to the other Club España members about the agreements already being fixed without its implication, showing its marginal role in the Club. Further, the other cartel participants on several occasions complained about Proderac not providing its data (On 23.03.2001 they expressed their displeasure regarding the fact that Proderac never gave detailed, reliable figures of its sales and that it never gave its list of clients and on 07.06.2001 it was stated: *'Proderac must inform of its clients list or no information will be shared with it'*) (see also recitals (532) onwards (…)). Proderac finally also submits tables comparing the assigned quota with the alleged actual data and holds that of all undertakings it deviated most from the assigned quotas in Club España. It further submits a table with the prices it allegedly adopted between September and December 2000 and which were lower than those fixed in the meeting of 28.07.2000 (see also section 19.1.3).

(1025) Also **Trame** attended only around 18 cartel meetings between 04.03.1997 and 19.09.2002, while its case was discussed in its absence on several other occasions (see also section 9.2.1.8, recital (879) (…)).(…) [1204], Trame was a marginal player in Club Italia, creating tensions with the other Club Italia participants. This is confirmed in several contemporaneous documents; for example in minutes of the meeting of 20.07.1999 it was noted that Trame was going in all directions, on 04.09.2000 a discussion was

[1204] (…)

held on the 'Trame' problem, on 30.08.2001, it was stated that Trame had chosen not to be part of the cartel and also on 11.01.2002, there was a discussion on 'Trame'.

(1026) Proderac and Trame should accordingly be granted a reduction of 5% of the fine which would otherwise have been imposed on them.

19.2.2.6. Pressure by competitors

(1027) Several companies invoke that pressure from competitors was a decisive factor in their decision to join and participate in the cartel activities. Some claim, in particular, that they feared sancions from competitors and fellow cartel participants, which were also their suppliers of raw materials. Other companies submit that their cartel participation was a question of survival on the market and/or a defence strategy to protect their own national market share. Proderac claims in particular that it would have acted under intimidation by its competitors or 'insuperable fear' and that it was therefore not giving its free consent, if any, to the anticompetitive practices[1205].

(1028) The Commission observes that these claims regarding intimidation or pressure from competitors are not based on any concrete evidence. Moreover, should the companies have considered themselves as being put under pressure by competitors, they should have brought the issue immediately to the attention of the competition authorities, rather than starting or continuing their participation in anti-competitive meetings and agreements during several years.

19.2.2.7. Absence of benefit derived from the infringement

(1029) With respect to the argument of absence of benefit derived from the cartel agreements, claimed by **Socitrel**[1206] and **CB**[1207], it should first be noted that the parties in no way prove that they did not derive any benefit from their cartel participation. In any event, if companies participate in cartel activities it can be assumed that they expect to gain from this cartel participation. For an undertaking to be classified as a perpetrator of an infringement it is not necessary for it to have derived any economic advantage from its participation in the cartel in question.[1208] It follows that the Commission is not required, for the purpose of fixing the amount of fines, to establish that the infringement secured an improper advantage for the undertakings concerned, nor to take into consideration, where it applies, the fact that no profit was derived from the infringement in question[1209]. Equally, lack of actual gain from cartel participation can also not qualify as a mitigating circumstance.

(1030) Therefore, no reduction of the fine should be granted for the alleged absence of any benefit from the agreements.

1205 (…)

1206 (…)

1207 (…)

1208 Case T-304/94 *Europa Carton* v *Commission* [1998] ECR II-869, paragraph 141 and Case T-109/02 *Bolloré v Commission* [2007] ECR II-947, paragraphs 671-672.

1209 Case T-241/01 *Scandinavian Airlines System v Commission* [2005] ECR II-2917, paragraph 146 and Case T-53/03 *BPB v Commission* [2008] ECR II-1201, paragraphs 441-442.

19.2.2.8. Other circumstances

(1031) **WDI** argues that the Commission does not consistently apply its competition policy. This follows from the fact that in 1980-1988 and before, the Commission imposed production quota on the upstream product, wire rod, under the then applicable ECSC rules in an attempt to overcome the then prevailing steel crisis. Conversely, quota arrangements set by the parties for the downstream product PS in (partly) the same period are now regarded as an infringement of Article 101 of the TFEU.

(1032) The Commission observes that the quotas on wire rod were not the result of illegal arrangements, but of ECSC legislation[1210] adopted to face a period of manifest crisis of the European steel sector and to favour its restructuring. The quota on wire rod can in no way be regarded as a justification for having at the same time secret anti-competitive arrangements on the downstream level (going moreover well beyond quota allocation, also involving price-fixing and customer allocation). The fact that the price of wire rod heavily influences the price of PS is also no valid excuse to engage in anti-competitive practices.

(1033) Finally, **Austria Draht** invokes the difficult economic situation at the time of the infringement (amongst others overcapacities and price decline) as a mitigating circumstance[1211]. It further argues that holding a company liable for acts of its sales agent without the latter being part of the proceedings, would be new in the Commission's practice and that the Commission should therefore only impose a symbolic fine [1212].

(1034) First, it suffices to note that Austria Draht's participation in the cartel is sufficiently proven (see recitals (479) and (772) (…)).and that the alleged bad economic situation at the time of the infringement is therefore irrelevant. Second, ample case-law and practice confirms that acts of a genuine agent are imputable to its principal and principals have regularly been held liable for the acts of their agent without the latter having been held liable as well[1213]. This case can therefore not be considered a novel situation justifying a symbolic fine.

19.2.3. The Duration of the Investigation

(1035) The duration of the investigation was six years and 13/14 days[1214]. Several companies[1215] claim that this duration was excessive and should entitle them to a reduction of the fine. To support their claim they refer to

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1210 Starting with Commission Decision No 2794/80/ECSC of 31 October 1980 establishing a system of steel production quotas for undertakings in the iron and steel industry (OJ L 291, 31.10.1980, p. 1).

1211 (…)

1212 (…)

1213 T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, paragraph 125; Commission decision of 1.10.2008 in COMP/39.181 Candle wax, para 338 and 397; Commission decision of 29.11.2006 in COMP/38.638 ESBR, Butadien Rubber, paragraphs 414-431.

1214 (…)

1215 (…)

case law of the Court of Justice of the European Union[1216], the Commission's decision in *Dutch Beer*[1217] and Article 6(1) of the European Convention on Human Rights (ECHR). In this context, reference was also made[1218] to the alleged long periods of inactivity of the Commission during the investigation as an additional indication of the Commission's breach of the principle that the investigation must be completed within a reasonable time.

(1036) Nedri[1219], together with Socitrel and Companhia Previdente[1220], acknowledge the long duration of the cartel and the large number of addressees but argue that this can be no reason for the long duration of the investigation because the Commission would already at a very early stage of the investigation have had all relevant evidence at its disposal.

(1037) ITC and Antonini[1221] observe that the negative effect of the increase in the price of raw materials would have been avoided, had the Commission concluded the proceedings in a shorter period of time.

(1038) The Commission acknowledges that the respect of a reasonable duration of administrative procedures relating to competition policy is a general principle of EU law, the observance of which is ensured by the Court of Justice of the European Union. To assess whether the duration of an investigation is excessive, the specific circumstances of the case, such as its complexity, should be taken into account.

(1039) While the duration of the investigation in this case may *prima facie* appear considerable, it is not excessive taking into account the complexity of this investigation, which concerns a cartel of a very long duration, covering most of the EEA, with a pan-European, Iberian and Italian level and with a significant number of companies involved (the SO was addressed to 40 addressees). The important level of restructuring within or between several undertakings during the infringement and the investigation period added to the complexity of the case. Further, (…) , this case is characterised by a very high number of cartel meetings, laid down in an exceptionally vast amount of documentary evidence. (…) Finally, the SO was issued in seven authentic languages and the file contained documents in at least eight languages,

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1216 In particular 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 (LVM) a.o. v Commission* [2002] ECR I-8375 and 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 (LVM) a.o. v Commission* (PVC II), [1999] ECR II-931; Case C-167/04 P *JCB Service v Commission* [2006] ECR I-8935; Case C-113/04 P *Technische Unie v Commission* [2006] ECR I-8831; Case C-282/95 P *Guérin automobiles v Commission* [1997] ECR I-1503; Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, [2006] ECR I-8725; Case T-213/95 SCK and FNK v Commission, [1997] ECR II-1739.

1217 Commission Decision of 18.04.2007 in COMP/B/37.766, Dutch Beer.

1218 (…)

1219 (…)

1220 (…)

1221 (…)

making the investigation more complex and entailing a large amount of translation work.

(1040) Even if - as Nedri alleges - the Commission had a lot of evidence at its disposal at an early stage of the investigation and – as Companhia Previdente and Socitrel claim – many addressees co-operated with the Commission, it should be noted that most leniency submissions were submitted between (…) and (…) and that the last, and very important,(…) . Further, establishing the infringement to the requisite legal standard required several rounds of requests for information, further inspections (at the premises of Dottore Commercialista (…) on 07-08.06.2006, see recital (114)) and the assessment of a vast amount of evidence collected and submitted at different points in time in this complex case. These arguments should therefore be dismissed.

(1041) Contrary to what has been claimed, there were no periods of inactivity in the Commission's investigation. While there may not have been continuous investigative steps towards each individual addressee, it follows clearly from the document list provided to each of the addressees when they exercised their right of access to the file that the Commission did not at any time interrupt the investigation.

(1042) None of the parties has furthermore demonstrated to the requisite legal standard that it experienced difficulties in exercising its rights of defence on account of the length of the investigation. A violation of the rights of defence in this context would consist in the increasing difficulty of defending oneself against objections the further back in time the facts are situated as a result of an excessively lengthy investigation period.

(1043) In this respect, HIT Groep[1222] and voestalpine/Austria Draht[1223] invoke that their rights of defence were violated because (i) they only became aware that they would be held liable for their own or their subsidiary's cartel behaviour at the time they received the SO and (ii) they had no/difficult access to relevant evidence. For HIT Groep this was explained by the fact that Nedri was sold to an independent undertaking in January 2002 and the documents related to the period 1984-1994 were in the hands of the legal successor of Hoogovens (Corus Nederland BV) whereas those relating to the period 1994-1997 were in the possession of its participating enterprises and of Thyssen Draht AG (see recital (52)). For voestalpine/Austria Draht, the difficulties of retrieving sales documents in preparation of their reply to the SO resulted from the expiry of the seven-year period during which documents had to be conserved under national law and from a change in the electronic book entry system, which occurred in the meantime, further to which no paper or electronic evidence (regarding the period of the infringement) could be found any longer.

(1044) First, regarding HIT Groep's and voestalpine/Austria Draht's alleged lack of awareness that they could be held liable for their own or their subsidiary's cartel participation, it suffices to note that already on 19.12.2003 and on 12.10.2004 requests for information were sent to voestalpine AG and

[1222] (…)
[1223] (…)

to HIT Groep respectively. In both requests for information the Commission explained that it was conducting an investigation into a possible cartel in the prestressing steel sector, involving price fixing and market sharing, which could constitute a violation of Article 101 of the TFEU[1224]. The request addressed to voestalpine contained detailed questions amongst others on the meetings which took place between voestalpine AG, Austria Draht and their competitors, on Mr. (…) , personnel overlap, the corporate structure and finally on precise sales and turnover figures of both voestalpine AG and Austria Draht. Also the request addressed to HIT Groep contained detailed questions on the corporate structure of HIT Groep and its relation to amongst others Nedri, personnel active in prestressing steel within HIT Groep and its daughter companies, reporting obligations within HIT Groep, overlap of personnel between Nedri and other companies within the group and the control of Nedri. Voestalpine AG and HIT Groep must thus have been aware of the investigation at the latest as of 19.12.2003 and 12.10.2004 respectively. Also after these dates several other requests for information were regularly addressed to the voestalpine Group[1225] and to HIT Groep[1226] including, on 06.06.2006 and 06.12.2007, requests to HIT Groep and voestalpine/Austria Draht, respectively, on their turnover data and contact details for notification.

(1045) Second, the difficulties HIT Groep invokes regarding access to cartel related documents follow from the restructuring of the group during the time of the infringement and are therefore not the result of the duration of the investigation. Similarly, for voestalpine AG and Austria Draht, the seven-year period to keep documents had not yet expired at the moment the first request for information was sent to voestalpine AG on 19.12.2003. Being aware of the Commission's investigation, voestalpine AG could have conserved cartel-related documents despite the expiry of the seven-year obligation and the introduction of the new book entry system and it could have requested the same from its subsidiary, Austria Draht.

(1046) In the same context, Socitrel and Companhia Previdente[1227] invoke that, as Socitrel terminated the infringement at the very beginning of the investigation (i.e. after the inspections), the long investigation period was a continuing source of uncertainty and pressure on the undertakings involved, in particular considering the potential large amount of the fines that could be imposed for facts which occurred in a distant past. This circumstance is moreover aggravated by the economic crisis, which started in 2008 and would have unforeseen duration and consequences. Also Austria Draht[1228], WDI,[1229] and ITC invoke the financial crisis in this context.

(1047) The Commission notes that the uncertainty and pressure regarding the potentially high level of the fine is the consequence of the cartel

1224 (…)
1225 (…)
1226 (…)
1227 (…)
1228 (…)
1229 (…)

participation of the undertaking concerned and not of the duration of the proceedings. The economic crisis is duly taken into account as spelled out in sections 19.3 and 19.5 below. As regards voestalpine and Austria Draht, the Commission furthermore notes that they have not claimed any inability to pay under Paragraph 35 of the Guidelines on fines.

(1048) Fapricela[1230] claims that, because of the duration of the proceedings, it found difficulties in preparing its defence to prove its alleged innocence and in particular in the gathering of documentary evidence, considering that the facts investigated by the Commission date back to 1996 and that Fapricela only received the first request for information on 11 February 2004.

(1049) The Commission notes that Fapricela received a request for information, alerting it to the Commission's investigation, slightly more than one year after the date of the Commission's inspections, when it is also presumed to have terminated its participation in the infringement. The fact that it may have had difficulties gathering documents or preparing its defence considering that the facts date back to 1996 is thus a consequence of the long duration of its cartel participation rather than of the duration of the Commission's investigation.

(1050) It should also be mentioned that Fapricela has presented a comprehensive and detailed defence to the objections raised by the Commission in the SO. This defence was not only based on the documents of the Commission's file but also on recollections of employees of Fapricela that participated in the cartel, showing that Fapricela still had a thorough knowledge of the underlying facts.

(1051) It must be concluded that the duration of the investigation is not excessive and that it is not such as to constitute an infringement of the rights of defence that would undermine the establishment of the infringement or require a reduction of the fine for any of the addressees of this Decision.

19.2.4. Deterrence

(1052) Point 30 of the 2006 Guidelines on fines provides that *'The Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect; 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'.*

(1053) Taking into account this provision, a multiplier for deterrence should not be applied to any of the undertakings except to ArcelorMittal, for which the conditions of point 30 of the Guidelines on fines are met.

(1054) The **ArcelorMittal companies**[1231] argue that their fine should not be increased for deterrence, in the absence of effective implementation of the cartel, in view of the constant cheating which occurred throughout the cartel

[1230] (…)
[1231] (…)

period as well as in light of the current economic crisis and because ArcelorMittal itself was never involved in the infringement[1232].

(1055) The implementation of the cartel or the absence thereof is one of the factors taken into account when establishing the gravity of the infringement (see section 19.1.3.4) and is therefore not a factor to be taken into account again in determining whether or not a multiplier for deterrence is to be applied. In any event, as described in section 19.1.3.4, the cartel was implemented, even if cheating may have frequently occurred (see also section 19.2.2.5). Also the economic crisis is duly taken into account in the establishment of the 10% cap (see section 19.3) as well as in the analysis of the addressee's capacity to pay the fine, as set out in section 19.5 insofar as inability to pay the fine in accordance with point 35 of the Guidelines on fines has been claimed, which was not the case for the ArcelorMittal companies. The economic crisis is therefore also not a factor to be taken into account in establishing whether a multiplier for deterrence should be applied. Finally, the fact that ArcelorMittal itself should be held liable because of the decisive influence it exercised on its subsidiaries is not a valid reason not to apply an increase for deterrence. It is only by taking as a basis the size of the resources of the group of undertakings as a whole that the objective of having deterrent fines can be achieved[1233].

(1056) The turnover of the ArcelorMittal undertaking exceeds EUR 46 000 million (see section 2.1.1). The value of sales in the relevant products represent less than 1% of the total turnover of ArcelorMittal. In view of this, the Commission applies to the basic amount of ArcelorMittal a multiplier of 20% for the purposes of deterrence.

19.2.5. Conclusions on the Adjusted Basic Amounts

(1057) The adjusted basic amount of the fine to be imposed on the addressees of this Decision should be as follows:

	Total adjusted basic amount	**Undertakings**
1.	a) (…) b) (…) c) (…) d) (…)	ArcelorMittal Wire France SA ArcelorMittal Fontaine SA ArcelorMittal Verderio Srl ArcelorMittal
2.	a) (…) b) (…) c) (…) d) (…)	ArcelorMittal España S.A. Emesa –Trefilería SA Industrias Galycas S.A. ArcelorMittal
3.	a) (…)	Global Steel Wire SA

1232 (…)

1233 Case T-330/01 *Akzo Nobel v Commission* [2006] ECR II-3389, paragraph 120.

	b) (…) c) (…) d) (…)	Moreda-Riviere Trefilerías S.A. Trenzas y Cables de Acero P.S.C., SL Trefilerías Quijano S.A.
4.	(…)	Companhia Previdente- Sociedade de Controle de Participações Financeiras S.A., and SOCITREL - Sociedade Industrial de Trefilaria, S.A.
5.	(…)	voestalpine AG, and voestalpine Austria Draht GmbH
6.	(…)	Fapricela-Indústria de Trefilaria S.A.
7.	(…)	Proderac Productos Derivados del Acero S.A.
8.	a) (…) b) (…) c) (…)	Westfälische Drahtindustrie GmbH Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG Pampus Industriebeteiligungen GmbH & Co. KG
9.	a) (…) b) (…)	Nedri Spanstaal BV HIT Groep BV
10.	a) (…) b) (…)	Saarstahl AG DWK Drahtwerk Köln GmbH
11.	(…)	Rautaruukki Oyj, and Ovako Bright Bar AB, and Ovako Hjulsbro AB, and Ovako Dalwire Oy Ab
12.	a) (…) b) (…)	Italcables S.p.A. Antonini S.p.A.
13.	(…)	Redaelli Tecna S.p.A.
14.	(…)	CB Trafilati Acciai S.p.A.
15.	(…)	I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.
16.	a) (…) b) (…)	Siderurgica Latina Martin S.p.A. ORI Martin S.A.
17.	(…)	Emme Holding S.p.A.

19.3. Application of the 10% Turnover Limit

(1058) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking is not to exceed 10% of its total turnover in the preceding business year.

(1059) For those undertakings where the final 2009 world-wide total turnover data are now available, the fine is capped on the basis of that 2009 turnover

(except for HIT Groep, as explained in recital (1070) below). Similarly, with the agreement of the undertakings Companhia Previdente, Pampus, Saarstahl, the three Ovako legal entities, ORI Martin and Emme, the Commission took into account their most recent available (provisional) 2009 turnover data to establish the 10% ceiling.

19.3.1. Relevant turnover

(1060) The final amount of the fine shall not exceed 10% of the total turnover of the undertaking in the business year preceding the date of the Commission Decision. In case the undertaking split up before the date of the Commission Decision, the Commission calculates the 10% limit for each entity individually. This is the case for Emesa, Galycas, Ovako Hjulsbro AB, Ovako Dalwire Oy AB, Trefilerías Quijano[1234], Nedri en Italcables and their respective former parents.

(1061) **Socitrel** and **Companhia Previdente**[1235] claim that the turnover to be considered for the 10% ceiling should be Socitrel's PS turnover rather than Companhia Previdente's total consolidated turnover. They argue, first, that by considering the total turnover, and thus including business areas of Socitrel and Companhia Previdente unrelated to the infringement, the Commission would obtain an unlawful gain. Second, they claim that it would be abusive to consider the cumulated turnover of both Socitrel and Companhia Previdente or the consolidated turnover of the latter, for acts only committed directly by Socitrel.

(1062) According to settled case-law, the purpose of Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) of Regulation No 17) is to empower the Commission to impose fines with a view to enabling it to carry out the task of supervision conferred on it by EU law. The 10% turnover limit seeks to prevent fines from being disproportionate in relation to the size of the undertaking concerned[1236]. Since only the total turnover of the undertaking can effectively give an approximate indication of that size, the aforementioned percentage must be understood as referring to the total turnover[1237]. The requests of Socitrel and Companhia Previdente to apply the 10% turnover limit to Socitrel's (PS) turnover should therefore be rejected.

19.3.2. Relevant business year

(1063) Several parties[1238] claim that the relevant figure for the purpose of determining the 10% turnover limit should not be the turnover in the business year preceding this Decision. Some of them argue that the last full year of the infringement (2001 or 2002) should be taken instead. According

1234 (…)

1235 (…)

1236 See jugement of the Court of Justice, *Britannia Alloys & Chemicals v Commission*, paragraphs 22-24, cited above.

1237 Case 100/80 to 103/80 *Musique diffusion française a.o.* v *Commission* [1983] ECR 1825, paragraph 119.

1238 (…)

to Socitrel, Companhia Previdente and Nedri[1239] their economic situation substantially changed between the end of the infringement and the date of the adoption of this Decision because of the increase of the price of the raw material and the undertakings' acquisitions in recent years. According to Nedri, the 2002 turnover would better reflect the undertakings' real economic situation during the period of the infringement and the 10% ceiling should therefore apply to this turnover. Some of the companies also argue that upholding the turnover of 2008 would directly follow from the duration of the Commission's investigation. Finally, some companies argue that their turnover in 2008 was exceptionally high and atypical. In this context, WDI suggests, as an alternative, to consider the average of the turnovers of the years 2003-2007 to calculate the 10% turnover ceiling.

(1064) Also in this context, HIT Groep[1240] states that since the sale of its last stakes in 2004 it no longer exercises any operational activities and that therefore it has virtually no turnover.

(1065) It is established case-law that pursuant to Article 23(2) of Regulation (EC) No 1/2003 (Article 15(2) Regulation No 17) the '*preceding business year*' refers in principle to the last full business year of each of the undertakings concerned at the date of adoption of the contested decision[1241].

(1066) It is however clear, both from the objectives of the system of which that provision forms part and from established case-law as also referred to in footnote 124 that the application of the 10% upper limit presupposes, first, that the Commission has at its disposal the turnover for the last business year preceding the date of adoption of the decision and, second, that those data represent a full year of normal economic activity over a period of 12 months[1242].

(1067) For Nedri, Socitrel and Companhia Previdente, as for all other undertakings addressees of this Decision except one (see recital (1070)), these two conditions are fulfilled. Therefore, the Commission could apply the 10% limit to the worldwide total turnover of each of these undertakings in the last full business year preceding the adoption of this Decision.

(1068) It should finally be noted that the fact that the economic situation between the end of the infringement and the adoption of the Decision may

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1239 Nedri refers in particular to Case C-76/06 P *Britannia Alloys & Chemicals v Commission*, in particular paragraphs 20 and 25.

1240 (…)

1241 See for example joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR a.o. v Commission* [2000] ECR II-49l, paragraph 5009; Case C-291/98 P *Sarrió* v *Commission* [2000] ECR I-9991, paragraph 85. The Court of Justice judgment in Case C-196/99 P Siderúrgica Aristrain Madrid *v Commission* ([2003] ECR I-11005, paragraphs 128-130) referred to by Socitrel and Companhia Previdente does not contradict this principle but rather confirms that the reference year for calculation of the fine (and for the exchange rate to be used for conversion into ECU) is the last year of the infringement.

1242 Case T-33/02, *Britannia Alloys & Chemicals v Commission*, [2005] ECR, confirmed by the Court of Justice, paragraph 38.

have changed is of no relevance as the purpose of the 10% turnover limit is to prevent fines from being disproportionate in relation to the size of the undertaking concerned at the time of adoption of the Decision in which the fine is imposed.

(1069) The claim of Socitrel, Companhia Previdente, WDI, SLM and Itas to take into account a different business year for the calculation of the 10% turnover limit than the last year before this Decisison should therefore be rejected. Regarding in particular, Nedri's claim to apply the 10% limit to the 2002 turnover on the basis of paragraphs 20 and 25 of the Judgment of the Court of Justice in *Britannia Alloys* (see recital (1063)), these paragraphs precisely concern the situation where the Commission did *not* have at its disposal the turnover for the last business year preceding the date of adoption of the decision and representing a full year of normal economic activity over a period of 12 months, and are therefore not applicable for Nedri, for which final turnover figures for the business year 2009 are available.

(1070) The situation is different for HIT Groep. HIT Groep has achieved virtually no turnover in the business year preceding the adoption of this Decision. The Commission is therefore entitled to refer to another business year in order to be able to make a correct assessment of the financial resources of that undertaking and to ensure that the fine has a sufficient deterrent effect[1243]. For HIT Groep, the Commission therefore applies the 10% ceiling to its total worldwide turnover of the business year 2003, which is HIT Groep's last complete business year preceding the adoption of this Decision in view of the fact that HIT Groep ceased its operational activities on 1 November 2004[1244].

(1071) **In conclusion**, the total turnover of the undertakings in the last business year and for HIT Groep in the business year 2003 and the 10% ceiling of this turnover are as follows:

	Total Turnover	**10% ceiling (EUR)**	**Undertakings**
1.	**EUR (…)**	**EUR (…)**	ArcelorMittal / ArcelorMittal Wire France SA/ ArcelorMittal Fontaine SA/ ArcelorMittal Verderio Srl
2.	**EUR (…)** **EUR (…)** **EUR (…)**	**EUR (…)** **EUR (…)** **EUR (…)**	ArcelorMittal/ ArcelorMittal España S.A. Emesa –Trefilería SA Industrias Galycas S.A.
3.	**EUR (…)**	**EUR (…)**	Global Steel Wire SA/ Moreda-Riviere Trefilerías

[1243] See judgment of the Court of Justice, *Britannia Alloys & Chemicals Ltd v Commission*, paragraphs 30-32, cited above (footnote 124) and judgment of the CFI in the same case, paragraphs 40-41.

[1244] (…)

	EUR (…)	**EUR (…)**	S.A./ Trenzas y Cables de Acero P.S.C., SL Trefilerías Quijano S.A.
4.	**EUR (…)**	**EUR (…)**	Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A./ SOCITREL - Sociedade Industrial de Trefilaria, S.A.
5.	**EUR (…)**	**EUR (…)**	voestalpine AG/ voestalpine Austria Draht GmbH
6.	**EUR (…)**	**EUR (…)**	Fapricela-Indústria de Trefilaria S.A.
7.	**EUR (…)**	**EUR (…)**	Proderac Productos Derivados del Acero S.A.
8.	**EUR (…)**	**EUR (…)**	Pampus Industriebeteiligungen GmbH & Co. KG/ Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG/ Westfälische Drahtindustrie GmbH
9.	**EUR (…)** **EUR (…)**	**EUR (…)** **EUR (…)**	HIT Groep BV Nedri Spanstaal BV
10.	**EUR (…)**	**EUR (…)**	Saarstahl AG/ DWK Drahtwerk Köln GmbH
11.	**EUR (…)** **EUR (…)** **EUR (…)** **EUR (…)**	**EUR (…)** **EUR (…)** **EUR (…)** **EUR (…)**	Rautaruukki Oyj Ovako Bright Bar AB Ovako Hjulsbro AB Ovako Dalwire Oy Ab
12.	**EUR (…)** **EUR (…)**	**EUR (…)** **EUR (…)**	Italcables S.p.A. Antonini S.p.A.
13.	**EUR (…)**	**EUR (…)**	Redaelli Tecna S.p.A.
14.	**EUR (…)**	**EUR (…)**	CB Trafilati Acciai S.p.A.
15.	**EUR (…)**	**EUR (…)**	I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.
16.	**EUR (…)**	**EUR (…)**	ORI Martin S.A. / Siderurgica Latina Martin S.p.A.
17.	**EUR (…)**	**EUR (…)**	Emme Holding S.p.A.

(1072) The total adjusted basic amounts mentioned in section 19.2.5 exceed this 10% turnover ceiling for (…). Accordingly the total adjusted basic amounts for these addressees will be limited to the 10% turnover limit mentioned in the table in recital (1071) above.

19.3.3 Reduction of fines for legal entities

(1072a) The 10% cap laid down in Article 23(2) is calculated on the basis of the total turnover of all the entities constituting an 'undertaking'. The 10% cap is not based on the individual turnovers of the legal entities within an undertaking that are held jointly

and severally liable for an infringement. [insert footnote] However, in this particular case, the Commission will use its margin of appreciation and discretion to set the parts of the fines for which the ArcelorMittal subsidiairies are not jointly and severally liable with ArcelorMittal SA, and the fine for which SLM is solely liable at a level not exceeding 10% of their owhn turnover in the business year preceding the adoption of the Decision. Therefore, the maximum amount of the fine for which ArcelorMittal Wire France SA and ArcelorMittal Fonatine SA are jointly and severally liable for the period prior to 1 July 1999 should be set at 10% of the consolidated turnover of ArcelorMittal Wire France SA for the year ending 31 December 2009. out of that total amount, the maximum amount of the fine for which ArcelorMittal Verderio Srl is jointly and severally liable with ArcelorMittal Wire France SA and ArcelorMittal Fontaine SA should be set at 10% of its own turnover for the year ending 31 December 2009. The maximum amount of the fine for which SLM is solely liable should be set at 10% of its own turnover for the year ending 31 December 2009.

(1072b) The respective total turnover of each of those legal entities and 10% of that turnover for the year ending 31 December 2009 is as follows:

	Total Turnover	**10%**	**Undertakings**
1.	**EUR**	**EUR**	ArcelorMittal Wire France SA/ ArcelorMittal Fontaine SA/
2.	**EUR**	**EUR**	ArcelorMittal Verderio Srl
3.	**EUR**	**EUR**	Siderurgica Latina Martin S.p.A.

19.4. Application of the Leniency Notice

19.4.1. DWK

(1073) When it submitted (…) , DWK was not the first to submit evidence enabling the Commission to adopt a decision to carry out an investigation within the meaning of Article 20(4) of Regulation No 1/2003 (see recital (105)). Immunity under point 8 (a) of the Leniency Notice was therefore no longer available for DWK. DWK, however, did submit detailed information and supporting evidence about essential elements of the infringement of Article 101 of the TFEU, in particular regarding the quota and price fixing and the client allocation in the pan-European arrangements, as well as on the arrangements with the Italian producers and within Club Italia, and the involvement of DWK and several other addressees in the cartel[1245]. DWK was therefore the first undertaking to submit evidence which enabled the Commission to find an infringement of Article 101 of the TFEU.

[1245] (…)

(1074) To the Commission's knowledge, DWK finally terminated its involvement in this infringement on 6.11.2001, i.e. prior to the time at which it submitted the evidence. It continuously provided the Commission with all relevant information, documents and evidence available, and maintained full co-operation throughout the investigation. There is furthermore no evidence that DWK took steps to coerce other addressees to participate in the infringement.

(1075) DWK therefore, under point 8(b) of the Leniency Notice, qualifies for full immunity from the fine that would otherwise have been imposed on it for this infringement. Saarstahl AG, which formed part of the same undertaking as DWK at the time of the submission of the evidence, benefits from the same immunity from the fine.

19.4.2. ITC

(1076) (…) , immediately after the inspections, ITC applied for leniency.(…).

(1077) In particular, regarding Club Italia, (…).

(1078) On top of this, regarding the pan-European arrangements, (…).

(1079) There are no indications that ITC has continued its involvement in the cartel after the date of the inspections. Therefore, ITC is considered to have terminated its involvement before the time it submitted the evidence, in compliance with point 21 of the 2002 Leniency Notice.

(1080) ITC is therefore the first undertaking to satisfy point 21 of the 2002 Leniency Notice. Considering the significant value of its contribution to this case and in particular the quantity and quality of the evidence and explanations submitted and the early stage at which it provided this contribution, ITC's fine is reduced by 50%.

(1081) Antonini which formed part of the same undertaking as ITC at the time of the submission of the evidence, benefits from the same reduction of the fine.

19.4.3. Nedri

(1082) (…) , Nedri replied to a request for information and applied simultaneously for leniency.(…) .[1246]

(1083) (…) . As such, it significantly strengthened the Commission's understanding of the pan-European part of the cartel.

(1084) Also the information regarding the (…) co-ordination qualifies as significant added value within the meaning of point 22 of the Leniency Notice, (…).

(1085) Nedri also claims[1247] that it was the first to provide information (…) . This information, however, did not significantly contribute to the understanding and/or the establishment of the infringement and does not qualify as significant added value.

1246 (…)

1247 (…)

(1086) There are no indications that Nedri has continued its involvement in the cartel after the date of the inspections on 19.09.2002. Therefore, Nedri is considered to have terminated its involvement before the time it submitted the evidence. The condition of point 21 of the 2002 Leniency Notice is thus fulfilled.

(1087) Nedri is therefore the second undertaking to satisfy point 21 of the 2002 Leniency Notice. Considering the value of its contribution to this case, the early stage of this contribution and the extent of Nedri's co-operation following its submission, Nedri's fine is reduced by 25%.

(1088) HIT Groep BV no longer formed part of the same undertaking as Nedri at the time of the submission of the evidence and did not itself submit a request for leniency or otherwise provide information qualifying as significant added value, although it knew about the investigation from at least 12.10.2004 (see recital (1044)). Therefore, HIT Groep cannot benefit from the same reduction of the fine.

19.4.4. Emesa/Galycas

(1089) In their reply to the SO Emesa and Galycas claim that they should benefit from leniency and/or partial immunity from fines in view of the (…)which include essential evidence of facts previously unknown to the Commission[1248].

(1090) (…).

(1091) This leniency application was submitted (…) , i.e. at a time when Emesa and Galycas no longer formed one undertaking with any of the applicants[1249]. Therefore, Emesa and Galycas cannot benefit from this joint leniency application.[1250]

(1092) Contrary to what Emesa and Galycas allege, this situation is in no way comparable to the situation whereby Saarstahl AG benefits from the immunity granted to DWK, as DWK and Saarstahl AG were part of the same undertaking at the time of the immunity application.

(1093) Emesa and Galycas, however (…) . (…) . As Emesa and Galycas were part of the same undertaking at the time of their replies, the significant added value of the evidence submitted by these companies is assessed together.

(1094) (…), the (…) was of no value unless corroborated by another source. When corroborated, it helped the Commission to prove the existence of the meeting and in particular its participants.

(1095) Also the (…) lists of meetings between Iberian ('ATA') producers (…) without providing any description of their content and without being supported by any documentary evidence. The lists were again preceded by a similar vague statement that (…). The lists were, therefore, again too vague to constitute evidence of the infringement, unless corroborated by further evidence from another source. When corroborated, they helped the

1248 (…)
1249 (…)
1250 (…)

Commission proving the existence of the meetings and in particular their participants.

(1096) Emesa/Galycas' (…) therefore constitute significant added value, as they strengthen the Commission's ability to prove the facts pertaining to this cartel in respect of several meetings of the pan-European arrangements and Club España and in particular regarding the participants in these meetings, when corroborated.

(1097) (…).

(1098) Emesa/Galycas is therefore the third undertaking to satisfy point 21 of the 2002 Leniency Notice. Considering the value of its contribution to this case, the stage at which it provided this contribution and the extent of its co-operation following this submission, its fine is reduced by 5%. ArcelorMittal España S.A., which formed part of the same undertaking as Emesa and Galycas at the time of the submission of the evidence, benefits from the same reduction of the fine.

19.4.5. ArcelorMittal

(1099) As described in recital (112), on (…) Tréfileurope SA (now ArcelorMittal Wire France S.A.) and its subsidiaries Fontainunion (now ArcelorMittal Fontaine S.A.) and Tréfileurope Italia (now ArcelorMittal Verderio S.r.l.), (…). (…).

(1100) The different submissions of Tréfileurope and its subsidiaries qualify as significant added value, mainly regarding the different phases of the pan-European arrangement (crisis period, Club Europe and the expansion period), including the (…) co-ordination[1251].

(1101) (…).

(1102) (…).

(1103) (…). For the period 25.01.1994-31.05.2000, the Commission had (…)as well as two inspection documents dated 11.07.1997 and 21.09.1999.

(1104) (…).

(1105) The (…) also allowed the Commission (…).

(1106) For the period from 01.06.2000 until the inspection, the Iberian branch of the cartel was already sufficiently proven by abundant documentary evidence before the (…), (…).

(1107) Regarding the pan-European branch of the cartel, the (…).

(1108) (…)[1252], (…).

(1109) (…).

(1110) Also for the Club Europe period, (…)[1253], (…).

[1251] (…)
[1252] (…)
[1253] (…)

(1111) For these reasons, ArcelorMittal Wire France SA, its parent company, ArcelorMittal, and its subsidiaries, ArcelorMittal Fontaine S.A. and ArcelorMittal Verderio S.r.l as well as ArcelorMittal España S.A. fulfil the conditions of point 21 of the Leniency Notice and are granted a reduction of the fine of 20%. For ArcelorMittal España S.A., this reduction also includes the reduction mentioned in section 19.4.4 (in particular recital (1098)).

(1112) Emesa /Galycas were no longer part of any of the undertakings making the (…) , are also not part of any of these undertakings today and can therefore not benefit from a reduction of the fine for this submission (see also recitals (1089) to (1092)).

19.4.6. WDI

(1113) On (…) [1254], WDI replied to a request for information and applied for leniency on (…) . (…) As such, WDI strengthened the Commission's understanding of the pan-European part of the cartel, even if not regarding issues of a decisive importance.

(1114) There are no indications that WDI continued its involvement in the cartel after the date of the inspections on 19.09.2002. Therefore, WDI is considered to have terminated its involvement before the time it submitted the evidence. The condition of point 21 of the 2002 Leniency Notice is thus fulfilled.

(1115) WDI is therefore the fifth undertaking to satisfy point 21 of the 2002 Leniency Notice. Considering the value of its contribution to this case, the stage at which it provided this contribution and the extent of its cooperation following this submission, its fine is reduced by 5%.

(1116) As Westfälische Drahtindustrie Verwaltungsgesellschaft mbH and Pampus Industriebeteiligungen GmbH & Co. KG formed part of the same undertaking as WDI at the time of the submission of the evidence, they benefit from the same reduction of the fine.

19.4.7. Tycsa

(1117) The Spanish undertaking Tycsa (Global Steel Wire SA, Moreda Riviere Trefilerías SA, Trenzas y Cables de Acero PSC SL, as well as Trefilerías Quijano S.A.) has not formally applied for leniency but replied to requests for information on 17.10.2002 and 21.09.2004. According to settled practice, undertakings which do not formally apply for reduction of the fine under the terms of the 2002 Leniency Notice may still be eligible for a reduction of the fine if, by the time a final decision is taken, it appears that they voluntarily supplied the Commission with evidence which represents significant added value according to point 21 of the 2002 Leniency Notice.

[1254] In its reply of 14.10.2002, WDI provides a list and a few minutes of 46 official ESIS meetings. These meetings not being considered as anti-competitive (see recital (97)), they do not constitute significant added value.

In its reply to the SO[1255] Tycsa (in particular Global Steel Wire SA, Moreda Riviere Trefilerías SA and Trenzas y Cables de Acero PSC SL) added (…).

(1118) Tycsa's contributions are however too vague to represent significant added value. The first contribution (of 17.10.2002) does not mention anything on Club España/Club Italia (even though this was part of the Commission's request for information and there is abundant evidence of Tycsa's participation in these Clubs) and, regarding the pan-European arrangement, it does not cover the Zurich Club or crisis period. It only contains a list of meetings with competitors which 'could have been' anti-competitive, covering the Club Europe and expansion period, providing the names of the participants, the place/forum of the meeting concerned and a very brief description of the content of the meeting, in most of the cases pointing to the harmless character thereof (for example 'exchange of statistical information'). On the rare occasions where the description of the content could point to a problematic meeting from a competition point of view, the content of these meetings was already clear from pre-existing documents (originating amongst others from the inspections, including from documents found at Tycsa itself). Similarly, the participants in the meetings were already clear from the same pre-existing documents.

(1119) Tycsa claims in particular in its Reply to the SO (…) contribute significantly to the Commission's understanding of the cartel. The Commission observes, however, that these three meetings are not key to the understanding or establishing of the cartel and that the existence of the last meeting was moreover already known from previous sources.

(1120) In its second reply of 21.09.2004, Tycsa lists a number of meetings between Iberian producers (providing place and participants, but no description of the content of the meeting), declaring that, to its knowledge, these meetings were only about general market developments. The Commission, however, has clear evidence of the anti-competitive character of the meetings concerned and of Tycsa's lead role in the cartel.

(1121) On this basis, Tycsa's replies to the Commission's requests for information cannot be considered to add significant value and the fact that Tycsa has provided self-incriminating evidence is thereby irrelevant. Hence, Tycsa does not qualify for a reduction of the fine under the Leniency Notice.

19.4.8. Redaelli

(1122) Redaelli replied to a request for information on 21.10.2002 and (…) .(…) . However, they did not add or clarify any important aspect for which the Commission did not already have sufficient evidence. On 19.09.2008 the Commission therefore rejected Redaelli's leniency application under point 23 of the Leniency Notice.

(1123) In its reply to the SO Redaelli[1256] contests the Commission's conclusion that the evidence provided by it did not represent significant added value. It

[1255] GSW, reply to the SO, recital 295 *et seq.;* MRT, reply to the SO, recital 200 *et seq.;*Tycsa PSC, reply to the SO, recital 159 *et seq.*

[1256] (…)

observes that it fully co-operated with the Commission despite difficulties due to the company's restructuration over the years, by not only (…) and integrating this into a leniency application on (…) , but also replying to the numerous requests for information of the Commission. It states that the Commission often referred in the SO to information provided by this company.[1257] It contests the fact that it was not granted a provisional reduction of the fine unlike other companies, and in particular Nedri, who submitted its leniency application on (…).

(1124) It is recalled that in order to qualify for a reduction of the fine under the Leniency Notice, a company must provide the Commission with evidence which represents significant added value with respect to the evidence already in the Commission's possession. While the Commission at times referred to Redaelli's evidence and statements in the SO and in this Decision, none of the evidence submitted by Redaelli represented such significant added value, contrary to the evidence submitted by other companies, (…).

(1125) Regarding Redaelli's claim that it has always fully-cooperated with the Commission by replying to the numerous requests for information, the Commission notes that companies have a legal obligation to reply to the Commissions' requests for information. This, therefore, does not entitle them in itself to a reduction of the fine.

19.4.9. SLM

(1126) SLM[1258] claims a reduction of the fine for the self-incriminating information it provided in its reply to the first request for information of the Commission, which goes beyond regular co-operation. It further claims that it could not deliver more information as it was not, at that point, able to identify which evidence was already in the possession of the Commission, and in view of its marginal role in the infringement. Finally, it submits that the Commission used its statements to strengthen its conclusions.

(1127) In order to qualify for a reduction of the fine under the Leniency Notice, the information submitted should be of significant added value. The self-incriminating nature of the information or the fact that the Commission refers to the information in describing the cartel is thereby not decisive. When applying for leniency, the undertaking is moreover expected to provide the Commission all relevant information it possesses and is more likely to qualify for leniency if it acts promptly. The fact that SLM would not have been able to deliver more information because it was not able to identify which evidence was in the possession of the Commission is therefore irrelevant.

(1128) On (…) , while replying to a request for information, SLM applied for a reduction of the fine. In this reply (…). However, regarding the question of the possible significant added value of SLM's submission, its description of

1257 (…)
1258 (…)

these meetings already followed from pre-existing evidence, and its statements were vague.

(1129) Similarly, (…) . However, there are several prior sources of evidence proving this and other meetings with a similar aim. The information provided by SLM therefore does not constitute significant added value.

19.4.10. Conclusion on the Application of the 2002 Leniency Notice

(1130) The fine to be imposed on the undertakings following the application of the 2002 Leniency Notice should be as follows:

	Total adjusted basic amount	**Reduc-tion**	**Fine**	**Undertakings**
1.	**a) EUR (…)** **b) EUR (…)** **c) EUR (…)**	**20%** **20%** **20%**	**EUR (…)** **EUR (…)** **EUR (…)**	ArcelorMittal Wire France SA/ArcelorMittal Fonatine SA (…) ArcelorMittal Verderio Srl ArcelorMittal
2.	**a) EUR (…)** **b) EUR (…)** **c) EUR (…)** **d) EUR (…)**	**20%** **20%** **5%** **5%**	**EUR (…)** **EUR (…)** **EUR (…)** **EUR (…)**	ArcelorMittal España S.A. ArcelorMittal Emesa –Trefilería SA Industrias Galycas S.A.
3.	**a) EUR (…)** **b) EUR (…)** **c) EUR (…)** **d) EUR (…)**	**0%** **0%** **0%** **0%**	**EUR (…)** **EUR (…)** **EUR (…)** **EUR (…)**	Global Steel Wire SA Moreda-Riviere Trefilerías S.A. Trenzas y Cables de Acero P.S.C., SL Trefilerías Quijano S.A.
4.	**a) EUR (…)** **b) EUR (…)**	**0%** **0%**	**EUR (…)** **EUR (…)**	Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A. SOCITREL - Sociedade Industrial de Trefilaria, S.A.
5.	**EUR (…)** **EUR (…)**	**0%** **0%**	**EUR (…)** **EUR (…)**	voestalpine AG voestalpine Austria Draht GmbH
6.	**EUR (…)**	**0%**	**EUR (…)**	Fapricela-Indústria de Trefilaria S.A.
7.	**EUR (…)**	**0%**	**EUR (…)**	Proderac Productos Derivados del Acero S.A.
8.	**a) EUR (…)** **b) EUR (…)** **c) EUR (…)**	**5%** **5%** **5%**	**EUR (…)** **EUR (…)** **EUR (…)**	Westfälische Drahtindustrie GmbH Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG Pampus Industriebeteiligungen GmbH & Co. KG
9.	**a) EUR (…)**	**0%**	**EUR (…)**	HIT Groep BV

	b) EUR (…)	**25%**	**EUR (…)**	Nedri Spanstaal BV
10.	**a) EUR (…)** **b) EUR (…)**	**100 %** **100 %**	**EUR (…)** **EUR (…)**	Saarstahl AG DWK Drahtwerk Köln GmbH
11.	**a) EUR (…)** **b) EUR (…)** **c) EUR (…)** **d) EUR (…)**	**0%** **0%** **0%** **0%**	**EUR (…)** **EUR (…)** **EUR (…)** **EUR (…)**	Rautaruukki Oyj Ovako Bright Bar AB Ovako Hjulsbro AB Ovako Dalwire Oy Ab
12.	**a) EUR (…)** **b) EUR (…)**	**50%** **50%**	**EUR (…)** **EUR (…)**	Italcables S.p.A. Antonini S.p.A.
13.	**EUR (…)**	**0%**	**EUR (…)**	Redaelli Tecna S.p.A.
14.	**EUR (…)**	**0%**	**EUR (…)**	CB Trafilati Acciai S.p.A.
15.	**EUR (…)**	**0%**	**EUR (…)**	I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.
16.	**a) EUR (…)** **b) EUR (…)**	**0%** **0%**	**EUR (…)** **EUR (…)**	ORI Martin S.A. Siderurgica Latina Martin S.p.A.
17.	**EUR (…)**	**0%**	**EUR (…)**	Emme Holding S.p.A.

19.5. Ability to pay

19.5.1. Introduction

(1131) According to point 35 of the 2006 Guidelines on fines, '*In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.*'

(1132) In exercising its discretion under point 35 of the 2006 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.

(1133) Twenty-three legal entities have invoked their 'inability to pay' under point 35 of the 2006 Guidelines on fines: (…). The Commission has considered those claims and carefully analysed the available financial data on those undertakings. All undertakings concerned received Article 18 requests asking them to submit details about their individual financial situation and the specific social and economic context they are in.

(1134) Insofar as the undertakings argue that the estimated fine would have a negative impact on their financial situation, without adducing credible evidence demonstrating their inability to pay the expected fine, the

Commission points to settled case law according to which the Commission is not required, when determining the amount of the fine to be imposed, to take into account the poor financial situation of an undertaking, since recognition of such an obligation would be tantamount to giving unjustified competitive advantages to undertakings least well adapted to the conditions of the market.[1259]

(1135) Accordingly, in recitals (1141) to (1188) the individual financial position of each of the undertakings concerned and the impact of the fine is assessed in the respective specific social and economic context for those undertakings that have provided more detailed information and data. The respective financial situation of the undertakings concerned is assessed at the time the Decision is adopted and on the basis of the financial data and information submitted by the undertakings.

(1136) In assessing the undertakings' financial situation, the Commission considers the financial statements (annual reports, consisting of a balance sheet, an income statement, a statement of changes in equity, a cash-flow statement and notes) of the last (usually five) financial years, as well as their projections for 2010 to 2012. 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 undertakings' equity and assets), their 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 undertakings' access to finance and, in particular, the scope of any undrawn credit facilities they may have. The Commission also includes in its analysis the relations with shareholders in order to assess their confidence in the undertakings' 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 those shareholders to assist the undertakings concerned financially.[1260] Attention is paid both to the equity and profitability of the undertakings and, above all, to their solvency, liquidity and cash flow. The analysis is in other words 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 into account consistency over time of the

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1259 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, and 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.

1260 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), and Case T-410/09 R *Almamet* v. *Commission* (not yet reported), at paragraphs 47 *et seq.*

submitted projections. The analysis takes into account possible restructuring plans and their state of implementation.

(1137) The Commission also assesses the specific social and economic context for each undertaking whose financial situation is found to be sufficiently critical following the analysis described in recital (1136). The Commission also attempts to take into account the impact of the global economic and financial crisis (hereinafter 'the economic crisis') affecting the steel sector, and the expected consequences for the undertaking concerned in terms of, for instance, falling demand and falling prices, but also in terms of access to finance. A number of undertakings in this case stated that the economic crisis has had a particularly severe impact on the construction sector and on all undertakings that directly or indirectly offer products or services to that industry, such as PS producers. They also argued that there was a dramatic drop in demand in demand for PS from mid 2008 until the third quarter of 2009 due to the economic crisis. They further argue that the margins in the PS sector in Europe are under strong pressure. In addition, as a result of the economic crisis, undertakings are experiencing difficulty in maintaining their credit lines with banks and obtaining sufficient financing. These arguments are, for the sector in general, supported by studies such as the report produced by the Directorate General for Enterprise and Industry of the European Commission entitled "Impact of the economic crisis on key sectors of the EU – the case of the manufacturing and construction industries" of February 2010.[1261] The question whether the specific economic context as described in this recital and the specific social context apply to each individual undertaking is assessed in recitals (1141) to (1188) for each applicant which has invoked an inability to pay.

(1138) The fact that an undertaking goes into liquidation does not necessarily mean that there will always be a total loss of asset value and, therefore, this may not, in itself, justify a reduction in the fine which would have otherwise been imposed.[1262] This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management continue to develop the undertaking and its assets. Therefore, each applicant which has invoked an inability to pay needs to demonstrate that good and viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure maintaining the undertaking as a going concern, the Commission considers that there is a sufficiently high risk that the undertaking's assets would lose a significant part of their value if, as a result of the fine to be imposed, the undertakings were to be forced into liquidation.

1261 Report by DG Enterprise and Industry, available at http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=5633&userservice_id=1&request.id=0.

1262 See case law above as well as 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, paragraph 372 and Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 163.

(1139) Consequently, where the conditions laid down in point 35 of the 2006 Guidelines on fines are met, the reduction of the final amount of the fine imposed on each of the undertakings concerned is established on the basis of the financial and qualitative analysis described in recitals (1135) to (1138) also taking into account the ability of the undertaking concerned to pay the final amount of the fine imposed and the likely effect such payment would have on the economic viability of each undertaking.

(1140) The analysis of the inability to pay claims must go beyond the circumstances of the entities liable for the infringement in this Decision (see Chapter VI) for the reasons indicated in recital (1166), (1170), (1173), (1176), (1182), to (1183). Therefore, the twenty-three applicants which have invoked an inability to pay claim (see recital (1133)) should be re-classified accordingly, solely for the purposes of the assessment of inability to pay claims, in the following thirteen undertakings:

19.5.2. (…)

(1141) The inability to pay claim submitted by (…) should be partly accepted, for the reasons set out in this section.

(1142) (…) [1263] (…)

(1143) (…)

(1144) (…) [1264]

(1145) (…) [1265]

(1146) (…)

19.5.3. (…)

(1147) (…)

(1148) The inability to pay claim submitted by (…) should be rejected for the reasons set out in recital (1149).

(1149) (…)

19.5.4. (…)

(1150) The inability to pay claim submitted by (…) should be partly accepted, for the reasons set out in this section.

(1151) (…)

(1152) (…)

(1153) (…) [1266]

(1154) (…) [1267]

(1155) (…)

[1263] (…)
[1264] (…)
[1265] (…)
[1266] (…)
[1267] (…)

19.5.5. (…) .

(1156) The inability to pay claim submitted by (…) should be partly accepted, for the reasons set out in this section.

(1157) (…)

(1158) (…)

(1159) (…) [1268].

(1160) (…) [1269].

(1161) (…)

19.5.6. (…)

(1162) The inability to pay claim submitted by (…) should be rejected for the reasons set out in recital (1163).

(1163) (…)

19.5.7. (…)

(1164) The inability to pay claim submitted by (…) should be rejected for the reasons set out in recital (1165).

(1165) (…)

19.5.8. (…)

(1166) (…)

(1167) The inability to pay claim submitted by (…) should be rejected for the reasons set out in recital (1168).

(1168) (…)

19.5.9. (...)

(1169) (…)

(1170) (…)

(1171) This inability to pay claims should be rejected for the reasons set out in recital (1172).

(1172) (…)

19.5.10. (…)

(1173) (…)

(1174) The inability to pay claims submitted by (…), (…), (…) and (…) should be rejected for the reasons set out in recital (1175).

(1175) (…)

19.5.11. (…)

(1176) (…)

[1268] (…)

[1269] (…)

(1177) The inability to pay claims submitted by (…), (…) and (…) should be rejected for the reasons set out in recitals (1178) and (1179).

(1178) (…)

(1179) (…)

19.5.12. (…)

(1180) The inability to pay claim submitted by (…) should be rejected for the reasons set out in recital (1181).

(1181) (…)

19.5.13. (…)

(1182) (…)

(1183) (…)

(1184) The inability to pay claims submitted by the (…) companies and by (…) should be rejected for the reasons set out in recital (1185).

(1185) (...)

19.5.14. (…)

(1186) (…)

(1187) The inability to pay claim should be rejected for the reasons set out in recital (1188).

(1188) (…)

19.5.15. Conclusion

(1189) It follows from the analysis in section 19.5 that a reduction of the fine which would otherwise be imposed should be granted on the grounds of inability to pay, to avoid the risk of forced liquidation, to (…), (…) and (…), and that the requests for a reduction of the fine on the grounds of inability to pay from the 20 other legal entities should be rejected.

19.6. The Amounts of the Fines to be Imposed in this Decision

(1190) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 should therefore be as follows:

1.	**EUR 45 705 600**	on ArcelorMittal Wire France SA **and ArcelorMittal Fontaine SA, of which** ArcelorMittal Verderio Srl is held jointly and severally liable for the amount of EUR 32 353 600; of which ArcelorMittal SA is held jointly and severally liable for the amount of EUR 31 680 000.
2.	**EUR 36 720 000**	on ArcelorMittal España S.A., of which ArcelorMittal SA is held jointly and severally liable for the amount of EUR 8 256 000; of which

		Emesa –Trefilería SA is held jointly and severally liable for the amount of EUR 2 576 400; of which Industrias Galycas S.A. is held jointly and severally liable for the amount of EUR 868 300.
3.	**EUR 54 389 000**	jointly and severally on Global Steel Wire SA and Moreda-Riviere Trefilerías S.A., of which Trenzas y Cables de Acero P.S.C., SL is held jointly and severally liable for the amount of EUR 40 000 000; of which Trefilerías Quijano S.A. is held jointly and severally liable for the amount of EUR 4 190 000.
4.	**EUR 12 590 000**	jointly and severally on Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A. and SOCITREL - Sociedade Industrial de Trefilaria, S.A..
5.	**EUR 22 000 000**	jointly and severally on voestalpine AG and voestalpine Austria Draht GmbH.
6.	**EUR 8 874 000**	on Fapricela -Indústria de Trefilaria S.A..
7.	**EUR 482 250**	on Proderac Productos Derivados del Acero S.A.
8.	**EUR 46 550 000**	on Westfälische Drahtindustrie GmbH, of which Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG is held jointly and severally liable for the amount of EUR 38 855 000; of which Pampus Industriebeteiligungen GmbH & Co. KG is held jointly and severally liable for the amount of EUR 15 485 000.
9.	**EUR 6 934 000**	on HIT Groep BV, of which Nedri Spanstaal BV is held jointly and severally liable for the amount of EUR 5 056 500.
10.	**EUR 0**	jointly and severally on Saarstahl AG and DWK Drahtwerk Köln GmbH.
11.	**EUR 4 300 000**	jointly and severally on Rautaruukki Oyj and Ovako Bright Bar AB, of which Ovako Hjulsbro AB is held jointly and severally liable for the amount of EUR 1 808 000; of which Ovako Dalwire Oy Ab is held jointly and severally liable up for the amount of EUR 554 000.
12.	**EUR 2 386 000**	on Italcables S.p.A., of which Antonini S.p.A. is held jointly and severally liable for the amount of EUR 22 500.
13.	**EUR 6 341 000**	on Redaelli Tecna S.p.A.
14.	**EUR 2 552 500**	on CB Trafilati Acciai S.p.A.
15.	**EUR 843 000**	on I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A.
16.	**EUR 15 956 000**	on Siderurgica Latina Martin S.p.A., of which: ORI Martin S.A. is held jointly and severally liable for the amount of EUR 14 000 000.
17.	**EUR 3 249 000**	on Emme Holding S.p.A.

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 101 of the TFEU and, from 1 January 1994, have infringed Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement and/or concerted practice in the prestressing steel sector in the internal market and, as of 1 January 1994, within the EEA.The periods for which the undertakings are liable are as follows:

1. undertakings in the ArcelorMittal group:
   a) ArcelorMittal Wire France SA from 01.01.1984 to 19.09.2002;
   b) ArcelorMittal Fontaine SA from 20.12.1984 to 19.09.2002;
   c) ArcelorMittal Verderio Srl from 03.04.1995 to 19.09.2002; and
   d) ArcelorMittal SA from 01.07.1999 to 19.09.2002.
2. undertakings in the Emesa/Galycas group:
   a) Emesa –Trefilería S.A. from 30.11.1992 to 19.09.2002;
   b) Industrias Galycas S.A. from 15.12.1992 to 19.09.2002;
   c) ArcelorMittal España S.A. from 02.04.1995 to 19.09.2002; and
   d) ArcelorMittal SA from 18.02.2002 to 19.09.2002.
3. undertakings in the Tycsa group:
   a) Trenzas y Cables de Acero P.S.C., SL from 26.03.1998 to 19.09.2002;
   b) Trefilerías Quijano S.A. from 15.12.1992 to 19.09.2002;
   c) Moreda-Riviere Trefilerías S.A. from 10.06.1993 to 19.09.2002; and
   d) Global Steel Wire S.A. from 15.12.1992 to 19.09.2002.
4. undertakings in the Socitrel group:
   a) SOCITREL - Sociedade Industrial de Trefilaria, S.A. from 07.04.1994 to 19.09.2002; and
   b) Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A., from 07.04.1994 to 19.09.2002.
5. undertakings in the voestalpine group:
   a) voestalpine Austria Draht GmbH from 15.04.1997 to 19.09.2002; and
   b) voestalpine AG from 15.04.1997 to 19.09.2002.
6. Fapricela - Indústria de Trefilaria S.A. from 02.12.1998 to 19.09.2002.
7. Proderac Productos Derivados del Acero S.A. from 24.05.1994 to 19.09.2002.
8. undertakings in the Pampus group:
   a) Westfälische Drahtindustrie GmbH from 01.01.1984 to 19.09.2002;
   b) Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG from 03.09.1987 to 19.09.2002; and
   c) Pampus Industriebeteiligungen GmbH & Co. KG from 01.07.1997 to 19.09.2002.
9. undertakings in the Nedri group:

a) Nedri Spanstaal BV from 01.01.1984 to 19.09.2002; and
b) Hit Groep BV from 01.01.1998 to 17.01.2002.

10. undertakings in the Saarstahl group:

a) DWK Drahtwerk Köln GmbH from 09.02.1994 to 06.11.2001; and
b) Saarstahl AG from 09.02.1994 to 06.11.2001.

11. undertakings in the Ovako group:

a) Ovako Hjulsbro AB from 23.10.1997 to 31.12.2001;
b) Ovako Dalwire Oy Ab from 23.10.1997 to 31.12.2001;
c) Ovako Bright Bar AB from 23.10.1997 to 31.12.2001; and
d) Rautaruukki Oyj from 23.10.1997 to 31.12.2001.

12. undertakings in the ITC group:

a) Italcables S.p.A. from 24.02.1993 to 19.09.2002;.and
b) Antonini S.p.A. from 24.02.1993 to 19.09.2002.

13. Redaelli Tecna S.p.A. from 01.01.1984 until 19.09.2002.

14. CB Trafilati Acciai S.p.A. from 23.01.1995 to 19.09.2002.

15. I.T.A.S. - Industria Trafileria Applicazioni Speciali - S.p.A. from 24.02.1993 to 19.09.2002.

16. undertakings in the ORI Martin group:

a) Siderurgica Latina Martin S.p.A. from 10.02.1997 to 19.09.2002; and
b) ORI Martin S.A. from 01.01.1999 to 19.09.2002.

17. Emme Holding S.p.A. from 04.03.1997 to 19.09.2002.

Article 2

For the infringements referred to in Article 1, the following fines are imposed:

1.	**a) EUR 31 680 000**	Jointly and severally on ArcelorMittal SA, ArcelorMittal Verderio Srl, ArcelorMittal Fontaine SA and ArcelorMittal Wire France SA;
	b) EUR 673 000	Jointly and severally on ArcelorMittal Verderio Srl, ArcelorMittal Fontaine SA and ArcelorMittal Wire France SA;
	c) EUR 13 352 000	Jointly and severally on ArcelorMittal Fontaine SA and ArcelorMittal Wire France SA.
2.	**a) EUR 868 300**	Jointly and severally on Emesa–Trefilería S.A., Industrias Galycas S.A., ArcelorMittal España S.A. and ArcelorMittal SA;
	b) EUR 1 708 100	Jointly and severally on Emesa–Trefilería S.A., ArcelorMittal España S.A. and ArcelorMittal SA;

	c) EUR 5 679 600 **d) EUR 28 464 000**	Jointly and severally on ArcelorMittal España S.A. and ArcelorMittal SA; and On ArcelorMittal España S.A.
3.	**a) EUR 4 190 000** **b) EUR 35 810 000** **c) EUR 14 389 000**	Jointly and severally on Global Steel Wire S.A., Moreda-Riviere Trefilerías S.A., Trenzas y Cables de Acero P.S.C., SL and Trefilerías Quijano S.A.; Jointly and severally on Global Steel Wire S.A., Trenzas y Cables de Acero P.S.C., SL and Moreda-Riviere Trefilerías S.A.; and Jointly and severally on Global Steel Wire S.A. and Moreda-Riviere Trefilerías S.A.
4.	**EUR 12 590 000**	jointly and severally on Companhia Previdente - Sociedade de Controle de Participações Financeiras S.A. and on SOCITREL - Sociedade Industrial de Trefilaria, S.A.
5.	**EUR 22 000 000**	Jointly and severally on voestalpine AG and on voestalpine Austria Draht GmbH
6.	**EUR 8 874 000**	On Fapricela -Indústria de Trefilaria S.A.
7.	**EUR 482 250**	On Proderac Productos Derivados del Acero S.A.
8.	**a) EUR 15 485 000** **b) EUR 23 370 000** **c) EUR 7 695 000**	Jointly and severally on Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG Jointly and severally on Westfälische Drahtindustrie GmbH and Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG; and On Westfälische Drahtindustrie GmbH
9.	**a) EUR 5 056 500** **b) EUR 1 877 500**	Jointly and severally on HIT Groep BV and Nedri Spanstaal BV; and On HIT Groep BV
10.	**EUR 0**	Jointly and severally on Saarstahl AG and on DWK Drahtwerk Köln GmbH
11.	**a) EUR 554 000** **b) EUR 1 254 000** **c) EUR 2 492 000**	Jointly and severally on Ovako Hjulsbro AB, Ovako Dalwire Oy Ab, Ovako Bright Bar AB and Rautaruukki Oyj; Jointly and severally on Ovako Hjulsbro AB, Ovako Bright Bar AB and Rautaruukki Oyj, and Jointly and severally on Ovako Bright Bar AB and Rautaruukki Oyj
12.	**a) EUR 22 500** **b) EUR 2 363 500**	Jointly and severally on Antonini S.p.A. and Italcables S.p.A.; and On Italcables S.p.A.
13.	**EUR 6 341 000**	On Redaelli Tecna S.p.A.
14.	**EUR 2 552 500**	On CB Trafilati Acciai S.p.A.
15.	**EUR 843 000**	On I.T.A.S. - Industria Trafileria Applicazioni Speciali – S.p.A..
16.	**a) EUR 14 000 000** **b) EUR 1 956 000**	Jointly and severally on Siderurgica Latina Martin S.p.A. and ORI Martin S.A.; and On Siderurgica Latina Martin S.p.A.

17.	**EUR 3 249 000**	On Emme Holding S.p.A.

The fines shall be paid in euro, within three months of the date of the notification of this Decision, to the following 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 / COMP/38344"

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking may cover the fine by the due date by either providing a bank guarantee acceptable to the Accounting Officer of the Commission or making a provisional payment of the fine.

Article 3

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

1. ARCELORMITTAL SA 19, Avenue de la Liberté L-2930 Luxembourg	19. WESTFÄLISCHE DRAHTINDUSTRIE GmbH Wilhelmstrasse 7 D – 59067 Hamm
2. ARCELORMITTAL WIRE FRANCE SA Avenue de Lyon 25 F – 01003 Bourg-en-Bresse Cédex	20. PAMPUS INDUSTRIE-BETEILIGUNGEN GmbH & Co. KG Mühlenstrasse 16 D – 58640 Iserlohn
3. ARCELORMITTAL FONTAINE SA Rue de Repos 100 B – 6140 Fontaine l'Evêque	21. NEDRI SPANSTAAL BV Groot Egtenrayseweg 13 NL - 5928 PA Venlo
4. ARCELORMITTAL VERDERIO S.r.L. Via Provinciale 2 I – 23879 Verderio Inferiore	22. HIT GROEP BV Geesterweg 4a NL-1911 NB Uitgeest
5. EMESA-TREFILERÍA S.A.	23. DWK DRAHTWERK KÖLN GmbH

	Polígono Industrial de Sabón, parcela n°9 E - 15142 Arteixo (La Coruña)		Schanzenstrasse 40 D – 51063 Köln
6.	INDUSTRIAS GALYCAS S.A. Portal de Gamarra 48 E-01013 Vitoria (Alava)	24.	SAARSTAHL AG Bismarckstrasse 57-59 D-66333 Völklingen
7.	ARCELORMITTAL ESPAÑA S.A. c/Albacete 3-6ª planta E- 28027 Madrid	25.	OVAKO Hjulsbro AB Skonbergsvägen 43 SE – 581 03 Linköping
8.	MOREDA-RIVIERE TREFILERÍAS S.A. Poligono Polizur C/ Montclar n. 61 E-08290 Cerdanyola del Vallès	26.	OVAKO DALWIRE Oy Ab Dalsbruksvägen 709 FI - 25900 Dalsbruk
9.	TRENZAS Y CABLES DE ACERO P.S.C., S.L. Polígono Industrial Nueva Montaña s/n E-39011 Santander	27.	OVAKO BRIGHT BAR AB Kanalvägen 18 SE-194 05 Upplands - Väsby
10.	TREFILERÍAS QUIJANO S.A. Avenida JM Quijano s/n E-39400 Los Corrales de Buelna (Cantábria)	28.	RAUTARUUKKI Oyj Suolakivenkatu 1 FI – 00811 Helsinki
11.	GLOBAL STEEL WIRE S.A. Lugar de Nueva Montaña s/n E – 39011 Santander	29.	ITALCABLES S.p.A. Via Guglielmo Oberdan 7 I - 25128 Brescia (BS)
12.	SOCITREL-SOCIEDADE INDUSTRIAL DE TREFILARIA, S.A. Apartado 7, Lugar da Estação P - 4746-908 Sao Romão do Coronado	30.	ANTONINI S.p.A. Via Malocco 30 I – 25017 Lonato (Brescia)
13.	COMPANHIA PREVIDENTE – Sociedade de Controle de Participações Financeiras, S.A. Rua Dom Luís I, n.º 19, 5.º, P – 1200-149 Lisboa	31.	REDAELLI TECNA S.p.A. Via A. Volta 16 I – 20093 Cologno Monzese (MI)
14.	VOESTALPINE AUSTRIA DRAHT GmbH Bahnhofstrasse 2 A 8600 Bruck an der Mur	32.	CB TRAFILATI ACCIAI S.p.A. Via Laghi, 64 I – 36056 Tezze sul Brenta (VI)
15.	VOESTALPINE AG Voestalpine Strasse 1 A-4020 Linz	33.	I.T.A.S.- INDUSTRIA TRAFILERIA APPLICAZIONI SPECIALI S.p.A. Via Brennero 24 I – 46100 Mantova
16.	FAPRICELA - INDÚSTRIA DE TREFILARIA S.A. Apartado 5 - Manga da Granja P - 3061 - 905 Ançã Coimbra	34.	SIDERURGICA LATINA MARTIN S.p.A. Via Oger Martin 21 I – 03024 Ceprano (Frosinone)
17.	PRODERAC-	35.	ORI MARTIN S.A.

	PRODUCTOS DERIVADOS DEL ACERO S.A. Pista de Silla, km 253, 2, apartado 22 E-46470 Catarroja (Valencia)		Boulevard Royal 10 L – 2449 Luxembourg
18.	WESTFÄLISCHE DRAHTINDUSTRIE VERWALTUNGSGESELLSCHAFT mbH & Co. KG Wilhelmstrasse 7 D – 59067 Hamm	36.	EMME HOLDING S.p.A. Via Campania 41 I- 65122 Pescara.

This Decision shall be enforceable pursuant to Article 299 of the TFEU and Article 110 of the EEA Agreement.

Done at Brussels, 30.6.2010

For the Commission

Joaquín Almunia
Vice-president of the Commission