JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

12 July 2018 (*)

(Competition — Agreements, decisions and concerted practices — European market for power cables — Decision finding an infringement of Article 101 TFEU — Single and continuous infringement — Imputability of the infringement — Presumption — Error of assessment — Presumption of innocence — Legal certainty — Principle of personal responsibility — Unlimited jurisdiction)

In Case T−419/14,

The Goldman Sachs Group, Inc., established in New York, New York (United States), represented by W. Deselaers, J. Koponen and A. Mangiaracina, lawyers,

applicant,

v

European Commission, represented by C. Giolito, L. Malferrari, H. van Vliet and J. Norris-Usher, acting as Agents,

defendant,

supported by

Prysmian SpA, established in Milan (Italy),

Prysmian cavi e sistemi Srl, established in Milan,

represented by C. Tesauro, F. Russo and L. Armati, lawyers,

interveners,

APPLICATION under Article 263 TFEU for the annulment of Commission Decision C(2014) 2139 final of 2 April 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39610 — Power cables) in so far as it concerns the applicant and, in the alternative, a reduction of the fine imposed on the applicant,

THE GENERAL COURT (Eighth Chamber),

composed of A. M. Collins, President, M. Kancheva (Rapporteur) and R. Barents, Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 March 2017,

gives the following

Judgment

I. Background to the dispute

A. The applicant and the sector concerned

1 The applicant, The Goldman Sachs Group, Inc., is a United States company. It is an investment bank which operates in all the major financial centres around the world. Between 29 July 2005 and 28 January 2009, it was the indirect parent company, through GS Capital Partners V Funds, LP ('the GSCP V Funds') and other intermediate companies, of Prysmian SpA and of a wholly owned subsidiary of that company, Prysmian Cavi e Sistemi Srl ('PrysmianCS'), formerly Pirelli Cavi e Sistemi Energia SpA, and subsequently Prysmian Cavi e Sistemi Energia Srl. Prysmian and PrysmianCS together form the Prysmian group, one of the leading businesses worldwide in the submarine and underground power cables sector.

2 Submarine power cables are used under water and underground power cables are used under the ground for the transmission and distribution of electrical power. They are classified in three categories: low voltage, medium voltage and high and extra high voltage. High voltage and extra high voltage power cables are, in the majority of cases, sold as part of projects. Such projects consist of a combination of the power cable and the necessary additional equipment, installation and services. High voltage and extra high voltage power cables are sold throughout the world to large national grid operators and other electricity companies, principally through competitive public tender procedures.

B. Administrative procedure

3 By letter of 17 October 2008, the Swedish company ABB AB provided the Commission of the European Communities with a series of statements and documents concerning restrictive commercial practices in the underground and submarine power cable production and supply sector. Those statements and documents were produced in support of an application for immunity submitted in accordance with the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17; 'the Leniency Notice').

4 From 28 January to 3 February 2009, further to the statements made by ABB, the Commission carried out inspections at the premises of Prysmian and Prysmian Cavi e Sistemi Energia and at the premises of other European companies concerned, that is to say, Nexans SA and Nexans France SAS.

5 On 2 February 2009, the Japanese companies, Sumitomo Electric Industries Ltd, Hitachi Cable Ltd and J-Power Systems submitted a joint application for immunity from fines, in accordance with point 14 of the Leniency Notice, or, in the alternative, for a reduction of the amount thereof, in accordance with point 27 of the Leniency Notice. They then supplied the Commission with further oral statements and documentation.

6 During the course of the investigation the Commission sent several requests for information to undertakings in the underground and submarine power cable production and supply sector pursuant to Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1), and point 12 of the Leniency Notice.

7 On 30 June 2011, the Commission initiated proceedings and adopted a statement of objections against the following legal entities: Nexans France, Nexans, Pirelli & C. SpA, Prysmian Cavi e Sistemi Energia, Prysmian, Sumitomo Electric Industries, Hitachi Cable, J-Power Systems, Furukawa Electric Co. Ltd, Fujikura Ltd, Viscas Corp., SWCC Showa Holdings Co. Ltd, Mitsubishi Cable Industries Ltd, Exsym Corp., ABB, ABB Ltd, Brugg Kabel AG, Kabelwerke Brugg AG Holding, nkt cables GmbH, NKT Holding A/S, Silec Cable SAS, Grupo General Cable Sistemas, SA, Safran SA, General Cable Corp., LS Cable & System Ltd, Taihan Electric Wire Co. Ltd and the applicant.

8 Between 11 and 18 June 2012, all the addressees of the statement of objections, with the exception of Furukawa Electric, took part in an administrative hearing before the Commission.

9 By judgments of 14 November 2012, *Nexans France and Nexans* v *Commission* (T−135/09, EU:T:2012:596) and of 14 November 2012, *Prysmian and Prysmian Cavi e Sistemi Energia* v *Commission* (T−140/09, EU:T:2012:597), the General Court partly annulled the inspection decisions addressed, first, to Nexans and Nexans France, and, second, to Prysmian and Prysmian Cavi e Sistemi Energia, in so far as they concerned power cables other than high voltage submarine and underground power cables and the material associated with such other cables, and dismissed the action as to the remainder. On 24 January 2013, Nexans and Nexans France brought an appeal against the first of those judgments. By judgment of 25 June 2014, *Nexans and Nexans France* v *Commission* (C−37/13 P, EU:C:2014:2030), the Court of Justice dismissed that appeal.

10 On 2 April 2014, the Commission adopted its Decision C(2014) 2139 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the [EEA] Agreement (Case AT.39610 — Power cables) ('the contested decision').

C. Contested decision

1. The infringement at issue

11 Article 1 of the contested decision states that a number of undertakings participated, over various periods of time, in a single and continuous infringement of Article 101 TFEU in the '(extra) high voltage underground and/or submarine power cables sector'. In essence, the Commission found that, from February 1999 to the end of January 2009, the main European, Japanese and South Korean producers of submarine and underground power cables participated in a network of multilateral and bilateral meetings and established contacts aimed at restricting competition for (extra) high voltage submarine and underground power cable projects in specific territories, by allocating markets and customers, thereby distorting the normal competitive process (recitals 10 to 13 and 66 of that decision).

12 In the contested decision, the Commission found that the cartel consisted of two main configurations, which formed a composite whole. More specifically, according to the Commission, the cartel consisted of two aspects, namely:

– the 'A/R cartel configuration', which included the European undertakings, which were generally referred to as 'R members', the Japanese undertakings, referred to as 'A members', and, lastly, the South Korean undertakings, referred to as 'K members'. That configuration made it possible to achieve the objective of allocating territories and customers among the European, Japanese and South Korean producers. That allocation followed an agreement relating to the 'home territory', under which the Japanese and South Korean producers would refrain from competing for projects in the European producers' 'home territory' and the European producers would undertake to stay out of the Japanese and South Korean markets. In addition, the parties allocated projects in the 'export territories', namely the rest of the world with the notable exception of the United States. For a time, this allocation was based on a '60/40' quota, meaning that 60% of the projects were reserved for European producers and the remaining 40% were reserved for Asian producers;

– the 'European cartel configuration', which involved the allocation of territories and customers by the European producers for projects to be carried out within the European 'home territory' or allocated to the European producers (see section 3.3 of the contested decision and, in particular, recitals 73 and 74 of that decision).

13 The Commission found that the participants in the cartel had established obligations to exchange information in order to enable the allocation agreements to be monitored (recitals 94 to 106 and 111 to 115 of the contested decision).

14 The Commission classed the cartel participants in three groups, according to the role each of them had played in implementing the cartel. First, it defined the core group to include the European undertakings Nexans France, the subsidiaries of Pirelli & C., formerly Pirelli SpA, having participated successively in

the cartel and Prysmian Cavi e Sistemi Energia and the Japanese undertakings Furukawa Electric Co., Fujikura and their joint undertaking Viscas, as well as Sumitomo Electric Industries, Hitachi Cable and their joint undertaking J-Power Systems (recitals 545 to 561 of the contested decision). Next, the Commission identified a group of undertakings which had not been part of the core group but which nevertheless could not be regarded as merely fringe players in the cartel. In this group, it placed ABB, Exsym, Brugg Kabel and the entity constituted by Sagem SA, Safran and Silec Cable (recitals 562 to 575 of that decision). Lastly, the Commission took the view that Mitsubishi Cable Industries, SWCC Showa Holdings, LS Cable & System, Taihan Electric Wire and nkt cables were merely fringe players in the cartel (recitals 576 to 594 of that decision).

2. The applicant's liability

15 The applicant was found liable on the basis of the exercise of decisive influence, as parent company, over Prysmian and Prysmian Cavi e Sistemi Energia from 29 July 2005 to 28 January 2009.

16 In particular, first, the Commission presumed, in light of the principles laid down by the case-law of the Courts of the European Union, that Prysmian had exerted a decisive influence over the market conduct of Prysmian Cavi e Sistemi Energia at least between 29 July 2005 and 28 January 2009 and that the applicant had exerted a decisive influence over the market conduct of Prysmian and Prysmian Cavi e Sistemi Energia at least between 29 July 2005 and 3 May 2007 (recital 782 of the contested decision).

17 Second, the Commission concluded on the basis of the analysis of the applicant's economic, organisational and legal links with its subsidiaries that the applicant had in fact exerted a decisive influence over the market conduct of both Prysmian and Prysmian Cavi e Sistemi Energia at least between 29 July 2005 and 28 January 2009 (recital 783 of the contested decision).

3. The fine imposed

18 Article 2(f) of the contested decision imposed on the applicant a fine of EUR 37 303 000, 'jointly and severally' with PrysmianCS and Prysmian, for its participation in the cartel during the period 29 July 2005 to 28 January 2009.

19 In calculating the fines imposed on the applicant and the other addressees of the decision, the Commission applied Article 23(2)(a) of Regulation No 1/2003 and the methodology set out in the Guidelines on the method of setting fines imposed pursuant to [that provision] (OJ 2006 C 210, p. 2, 'the 2006 Guidelines on setting fines').

20 In the first place, as regards the basic amounts of the fines, after establishing the appropriate value of sales in accordance with point 18 of the 2006 Guidelines on setting fines (recitals 963 to 994 of the contested decision), the Commission selected the proportion of the value of sales which would reflect the gravity of the infringement in accordance with points 22 and 23 of those guidelines. In that regard, it considered that the infringement, by its very nature, was among the most harmful restrictions of competition, which justified a gravity percentage of 15%. The Commission also increased the gravity percentage by 2% for all addressees on account of their combined market share and the almost worldwide reach of the cartel, which included, inter alia, all of the territory of the European Economic Area (EEA). In addition, it considered, in particular, that the conduct of the European undertakings had been more detrimental to competition than that of the other undertakings, inasmuch as, in addition to their participation in the 'A/R cartel configuration', the European undertakings had allocated power cable projects among themselves in the context of the 'European cartel configuration'. For that reason, the Commission set the proportion of the value of sales to reflect the gravity of the infringement at 19% for the European undertakings and at 17% for the other undertakings (recitals 997 to 1010 of that decision).

21 In so far as concerns the multiplier to reflect the duration of the infringement, the Commission used a multiplier of 3.5 for the applicant, which reflected the period of its participation in the cartel from 29 July 2005 to 28 January 2009. The Commission also included in the basic amount of the fines an additional

amount, namely the entry fee, of 19% of the value of sales (recitals 1011 and 1016 of the contested decision).

22 In the second place, the Commission found no aggravating circumstances that could affect the basic amounts of the fine of the cartel participants, with the exception of ABB. On the other hand, in so far as mitigating circumstances are concerned, it decided to reflect in the fines the degree of involvement in the implementation of the cartel of each of the various undertakings. Accordingly, it reduced the basic amount of the fines to be imposed in respect of the fringe cartel participants by 10% and the basic amounts of the fines to be imposed in respect of the undertakings whose involvement had been moderate by 5%. It also granted Mitsubishi Cable Industries and SWCC Showa Holdings, in respect of the period preceding the creation of Exsym, and LS Cable & System and Taihan Electric Wire an additional reduction of 1% on account of the fact that they had been unaware of certain aspects of the single and continuous infringement and were not liable for them. On the other hand, no reduction in the basic amounts of the fines was granted to the undertakings belonging to the core group, which includes the applicant (recitals 1017 to 1020 and 1033 of the contested decision). Applying the 2006 Guidelines on setting fines, the Commission also granted Mitsubishi Cable Industries an additional reduction of 3% on account of its effective cooperation outside the scope of the Leniency Notice (recital 1041 of that decision).

II. Procedure and forms of order sought

23 By application lodged at the Registry of the General Court on 17 June 2014, the applicant brought the present action.

24 By documents lodged at the Court Registry on 2 and 11 October 2014, Prysmian and PrysmianCS, and the European Private Equity and Venture Capital Association applied for leave to intervene in the case in support of the form of order sought by the Commission.

25 By orders of 25 June 2015, the President of the Eighth Chamber of the General Court (former composition) granted Prysmian and PrysmianCS, the interveners, leave to intervene and ordered that they be sent the non-confidential versions of the applicant's and the Commission's pleadings and rejected the application for leave to intervene submitted by the European Private Equity and Venture Capital Association.

26 The interveners lodged their statement in intervention on 29 October 2015. By letters of 14 January and 5 February 2016, the Commission and the applicant respectively submitted their observations on that statement in intervention.

27 By order of 14 September 2016, the President of the Eighth Chamber (former composition) of the General Court partly granted the applicant's and the Commission's requests for confidential treatment, in so far as they were challenged by the interveners.

28 As a result of changes to the composition of the Chambers of the General Court pursuant to Article 27(5) of the Rules of Procedure, the Judge-Rapporteur was attached to the Eighth Chamber (new composition), to which the present case has therefore been assigned.

29 Acting upon a proposal of the Judge-Rapporteur, the General Court (Eighth Chamber) decided to open the oral part of the procedure. The parties presented oral argument and answered the questions put to them by the Court at the hearing on 28 March 2017.

30 The applicant claims that the Court should:

– annul, wholly or in part, Articles 1 to 4 of the contested decision in so far as they relate to it;

– reduce the fine imposed on it in Article 2 of the contested decision;

– order the Commission to pay the costs.

31 The Commission, supported by the interveners, contends that the Court should:

– dismiss all of the applicant's claims;

– order the applicant to pay the costs.

III. Law

32 In the application, the applicant seeks partial annulment of the contested decision as well as the reduction of the fine imposed on it.

A. The claims for annulment

33 In support of its claims for annulment, the applicant raises five pleas in law. The first plea alleges infringement of Article 101 TFEU and Article 23(2) of Regulation No 1/2003, an error of law and a manifest error of assessment as regards the Commission's conclusion that the applicant is liable for the infringement committed by the interveners. The second plea alleges infringement of Article 2 of that regulation, insufficiency of the evidence and breach of the duty to state reasons laid down in Article 296 TFEU. The third plea alleges infringement of Article 101 TFEU and Article 23(2) of that regulation, as well as breach of the principles of personal responsibility and the presumption of innocence. The fourth plea alleges infringement of Article 101 TFEU and Article 23(2) of that regulation, a manifest error of assessment and breach of the principle of legal certainty and of the principle that penalties must be specific to the offender. The fifth plea alleges infringement of the rights of the defence.

1. The first plea in law, alleging infringement of Article 101 TFEU and of Article 23(2) of Regulation No 1/2003, an error of law and a manifest error of assessment

34 The applicant takes issue with the Commission's decision to hold it jointly and severally liable for payment of the fine imposed for the infringements committed by the interveners between 29 July 2005 and 28 January 2009. In essence, it disputes the Commission's conclusions, described in paragraphs 15 to 17 above, that it could presume that the applicant had exerted a decisive influence over the interveners from 29 July 2005 to 3 May 2007 and that a decisive influence could, in any event, be inferred from an analysis of the applicant's economic, organisational and legal links with the interveners throughout the period during which the applicant held shares in the Prysmian group.

35 The applicant divides the first plea into three limbs. In the first limb, it submits that the Commission committed an error of law and a manifest error of assessment in presuming that it in fact exercised decisive influence over the interveners for the period between 29 July 2005 and 3 May 2007. In the second limb, it claims that the Commission committed a manifest error of assessment by taking the view that, in any event, it exercised decisive influence over the interveners during the entire period during which it held shares in the interveners. In the third limb, it claims that the Commission committed a manifest error of assessment in finding, in essence, that it was not a pure financial investor.

(a) The first limb, relating to the application of the presumption of actual exercise of decisive influence for the period between 29 July 2005 and 3 May 2007

36 First of all, the applicant maintains that the Commission erred in presuming that it exerted a decisive influence, given that its holding in Prysmian, through the GSCP V Funds and other intermediate companies, was much less than 100% for most of the time during which it held its investment. It points out in this connection that, leaving aside 41 days, its holding in Prysmian was no more than between 84.4% and 91.1%, until 3 May 2007, the date on which shares in Prysmian were offered to the public in an initial public offering on the Milan Stock Exchange ('the IPO date'). According to the applicant, the Commission

has never applied the presumption of actual exercise of decisive influence in a case involving a shareholding of less than 93%.

37 Next, the applicant submits that the Commission erred in applying the presumption of actual exercise of decisive influence by reference to the voting rights associated with Prysmian's shares rather than to that company's shareholding. According to the applicant, that approach is unprecedented in its decision-making practice and lacks support in the case-law of the EU Courts. Moreover, the applicant contends in essence that holding 100% of the voting rights associated with the shares of a company is not the same as holding 100% of the capital of that company.

38 In addition, the applicant complains that the Commission failed to have sufficient regard to the divestments of Prysmian's equity that it made to Apollo Investment Corporation ('Apollo') and to the divestments of Prysmian's equity that it made to Prysmian's management team. According to the applicant, those divestments effectively prove that it had not been in a position to exercise 100% of the voting rights associated with Prysmian's shares, contrary to the Commission's conclusion in the contested decision.

39 Lastly, the applicant claims that, even if the Commission had been entitled to apply the presumption of actual exercise of decisive influence to it with regard to the period preceding the IPO date, it nevertheless adduced sufficient evidence to rebut that presumption.

40 The Commission and the interveners dispute those arguments.

41 By the first limb of the first plea, the applicant essentially submits two complaints, alleging (i) that the Commission wrongly applied the presumption of actual exercise of decisive influence in order to hold it jointly and severally liable for payment of the fine imposed on its subsidiaries for the period between 29 July 2005 and the IPO date and (ii) that the Commission erred in concluding that it had not succeeded in rebutting that presumption.

(1) The first complaint, relating to the application of the presumption of actual exercise of decisive influence for the period between 29 July 2005 au 3 May 2007

42 It is settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company having regard in particular to the economic, organisational and legal links between those two legal entities (see judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:536, paragraph 58 and the case-law cited).

43 That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking within the meaning of Article 101 TFEU. Thus, the fact that a parent company and its subsidiary constitute a single undertaking within the meaning of that article enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement (see, to that effect, judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:536, paragraph 59 and the case-law cited).

44 According to further settled case-law, in the specific case where a parent company has a 100% shareholding in a subsidiary that has infringed the competition rules of the European Union: (i) the parent company is able to exercise decisive influence over the conduct of the subsidiary; and (ii) there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary (see, to that effect, judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:536, paragraph 60 and the case-law cited).

45 In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent exercises a decisive influence over the commercial

policy of the subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market (see judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:536, paragraph 61 and the case-law cited).

46 Lastly, it should be recalled that, in the specific case where a company holds all or almost all of the capital of an intermediate company which, in turn, holds all or almost all of the capital of a subsidiary of its group which has committed an infringement of EU competition law, there is also a rebuttable presumption that that company exercises a decisive influence over the conduct of the intermediate company and indirectly, via that company, also over the conduct of that subsidiary (see, to that effect, judgment of 8 May 2013, *Eni* v *Commission*, C−508/11 P, EU:C:2013:289, paragraph 48 and the case-law cited).

47 In the present case, it is common ground that the Commission applied the presumption of actual exercise of decisive influence despite the fact that the applicant did not hold a 100% shareholding in Prysmian during the entire period between 29 July 2005 and the IPO date. It is not disputed that, as appears from recitals 739 to 747 of the contested decision, although the applicant initially held 100% of that capital, the level of that holding decreased, shortly afterwards and gradually, following (i) the divestment of equity made on 7 September 2005 to Apollo and (ii) the divestment of equity made on 21 July 2006 to Prysmian's management team. Accordingly, the applicant is correct to state in its pleadings that, apart from 41 days when its shareholding was 100%, its shareholding before the IPO date was between 91.1% and 84.4% of the equity.

48 Nevertheless, as is apparent from recitals 748 to 754 of the contested decision, the Commission did not base the application of the presumption of actual exercise of decisive influence on the level of the applicant's holding in Prysmian's share capital, but on the fact that, despite the divestment of some equity, the applicant controlled 100% of the voting rights associated with that company's shares. According to the Commission, that placed it in a situation similar to that of a sole owner of the Prysmian group.

49 In the first place, regarding the question whether the presumption of actual exercise of decisive influence could be applied in those circumstances, it should be pointed out that, according to settled case-law, the Commission is entitled to apply that presumption where the parent company is in a similar situation to that of a sole owner as regards its power to exercise a decisive influence over the conduct of its subsidiary (see, to that effect, judgments of 7 June 2011, *Total and Elf Aquitaine* v *Commission*, T−206/06, not published, EU:T:2011:250, paragraph 56: of 12 December 2014, *Repsol Lubricantes y Especialidades and Others* v *Commission*, T−562/08, not published, EU:T:2014:1078, paragraph 42, and of 15 July 2015, *Socitrel and Companhia Previdente* v *Commission*, T−413/10 and T−414/10, EU:T:2015:500, paragraph 204).

50 Accordingly, it must be held that, as the Commission states in recital 754 of the contested decision,where a parent company is able to exercise all the voting rights associated with its subsidiary's shares, in particular in combination with a very high majority stake in the share capital of that subsidiary, as in the present case, that parent company is in a similar situation to that of the sole owner of that subsidiary, since that parent company is able to determine the economic and commercial strategy of the subsidiary concerned, even if it does not hold all or virtually all the share capital of that subsidiary.

51 Moreover, it should be pointed out that the presumption of actual exercise of decisive influence is based, in essence, on the premiss that the fact that a parent company holds all or virtually all the share capital of its subsidiary enables the Commission to conclude, without supporting evidence, that that parent company has the power to exercise a decisive influence over the subsidiary without there being any need to take into account the interests of other shareholders when adopting strategic decisions or in the day-to-day business of that subsidiary, which does not determine its own market conduct independently, but in accordance with the wishes of that parent company (see, to that effect, Opinion of Advocate General Kokott in *Akzo Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:262, point 73).

52 Those considerations are fully applicable in the case where a parent company is able to exercise all the voting rights associated with the shares of its subsidiary, since that parent company is in a position to exercise total control over the conduct of that subsidiary without any third parties, in particular other shareholders, being in principle able to object to that control. Admittedly, it cannot be ruled out that, in certain cases, minority shareholders who have no voting rights associated with the shares of that subsidiary, may exercise, with respect to that subsidiary, certain rights enabling them, in certain circumstances, to also have an influence over the conduct of that subsidiary. However, in those circumstances, that parent company may then rebut the presumption of actual exercise of decisive influence by adducing evidence capable of showing that it does not determine the commercial policy of the subsidiary concerned on the market.

53 In the second place, regarding the question whether the applicant is in such a position, it should be recalled that, in recitals 751 to 754 of the contested decision, the Commission sets out the reasons why the relationship between the applicant and Prysmian between 29 July 2005 and the IPO date was, in its view, similar to that of a parent company which holds 100% of the share capital of its subsidiary. In essence, it explains that the two divestments of Prysmian's equity that the applicant made (i) to Apollo and (ii) to the management team of Prysmian were subject to conditions ensuring that the new shareholders would be pure passive investors and could not exercise any voting rights associated with their shareholding.

54 For its part, the applicant submits that the investments made by Apollo and by Prysmian's management were not purely passive and moreover did not entail relinquishing the ability to exercise the voting rights associated with Prysmian's shares in favour of the applicant. In addition, it criticises the Commission for having 'overlooked', in the analysis, the two divestments of equity that it made (i) to Apollo and (ii) to Prysmian's management.

55 First, as regards the applicant's divestment of Prysmian's equity to Apollo, it should be observed that, according to recital 751 of the contested decision, this was effected through the establishment of a new partnership, known as GS Prysmian Co-Invest LP, of which Apollo was only a limited partner. The applicant does not dispute that finding of the Commission. In particular, clause 5.7 of the sale and purchase agreement signed between the GSCP V Funds and Apollo on 7 September 2005, as cited in footnote 1115 of that decision, provides as follows:

'[*confidential*]' (1) (emphasised in the contested decision).

56 It is apparent from the previous paragraph that, pursuant to the sale and purchase agreement, Apollo recognised [*confidential*].

57 Accordingly, the Commission was justified to take the view that the applicant's divestment of Prysmian's equity to Apollo was subject to conditions ensuring that the new shareholder would be a pure passive investor.

58 The applicant's line of argument that the Commission cannot merely rely on the formal language of the sale and purchase agreement signed between the GSCP V Funds and Apollo on 7 September 2005, which may not reflect the true situation created following the applicant's divestment of Prysmian's equity to Apollo, cannot call in question that conclusion. As the Commission states, the applicant does not adduce any evidence to show that that agreement and, in particular, clause 5.7 thereof did not reflect the true situation established between those funds and Apollo.

59 Next, regarding the applicant's line of argument that the wording of the sale and purchase agreement signed between the GSCP V Funds and Apollo on 7 September 2005 merely reflected the risk that Apollo was willing to take in connection with its investment, it is sufficient to observe, in order to reject that line of argument, that the reasons which led to the adoption of that agreement are irrelevant for the purpose of ascertaining whether, after the applicant's divestment of Prysmian's equity to Apollo, the applicant retained the ability to exercise all the voting rights associated with those shares.

60 Lastly, the applicant's line of argument that the increase in the number of shareholders within Prysmian implied in itself the existence of other interests to be taken into account within the undertaking cannot succeed. As regards the investments made by Apollo, the applicant provides no information on the nature of those interests or on the manner in which they might manifest themselves in a context in which Apollo was unable to exercise any voting rights.

61 Second, as regards the applicant's divestment of Prysmian's equity to Prysmian's management, it is apparent from recital 752 of the contested decision that that divestment was accompanied by a series of conditions that the management was required to accept and which were set out in the context of a co-investment contract and a fiduciary agreement with a third-party bank. In particular, through that contract and that agreement, the managers accepted that their respective shares would be acquired and held through that bank, as a fiduciary. Moreover, it is apparent from that contract and that agreement that the managers could only exercise the rights granted to them under the divestment through the fiduciary, who, in turn, could participate in Prysmian's shareholder meetings only following receipt of voting instructions from the GSCP V Funds.

62 The applicant asserts that, as regards its divestment of Prysmian's equity to Prysmian's management, the persons involved were either members of Prysmian's or PrysmianCS's board of directors. In the applicant's submission, those managers were therefore able to exercise an influence over Prysmian and, in so far as they were responsible for determining the commercial policy of that group, could not be regarded as pure passive investors. In addition, it submits that that divestment was part of a scheme for incentivising management, which was intended to support the growth of the undertaking.

63 However, those assertions do not constitute arguments capable of calling into question the findings made by the Commission in recital 752 of the contested decision. It should be pointed out that, contrary to what the applicant asserts, in so far as the members of Prsymian's management were not entitled to exercise any voting rights associated with Prsymian's shares, they were not shareholders whose interests had to be taken into account by the parent company. Accordingly, the applicant has failed to show that the position of a manager in that case differs from that of a manager of a subsidiary which is wholly owned by the parent company. Moreover, it should be noted that increasing the motivation of those members of Prysmian's management did not depend on their being able to exercise those voting rights and was therefore unrelated to the express clauses of the co-investment contract and the fiduciary agreement prohibiting that management from exercising any specific shareholder right.

64 It follows that the Commission could rightly consider the applicant's divestments of Prsymian's equity to Apollo and to Prysmian's management to be purely passive and that they resulted in the exercise of the voting rights associated with Prsymian's shares being relinquished to the applicant, which therefore continued to be able to exercise 100% of those voting rights.

65 Third, to the extent that the applicant alleges a lack of reasoning by the Commission, inasmuch as the Commission allegedly overlooked the applicant's divestments of Prsymian's equity to Apollo and to Prysmian's management in its analysis, it is sufficient to note that the explanations provided in recitals 751 to 754 of the contested decision clearly constitute a detailed and adequate statement of reasons, for the purposes of settled case-law, in order to enable the applicant to understand the logic underlying the Commission's assessment and the Court to exercise its review of that assessment (see, to that effect, judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C−521/09 P, EU:C:2011:620, paragraph 147 and the case-law cited).

66 In the light of the foregoing, the applicant's ability to exercise decisive influence over the interveners on account of its ability to exercise all the voting rights associated with Prsymian's shares was, on the facts of the present case, comparable to the ability that it would have enjoyed as sole owner.

67 Accordingly, it must be held, following an in-depth review, and in the light of the fact that the applicant does not challenge the Commission's finding that Prysmian exercised decisive influence over PrysmianCS, that the Commission was entitled to take the view, without erring, that the presumption of actual exercise

of decisive influence over the interveners' market conduct could be applied to the applicant for the period between 29 July 2005 and 3 May 2007.

68 The first complaint of the first limb must therefore be rejected.

(2) The second complaint, relating to the rebuttal of the presumption of actual exercise of decisive influence

69 In the applicant's submission, even if the Commission correctly applied the presumption of actual exercise of decisive influence, the applicant, in any event, rebutted that presumption during the administrative procedure. In essence, the applicant submits that there is a great deal of evidence demonstrating that the interveners acted independently on the market, without any direction from the applicant.

70 First, the applicant submits that the contested decision failed to show that the employee directors of the Principal Investment Area of its 'Merchant Banking' Division ('the PIA'), who controlled the GSCP V Funds, exercised an influence over the interveners' commercial policy. It claims that the minutes of Prysmian's board of directors prove that it was its management team that directed such a policy.

71 As the Commission observes in the context of this complaint, the applicant does not mention specific emails or minutes which substantiate its claim. However, as is clear from the case-law cited in paragraph 45 above, in order to rebut the application of the presumption of actual exercise of decisive influence, it is for the applicant to adduce evidence showing that, in reality and contrary to what the Commission presumed, the interveners determined their commercial strategy independently. The applicant's first argument must therefore be rejected.

72 Second, the applicant relies on public statements by the members of Prysmian's board of directors, including one made at their meeting of 15 December 2005, in which it was allegedly stated that Prysmian was 'not subject to the management and coordination by any other company'. The applicant adds that, if the interveners had indeed been under its control, it would have been required to declare this publicly, in accordance with Italian law.

73 However, public statements that the members of Prysmian's board of directors may have made at their meetings are in themselves incapable of establishing the veracity of their content. The applicant does not adduce any evidence supporting the veracity of those public statements.

74 Moreover, the fact that such statements were made in accordance with Italian law, as the applicant claims, is incapable of demonstrating that the applicant was not, in reality, the parent company with control of the Prysmian group. As the Commission observes, the exercise of decisive influence has to be assessed on the basis of concrete evidence, so that the question whether a subsidiary can determine its conduct on the market autonomously or, by contrast, is subject to the decisive influence of its parent company cannot be assessed solely on the basis of the provisions of the relevant national law.

75 Third, the applicant relies on the interveners' reply to the Commission's request for information of 20 October 2009 and, in particular, the fact that that document contains no reference to the applicant. However, again, the mere lack of any reference to the applicant in that document does not prove that the applicant did not exercise any influence over the interveners, in particular during the period preceding the IPO date.

76 Fourth, the applicant submits that it did not give any instructions in relation to, or have any direct control over, matters of a commercial nature relating to the Prysmian group. In that regard, it provides a brief 'summary' of a series of arguments to be set out more fully and 'in detail' in the context of the second limb of the first plea. However, in the present case, such a reference does not enable the Court to determine precisely the scope of those arguments. Although the basic legal and factual particulars relied on by the applicant may have been set out in the application, it is nevertheless important for the applicant to present them coherently and intelligibly. In particular, it is not the task of the Court to search through all the

matters relied on in support of the second limb of the first plea in order to ascertain whether those matters could also be used in support of this ground (judgment of 27 September 2006, *Roquette Frères* v *Commission*, T−322/01, EU:T:2006:267, paragraph 209). Accordingly, this line of argument must be rejected as inadmissible, without prejudice to the analysis to be carried out in the context of the second limb of the first plea.

77 It is apparent from the foregoing that, contrary to what the applicant claims, it has not succeeded in rebutting the application of the presumption of actual exercise of decisive influence with sufficient evidence to show that its subsidiary acted independently on the market.

78 The second complaint of the first limb must therefore be rejected, as must that limb in its entirety.

(b) The second limb, concerning the Commission's conclusions regarding the period between 29 July 2005 and 28 January 2009

79 The applicant maintains that the evidence on which the Commission relied in the contested decision to hold it jointly and severally liable throughout the period of the infringement does not establish that it had the ability to exert a decisive influence, or that it actually exerted a decisive influence, over the interveners. In essence, the applicant considers that the Commission did not establish to the requisite legal standard that the interveners and the applicant formed an economic unit within the meaning of the case-law.

80 The Commission and the interveners dispute those arguments.

81 As is apparent from the case-law cited in paragraph 42 above, the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company having regard in particular to the economic, organisational and legal links between those two legal entities.

82 According to settled case-law, in order to ascertain whether a subsidiary determines its conduct on the market independently, account must be taken of all the relevant factors relating to the economic, organisational and legal links which tie the subsidiary to the parent company, which may vary from case to case and cannot therefore be set out in an exhaustive list (see judgments of 14 September 2016, *Ori Martin and SLM* v *Commission*, C−490/15 P and C−505/15 P, not published, EU:C:2016:678, paragraph 60 and the case-law cited, and of 9 September 2015, *Philips* v *Commission*, T−92/13, not published, EU:T:2015:605, paragraph 41 and the case-law cited).

83 Where a parent company and its subsidiary form part of a single undertaking for the purposes of Article 101 TFEU, the factor which entitles the Commission to address the decision imposing fines to the parent company is not necessarily a parent-subsidiary relationship in which the parent company instigates the infringement; nor, *a fortiori*, is it because of the parent company's involvement in the infringement; rather, it is because the companies concerned constitute a single undertaking for the purposes of Article 101 TFEU (see judgment of 14 September 2016, *Ori Martin and SLM* v *Commission*, C−490/15 P and C−505/15 P, not published, EU:C:2016:678, paragraph 60 and the case-law cited).

84 It should also be noted that, in order to be able to impute the conduct of a subsidiary to the parent company, the Commission cannot merely find that the parent company is in a position to exercise decisive influence over the conduct of its subsidiary, but must also establish whether that influence was actually exercised (see judgments of 26 September 2013, *EI du Pont de Nemours* v *Commission*, C−172/12 P, not published, EU:C:2013:601, paragraph 44 and the case-law cited; of 26 September 2013, *The Dow Chemical Company* v *Commission*, C−179/12 P, not published, EU:C:2013:605, paragraph 55 and the case-law cited; and of 9 September 2015, *Toshiba* v *Commission*, T−104/13, EU:T:2015:610, paragraph 95 and the case-law cited).

85 Having regard to the fact that, under Article 263 TFEU, the Court must confine itself to a review of the legality of the contested decision on the basis of the reasons set out in that decision, the question whether a parent company actually exercises management power over its subsidiary must be assessed solely by reference to the evidence assembled by the Commission in the decision which attributes liability for the infringement to the parent company. The only relevant question is therefore whether the infringement is or is not proved in the light of that evidence (see judgment of 9 September 2015, *Toshiba* v *Commission*, T−104/13, EU:T:2015:610, paragraph 98 and the case-law cited).

86 In the contested decision, the Commission adopted its conclusion that the applicant exercised decisive influence over the interveners by relying, in its view, on objective factors relating to the economic, organisational and legal links between the applicant and the Prysmian group. Those objective factors, as described in recitals 758 to 781 of that decision, are, first, the power to appoint the members of the various boards of directors of Prysmian, second, the power to call shareholder meetings and to propose the revocation of directors or of entire boards of directors, third, the applicant's actual level of representation on Prysmian's board of directors, fourth, management powers of the applicant's representatives on the board of directors, fifth, the important role played by the applicant on the committees established by Prysmian, sixth, the receipt of regular updates and monthly reports, seventh, the measures to ensure continuation of decisive control after the IPO date and, eighth, evidence of behaviour typical of an industrial owner.

87 It should be observed that, according to the Commission, the first six objective factors mentioned in paragraph 86 above show that the applicant exercised decisive influence both during the period preceding the IPO date and during the period following that date. By contrast, the last two factors relate exclusively to that latter period. In that context, even though, as regards the period preceding the IPO date, the Court has already held that the Commission correctly applied the presumption of actual exercise of decisive influence and that the applicant has not succeeded in rebutting that presumption, it is still necessary to examine all the factors relied on by the Commission in the contested decision, since they are also applicable to the period following that date.

88 It is therefore necessary to examine the merits of each factor on which the Commission relies, in the light of the arguments put forward by the applicant, and, in particular, to ascertain, in accordance with the case-law cited in paragraphs 81 to 85 above, whether those factors are capable as a whole of demonstrating both the applicant's ability to exercise a decisive influence over the interveners' market conduct and that that influence was actually exercised.

(1) The power to appoint the members of the various boards of directors of Prysmian and the power to call shareholder meetings and to propose the revocation of directors or of entire boards of directors

89 In recitals 758 to 760 of the contested decision, the Commission explains that the applicant had the power to appoint directors to Prysmian's board of directors and that the applicant exercised that power throughout the entire infringement period. It adds that the applicant also had the power to call shareholder meetings and to propose, at those meetings, the revocation of directors or of the entire board of directors.

90 The applicant does not dispute the findings in the contested decision that it had the power to appoint the members of Prysmian's board of directors and to call shareholder meetings and to revoke directors or the entire board of directors. Moreover, it does not dispute, as it confirmed at the hearing, the Commission's findings regarding the specific composition of the various boards of directors of Prysmian during the infringement period. However, the applicant claims that those powers did not confer on it the ability to exercise actual control over the board or thus to influence, decisively, Prysmian's commercial policy. In its view, the Commission has failed to prove that it exercised such actual control.

91 In the first place, as regards the applicant's ability to exercise decisive influence over the interveners, it must be stated that the ability to decide upon the composition of the board of directors of a company constitutes an objective factor which determines, in itself, whether it is possible to control the decisions that may be adopted by that board and, therefore, by the company concerned. The board of directors

constitutes, by definition, the body responsible for administering and representing the company. It is tasked, inter alia, with determining and monitoring the commercial policy of the company in question and with appointing that company's management team. As regards, in particular, Prysmian, the Commission's finding that the applicant had the power to appoint all the members who were to sit on the various boards of directors of that company, albeit indirectly, through the GSCP V Funds, supports the conclusion that the applicant had the ability to control those boards as well as the decisions that the boards were required to take in performing their duties.

92 In the second place, as regards the question whether the applicant actually exercised that control, it should be pointed out, in accordance with recital 759 of the contested decision and with the findings made in the examination of the first limb of this plea, that the applicant had complete control over the voting rights associated with Prysmian's shares during the period prior to the IPO date and that it also had an absolute majority at shareholder meetings until November 2007. As it confirmed at the hearing, the applicant thus appointed all the members of the boards of directors both, first, of GSCP Athena Srl and GSCP Athena Energia Srl, on 9 and 11 May 2005, which became, in essence Prysmian and PrysmianCS respectively, and, subsequently, the boards of Prysmian, on 15 December 2005 and on 28 February 2007.

93 Moreover, it should be pointed out, as the Commission observes in recital 759 of the contested decision, that the board of directors appointed on 28 February 2007, that is to say before the IPO date, was appointed until 31 December 2009 and remained unchanged, after the IPO date, until the date on which the infringement ceased. Although, during that period, the applicant no longer had absolute control over the voting rights associated with Prysmian's shares, the fact that that board continued to have the same composition is evidence that the applicant continued to exercise control over the board of directors.

94 The foregoing assessments are, moreover, supported by the Commission's finding, which is not challenged by the applicant, that the applicant also had the power to call shareholder meetings and to propose the revocation of directors, or even the entire board of directors. That power highlights the applicant's ability to exercise control over the successive boards of directors of Prysmian and over the decisions that those boards might adopt. It is true, as the applicant asserts, that the only occasion established by the Commission on which the applicant revoked the appointment of the members of Prysmian's board of directors was, according to recital 760 of the contested decision, on 9 April 2009, that is to say, after the infringement period. However, as the Commission observes, nothing prevents facts and matters arising after the formal end date of an infringement from being taken into account as indicia, on account of their relevance, in order to assess facts and matters that occurred during the infringement period. In addition, it should be pointed out that the applicant had the same powers throughout the entire infringement period.

95 It follows that the Commission was entitled to rely on the applicant's power to appoint directors to Prysmian's board of directors and on its power to propose their revocation as objective factors to show that the applicant had the ability to, and did in fact, control that board.

96 The applicant disputes however that its powers to appoint directors to Prysmian's board of directors and to propose their revocation constitute objective factors in order to show that it in fact controlled that board. First, it claims that the Commission was in addition required to demonstrate how specifically the applicant had exercised such control over the members of Prysmian's boards of directors. It relies, in that regard, on the judgment of 6 March 2012, *FLS Plast* v *Commission* (T−64/06, not published, EU:T:2012:102).

97 It should be recalled that the judgment of 6 March 2012, *FLS Plast* v *Commission* (T−64/06, not published, EU:T:2012:102), by which the Court annulled in part the decision at issue, concerned a parent company which held 60% of the shares of the subsidiary, the remaining 40% belonging to a third company. The Court found that exercise of control by the parent company could not be presumed since, with a 40% shareholding, the third company was also able to exercise influence over the conduct of the subsidiary. The Commission was therefore still required to show that it was the applicant in question which exercised decisive influence unilaterally. Moreover, the Court found that the Commission had not provided any explanation concerning the power of the representatives of the parent company within the subsidiary's board of directors, so that it had not been established that those representatives had the power to actually

control the board as a whole during part of the infringement period (judgment of 6 March 2012, *FLS Plast* v *Commission*, T−64/06, not published, EU:T:2012:102, paragraphs 39 and 43).

98 Thus, the facts of the case which gave rise to the judgment of 6 March 2012, *FLS Plast* v *Commission* (T−64/06, not published, EU:T:2012:102), differ from those of the present case, in which the applicant was able to exercise all the voting rights associated with Prysmian's shares during the period preceding the IPO date and, even after that date, there was, as the applicant confirmed at the hearing, no other shareholder with a significant shareholding who could also influence the conduct of the subsidiary. Consequently, the applicant cannot reasonably rely on that judgment to claim that the Commission was in addition required to demonstrate how specifically the applicant had exercised such control over the members of Prysmian's boards of directors.

99 Second, the applicant submits that the directors on Prysmian's first board of directors, of 15 December 2005, were in fact appointed by Mr B., who, at that time, was the Chief Executive Officer (CEO) of Pirelli Cavi e Sistemi Energia and who subsequently became the CEO of Prysmian.

100 However, as both the Commission and the interveners observe, it must be stated that that claim is not substantiated by any evidence put forward by the applicant, in particular by the email relied on, of 20 February 2007, and must therefore be rejected. Moreover, even if Mr B. did indeed propose candidates for Prysmian's board of directors, the applicant cannot claim that it was Mr B., and not itself, who selected and appointed those candidates. Lastly, even if the applicant submits that the fact that Mr B. was the CEO of Pirelli Cavi e Sistemi Energia before it was acquired by the GSCP V Funds shows that Prysmian acted independently on the market in accordance with its management's instructions, it should be pointed out that, as is apparent from recital 781 of the contested decision, Mr B. was the only member of Prysmian's board of directors who was employed by Pirelli Cavi e Sistemi Energia before the latter was acquired by the GSCP V Funds. In accordance with the case-law, the fact that, when acquiring a company, a company replaces some of the directors constitutes evidence that the acquiring company in fact exercises decisive influence over the conduct of the company that has been acquired (see, to that effect, judgment of 16 September 2013, *CEPSA* v *Commission*, T−497/07, not published, EU:T:2013:438, paragraph 176).

101 Third, the applicant states that meetings of Prysmian's board of directors took place on a quarterly basis only, which, in the applicant's submission, confirms that it was the management team that controlled the management of that company, rather than its board of directors. However, such a claim, relating to the regularity or frequency of the meetings of the board of directors, is incapable of calling in question the fact that the board of directors is the body which decides on the composition and duties of the management team in performing its duties. Moreover, the applicant does not adduce any specific evidence capable of proving that the management, in particular Mr B. as CEO, was absolutely independent from that board in the daily management of the company, as the applicant claims. Consequently, the applicant's claim must be rejected as unfounded.

102 In view of the foregoing, it must be held that the power to appoint the members of the board of directors and the power to call general shareholder meetings and to propose the revocation of directors constitute objective factors showing that the applicant was in a position to, and did in fact, exercise decisive influence over the interveners.

(2) The applicant's actual level of representation on Prysmian's board of directors

103 In recitals 761 and 762 of the contested decision, the Commission states that the applicant ensured that it was directly represented on each of Prysmian's boards of directors, by appointing directors with whom it had links [*confidential*]. According to the Commission, those directors always represented at least 50% of the various boards of directors of Prysmian. It adds that, in certain cases, directors linked to the applicant had casting votes, which enabled the applicant to maintain actual control over the board's decisions.

104 The applicant disputes that assertion by submitting, first, that the directors whom the Commission identified as its employees were, in fact, PIA Employee Directors and that they were employed by a

company ‘affiliated’ to the applicant, namely GS Services Ltd. It then claims that the other board directors were independent directors, and that the Commission has failed to show that they breached their independence or fiduciary duties. Lastly, the applicant states that, contrary to the Commission’s finding in that decision, it was never represented by at least 50% of the members of Prysmian’s board of directors.

105 However, the applicant’s arguments in that regard cannot be upheld. It must be held that the directors whom the applicant calls ‘PIA Employee Directors’, employed by GS Services, were also employees of the applicant, since, as the Commission explains [*confidential*].

106 Moreover, as regards the Commission’s finding that, throughout the entire infringement period, the applicant had links with at least 50% of the directors of the successive boards of directors of Prysmian, it is true, as the applicant states, that the highest degree of representation of the PIA Employee Directors on those boards was 43% before the IPO date and approximately 33% after that date. However, the fact remains that, in recitals 761 and 762 of the contested decision, and in the respective footnotes to those recitals, the Commission puts forward evidence which shows — and the applicant has not succeeded in proving the contrary — that the applicant also had links with other members of the boards of directors of Prysmian, in particular through [*confidential*].

107 In that regard, it should be borne in mind that the Court has held that the existence of an economic entity formed by the parent company and its subsidiary may be based not only on the formal relationship between the two, but also on informal relationships, consisting inter alia of mere personal links between the legal entities comprising such an economic unit (see, to that effect, judgment of 11 July 2013, *Commission* v *Stichting Administratiekantoor Portielje*, C−440/11 P, EU:C:2013:514, paragraph 68).

108 Accordingly, when account is taken of both the PIA Employee Directors and the directors with whom the applicant had other types of links, in particular through [*confidential*], the Commission’s conclusion that the applicant made sure that it was represented by at least 50% of the members of the board of directors during the entire period concerned is well founded. In addition, even though the applicant claims that the directors with whom the applicant had other types of links acted as independent directors, it must be stated that, as is apparent from the applicant’s reply to the Commission’s request for information of 13 March 2013, annexed to the application, such a status is based solely on an assessment made by Prysmian’s own board of directors. The mere fact that that board of directors has evaluated some of its directors as independent, or that it published such an evaluation in its corporate governance reports, as the applicant claims, is not, in itself, capable of calling into question the Commission’s finding that those directors did not in fact cease to have links with the applicant.

109 It follows that the Commission was entitled to rely, as an objective factor, on the applicant’s actual level of representation on Prysmian’s board of directors in order to show that it was in a position to, and did in fact, exercise decisive influence over the interveners.

(3) Management powers of the applicant’s representatives on the board of directors

110 In recital 763 of the contested decision, the Commission explains that the applicant also made sure that its representatives on the board of directors were vested with the broadest possible management powers. In particular, the Commission observes, first, that on 15 December 2005 and 16 May 2007, four PIA Employee Directors were appointed as ‘Managing Directors’ of Prysmian, which conferred on them delegated powers relating to the ordinary management of that company, including the signature of day-to-day management acts. Second, the Commission states that, even though, on 16 January 2007, in preparation for the initial public offering, the managing directors’ powers were revoked, two PIA Employee Directors were subsequently assigned to a ‘Strategic Committee’, composed of a total of three members. The Commission acknowledges that that committee had no voting or veto powers, but states that it had a central role in supporting the board of directors in relation to Prysmian’s key strategic and business matters. Lastly, the Commission observes that that committee was dissolved in May 2010, just after the applicant’s complete disposal of its shareholding in Prysmian.

111 The applicant disputes those assertions of the Commission. It claims that an unbiased review of the evidence relied on in support of those assertions demonstrates that the PIA Employee Directors did not play any role in Prysmian's commercial policy before the IPO date. Moreover, it claims that the strategic committee did not play a central role in Prysmian's commercial policy and that it acted merely as an advisory body. The applicant's submission contains no evidence to show that the PIA Employee Directors exercised, by their membership of that committee, a decisive influence over Prysmian's commercial policy.

112 As regards the applicant's first claim, relating to the period preceding the IPO date, it must be stated, first of all, that the evidence relied on by the Commission in the contested decision, in particular in footnotes 1142 to 1145, demonstrates clearly and unequivocally that three out of four of the persons appointed as Prysmian's managing directors were PIA Employee Directors.

113 Next, it is apparent from the annexes to the application that, pursuant to the powers delegated thereto, the PIA Employee Directors were involved in the day-to-day management of Prysmian. In particular, they decided, inter alia, on a request for permission to open a branch in Qatar, on appointments to the boards of directors of Prysmian's subsidiaries and on Prysmian's employment issues.

114 Accordingly, the applicant's claim that the PIA Employee Directors played no role in the business life of Prysmian before the IPO date must be rejected. Moreover, even though the applicant asserts that, in most cases, the decisions in question had already been taken by Prysmian's management, it is sufficient to recall that, in accordance with the case-law, the fact that the parent company or its representatives must approve those proposals and therefore has the right to reject them is, in fact, evidence of a decisive influence (judgment of 13 December 2013, *HSE* v *Commission*, T−399/09, not published, EU:T:2013:647, paragraph 84).

115 As regards the applicant's second claim, relating to the period following the IPO date and, in particular, the strategic committee, it should be pointed out, first, that the applicant does not dispute that that committee was in fact composed of three members, two of whom were PIA Employee Directors. As regards its duties, it is apparent from the annexes to the application that that committee was formally tasked with examining Prysmian's budgets and investments, securing its financing and assisting the board of directors in its duties. More specifically, the agenda of its meeting of 16 July 2008 shows that it examined matters of commercial strategy, including investments in Brazil, China, Tunisia, Italy and Russia.

116 Consequently, even though the strategic committee did not have decision-making powers, as the Commission itself acknowledges in the contested decision, that does not mean, as the applicant claims, that it had no role in the context of Prysmian's strategic decision-making process.

117 Next, the applicant submits, nevertheless, that, within the strategic committee, the PIA Employee Directors provided only limited advice by short emails in connection with their experience as investment professionals — and always at the initiative and request of management. However, as the Commission states, those emails constitute evidence that the PIA Employee Directors were systematically contacted regarding strategic decisions, including on potential investments, and that they were actively involved in decisions pertaining to Prysmian's commercial policy.

118 Lastly, although the applicant states that it was Mr B., as CEO of Prysmian, and his management team who determined the composition of the strategic committee, it is sufficient to point out that such a claim is not substantiated by the email of 20 February 2007 on which it relies.

119 It follows that the Commission was entitled to find that, first, the management powers of the PIA Employee Directors within Prysmian's board of directors, during the period until the IPO date, and subsequently their role within the strategic committee, from that date onwards, constitute additional objective factors capable of showing that the applicant had the ability to, and did in fact, exercise decisive influence over the interveners throughout the entire infringement period.

(4) The important role played by the applicant on the committees established by Prysmian

120 In recital 764 of the contested decision, the Commission states that the PIA Employee Directors also had an important role on other Prysmian committees established on 15 December 2005, namely the compensation committee and the internal control committee. According to the Commission, the former dealt inter alia with questions of remuneration and, until 28 February 2007, two out of three of its members were PIA Employee Directors; the latter dealt with questions of compliance with the rules in force, in particular in relation to accounting documents, and one of its two members was a PIA Employee Director.

121 The applicant acknowledges that PIA Employee Directors participated in those committees, but submits that that does not prove that it exercised decisive influence over Prysmian. In addition, the applicant states that, after 28 February 2007, only one PIA Employee Director participated in those committees, specifically in the compensation committee.

122 As regards the compensation committee, it should be noted that, contrary to the applicant's submission, in so far as that committee may determine the compensation of the subsidiary's management, the fact that the PIA Employee Directors formed a majority on that committee, as was the case in respect of the period before the IPO date, is indeed capable of showing that the parent company exercised decisive influence over its subsidiary. However, the Commission cannot use that factor as evidence of decisive influence for the period after that date, since only one of the three members of the committee was a PIA Employee Director.

123 The Commission's line of argument is also unfounded in relation to the internal control committee. In so far as, in the present case, that committee performed only tasks such as the review and verification of internal accounting documents and assistance in drawing up balance sheets, it cannot be concluded that that committee enabled the applicant to control the commercial policy of its subsidiary. In addition, it should be pointed out that, as is apparent from recital 764 of the contested decision, no PIA Employee Director sat on that committee after 28 February 2007, so that that circumstance cannot, in any event, provide a basis for a finding that the applicant exercised decisive influence for the period following the IPO date.

124 It follows that the Commission was not entitled to take into account the PIA Employee Directors' participation in the compensation and internal control committees as objective factors capable of showing that the applicant was able to, and did in fact, exercise decisive influence over the interveners throughout the entire infringement period.

(5) Receipt of regular updates and monthly reports

125 In recital 765 of the contested decision, the Commission refers to the receipt of regular updates and monthly reports by PIA Employee Directors throughout the infringement period.

126 In the applicant's view, those reports are not relevant to the assessment of whether it exercised decisive influence over the interveners, as they were not produced for the applicant, but were designed to report on the performance of the business to a broad audience. Moreover, the applicant submits that the sole purpose of the reports was to enable the PIA Employee Directors to take cognisance of the investment in Prysmian and did not require any input on their part.

127 As the Commission observes, the case-law of the Court has already established that the supervisory board of a subsidiary, the majority of whose members were appointed by a parent company, can keep itself regularly informed of developments in that subsidiary's business by way of reports (see, to that effect, judgment of 13 December 2013, *HSE* v *Commission*, T−399/09, not published, EU:T:2013:647, paragraph 93). Accordingly, the applicant's claim to the contrary must be rejected.

128 Moreover, by the monthly reports in question, the PIA Employee Directors were kept regularly informed of developments in Prysmian's business. As is apparent from the examples cited in footnote 1157 of the

contested decision, they received information regarding that company's power cable business, covering the topics of finances, energy, telecoms, operations, human resources, logistics, purchasing and product development and quality.

129 Thus, in view also of the applicant's power to appoint the members of the various boards of directors of Prysmian and of the delegated powers enjoyed by the PIA Employee Directors, in accordance with the considerations set out in paragraphs 110 to 119 above, the receipt of regular updates and monthly reports constitutes an additional factor illustrating that the applicant was regularly informed of the commercial strategy of its subsidiary, which supports the existence of an economic unit between them.

(6) The measures to ensure continuation of decisive control after the IPO date

130 In recitals 766 to 770 of the contested decision, the Commission asserts that the applicant took measures in order to guarantee that, even after the initial public offering, it would be in a position to exercise decisive control over Prysmian. According to the Commission, this involved the following four measures:

– first of all, on 28 February 2007, in its capacity as sole indirect shareholder, the applicant appointed the board of directors that governed Prysmian until 9 April 2009. In so doing, the applicant was able to avoid a new board of directors being put in place directly after the initial public offering in May 2007:

– next, at Prysmian's shareholder meeting of 16 January 2007, the applicant changed its by-laws introducing inter alia a slate system for the nomination and appointment of new boards of directors (the Commission explains that the applicant was in a position to nominate at least five of the six directors in the future and thus to keep control over Prysmian despite having a smaller shareholding):

– moreover, on 12 November 2007, 9.9% of Prysmian's shares were sold to Taihan Electric Wire. In a letter dated 6 November 2007, Taihan Electric Wire committed to Prysmian not to hold an investment of more than 10% overall in Prysmian's share capital, not to exercise voting rights at Prysmian's shareholders' meetings, including through other companies in the Taihan Group, for more than 10% of the shares with voting rights and not to propose any candidate for appointment to the position of director or statutory auditor of Prysmian (according to the Commission, these commitments guaranteed the applicant that Prysmian's second largest shareholder would be unable to present a slate or nominate any representatives to Prysmian's board of directors):

– lastly, there are express references to the applicant's controlling interest after the initial public offering, in particular in the minutes of the meeting of the board of directors of 19 December 2007.

131 The applicant submits that the Commission has nevertheless failed to show that the applicant formed an economic unit with the interveners within the meaning of the case-law during the period subsequent to the IPO date. First, the applicant submits that the Commission erred in law in so far as it applied parental liability to a level of shareholding which is unprecedented. The applicant then states that the appointment of Prysmian's board of directors in February 2007 did not secure for the applicant any position of control of Prysmian. Moreover, it states that the implementation of a slate system was in preparation for the initial public offering. In addition, in the applicant's submission, the investment of Taihan Electric Wire cannot be discounted.

132 In that regard, first, it is necessary to reject the applicant's claim that the Commission was wrong to find it jointly and severally liable for payment of the fine imposed on its subsidiaries in respect of a level of shareholding which is, in the applicant's view, unprecedented. It is sufficient to recall that, according to the case-law, a minority interest may enable a parent company actually to exercise a decisive influence on its subsidiary's market conduct, if it is allied to rights which are greater than those normally granted to minority shareholders in order to protect their financial interests and which, when considered in the light of a set of consistent legal or economic indicia, are such as to show that a decisive influence is exercised over the subsidiary's market conduct (judgments of 12 July 2011, *Fuji Electric* v *Commission*, T−132/07,

EU:T:2011:344, paragraph 183, and of 9 September 2015, *Toshiba* v *Commission*, T−104/13, EU:T:2015:610, paragraph 97).

133 Second, with respect to the applicant's argument that the appointment of the board of directors on 28 February 2007 did not secure any position of control for it, it should be recalled that, as was stated at paragraph 93 above, the board of directors appointed on that date, that is to say before the IPO date, was appointed until 31 December 2009 and it remained unchanged after the IPO date and even after the date on which the infringement ceased. Although, during that period, the applicant no longer had absolute control of the voting rights associated with Prysmian's shares, the fact that that board continued to have the same composition is evidence that the applicant continued to exercise control over the board of directors after the initial public offering.

134 Third, as regards the applicant's claim relating to the slate system, according to which that system was required by the obligations of the Code of Conduct for listed companies, it should be pointed out that the applicant does not challenge the Commission's conclusion that that system enabled to it ensure, with a smaller shareholding, that it was in a position to nominate at least five of the six directors on Prysmian's board of directors. Since it is irrelevant whether the system stems from an initiative of the applicant or from a legal requirement arising from the legislation in force, the Commission's conclusion that that system enabled the applicant to maintain its control over Prysmian's board of directors after the initial public offering must be upheld. Moreover, even if that system was not used by the applicant during the infringement period, it was not necessary given that, as has already been stated, the board of directors appointed by the applicant on 28 February 2007 remained in place until after the date on which the infringement ceased.

135 Fourth, as regards the investment of Taihan Electric Wire, made on 12 November 2007, whilst the applicant claims that it did not prevent that company from exercising its rights, the commitment not to propose candidates for the board of directors, which is apparent from clause 2 of the letter of 6 November 2007, annexed to the application, was intended to ensure that that company could not intervene in the process of composing the board of directors. Moreover, contrary to what the applicant claims, that commitment was not conditional on Taihan Electric Wire increasing its shareholding in Prysmian to more than 10%. Accordingly, the Commission was correct to take the view that that commitment resulted in the applicant maintaining control over Prysmian's board of directors inasmuch as the company's second largest shareholder relinquished influence over the composition of that board.

136 Fifth, as regards the express reference to the applicant's control which emerges, according to the Commission, from the minutes of the meeting of the board of directors of 19 December 2007, it is sufficient to note that that document shows that one of the PIA Employee Directors stated, when assessing the divestment to Taihan Electric Wire, that it was not '[*confidential*]'. Moreover, even though the applicant challenges the probative value of that document, it consists of formal minutes which, as such, are supposed to reproduce the comments that the participants in that board meeting wished to have placed on record, and the applicant has submitted no evidence capable of demonstrating the contrary.

137 It follows that the Commission correctly established the existence of four measures showing that the applicant maintained control of Prysmian after the IPO date, that is to say, after it no longer held the majority of the voting rights associated with the shares in that company.

(7) Evidence of behaviour typical of an industrial owner

138 In recital 771 of the contested decision, the Commission states that it is clear from the evidence that even at the end of 2007, at a time when the applicant indirectly held 31.69% of Prysmian's shares, the applicant favoured, just like an industrial owner, cross-selling between Prysmian and other subsidiaries of the applicant. In footnote 1165 of that decision, it refers to an email exchange between Mr O. and Mr B. on 20 December 2007, to an email from Mr O. of 2 January 2008 and to an email from Mr S. of 30 January 2008.

139 The applicant disputes the Commission's assertions by submitting that, by the emails in question, Mr O., as a PIA Employee Director, merely pointed out potential business opportunities for Prysmian, and provided the name of a person to contact at a Norwegian company. In the applicant's submission, the Commission is wrong to assert that those emails concerned intra-group cross-selling and has failed to show that the exchange of correspondence gave rise to subsequent contact or that that exchange reveals that there was pressure on Prysmian to pursue those opportunities.

140 As regards the content of the emails in question, it is apparent from the annexes to the defence that, by the emails in question, Mr O. approached Prysmian to inform it that the applicant had recently acquired a company offering television services in Norway and to propose his services for the purposes of establishing contacts with that company for the sale of power cables. Mr O. proposed to proceed in the same manner in relation to a company held by the applicant in the United States.

141 Contrary to the applicant's submission, the emails in question show that the undertakings operating on the market considered it appropriate to approach the applicant rather than the Prysmian group directly in relation to the possible sale of power cables, which reveals its status as an interlocutor in relation to that group. Even if, as the applicant claims, those emails do not reveal either an instruction by the applicant to establish contacts or a systematic practice, the Commission did not err in including them in its analysis as a factor capable of demonstrating the applicant's involvement in Prysmian's business.

142 Accordingly, the Commission was entitled to rely on the exchange of emails in question, in particular those exchanged between Mr O. and Mr B. on 20 December 2007, as a factor to show that the applicant exercised decisive influence over Prysmian.

(8) The assessment of all the factors relied on in the contested decision

143 It is apparent from paragraphs 89 to 142 above that the Commission was entitled to base its conclusion that the applicant exercised decisive influence over the interveners on, first, its power to appoint the members of the various boards of directors of Prysmian, second, its power to call shareholder meetings and to propose the revocation of directors or of entire boards of directors, third, the delegated powers of the PIA Employee Directors on the boards of directors and their participation in the strategic committee, fourth, the receipt of regular updates and monthly reports, fifth, the measures listed by the Commission to ensure continuation of decisive control by the applicant after the initial public offering and, sixth, the evidence that the applicant acted as an industrial owner. Accordingly, it must be held, following an in-depth review, that the Commission was entitled to consider, without making any error, that the applicant exercised decisive influence not only before the IPO date but also during the entire period from 29 July 2005 until 28 January 2009.

144 The second limb of the first plea must therefore be rejected.

(c) The third limb, relating to the Commission's conclusion that the applicant was not a pure financial investor

145 The applicant maintains that the Commission made a manifest error of assessment in finding that the investment in the Prysmian group made by the GSCP V Funds was not the investment of a pure financial investor. It alleges that those funds' acquisition of Prysmian was undertaken by professional shareholders, not by managers or strategists. Consequently, no parental liability can be attributed to it.

146 In particular, the applicant observes that the GSCP V Funds did not have the expertise or resources to determine the conduct on the market of the Prysmian group, that the management of portfolio companies does not fall within the mandate of the PIA, which created those funds, that Prysmian's existing management team (put in place by the former owner of the company) continued to direct business activities, that the PIA Employee Directors were investment professionals whose role was simply to monitor investments, that there was no incentive for it to control Prysmian, as is demonstrated by the divestments it made shortly after the acquisition, and that the Prysmian group was not perceived externally

as being part of the group of which the applicant is the parent company and was not included in that group for accounting purposes.

147 In addition, the applicant argues that, contrary to what the Commission stated in the contested decision, the measures which it took with regard to the Prysmian group were not identical to those which a holding company adopts with regard to an industrial group.

148 Lastly, the applicant takes issue with the Commission's conclusion that the economic advantage which it derived from its investment enabled the Commission to prove that it was not a financial investor.

149 The Commission and the interveners dispute those arguments.

150 By the third limb of its first plea, the applicant disputes in particular the Commission's findings in recitals 773 to 781 of the contested decision, in which the Commission responds to the arguments that the applicant put forward during the administrative procedure in order to establish that its conduct vis-à-vis the Prysmian group was that of a pure financial investor.

151 According to the case-law, the imputation to the parent company of liability for the infringement committed by its subsidiary is not applicable to pure financial investors, namely the case of an investor who holds shares in a company in order to make a profit, but who refrains from any involvement in its management and in its control (see, to that effect, judgment of 12 December 2012, *1. garantovaná* v *Commission*, T−392/09, not published, EU:T:2012:674, paragraphs 50 to 52). However, 'pure financial investor' does not constitute a legal criterion but is an example of a circumstance in which it is open to a parent company to rebut the presumption of actual exercise of decisive influence (see, to that effect, Opinion of Advocate General Kokott in *Akzo Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:262, point 75).

152 As regards, first of all, the applicant's claims (i) that the GSCP V Funds did not have the expertise or resources to determine the conduct on the market of the Prysmian group, and (ii) that the management of subsidiaries did not fall within the mandate of the PIA, those matters are irrelevant for the purposes of finding whether decisive influence was actually exercised. Moreover, those claims are contradicted by the objective factors and the indicia which were established as well founded in paragraph 143 above. As the Commission observes, the contested decision does not find that the applicant was involved in Prysmian's commercial management, but that it exercised decisive influence over that company's business decisions. In accordance with settled case-law, it is unnecessary to restrict the assessment of the exercise of decisive influence to matters relating solely to the subsidiary's commercial policy on the market *stricto sensu* (see, to that effect, judgment of 15 July 2015, *HIT Groep* v *Commission*, T−436/10, EU:T:2015:514, paragraph 127 and the case-law cited).

153 As regards, next, the applicant's claim that the PIA Employee Directors who sat on the various boards of directors of Prysmian did not have the qualifications or expertise to manage that company's business, it must be held, again, that such a circumstance is irrelevant for the purposes of finding that a parent company did not exercise decisive influence over its subsidiary. In any event, it is incapable of calling in question the fact that those employee directors were involved in Prysmian's commercial policy in so far as, as was found in paragraphs 105 and 119 above, they sat on the boards of directors of that company and on its strategic committee and held delegated management powers.

154 With respect, moreover, to the applicant's claim that it had no interest in controlling Prysmian, it is also contradicted, inter alia, by the fact that it appointed all the boards of directors of that company during the infringement period and that its appointees sat on the company's strategic committee after the initial public offering. That claim is also clearly contradicted by the statement of the PIA Employee Director examined in paragraph 136 above.

155 As regards, lastly, the applicant's claim that the Prysmian group was not perceived externally as being part of the group of which the applicant is the parent company and was not included in that group for

accounting purposes, it must be rejected since it is incapable of rebutting the factors and indicia raised by the Commission in establishing the existence of decisive influence.

156 It is apparent from the foregoing that, contrary to what the applicant claims, it has not succeeded in showing that its shareholding in the Prysmian group was intended solely as a pure financial investment and that it refrained from any involvement in the management and control of that company.

157 The third limb of the first plea must therefore be rejected as must, therefore, that plea in its entirety.

2. The second plea in law, alleging infringement of Article 2 of Regulation No 1/2003, insufficiency of the evidence and breach of the duty to state reasons laid down in Article 296 TFEU

158 The applicant maintains that the Commission infringed Article 2 of Regulation No 1/2003 and breached its duty to state reasons as provided for in Article 296 TFEU, in that it failed properly to consider the relationship between it and the interveners when finding that the applicant was jointly and severally liable for payment of the fine imposed on its subsidiaries.

159 The applicant divides the second plea into two limbs. In the first limb, it submits that the evidence the Commission relied on when finding that it was jointly and severally liable for payment of the fine imposed on its subsidiaries is biased and comes from unsubstantiated statements submitted by the interveners in the administrative procedure. In the second limb, it submits that the Commission has failed to state adequate reasons.

(a) The first limb, alleging infringement of Article 2 of Regulation No 1/2003 and insufficiency of the evidence

160 The applicant criticises the Commission for basing its conclusions as to its joint and several liability for payment of the fine on mere statements made by the interveners, even though those statements were not, it alleges, precise, consistent or reliable.

161 In particular, the applicant argues that the statements made by the interveners are unsupported by evidence and that the Commission accepted those statements uncritically. It also observes that the Commission deliberately ignored the evidence which it provided in order to counter the information provided by the interveners. Moreover, the applicant maintains that the statements of the interveners on which the Commission relied are inconsistent with statements which they had made earlier and with evidence provided to the Commission before the statement of objections was issued. The Commission thus breached its duty to consider carefully and impartially the documents furnished by the interveners.

162 The Commission and the interveners dispute those arguments.

163 The applicant submits that the conclusions as to its joint and several liability for payment of the fine imposed on its subsidiaries which are set out in the contested decision are not based on sufficient and reliable evidence. In essence, it reiterates in this respect most of the arguments put forward in the first plea: those arguments must be rejected for the same reasons as those set out in the context of that plea.

164 In the first place, the applicant asserts that the Commission copied and pasted, without critical examination, the interveners' statements regarding its power to appoint Prysmian's board of directors, the PIA Employee Directors' participation in the strategic committee, its behaviour as an industrial owner and the delegated powers enjoyed by the PIA Employee Directors.

165 As regards, first of all, the power to appoint boards of directors, it should be pointed out that the Commission's conclusions are based not only on Prysmian's statements, but also on the information provided by the applicant and on the company's by-laws, as is apparent from recital 762 of the contested decision and from footnotes 1138 to 1141 of that decision. Moreover, although the applicant claims, again, that the first board of directors was selected by Mr B., as Prysmian's CEO, and not by the applicant itself, it

must be stated that, as was found in paragraph 100 above, that claim is not substantiated by any evidence submitted by the applicant.

166 As regards, next, the applicant's participation in the strategic committee, it is apparent from recital 763 and from footnotes 1148 to 1153 of the contested decision that the Commission based its conclusions on the email exchanges between the PIA Employee Directors and the CEO of Prysmian, and on the agenda of the meetings of that committee and the minutes of the board meetings. Therefore, the Commission did not rely exclusively on the interveners' statements as the basis for its conclusions with regard to that committee, as the applicant claims. Moreover, as was stated in paragraph 115 above, the agenda of the meeting of that committee of 16 July 2008 shows that it examined matters of commercial strategy, including investments in Brazil, China, Tunisia, Italy and Russia, which contradicts the applicant's assertion that the relevant committee had no role in the context of Prysmian's strategic decision-making process.

167 Moreover, the conclusion that the applicant favoured intra-group cross-selling is based, as recital 771 of the contested decision explains, on the emails exchanged between Mr O. and Mr B. on 20 December 2007, on an email from Mr O. of 2 January 2008 and on an email from Mr S. of 30 January 2008. The claim that that finding is based solely on the interveners' statements must therefore be rejected.

168 As regards, lastly, the delegated powers of the PIA Employee Directors, it is apparent from paragraphs 112 to 114 above that the evidence relied on by the Commission in the contested decision, in particular in footnotes 1142 to 1145 of that decision, consists of the minutes of the meeting of Prysmian's board of directors of 15 December 2005. Contrary to what the applicant observes, the Commission did not thus merely base its conclusions on the interveners' statements. As to the remainder, the Commission's assertions are confirmed by the annexes to the application, which show that, pursuant to the powers delegated to those Managing Directors, the PIA Employee Directors were involved in the day-to-day management of Prysmian. In particular, they decided, inter alia, on a request for permission to open a branch in Qatar, on appointments to the boards of subsidiaries and on employment issues.

169 It is apparent from the foregoing that, contrary to the applicant's submission, the findings made by the Commission are not based exclusively on statements made by the interveners.

170 In the second place, in so far as the applicant claims that the interveners' statements are contradictory and that the Commission ignored the evidence which it provided during the administrative procedure, it is sufficient to note that it does not identify precisely what those statements or items of evidence are, so that its claims to that effect must be rejected.

171 The first limb of the second plea must therefore be rejected.

(b) The second limb, alleging breach of the duty to state reasons

172 The applicant submits that the Commission breached its duty to state reasons under Article 296 TFEU. In particular, it criticises the Commission for omitting the detailed information which it provided during the administrative procedure and for failing to support its conclusions adequately, in particular in so far as concerns the application of the presumption of the actual exercise of decisive influence with regard to the period preceding the IPO date, the Commission's finding that the applicant exerted a decisive influence on the Prysmian group throughout the period of the infringement, and its own argument that the role which it played within Prysmian was that of a pure financial investor.

173 The Commission and the interveners dispute those claims.

174 Article 296 TFEU requires all legal acts, including decisions, to state the reasons on which they are based.

175 According to settled case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning

followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to carry out its review (see judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C−521/09 P, EU:C:2011:620, paragraph 147 and the case-law cited).

176 Thus, it is settled case-law that the purpose of the obligation to state the reasons on which an individual decision is based is, in addition to permitting review by the Courts, to provide the person concerned with sufficient information to know whether the decision may be vitiated by an error enabling its validity to be challenged. It should be borne in mind, however, that the obligation laid down in Article 296 TFEU to state adequate reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (see judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C−521/09 P, EU:C:2011:620, paragraphs 146 and 148 and the case-law cited). Claims and arguments intended to deny that the measure is well founded are thus of no effect in the context of a plea alleging the lack or inadequacy of a statement of reasons (see, to that effect, judgments of 22 March 2001, *France* v *Commission*, C−17/99, EU:C:2001:178, paragraphs 35 to 38, and of 15 June 2005, *Corsica Ferries France* v *Commission*, T−349/03, EU:T:2005:221, paragraphs 52 and 59).

177 In the present case, contrary to the applicant's submission, the reasoning of the contested decision is sufficient for the purposes of enabling it to know the reasons which led the Commission to hold it jointly and severally liable for payment of the fine imposed on its subsidiaries for its direct participation in the cartel in question and for the purposes of enabling the Court to carry out its review.

178 As regards, first of all, the decision to apply the presumption of actual exercise of decisive influence for the period preceding the IPO date, it is apparent from recitals 748 to 754 of the contested decision that the Commission explained that the fact that the applicant indirectly controlled all the voting rights associated with Prysmian's shares placed it in a similar situation to that of a sole owner of Prysmian. Moreover, the Commission explained, in particular in recitals 751 to 753 of that decision, that the investments made by Apollo and by Prysmian's management were purely passive and moreover implied relinquishment of the exercise of the voting rights associated with Prysmian's shares to the applicant. On that basis, the Commission found, in the light of the case-law cited in recitals 697 to 702 of that decision, that it was entitled to hold the applicant jointly and severally liable for payment of the fine imposed on its subsidiaries.

179 As regards, next, the finding that the applicant exercised decisive influence over the interveners for the period between 29 July 2005 and 28 January 2009, the Commission explained its conclusion that the applicant exercised such influence by relying, in accordance with the case-law, on objective factors relating to the economic, organisational and legal links between the applicant and the interveners. Those factors were described individually and in detail in recitals 758 to 771 of the contested decision and were weighed up as a whole in recitals 772 to 781 of that decision. Moreover, the Commission replied to the main arguments put forward by the applicant in the context of that final weighing up, in particular in recitals 773 to 778 of that decision. Lastly, it should be pointed out that, contrary to what the applicant claims, the Commission's explanations concerned not only the period preceding the IPO date but also the period following that date, as the measures examined in recitals 766 to 770 of that decision show.

180 As regards, lastly, the conclusion that the applicant did not behave, vis-à-vis the Prysmian group, like a pure financial investor, the Commission provides the applicant with a clear answer, in particular in recital 779 of the contested decision, in which it states that the exercise of voting rights regarding strategic decisions for the business conduct of the subsidiary, such as the appointment of top management and the approval of business and management plans, is evidence of a clear exercise of decisive influence rather than a purely temporary financial investment.

181 It follows that the Commission fulfilled its duty to state reasons under Article 296 TFEU, both as regards the application of the presumption of actual exercise of decisive influence and as regards the finding that

the applicant exercised decisive influence over the interveners throughout the entire infringement period. It also explained why the applicant could not be regarded as a pure financial investor vis-à-vis the Prysmian group.

182 The second limb of the second plea must therefore be rejected, as must that plea in its entirety.

3. The third plea in law, alleging infringement of Article 101 TFEU and Article 23(2) of Regulation No 1/2003, as well as breach of the principles of personal responsibility and of the presumption of innocence

183 The applicant argues that the contested decision infringes its fundamental rights.

184 In particular, the applicant submits that the presumption of the actual exercise of decisive influence which the Commission applied with regard to the period preceding the IPO date is contrary to the principle of the presumption of innocence and to Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and to Article 48(1) of the Charter of Fundamental Rights of the European Union ('the Charter'). It adds that the Commission disregarded the evidence which it adduced in order to rebut the presumption of actual exercise of decisive influence.

185 Moreover, the applicant submits that finding it jointly and severally liable for payment of the fine imposed on its subsidiaries, on account of its being the parent company, is in breach of the principle of personal responsibility, since neither it nor its representatives within those subsidiaries were involved in the infringement referred to in Article 101 TFEU.

186 The Commission and the interveners dispute those arguments.

187 In the first place, as regards the principle of personal responsibility and the principle of the presumption of innocence, it should be pointed out that the EU Courts have held on several occasions that the Commission does not infringe those principles by applying the presumption of actual exercise of decisive influence.

188 It should be recalled, first of all, that, according to the case-law, the fact that the parent company of a group which exercises decisive influence over its subsidiaries can be held jointly and severally liable for their infringements of competition law does not in any way constitute an infringement of the principle of personal responsibility, but is the expression of that very principle, since the parent company and the subsidiaries under its decisive influence are collectively a single undertaking for the purposes of EU competition law and responsible for that undertaking and, if that undertaking intentionally or negligently infringes the competition rules, that gives rise to the collective personal responsibility of all the principals in the group structure (see judgment of 27 September 2012, *Nynäs Petroleum and Nynas Belgium* v *Commission*, T−347/06, EU:T:2012:480, paragraph 40 and the case-law cited: see also, to that effect, Opinion of Advocate General Kokott in Akzo *Nobel and Others* v *Commission*, C−97/08 P, EU:C:2009:262, point 97).

189 Next, it is settled case-law that the presumption of actual exercise of decisive influence does not infringe the right to be presumed innocent, inasmuch as (i) it does not lead to a presumption of guilt on the part of either one of those companies (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C−625/13 P, EU:C:2017:52, paragraph 149 and the case-law cited) and (ii) the presumption of actual exercise of decisive influence is rebuttable (see judgment of 19 June 2014, *FLS Plast* v *Commission*, C−243/12 P, EU:C:2014:2006, paragraph 27 and the case-law cited).

190 Lastly, contrary to the applicant's submission, according to the settled case-law of the Court, the fact that it is difficult to adduce the evidence necessary to rebut a presumption of actual exercise of decisive influence does not in itself mean that that presumption is in fact irrebuttable (see, to that effect, judgment of 16 June 2016, *Evonik Degussa and AlzChem* v *Commission*, C−155/14 P, EU:C:2016:446, paragraph 44 and the case-law cited).

191 It follows that the applicant's argument that the presumption of actual exercise of decisive influence is incompatible with the principles of personal responsibility and of the presumption of innocence, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter, must be rejected.

192 In the second place, the applicant's assertion that neither it nor its representatives were involved in the cartel in question cannot succeed in the light of the case-law cited in paragraph 188 above.

193 In the third place, as regards the applicant's argument that the Commission failed to provide sufficient reasons to reject the applicant's rebuttal of the presumption of actual exercise of decisive influence, that argument was already rejected in the context of the second plea, and it must be rejected for the same reasons here.

194 It follows that, contrary to the applicant's submission, holding it jointly and severally liable for payment of the fine imposed on its subsidiaries on account of its being the parent company does not infringe the principles of personal responsibility and of the presumption of innocence in the manner claimed by the applicant in this plea.

195 The third plea must therefore be rejected.

4. The fourth plea in law, alleging infringement of Article 101 TFEU and Article 23(2) of Regulation No 1/2003, a manifest error of assessment and breach of the principle of legal certainty and the principle that penalties must be specific to the offender

196 In essence, the applicant maintains that the Commission made a manifest error of assessment and breached the principle of legal certainty and the principle that penalties must be specific to the offender by failing to determine the shares to be paid by those held jointly and severally liable from the perspective of their internal relationship and by confining itself to concluding that they are jointly and severally liable. According to the applicant, such a determination is unnecessary if the companies belong to the same group at the time the decision at issue is adopted. By contrast, if the economic unit formed by the companies no longer exists, as in the present case, the Commission should be compelled to make that determination in that decision.

197 The Commission disputes those arguments.

198 The applicant submits that, in so far as it no longer formed a single economic entity with the interveners on the date that the contested decision was adopted, the Commission was required to determine the share of the fine to be paid by each of them from the perspective of their internal relationship.

199 According to the Court's case-law, inasmuch as it is merely the manifestation of an *ipso jure* effect of the concept of an 'undertaking', the EU law concept of joint and several liability for payment of a fine concerns only the undertaking itself and not the companies of which it is made up (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C−625/13 P, EU:C:2017:52, paragraph 150 and the case-law cited).

200 While it follows from Article 23(2) of Regulation No 1/2003 that the Commission is entitled to hold a number of companies jointly and severally liable for payment of a fine in so far as they formed part of the same undertaking, it is not possible to conclude on the basis of either the wording of that provision or the objective of the joint and several liability mechanism that that power to impose penalties extends, beyond the determination of joint and several liability from an external perspective, to the power to determine the shares to be paid by those held jointly and severally liable from the perspective of their internal relationship (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C−625/13 P, EU:C:2017:52, paragraph 151 and the case-law cited).

201 On the contrary, the mechanism of joint and several liability is intended to constitute an additional legal device available to the Commission to strengthen the effectiveness of the action taken by it for the recovery of fines imposed for infringements of the competition rules, since that mechanism reduces the risk of insolvency for the Commission, as creditor of the debt represented by such fines: that is part of the objective of deterrence pursued generally by competition law (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C−625/13 P, EU:C:2017:52, paragraph 152 and the case-law cited).

202 The determination, in the context of the internal relationship of those held jointly and severally liable for payment of a fine, of the share each of them is required to pay does not pursue that dual objective. That is a contentious issue, to be resolved at a later stage, and, in principle, the Commission no longer has any interest in the matter where the fine has been paid in full by one or more of those held liable (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C−625/13 P, EU:C:2017:52, paragraph 153 and the case-law cited).

203 In the present case, it is sufficient to note, in the light of the case-law cited in paragraphs 199 to 202 above, that the Commission was not required to determine the share to be paid by each of the applicant and the interveners from the perspective of their internal relationship. In so far as, as is apparent from the examination carried out in the context of the first plea, the Commission was right to conclude that throughout the entire infringement period the applicant and the interveners constituted a single undertaking for the purposes of competition law, it was entitled to confine itself to determining the amount of the fine that those companies were jointly and severally liable to pay.

204 Furthermore, the applicant's argument that on the date that the contested decision was adopted the interveners no longer constituted with it a single entity cannot call into question the finding made in the previous paragraph.

205 To accept this argument would run counter to the very concept of joint and several liability. In that regard, it must be stated that the joint and several liability mechanism implies, by definition, that the Commission may address either the parent company or the subsidiary without apportioning liability in the manner claimed by the applicant. As the Court has held, there is no 'order of priority' when the Commission imposes a fine on one or other of those companies (see judgment of 18 July 2013, *Dow Chemical and Others* v *Commission*, C−499/11 P, EU:C:2013:482, paragraph 49 and the case-law cited).

206 Moreover, to accept such an argument would be liable to harm the objective of the joint and several liability mechanism, which, according to the case-law cited in paragraph 201 above, is to constitute an additional legal device available to the Commission to strengthen both the effectiveness of the recovery of fines imposed and the objective of deterrence pursued generally by competition law.

207 In the light of the foregoing, it must be held, following an in-depth review, that the Commission did not err or breach the principle of legal certainty and the principle that penalties must be specific to the offender by failing to determine the share of the fine to be paid by each of the applicant and the interveners from the perspective of their internal relationship.

208 The fourth plea must therefore be rejected.

5. The fifth plea in law, alleging infringement of the rights of the defence

209 The applicant submits that the Commission infringed its rights of defence during the administrative procedure. It divides this plea into three limbs, alleging, first, that the Commission denied it access to documents essential to its defence, second, that the Commission unlawfully delayed access to other essential documents and, third, that the excessive length of the procedure harmed its ability to defend itself.

(a) The first limb, alleging that the Commission denied the applicant access to evidence essential to its defence

210 The applicant maintains that, in order to find it liable for the cartel, the Commission relied in the contested decision on several items of inculpatory evidence that it did not communicate to it. These include the document which provides evidence of the scope of the delegated powers of the PIA Employee Directors and the documents which contain evidence of the role of the remuneration and internal control committees.

211 The Commission disputes those arguments.

212 According to settled case-law, observance of the rights of the defence is a fundamental right of EU law, enshrined in Article 41(2)(a) of the Charter, which requires observance of the rights of the defence in all proceedings (see judgment of 17 December 2014, *Pilkington Group and Others* v *Commission*, T−72/09, not published, EU:T:2014:1094, paragraph 232 and the case-law cited).

213 Respect for the rights of the defence requires that the undertaking concerned must have been afforded the opportunity, during the administrative procedure, to make known its views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim that there has been an infringement of the Treaty (judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C−204/00 P, C−205/00 P, C−211/00 P, C−213/00 P, C−217/00 P and C−219/00 P, EU:C:2004:6, paragraph 66).

214 In that connection, Article 27(1) of Regulation No 1/2003 provides (i) that the Commission is to give the undertakings or associations of undertakings which are the subject of the proceedings conducted by the Commission the opportunity to be heard on the matters to which the Commission has taken objection and (ii) that the Commission is to base its decisions only on objections on which the parties concerned have been able to comment.

215 Moreover, it is settled case-law that the failure to communicate a document constitutes a breach of the rights of the defence only if the undertaking concerned shows, first, that the Commission relied on that document to support its objection concerning the existence of an infringement and, second, that the proof necessary for demonstrating the merits of that objection could be adduced only by reference to that document. If there were other documentary evidence of which the parties were aware during the administrative procedure that specifically supported the Commission's findings, the fact that an incriminating document not communicated to the person concerned was inadmissible as evidence would not affect the validity of the objections upheld in the contested decision. It is thus for the undertaking concerned to show that the result at which the Commission arrived in its decision would have been different if a document which was not communicated to that undertaking and on which the Commission relied to make a finding of infringement against it had to be disallowed as evidence (see judgment of 9 September 2015, *Toshiba* v *Commission*, T−104/13, EU:T:2015:610, paragraph 129 and the case-law cited).

216 In the present case, although the applicant claims that it did not receive from the Commission either the document relating to the scope of the powers delegated to the PIA Employee Directors or the documents relating to the remuneration and internal control committees, it must be held, as the Commission claims, that such a claim has no basis in fact.

217 First of all, as the Commission explains, without being challenged by the applicant, the document relating to the scope of the powers delegated to the PIA Employee Directors was disclosed to the applicant on 27 March 2012 and the applicant had access to both a confidential and non-confidential version of that document.

218 Next, the document relating to the remuneration committee is the confidential version of the interveners' reply to the statement of objections. On 4 January and 12 March 2012, and on 11 September 2013, the applicant had access to the non-confidential version of that reply, from which the information mentioned by the Commission in respect of the applicant in the contested decision is taken.

219 Lastly, the document relating to the internal control committee is identical to the document in Annex 15 to the interveners' reply to a request for information of 20 October 2009, to which the applicant had access, in particular, on 26 January 2012.

220 It follows that the Commission did not deny access to the documents indicated by the applicant in the application and that it therefore fulfilled its obligations under the case-law cited in paragraph 215 above.

221 As to the remainder, the applicant submits that it did not have access to other documents in the file, such as documents [*confidential*] and [*confidential*]. That claim must be rejected as inadmissible in so far as it was made for the first time before the Court at the stage of the reply and is not based on matters which have come to light in the course of proceedings. In any event, it should be pointed out that, as the Commission observes, document [*confidential*] was disclosed to the applicant on 8 September 2011 and document [*confidential*] contains only publicly-accessible information, as footnote 1127 of the contested decision shows.

222 The first limb of the fifth plea must therefore be rejected.

(b) The second limb, alleging that the Commission unlawfully delayed access to other documents essential to its defence

223 The applicant alleges, first of all, that the Commission provided information essential to its defence only at a very late stage in the investigation, that is to say, on 17 May 2013, such that it was unable properly to exercise its rights of defence. The information in question, both inculpatory and exculpatory, included, first, evidence central to the role of the strategic committee, second, evidence concerning the remuneration committee and the internal control committee, third, evidence of what was discussed at the monthly meetings and, fourth, evidence used by the Commission to support its allegation that it had acted as an 'industrial owner'.

224 Next, the applicant maintains that the late disclosure of this information did not remedy the breach of its rights of defence, in that the information was not in its possession when it was preparing its reply to the statement of objections or at the hearing held in June 2012. Moreover, according to the applicant, if it had been able to put forward its position on this evidence at an earlier stage, the Commission may have been more receptive to it.

225 In addition, the applicant asserts that the Commission's reasoning that late access to the information is justified by the need first to establish the relevance of this evidence before communicating it is unfounded. It states that the majority of the relevant evidence had been available to the Commission more than a year earlier.

226 Lastly, the applicant requests the Court to order the Commission to produce, in accordance with Article 64(4) of the Rules of Procedure of the General Court of 2 May 1991, for the review of the Court *in camera*, all relevant documents produced internally by the Commission between 1 March 2012 and 17 May 2013, in particular, correspondence with the Legal Service and the Hearing Officer and minutes of internal meetings of the case team and written instructions within the case team.

227 The Commission disputes those arguments.

228 The applicant submits, in essence, that the Commission gave it belated access to documents essential to its defence.

229 According to the case-law cited in paragraph 213 above, respect for the rights of the defence requires that the undertaking concerned must have been afforded the opportunity during the administrative procedure to make known its views on the truth and relevance of the facts and circumstances alleged.

230 In the context of this limb, the applicant does not claim, as it did in the first limb, that it did not have access to documents essential to the exercise of its defence against the complaints made against it by the Commission in the contested decision, but criticises the Commission only for disclosing those documents belatedly.

231 However, it should be pointed out, first, that the documents relied on by the applicant were communicated to it on 17 May 2013, namely approximately 10 months before the adoption of the contested decision. Accordingly, the applicant cannot reasonably claim that it was unable to submit observations on that material because it had insufficient time to examine it. Next, the applicant did in fact take a view on those documents, in particular on 17 June 2013, one month after they had been disclosed. Nothing in its pleadings is capable of showing, as the applicant claims, that the Commission had insufficient time to take its observations into consideration. Lastly, the applicant does not explain precisely what arguments it would have been able to put forward had it not been prevented from doing so by lack of time.

232 Second, it should be pointed out that, among the documents that the applicant identifies as having been communicated to it belatedly, one concerns the Commission's conclusions relating to the remuneration committee and the internal control committee of Prysmian. It is apparent from the analysis carried out in the context of the first plea, in paragraphs 120 to 124 above, that that factor cannot be used by the Commission as a basis for its conclusion that the applicant exercised decisive influence over the interveners. Accordingly, the applicant's criticism regarding the belated disclosure of that document regarding those matters must be rejected as ineffective. As to the remainder, in the light of the relative brevity of the documents in question, namely of the minutes of meetings of Prysmian's board of directors and of the monthly reports, the applicant cannot claim that it did not have time to examine them in order to prepare its defence before the Commission.

233 Third, the applicant cannot reasonably claim that the documents communicated on 17 May 2013 constituted the sole basis for the Commission's line of argument. In that regard, it should be pointed out that the Commission's conclusions in the contested decision are based on several other documents, which were communicated to the applicant following the adoption of the statement of objections of 30 June 2011.

234 Fourth, even though the applicant did not have access to those documents for the preparation of its reply to the statement of objections, it should be borne in mind that, in accordance with the case-law, the statement of objections is a preparatory document containing assessments of fact and law which are purely provisional in nature (judgment of 5 December 2013, *SNIA* v *Commission*, C−448/11 P, not published, EU:C:2013:801, paragraph 42 and the case-law cited). There is therefore nothing to prevent documents received as replies to the statement of objections from being used subsequently in the final decision provided that the interested party is afforded the opportunity, as in the present case, to take a view on them.

235 The second limb of the fifth plea must therefore be rejected as in part ineffective and in part unfounded. As regards, moreover, the measure of organisation of procedure proposed by the applicant, it is sufficient to note that the applicant does not explain how that measure might support its line of argument. Accordingly, the applicant's request cannot be granted.

(c) The third limb, alleging the excessive length of the administrative procedure

236 The applicant maintains that the Commission breached the principle of sound administration, given the excessive length of the administrative procedure. It points out that the investigation was in progress for more than five years, that is to say, from 9 January 2009 to 2 April 2014. It adds that that duration had consequences for its defence, since it did not receive the statement of objections until 30 June 2011, by which time the GSCP V Funds had already divested the last of their investments in Prysmian, in 2010. The applicant also submits that, in the event that the excessive duration of the administrative procedure does not justify the annulment of the contested decision, the Court should nevertheless grant an equitable reduction in the fine.

237 The Commission disputes those arguments.

238 According to settled case-law, compliance with the reasonable time requirement in the conduct of administrative procedures relating to competition policy constitutes a general principle of EU law whose observance the EU judicature ensures (see judgment of 19 December 2012, *Heineken Nederland and Heineken* v *Commission*, C−452/11 P, not published, EU:C:2012:829, paragraph 97 and the case-law cited).

239 The principle that an administrative procedure must be conducted within a reasonable time has been reaffirmed by Article 41(1) of the Charter, under which 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union' (see judgment of 5 June 2012, *Imperial Chemical Industries* v *Commission*, T−214/06, EU:T:2012:275, paragraph 284 and the case-law cited).

240 Whether the time taken for each step of a procedure is reasonable must be assessed in relation to the individual circumstances of each case, and in particular its context, the conduct of the parties during the procedure, what is at stake for the various undertakings concerned and its complexity (see, to that effect, judgments of 20 April 1999, *Limburgse Vinyl Maatschappij and Others* v *Commission*, T−305/94 to T−307/94, T−313/94 to T−316/94, T−318/94, T−325/94, T−328/94, T−329/94 and T−335/94, EU:T:1999:80, paragraph 126).

241 The Court has also held that, in matters relating to competition policy before the Commission, the administrative procedure may involve an examination in two successive stages, each corresponding to its own internal logic. The first stage, covering the period up to notification of the statement of objections, begins on the date on which the Commission, exercising the powers conferred on it by the EU legislature, takes measures which imply an accusation of an infringement and must enable the Commission to adopt a position on the course which the procedure is to follow. The second stage covers the period from notification of the statement of objections to adoption of the final decision. It must enable the Commission to reach a final decision on the infringement concerned (judgment of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, C−105/04 P, EU:C:2006:592, paragraph 38).

242 Moreover, it is apparent from the case-law that, where the breach of the reasonable time principle has had a possible effect on the outcome of the procedure, that breach may entail the annulment of the contested decision (see, to that effect, judgment of 21 September 2006, *Technische Unie* v *Commission*, C−113/04 P, EU:C:2006:593, paragraph 48 and the case-law cited).

243 Nevertheless, for the purposes of the application of the competition rules, a failure to act within a reasonable time can constitute a ground for annulment only in cases of decisions finding infringements where it has been proved that the breach of the reasonable-time principle has adversely affected the rights of defence of the undertakings concerned. Except in that specific circumstance, failure to comply with the obligation to adopt a decision within a reasonable time cannot affect the validity of the administrative procedure under Regulation No 1/2003 (judgment of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, C−105/04 P, EU:C:2006:592, paragraph 42).

244 Lastly, as respect for the rights of the defence, a principle whose fundamental nature has been emphasised on many occasions in the case-law of the Court, is of crucial importance in procedures such as that followed in the present case, it is essential to prevent those rights from being irremediably compromised on account of the excessive duration of the investigation phase and to ensure that the duration of that phase does not impede the establishment of evidence designed to refute the existence of conduct susceptible of rendering the undertakings concerned liable. For that reason, examination of any interference with the exercise of the rights of the defence must not be confined to the actual phase in which those rights are fully effective, that is to say, the second phase of the administrative procedure. The assessment of the source of any undermining of the effectiveness of the rights of the defence must extend to the entire procedure and be carried out by reference to its total duration (see judgment of 21 September 2006, *Nederlandse*

Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v *Commission*, C-105/04 P, EU:C:2006:592, paragraph 50 and the case-law cited).

245 In the present case, as regards the first phase of the administrative procedure, a period of 29 months elapsed from the notification to the interveners of the inspection decision in January 2009 until the receipt of the statement of objections in June 2011. The second phase of the administrative procedure, from the receipt of the statement of objections to the adoption of the contested decision in April 2014, covered a period of 33 months.

246 In that regard, it must be held that the duration of the first phase of the administrative procedure and the duration of the second phase of that procedure are not excessive in the light of the steps that the Commission took to complete the investigation and adopt the contested decision.

247 First of all, as the Commission observes, the investigation related to a cartel of global scope, with a high number of participants, which lasted for almost 10 years during which the Commission was required to elicit the vast amounts of evidence contained in the file including all the evidence collected during the inspections and received from the leniency applicants. Moreover, during that investigation, the Commission sent the participants in the sector concerned requests for information in accordance with Article 18 of Regulation No 1/2003 and with point 12 of the Leniency Notice.

248 Next, the volume of evidence led the Commission to adopt a decision, in its English version, of 287 pages, Annex 1 of which contains the complete references to all the evidence collected during the investigation phase. The breadth and scope of the cartel and the linguistic difficulties are also noteworthy. It should be borne in mind that the contested decision had 26 addressees from a wide range of countries; a large number of those addressees participated in the cartel under various legal forms and were restructured during and after the cartel period. In addition the decision, drafted in English, had to be translated in full into German, French and Italian.

249 Lastly, it is apparent from the background to the dispute set out in paragraphs 3 to 10 above that in the context of the administrative procedure the Commission adopted a whole series of steps, which justify the duration of each phase of that procedure and the appropriateness for the purpose of the investigation was not specifically challenged by the applicant.

250 Accordingly, the duration of the two phases of the administrative procedure was reasonable in order to enable the Commission to assess thoroughly the evidence and arguments raised by the parties concerned by the investigation.

251 It follows that the applicant cannot reasonably claim that the duration of the administrative procedure before the Commission was excessive and that the Commission infringed the reasonable-time principle.

252 In any event, were it to be found that the overall duration of the administrative procedure was excessive and that the reasonable-time principle was infringed, such a finding would be insufficient, in itself, in the light of the case-law cited in paragraphs 242 to 244 above, to conclude that the contested decision should be annulled.

253 In that regard, the applicant claims that the excessive duration of the administrative procedure ‘impacted on [its] ability to defend itself’, in particular in so far as, at the time that it was informed that it was being investigated, namely on the date on which the statement of objections was adopted, on 30 June 2011, it had already divested the last of its shares in the interveners and, therefore, it had limited access to the relevant evidence. In that regard, it is sufficient to recall that, according to settled case-law, by virtue of a general duty of care attaching to any undertaking or association of undertakings, the applicant is required to ensure the proper maintenance of records in its books or files of information enabling details of its activities to be retrieved, in order, in particular, to make the necessary evidence available in the event of legal or administrative proceedings (see, to that effect, judgment of 16 June 2011, *Heineken Nederland and Heineken* v *Commission*, T-240/07, EU:T:2011:284, paragraph 301 and the case-law cited). That

obligation also applies to the divestment of a subsidiary, as was held in the judgment of 27 June 2012, *Bolloré* v *Commission* (T−372/10, EU:T:2012:325, paragraph 152).

254 As regards the applicant's request to the Court to grant an equitable reduction of the fine imposed on it in the event that the duration of the administrative procedure does not justify annulment of the contested decision, it must be regarded as being raised in support of its claim for the reduction of that amount, which will be examined in paragraph 261 below.

255 The third limb of the fifth plea must be rejected, as must that plea in its entirety.

256 In the light of the foregoing, it must be held that the applicant has not succeeded in proving that the Commission committed irregularities justifying annulment of the contested decision in so far as the decision concerns it.

257 The applicant's claims for annulment must therefore be rejected.

B. The claim for reduction of the fine imposed on the applicant

258 The applicant calls upon the Court to reduce the fine imposed on it so as to take account of the errors which the Commission made when calculating that amount. Similarly, the applicant requests the Court to grant an equitable reduction of the fine in the event that the duration of the administrative procedure does not justify annulment of the contested decision. Lastly, it requests the Court to grant it the benefit of any reduction in the fine granted to the interveners following the action brought against that decision in Case T−475/14, *Prysmian and Prysmian Cavi e Sistemi* v *Commission*.

259 Before considering the applicant's various claims for a reduction of the fine imposed on it, it should be borne in mind that the review of legality is supplemented by the unlimited jurisdiction which Article 31 of Regulation No 1/2003 has conferred on the Courts of the European Union, in accordance with Article 261 TFEU. That jurisdiction empowers the competent Court, in addition to carrying out a review of legality of the penalty, to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the fine or penalty payment imposed. However, it must be pointed out that the exercise of unlimited jurisdiction does not amount to a review of the Court's own motion, and that proceedings before the Courts of the European Union are *inter partes*. With the exception of pleas involving matters of public policy which the Courts are required to raise of their own motion, such as the failure to state reasons for a contested decision, it is for the applicant to raise pleas in law against that decision and to adduce evidence in support of those pleas (judgment of 8 December 2011, *KME Germany and Others* v *Commission*, C−389/10 P, EU:C:2011:816, paragraphs 130 and 131).

1. The claim for reduction of the amount of the fine imposed on account of errors by the Commission when calculating that amount

260 As regards, in the first place, the applicant's claim that the amount of the fine imposed on it should be reduced so as to take account of the errors which the Commission made when calculating that amount, it should be pointed out (i) that the pleas raised by the applicant in support of the claims for annulment have been rejected and (ii) that there are no factors which, in the present case, would justify a reduction of that amount. It follows that this claim must be rejected in its entirety.

2. The claim for reduction of the fine on account of the excessive duration of the administrative procedure

261 As regards, in the second place, the applicant's claim that an equitable reduction of the fine imposed on it should be granted on account of the excessive duration of the administrative procedure, it is sufficient to recall that, although an infringement by the Commission of the reasonable-time principle can justify the annulment of a decision taken by it following an administrative procedure based on Article 101 or 102 TFEU inasmuch as it also entails an infringement of the rights of defence of the undertaking concerned, an

infringement of that principle, if established, cannot lead to a reduction of the fine imposed (see judgment of 26 January 2017, *Villeroy & Boch* v *Commission*, C−644/13 P, EU:C:2017:59, paragraph 79 and the case-law cited).

262 In any event, as is apparent from paragraph 251 above, the duration of the administrative procedure was held not to be excessive in the present case. It follows that this claim cannot succeed.

3. The claim for reduction of the amount of the fine in order to benefit from any reduction of that amount granted to the interveners following the action brought against the contested decision in Case T−475/14

263 As regards, in the third and last place, the applicant's request to benefit from any reduction of the fine granted by the Court to the interveners following the action brought against the contested decision in Case T−475/14, *Prysmian and Prysmian Cavi e Sistemi* v *Commission*, it should be recalled that the applicant was not held liable for the cartel in question on account of its direct participation in the cartel's activities. In accordance with Article 1 of that decision, it was only held liable for the infringement as the parent company of the interveners.

264 In a situation in which the parent company's liability results exclusively from the direct participation of its subsidiary in the infringement and the two companies have brought parallel actions having the same object, the Court may, without ruling *ultra petita*, take account of the annulment of the finding that the subsidiary committed an infringement for a certain period and make a corresponding reduction in the amount of the fine imposed on the parent company jointly and severally with its subsidiary.

265 In that respect, first, in order to hold an economic unit liable, it is necessary to prove that at least one entity has committed an infringement of the EU competition rules and that that fact be noted in a decision which has become definitive and, secondly, that the reason for which it was found that the subsidiary had not acted unlawfully is irrelevant.

266 It is in that context that it is necessary to refer to the wholly derivative nature of the liability incurred by the parent company solely because of a subsidiary's direct participation in the infringement. In that situation, the parent company's liability arises from its subsidiary's unlawful conduct, which is attributed to the parent company in view of the economic unit formed by those companies. Consequently, the parent company's liability necessarily depends on the facts constituting the infringement committed by its subsidiary and to which its liability is inextricably linked.

267 For the same reasons, it must be specified that, in a situation in which no factor individually reflects the conduct for which the parent company is held liable, the reduction of the amount of the fine imposed on the subsidiary jointly and severally with its parent company must, in principle, where the necessary procedural requirements are satisfied, be extended to the parent company.

268 In the present case, both the applicant and the interveners brought an action against the contested decision and those actions have, in part, the same objective, namely, principally, to annul the fine provided for in Article 2(f) of that decision so far as it concerns them, and, in the alternative, to reduce the amount of that fine which was jointly and severally imposed on them.

269 In those circumstances, the applicant is entitled to benefit in the same way from any annulment of the contested decision as the interveners in the context of the action brought in Case T−475/14.

270 However, by today's judgment in Case T−475/14, *Prysmian and Prysmian Cavi e Sistemi* v *Commission*, the Court has dismissed the action in the case giving rise to that judgment, namely both the claims for annulment made by the interveners and their claims for a reduction of the fines imposed on them.

271 Accordingly the applicant's request to benefit from any reduction granted to the interveners following the action brought against the contested decision in Case T−475/14, *Prysmian and Prysmian Cavi e Sistemi* v

Commission, cannot succeed and, therefore, the claims seeking a reduction in the amount of the fine imposed on the applicant must be rejected as a whole.

272 In the light of all the foregoing, this action must be dismissed.

IV. Costs

273 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

274 Since the applicant has been unsuccessful in all its pleas and the Commission has applied for costs, the applicant must be ordered to pay all the costs.

275 According to Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in Article 138(1) and (2) of those rules to bear his own costs. In the circumstances of the present case, Prysmian and PrysmianCS must be ordered to bear their own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the action;

2. Orders The Goldman Sachs Group, Inc. to bear its own costs and to pay those of the European Commission;

3. Orders Prysmian SpA and Prysmian Cavi e Sistemi Srl to bear their own costs.

Collins Kancheva Barents

Delivered in open court in Luxembourg on 12 July 2018.

E. Coulon A.M. Collins

Registrar President

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IV. Costs

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* Language of the case: English.

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1 Confidential information omitted.