JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

27 September 2006 *

In Case T-330/01,

Akzo Nobel NV, established in Arnhem (Netherlands), represented initially by M. van Empel and C. Swaak, and subsequently by C. Swaak, lawyers,

applicant,

v

Commission of the European Communities, represented by A. Whelan, A. Bouquet and W. Wils, acting as Agents, assisted by H. van der Woude, lawyer,

defendant,

APPLICATION for annulment of Articles 3 and 4 of Commission Decision C(2001) 2931 final of 2 October 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.756 — Sodium Gluconate) in so far as it pertains to the applicant or, in the alternative, reduction of the fine imposed on the applicant,

* Language of the case: Dutch.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of J. Azizi, President, M. Jaeger and F. Dehousse, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 17 February 2004,

gives the following

Judgment

Facts

1 Akzo Nobel NV ('Akzo') is the parent company of a group of companies specialising in the chemical and pharmaceuticals industries. It holds all of the shares in Akzo Nobel Chemicals BV ('ANC'). At the material time and until December 1995, Avebe was active in the sodium gluconate market through its share in Glucona vof, a company it controlled jointly with the Coöperatieve Verkoop- en Productievereniging van Aardappelmeel en Derivaten Avebe BA ('Avebe'). In December 1995, Avebe acquired ANC's share in Glucona vof, which became a limited liability company and took the name Glucona BV (hereinafter both Glucona vof and Glucona BV will be referred to without distinction as 'Glucona').

2 Sodium gluconate is a chelating agent, products which inactivate metal ions in industrial processes. Those processes are used, inter alia, in industrial cleaning (bottle washing, utensil cleaning), surface treatment (de-rusting, degreasing, aluminium etching) and water treatment. Chelating agents are thus used in the food industry, the cosmetics industry, the pharmaceutical industry, the paper industry, the concrete industry and in various other industries. Sodium gluconate is sold worldwide and competing undertakings have a worldwide presence.

3 In 1995, total sales of sodium gluconate on a worldwide level were around EUR 58.7 million and sales in the European Economic Area (EEA) around EUR 19.6 million. At the material time, almost all of the sodium gluconate produced worldwide was in the hands of five undertakings namely (i) Fujisawa Pharmaceutical Co. Ltd ('Fujisawa'), (ii) Jungbunzlauer AG ('Jungbunzlauer'), (iii) Roquette Frères SA ('Roquette'), (iv) Glucona and (v) Archer Daniels Midland Co. ('ADM').

4 In March 1997, the United States Department of Justice informed the Commission that following an investigation into the lysine and citric acid markets, an investigation had also been opened into the sodium gluconate market. In October and December 1997 and February 1998, the Commission was informed that Akzo, Avebe, Glucona, Roquette and Fujisawa acknowledged that they had participated in a cartel to fix the price of sodium gluconate and to allocate sales volumes of the product in the United States and elsewhere. Pursuant to agreements entered into with the United States Department of Justice, those undertakings were fined by the United States authorities.

5 On 18 February 1998, the Commission sent requests for information under Article 11 of Council Regulation No 17 of 6 February 1962 — First Regulation implementing Articles [81] and [82] of the Treaty (OJ English Special Edition 1959-1962, p. 87) to the main producers, traders and customers of sodium gluconate in Europe.

6 Following receipt of the request for information, Fujisawa approached the Commission and announced that it had cooperated with the United States authorities in the course of the investigation described above and that it wished to cooperate with the Commission under the Commission notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4) ('the Leniency Notice'). On 12 May 1998, following a meeting with the Commission on 1 April 1998, Fujisawa supplied a written statement and a file of documents providing a summary of the cartel's history and a number of documents.

7 On 16 and 17 September 1998, the Commission carried out inspections pursuant to Article 14(3) of Regulation No 17 at the premises of Avebe, Glucona, Jungbunzlauer and Roquette.

8 On 2 March 1999, the Commission sent detailed requests for information to Glucona, Roquette and Jungbunzlauer. By letters of 14, 19 and 20 April 1999, those undertakings made it known that they wished to cooperate with the Commission and provided it with certain information about the cartel. On 25 October 1999, the Commission sent additional requests for information to ADM, Fujisawa, Glucona, Roquette and Jungbunzlauer.

9 On 17 May 2000, the Commission, on the basis of the information supplied to it, sent a statement of objections to Akzo and the other undertakings concerned for infringement of Article 81(1) EC and Article 53(1) of the Agreement on the EEA ('the EEA Agreement'). Akzo and all the other undertakings concerned submitted written observations in response to the Commission's objections. None of the parties requested an oral hearing, nor did they substantially contest the facts as set out in the statement of objections.

10 On 11 May 2001, the Commission sent additional requests for information to Akzo and the other undertakings concerned.

11 On 2 October 2001, the Commission adopted Decision C(2001) 2931 final relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (COMP/E-1/36.756 — Sodium Gluconate; 'the Decision'). The Decision was notified to Akzo by letter of 10 October 2001.

12 The Decision includes the following provisions:

'Article 1

[Akzo], [ADM], [Avebe], [Fujisawa], [Jungbunzlauer] and [Roquette] have infringed Article 81(1) EC and — from 1 January 1994 onwards — Article 53(1) of the EEA Agreement by participating in a continuing agreement and/or concerted practice in the sodium gluconate sector.

The duration of the infringement was as follows:

— in the case of [Akzo], [Avebe], [Fujisawa] and [Roquette], from February 1987 to June 1995;

— in the case of [Jungbunzlauer], from May 1988 to June 1995;

— in the case of [ADM], from June 1991 to June 1995.

...

Article 3

For the infringement referred to in Article 1, the following fines are imposed:

(a) [Akzo]	EUR 9 million
(b) [ADM]	EUR 10.13 million
(c) [Avebe]	EUR 3.6 million
(d) [Fujisawa]	EUR 3.6 million
(e) [Jungbunzlauer]	EUR 20.4 million
(f) [Roquette]	EUR 10.8 million.

...'

13 In recitals 296 to 309 of the Decision, the Commission analysed the links existing between Glucona and its parent companies, Avebe and Akzo, during the period concerned by the cartel. It noted in particular that, until 15 August 1993, Glucona had been managed jointly by representatives of Avebe and Akzo, but that, as from

that date, due to a restructuring of Glucona, it had been managed solely by a representative of Avebe. The Commission nevertheless found that it was appropriate to hold Avebe and Akzo liable for the anti-competitive conduct of their subsidiary for the entire relevant period and therefore to address the Decision to them.

14 In calculating the amount of the fines, the Commission applied in the Decision the methods set out in the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3; 'the Guidelines') and the Leniency Notice.

15 First, the Commission determined the basic amount of the fine by reference to the gravity and duration of the infringement.

16 In that context, as regards the gravity of the infringement, the Commission found, first, that, taking into account the nature of the infringement, its actual impact on the EEA sodium gluconate market and the scope of the relevant geographic market, the undertakings concerned had committed a very serious infringement (recital 371 of the Decision).

17 Next, the Commission considered that it was necessary to take account of the actual economic capacity of the offenders to cause significant damage to competition, and to set the fine at a level which ensured that it had sufficient deterrent effect. Consequently, taking as its basis the relevant undertakings' worldwide turnover from the sale of sodium gluconate in 1995, the last year of the infringement, figures which were communicated by the undertakings concerned following requests from the Commission and on the basis of which the Commission calculated the respective market shares of those undertakings, the Commission divided the undertakings into two categories. In the first category, it placed the undertakings which, according to

the data in its possession, held worldwide shares in the sodium gluconate market above 20%, namely Fujisawa (35.54%), Jungbunzlauer (24.75%) and Roquette (20.96%). The Commission set a starting amount of EUR 10 million for those undertakings. In the second category, it placed the undertakings which, according the data in its possession, held worldwide shares in that market of below 10%, namely Glucona (approximately 9.5%) and ADM (9.35%). The Commission set the starting amount of the fine at EUR 5 million for those undertakings, that is to say, for Akzo and Avebe, which jointly owned Glucona, at EUR 2.5 million each (recital 385 of the Decision).

18 In order to ensure that the fine had a sufficient deterrent effect and to take account of the fact that large undertakings have legal and economic knowledge and infrastructures which enable them more easily to recognise that their conduct constitutes an infringement and be aware of the consequences stemming from it under competition law, the Commission also adjusted the starting amount. Consequently, taking account of the size and the worldwide resources of the undertakings concerned, the Commission applied a multiplier of 2.5 to the starting amount for ADM and Akzo and therefore increased that amount, so that it was set at EUR 12.5 million as regards ADM and EUR 6.25 million as regards Akzo (recital 388 of the Decision).

19 As regards the duration of the infringement committed by each undertaking, the starting amount was moreover increased by 10% per year, i.e. an increase of 80% for Fujisawa, Akzo, Avebe and Roquette, of 70% for Jungbunzlauer and of 35% for ADM (recitals 389 to 392 of the Decision).

20 Accordingly, the Commission set the basic amount of the fines at EUR 11.25 million as regards Azko. As regards ADM, Avebe, Fujisawa, Jungbunzlauer and Roquette, the basic amount was set at EUR 16.88 million, EUR 4.5 million, EUR 18 million, EUR 17 million and EUR 18 million respectively (recital 396 of the Decision).

21 Second, on account of aggravating circumstances, the basic amount of the fine imposed on Jungbunzlauer was increased by 50% on the ground that the undertaking had acted as ringleader of the cartel (recital 403 of the Decision).

22 Third, the Commission examined and rejected the arguments of certain undertakings that there were attenuating circumstances which should have applied in their case (recitals 404 to 410 of the Decision).

23 Fourth, under Section B of the Leniency Notice, the Commission allowed Fujisawa a 'very substantial reduction' (namely 80%) of the fine which would have been imposed if it had not cooperated. Finally, under Section D of that notice, the Commission allowed ADM and Roquette a 'significant reduction' (namely 40%) of the fine, and allowed Akzo, Avebe and Jungbunzlauer a 20% reduction (recitals 418, 423, 426 and 427 of the Decision).

Procedure and forms of order sought

24 Azko brought the present action by application lodged at the Registry of the Court of First Instance on 19 December 2001.

25 Upon hearing the Report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and, in the context of measures of organisation of procedure under Article 64 of the Rules of Procedure of the Court of First Instance, put written questions to the parties to which they replied within the prescribed period.

26 The parties presented oral argument at the hearing on 17 February 2004.

27 Akzo claims that the Court should:

— annul Articles 3 and 4 of the Decision in so far as they pertain to it;

— in the alternative, annul Article 3, combined with recital 388 of the Decision, in so far as a multiplier of 2.5 was applied to it;

— order the Commission to pay the costs, including interest and the costs of the bank guarantee.

28 The Commission contends that the Court should:

— dismiss the application;

— order Akzo to pay the costs.

Law

29 The grounds of annulment put forward by Akzo concern, first, the determination of the starting amount of the fines imposed on all of the parties to the cartel, second, the classification of the participants in the cartel, thirdly, the taking into account of Azko's turnover and, fourth, the application of a multiplier of 2.5.

The determination of the starting amount of the fines imposed on all of the parties to the cartel

30 Akzo claims that there has been infringement, first, of the principle of proportionality and, second, of the obligation to state reasons.

Infringement of the principle of proportionality

31 Akzo claims that in setting, in recital 385 of the Decision, the starting amount for the calculation of the amounts imposed on all of the parties to the cartel at EUR 40 million, the Commission did not take account of the limited volume of the sodium gluconate market and thereby infringed the principle of proportionality.

32 Akzo states that total sales of sodium gluconate in the EEA in 1995 were less than EUR 20 million, whilst worldwide sales totalled less than EUR 59 million. It maintains that, consequently, the total amount of the fines imposed by the Decision

is more than twice the annual sales of the relevant product in the EEA and more than two-thirds of its worldwide sales.

33 It submits that, in so doing, the Commission failed to take account of the small size of the market, that is, the limited volume of the market for the relevant product when it set the starting amount for the calculation of the fines, although it alleges it did so in recital 377 of the Decision. Instead, it categorised the parties to the cartel in two categories, putting in the first category those undertakings which held over 20% of the worldwide sodium gluconate market and in the second category those which held under 10% of the worldwide sodium gluconate market (see paragraph 17 above). Such an approach, classifying the undertakings concerned by reference to their relative weight in the relevant market, is not appropriate in such a small-scale market.

34 The Commission contends that the plea in law should be rejected.

35 The Court notes that, under Article 15(2) of Regulation No 17, the amount of the fine is set by reference to the gravity and duration of the infringement. Moreover, in accordance with the Guidelines, the starting amount is set by reference to the gravity of the infringement in the light of the nature of the infringement, its actual impact on the market and the size of the relevant geographic market.

36 Thus that legal framework does not explicitly require the Commission to take account of the small size of the market and the value of the product when the starting amount of the fine is determined.

37 According to the case-law, however, in assessing the gravity of an infringement, the Commission is required to take account of a large number of factors, the nature and importance of which vary according to the type of infringement at issue and the specific circumstances surrounding the infringement in question (Joined Cases 100/80 to 103/80 *Musique diffusion française and Others* v *Commission* [1983] ECR 1825, paragraph 120). The factors tending to establish the gravity of an infringement may, where appropriate, include the size of the market for the relevant product.

38 Accordingly, although the size of the market and the value of the product may be factors to be taken into account to establish the gravity of the infringement, their importance varies according to the specific circumstances surrounding the infringement in question.

39 In the present case, it is apparent from recital 385 of the Decision that, although the Commission considered the infringement to be very serious for the purposes of the Guidelines, which, in such cases, provide that the Commission may adopt a starting amount of at least EUR 20 million, in the present case the Commission opted for a starting amount of only EUR 10 million for the undertakings placed in the first category and EUR 5 million for those placed in the second category, i.e., one-half and one-quarter respectively of the amounts which it may adopt for very serious infringements.

40 This determination of the starting amount of the fine indicates that, in accordance with recital 377 of the Decision, where the Commission stated that the small size of the product market 'will also be taken into consideration in the present case, when defining the starting amounts', the Commission did take sufficient account of the size of the market for the relevant products.

41 The Court finds, in any event, that given the nature of the infringement committed by Akzo and having regard to the size of the market for the products in question, that the Commission did not infringe the principle of proportionality in imposing a starting amount of EUR 5 million on Akzo for the calculation of its fine.

42 Accordingly, the plea alleging infringement of the principle of proportionality must be rejected.

Infringement of the obligation to state reasons

43 Akzo claims that the Decision does not contain sufficient reasons in that there is, in its view, a contradiction between, on the one hand, the Commission's statement that it did take account of the small size of the sodium gluconate market (recital 377 of the Decision) and, on the other, the recitals pertaining to the classification of the undertakings concerned (recitals 378 to 384 of the Decision).

44 The Commission contends that the plea must be dismissed.

45 The Court notes that it is settled case-law that the statement of reasons required by Article 253 EC must disclose in a clear and unequivocal fashion the reasoning followed by the Community institution which adopted the measure challenged, so as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63; Case

C-301/96 *Germany* v *Commission* [2003] ECR I-9919, paragraph 87; and Case T-251/00 *Lagardère and Canal+* v *Commission* [2002] ECR II-4825, paragraph 155).

46 The Court notes that, in recital 377 of the Decision, the Commission stated that it had taken account of the small size of the sodium gluconate market in fixing the starting amounts. Next, in recitals 378 to 384 of the Decision, it applied differential treatment to the members of the cartel, placing them in two categories by reference to their specific weight on the market and the need to ensure that the fine would have a deterrent effect. Lastly, as stated in paragraph 39 above, in recital 385 of the Decision, in calculating the fine by reference to the gravity of the infringement, the Commission adopted a starting amount of EUR 10 million for the undertakings placed in the first category and EUR 5 million for those placed in the second category, i.e., one-half and one-quarter respectively of the amounts which it could impose for very serious infringements.

47 It is therefore apparent from a reading of recitals 377 and 385 of the Decision that the Commission did state sufficiently clearly that it had taken account of the small size of the product market by fixing the starting amounts of the fines at levels lower than it could impose under the Guidelines for very serious infringements. That statement of how the small size of the product market was taken into account is not contradicted by recitals 378 to 384 of the Decision, where the Commission explained why it was necessary, in its view, to place the members of the cartel into two categories by reference to their specific weight on the market and the need to ensure that the fine would have a deterrent effect. That stage of the calculation concerned the relationship between the members of the cartel and not the absolute value of the market concerned.

48 Accordingly, contrary to Akzo's assertions, there is no contradiction between recital 377 on the one hand and recitals 378 to 384 of the Decision on the other.

49 Accordingly, the plea alleging infringement of the obligation to state reasons must be rejected.

Classification of the parties to the cartel

50 Akzo claims that there has been infringement, first, of the principle of proportionality and, second, of the obligation to state reasons.

Infringement of the principle of proportionality

— Arguments of the parties

51 Akzo claims that the Commission infringed the principle of proportionality in classifying the parties to the cartel into two categories by reference to their shares of the sodium gluconate market, without taking precise account of their actual market shares, but rather adopting an overly simplistic approach consisting of classifying those undertakings according to whether their market share was over 20% or under 10% (recitals 379 to 382 of the Decision).

52 Akzo states that the actual ratio of the worldwide turnover of the undertakings concerned is markedly different from the simplistic 1:2 ratio applied by the Commission. The actual ratio between the undertakings holding the weakest market

shares (9% respectively for ADM and Glucona) and those holding the greatest market share (36% for Fujisawa) is 1:4 and not 1:2. Thus, according to the calculation method adopted by the Commission, but taking into account the actual ratio between the undertakings concerned, it should have set the basic amount of the fine imposed on Akzo and Avebe at EUR 1.25 million and not EUR 2.5 million.

53 Akzo acknowledges that there does not necessarily have to be a mathematical ratio between the fine ultimately imposed and the turnover of the undertakings concerned. Nevertheless, in its view, the Commission's practice in its decisions is to take the turnover of the parties to a cartel in the market in question as a basis.

54 Akzo infers from the case-law of the Court of Justice and the Court of First Instance that, unless it can rely on specific, objective justifications, the Commission must check that the specific basic amounts reflect the relative economic weight of the undertakings concerned in terms of turnover or market share. That was not so in the present case. In its view, in the specific circumstances of this case, the Commission should have placed the undertakings concerned into three categories. It would have been possible to identify a category of undertakings falling between ADM and Glucona (9% each) and Fujisawa (36%) in terms of market share, namely Roquette (21%) and Jungbunzlauer (25%). Such a classification would have better reflected the relative weight of the undertakings concerned and would have allowed the Commission to achieve its declared objective of taking account of the relative weight of the undertakings concerned in determining the specific basic amount of the fine.

55 The Commission contends that the plea in law should be rejected.

— Findings of the Court

56 Under the Guidelines, where there are infringements involving a number of undertakings, the Commission may, as it did in this case, weight the starting amounts to take account of the specific weight of each undertaking by dividing the members of the cartel into groups 'particularly where there is considerable disparity between the sizes of the undertakings committing infringements of the same type' (sixth paragraph of Section 1.A of the Guidelines). The Guidelines further state that 'the principle of equal punishment for the same conduct may, if the circumstances so warrant, lead to different fines being imposed on the undertakings concerned without this differentiation being governed by arithmetic calculation' (seventh paragraph of Section 1.A of the Guidelines).

57 It is the settled case-law of the Court of First Instance that, in determining the gravity of the infringement, the Commission is not required to ensure, where fines are imposed on a number of undertakings involved in the same infringement, that the final amounts of the fines resulting from its calculations for the undertakings concerned reflect any distinction between them in terms of their overall turnover, but that it may divide them into groups (see, to that effect, Case T-23/99 *LR AF 1998* v *Commission* [2002] ECR II-1705, paragraph 278; Case T-213/00 *CMA CGM and Others* v *Commission* [2003] ECR II-913, paragraphs 385 and 386; and Joined Cases T-191/98, T-212/98 to T-214/98 *Atlantic Container Line and Others* v *Commission* [2003] ECR II-3275 ('*TACA*'), paragraphs 1519 and 1520, and case-law cited).

58 However, as this Court has also held on a number of occasions, when the Commission divides the undertakings concerned into groups for the purpose of determining the amount of the fines, the determination of the thresholds for each of the groups thus identified must be coherent and objectively justified (see, to that

effect, *LR AF 1998* v *Commission*, paragraph 57 above, paragraph 298; *CMA CGM and Others* v *Commission*, paragraph 57 above, paragraph 416, et *TACA*, paragraph 57 above, paragraph 1541, and case-law cited).

59 In the present case, in order to identify the categories in which to place the undertakings concerned, the Commission decided to take account of their importance on the market in question on the basis of a single criterion, namely the shares of the worldwide sodium gluconate market, calculated by reference to the turnover achieved by them in that market in 1995.

60 On that basis, the Commission established two categories of undertaking, the first one comprising 'the three major producers of sodium gluconate with world-wide market shares above 20%' and the second comprising the undertakings 'which had significantly lower market shares in the worldwide sodium gluconate market (below 10%)' (recital 382 of the Decision).

61 The Commission thus set a starting amount of EUR 10 million for Fujisawa, Jungbunzlauer and Roquette, whose respective market shares were approximately 36%, 25% and 21%, and a starting amount of EUR 5 million for those in the second category, namely Glucona and ADM, which each held market shares of approximately 9%. Since Glucona was held jointly by Akzo and Avebe, the Commission set the starting amounts for each of those two companies at EUR 2.5 million (recital 385 of the Decision).

62 In proceeding in this manner, on the basis of its calculation using the market shares of the undertakings concerned, the Commission chose a coherent method for dividing the members of the cartel into two groups, which is objectively justified by the difference in size between the undertakings belonging to those two categories.

63 In such a situation, contrary to Akzo's assertions, the Commission was not required to differentiate any further between the members of the cartel by reference to their market share. In particular, it is irrelevant whether placing the members of the cartel into three categories would have better reflected the relative weight of the undertakings concerned, as Akzo maintains, because the approach adopted by the Commission is not incoherent or without objective justification. Nor can Akzo rely on the fact that in other cases the Commission has chosen to classify the members of the cartel at issue there differently, because it does not show that in this case the approach adopted by the Commission was not coherent and objectively justified.

64 In any event, even though dividing the members of the cartel into three categories might have been justified in the present case, the Court finds, in the light of the considerations in paragraphs 39 et seq. above, that imposing a starting amount of EUR 5 million on Glucona is not disproportionate. Accordingly, a hypothetical reclassification of the members of the cartel cannot affect Akzo's situation.

65 Accordingly, the plea alleging infringement of the principle of proportionality must be rejected.

Infringement of the obligation to state reasons

66 Akzo claims that the Decision does not contain a sufficient statement of reasons in that the Commission did not explain why it had set a specific basic amount which did not reflect clearly Glucona's relative weight in the light of its turnover or market share.

67 The Commission contends that the plea must be dismissed.

68 The Court notes that the obligation to state reasons, as defined in paragraph 45 above, is also satisfied where the Commission indicates in its decision the factors which enabled it to determine the gravity of the infringement and its duration (Case C-291/98 P *Sarrió* v *Commission* [2000] ECR I-9991, paragraphs 73, 76 and 80; Case C-279/98 P *Cascades* v *Commission* [2000] ECR I-9693, paragraphs 39 to 47; and *TACA*, paragraph 57 above, paragraph 1521).

69 As indicated in paragraphs 15 to 20 above, the Commission referred in the Decision to the factors which had enabled it to determine the gravity and duration of the infringement.

70 Moreover, irrespective of the issue of whether there might be a lack of precise correlation between the basic amount fixed for Glucona by the Commission, on the one hand, and its turnover or market share, on the other, the Court has held in paragraph 57 above that the Commission is not required to ensure that the amounts of the fines calculated for the undertakings concerned reflect all distinctions between them in terms of their turnover. The Commission may divide them into groups. Accordingly, the Commission was not required to give specific reasons dealing with the issue of whether the specific basic amount did or did not reflect Glucona's relative weight in the light of its turnover or market share.

71 Regarding the issue of dividing the members of cartels into groups, it is clear that such a division is done on the basis of the Guidelines, which provide for the possibility of weighting amounts (see paragraph 56 above). The Decision was thus adopted in a context with which Akzo was quite familiar.

72 Accordingly, the plea alleging infringement of the obligation to state reasons must be rejected.

Taking into account of Akzo's turnover

73 Akzo puts forward pleas alleging infringement, first, of Article 81 EC and, second, of the obligation to state reasons.

Infringement of Article 81 EC

— Arguments of the parties

74 Akzo does not deny the Commission's finding in recital 310 of the Decision that ANC, a wholly-owned subsidiary which, at the material time, controlled Glucona jointly with Avebe, is partly responsible for the infringements for which Glucona has been held liable.

75 Akzo states, however, that in recitals 296 to 310 of the Decision, the Commission found incorrectly that, for Glucona's operations, ANC had been guided by Akzo's instructions in its actions, to the point where Akzo could be held liable in its own name for the infringements allegedly committed by Glucona.

76 Akzo observes that, in recital 310 of the Decision, the Commission, in the main, based its finding that Akzo could be held liable for Glucona's actions on the assumption that, because ANC was a wholly-owned subsidiary of Akzo, ANC had carried out, in all material respects, the instructions given to it by its parent company, and relied in that regard on the judgment of the Court of Justice in Case 107/82 *AEG* v *Commission* [1983] ECR 3151). Akzo observes next that it was only secondarily ('furthermore' in recital 310 of the Decision) that the Commission took into account the fact that at least two of ANC's representatives in Glucona had played an active role in the cartel, in particular through their participation in multilateral meetings, and that they had held simultaneously the positions of Vice-President and General Manager of Akzo.

77 Akzo acknowledges that, in the judgment in Case C-286/98 P *Stora Kopparbergs Bergslags* v *Commission* [2000] ECR I-9925, the Court of Justice held, in paragraph 29, that the Commission could reasonably assume that a wholly-owned subsidiary would carry out the instructions of its parent company and that in that case it was for the undertaking concerned to prove the incorrectness of that assumption.

78 Akzo nevertheless expresses doubts as to whether that assumption should hold not only in cases where there is a direct relationship between the parent company and its subsidiary, but also in cases such as the present one, where that relationship is much more distant. First, it observes that, in the present case, ANC is the subsidiary of the national holding company Akzo Nobel Nederland BV ('ANN'), which in turn is a subsidiary of the head holding company. Second, it states that both Akzo and ANN were holding companies which did not themselves carry on any commercial activities by either manufacturing or distributing products. Third, it states that it was only through other companies that Akzo held an (indirect) 50% share in Glucona, over which it thus had no direct control.

79 That being so, before the Court, Akzo has emphasised a certain number of facts. It claims that, on the basis thereof, it is in any event able to rebut the abovementioned

assumption and prove that, despite the fact that ANC was a wholly-owned subsidiary of Akzo, it was quite unrealistic to assume that Akzo could determine or even only influence Glucona's strategic and commercial conduct and that, moreover, that had not occurred.

80 The Commission contends that the plea in law should be rejected.

— Findings of the Court

81 Akzo does not deny that the infringement committed by Glucona could be attributed to ANC. Accordingly, it is necessary to consider only whether Akzo could be held liable for acts attributed to ANC, its wholly-owned subsidiary.

82 It should be borne in mind that the fact that a subsidiary has separate legal personality is not sufficient to exclude the possibility of its conduct being imputed to the parent company, especially where the subsidiary does not independently decide its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company (see *Stora Kopparbergs Bergslags* v *Commission* paragraph 77 above, paragraph 26, and case-law cited).

83 Moreover, as Akzo itself acknowledges, the case-law of the Court of Justice and the Court of First Instance is to the effect that the Commission may, in that context, reasonably assume that a wholly-owned subsidiary carries out, in all material respects, the instructions given to it by its parent company and that that assumption implies that the Commission is not required to check whether the parent company has actually exercised that power. In such a situation, when, in the statement of objections, the Commission relies on that assumption and declares its intention to

hold a parent company liable for an infringement committed by its wholly-owned subsidiary, it is for the parties concerned, when they consider that, despite the shareholdings at issue, the subsidiary determines its conduct independently on the market, to rebut that assumption by providing the Commission with sufficient evidence during the administrative procedure (see, to that effect, Case T-354/94 *Stora Kopparbergs Bergslags* v *Commission* [1998] ECR II-2111, paragraph 80, upheld on this point by *Stora Kopparbergs Bergslags* v *Commission*, paragraph 77 above, paragraphs 27 to 29; *AEG* v *Commission*, paragraph 76 above, paragraph 50, Case T-65/89 *BPB Industries and British Gypsum* v *Commission* [1993] ECR II-389, paragraph 149).

84 In the present case, it is common ground that, during the period covered by the Decision, ANC was a wholly-owned subsidiary of Akzo.

85 Moreover, as regards the conduct of the administrative procedure, the Court notes that, as observed by the Commission in recital 300 of the Decision, it had, in paragraphs 324 to 330 of the statement of objections, analysed the links between Glucona and its parent companies and declared its intention to hold ANC and Avebe jointly liable for the infringement. As to the links between ANC and Akzo, the Commission considered that, since ANC was a wholly-owned subsidiary of Akzo, the statement of objections should be addressed to Akzo. As noted by the Commission in recital 301 of the Decision, Akzo, in its reply to the statement of objections, explicitly confirmed that it should be held jointly liable with Avebe for the infringement.

86 In such a situation, Akzo cannot criticise the Commission for having held it liable, in its own name, for the infringements committed by its wholly-owned subsidiary, ANC, as co-owner of Glucona.

87 Akzo is incorrect in maintaining, in that context, that the purpose of the statement of objections is primarily to restrict the scope of the infringements alleged by the Commission to the factors which are expressly referred to therein, so as to enable the undertaking concerned to defend itself by putting forward its arguments on all of those factors during the administrative procedure and to enable the Commission to take account of those arguments in its decision-making process, but that the statement of objections does not concern the issue of identification of the undertaking (or undertakings) which might be held liable for such an infringement. The statement of objections addressed by the Commission to an undertaking against which it is contemplating imposing a fine for infringement of the competition rules must contain the essential findings against that undertaking, such as the acts complained of, their classification and the evidence on which the Commission relies, in order to enable that undertaking to put forward its arguments effectively during the administrative procedure opened concerning it (see, to that effect, Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraph 26; Case C-62/86 *AKZO* v *Commission* [1991] ECR I-3359, paragraph 29; and Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307, paragraph 135). Likewise, according to settled case-law, given its importance, the statement of objections must specify unequivocally the legal person on whom fines may be imposed and be addressed to that person (see Joined Cases C-395/96 P and C-396/96 P *Compagnie maritime belge transports and Others* v *Commission* [2000] ECR I-1365, paragraphs 143 and 146, and Case C-176/99 P *ARBED* v *Commission* [2003] ECR I-10687, paragraph 21).

88 Accordingly, on the basis of the information contained in the statement of objections, Akzo could not be unaware that it was likely to be the addressee of a final decision of the Commission. In such a situation, the onus was on it to react during the administrative procedure, or be faced with the prospect of no longer being able to do so, by demonstrating that, despite the factors relied on by the Commission, it could not be held liable for the infringement committed by Glucona.

89 Accordingly, in keeping with the principles and rules governing the administrative procedure, in particular the requirement that the statement of objections have

practical effect, it is not necessary to consider whether the different matters relied on for the first time before the Court are well founded, namely those by which Akzo seeks to prove that, despite the fact that ANC was a wholly-owned subsidiary of Akzo, it had not been able to determine or even only influence Glucona's strategic and commercial conduct.

90 Accordingly, the plea alleging infringement of Article 81 EC must be rejected.

Infringement of the obligation to state reasons

91 Akzo claims that the Decision does not contain a sufficient statement of reasons because the Commission merely made an apodictic and vague assertion that ANC was a wholly-owned subsidiary of Akzo and that it was therefore to be assumed that ANC had carried out, in all material respects, the instructions given to it by its parent company.

92 The Commission contends that did provide sufficient reasons on this point in the Decision.

93 The Court notes that, where, as in the present case, a decision taken in application of Article 81 EC relates to several addressees and raises a problem with regard to liability for the infringement, it must include an adequate statement of reasons with respect to each of the addressees, in particular those of them who according to the decision must bear the liability for the infringement (Case T-38/92 *AWS Benelux* v *Commission* [1994] ECR II-211, paragraph 26).

94 In the present case, in recitals 278 to 284 of the Decision, the Commission, referring to the case-law of the Court of Justice and the Court of First Instance, summarised the principles it intended to apply to identify the addressees of the Decision. Regarding specifically the issue of holding Akzo liable for the conduct of ANC, which, as the Commission stated in recital 310 of the Decision, was 'a wholly owned subsidiary of the group Akzo Nobel NV', the Commission referred again in recitals 280, 281 and 310 of the Decision to the case-law cited in paragraph 83 above and inferred therefrom, in recital 310 of the Decision, that it had to be assumed that ANC had carried out, in all material respects, the instructions given to it by its parent company. Moreover, in recitals 300 and 301 of the Decision, the Commission noted that, in the statement of objections, it had declared its intention to consider Akzo and Avebe as being jointly liable for the whole duration of the infringement and that Akzo had not contested that viewpoint.

95 It follows that, far from merely making an apodictic and vague assertion, as Akzo maintains, the Commission gave a specific factual and legal statement of the reasons why it had decided to hold Akzo liable for ANC's conduct.

96 Moreover, according to settled case-law, the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to the context in which the act was adopted (see, inter alia, *Commission* v *Sytraval and Brink's France*, paragraph 45 above, paragraph 63, and *Germany* v *Commission*, paragraph 45 above, paragraph 87). The reasons in the Decision relating to Akzo's liability for ANC's conduct are also clarified in the statement of objections, which is part of the context surrounding the Decision and from which the applicant was to derive information on the Commission's intention to hold it liable for ANC's conduct. Furthermore, because Akzo itself stated explicitly in its reply to the statement of objections that it should be held jointly liable with Avebe for the infringement (see paragraph 85 above), the Commission could reasonably assume that Akzo was sufficiently aware of the content of the Decision on this particular point.

97 Accordingly, the plea alleging infringement of the obligation to state reasons must be rejected.

The application of a multiplier of 2.5

98 Akzo puts forward pleas alleging infringement, first, of Article 15(2) of Regulation No 17 and, second, of the obligation to state reasons.

Infringement of Article 15(2) of Regulation No 17

— Arguments of the parties

99 First, Akzo claims that, by applying a multiplier of 2.5 to the starting amount in order to take account of its size and overall resources, the Commission infringed Article 15(2) of Regulation No 17 in determining the fines not by reference to the gravity and duration of the infringement, as provided for by that provision, but reference to the type of undertaking having committed that infringement.

100 Akzo contends that, although the Court of Justice and the Court of First Instance have held that, in order to assess the gravity of the infringement, the Commission must take account of many factors, including the need for the fine to have a deterrent effect, the fact remains that that reasoning relates directly to the criterion of the gravity of the infringement and not the type of undertaking concerned. It

states that the latter criterion has no basis in Article 15(2) of Regulation No 17 and that, in imposing a ceiling of 10% of turnover on the ultimate fine, the Council has already taken account of the different impact of fines on undertakings owing to their size.

101 Referring to *LR AF 1998* v *Commission*, paragraph 57 above (paragraph 280), Akzo adds that, in fixing the multiplier on the basis of a single factor, namely the turnover of the Akzo Nobel group, the Commission accorded disproportionate weight to that factor in comparison with the importance it gave to other factors on the basis of which it assessed the gravity of the infringement.

102 Akzo further claims that, if the last three paragraphs of Section A 'Gravity' of the Guidelines are to be interpreted as allowing the Commission to apply a multiplier such as the one used in the present case, then they infringe Article 15(2) of Regulation No 17 and cannot be used against it.

103 Second, Akzo claims that the Commission infringed Article 15(2) of Regulation No 17 in applying a multiplier of 2.5 to the starting amount of the fine imposed on it, a multiplier which was based on the size of the Akzo Nobel group as a whole.

104 Akzo observes that, under Article 15(2) of Regulation No 17, the Commission is to determine the amount by reference to the gravity and duration of the infringement and not by reference to the economic impact thereof.

105 Akzo acknowledges that, in *Musique diffusion française and Others* v *Commission*, paragraph 37 above, the Court of Justice held that the overall turnover of the undertakings concerned gives an indication, albeit approximate and imperfect, of the size of the undertakings and of their economic power.

106 It argues, however, first of all, that the concept of 'undertakings' as used by the Court of Justice in that judgment cannot easily be applied to the present case.

107 Second, Akzo contends that, in *Musique diffusion française and Others* v *Commission*, paragraph 37 above, the Court of Justice stated that it was necessary to take account also of the proportion of that turnover accounted for by the goods in respect of which the infringement was committed, which gives an indication of the scale of the infringement. In the Decision, the Commission disregarded the fact that that criterion was of more direct interest than the one referred to in paragraph 104 above, in that it relates directly to the criteria laid down in Article 15(2) of Regulation No 17. Those considerations are all the more important where, as in the present case, the proportion of that turnover accounted for by the goods in respect of which the infringement was committed in relation to the overall turnover is 0.05%.

108 As regards the judgment of the Court of First Instance in Case T-31/99 *ABB Asea Brown Boveri* v *Commission* [2002] ECR II-1881), Akzo observes that the multiplier applied in this case was not determined on the basis of the group's overall turnover. Paragraphs 164 and 165 of that judgment are to the effect, however, that the multiplier must be based on the size of the undertaking which has committed the alleged infringement as found by the Commission. It adds that, in that case, the Court held, in response to the argument put forward by ABB that the Commission should have calculated the fine (and applied the multiplier) solely on the basis of the turnover achieved by the group's district heating division, that the Commission seemed to have calculated the fine correctly, basing the multiplier on the overall size

of the ABB group and not only on that of the 'undertaking' allegedly constituted by ABB's district heating division, on the ground that the Commission had, on the basis of a number of factors, correctly found that the ABB group should be held liable for the infringement (paragraph 163 of that judgment).

109 The Commission contends that the plea in law should be rejected.

— Findings of the Court

110 First of all, regarding Akzo's argument that the Commission fixed the fine by reference to the type of undertaking which committed the infringement, the Court finds that, in recitals 334 to 371 of the Decision, the Commission, in a first stage of its analysis, found that the undertakings concerned had committed a very serious infringement, in the light of its nature, its actual impact on the sodium gluconate market in the EEA and the scope of the geographic market concerned, an infringement which had affected the EEA as a whole.

111 Next, the Commission applied differential treatment to the undertakings concerned so as to take account of the specific weight of their conduct on competition, basing itself on the turnover achieved by the undertakings concerned in worldwide sodium gluconate sales during the last year of the infringement, namely 1995 (see, inter alia, recital 381 of the Decision). Therefore, and contrary to Akzo's assertion, during this stage of fixing the amount of the fine by reference to the gravity of the infringement, the Commission did not take account of the type of undertaking which committed the infringement, but rather of the importance of those undertakings on the specific market.

112 It was only at the final stage of calculating the fine by reference to the gravity of the infringement that, in keeping with the possible differentiation provided for by the Guidelines, the Commission took account of a certain typology of the undertakings in question. That typology flows directly from taking account of the size and resources of the undertakings in question, which are criteria which must be taken into account in order to ensure that fines have a deterrent effect. In fact, the Commission did, at that stage, take account of the size and overall resources of the groups of undertakings to which the members of the cartel belonged by applying a multiplier of 2.5 to the starting amount used for some of them, including Akzo (recital 388 of the Decision).

113 In so doing, contrary to Akzo's assertions, it did not determine the fine by reference to the type of undertaking which committed the infringement, but by reference to the gravity and duration of the infringement, even though, when assessing the gravity of the infringement, it took account of the size and overall resources of the undertakings concerned in order to ensure that the fines to be imposed would have a deterrent effect. Accordingly, Akzo's line of argument is inaccurate.

114 Second, as to Akzo's criticism of the Commission for having committed errors of law when taking account of the size and overall resources of the undertakings concerned, the Court notes that Akzo itself acknowledges that, in order to assess the gravity of an infringement, the Commission must take account of a large number of factors, including the requirement that the fine must have a deterrent effect. The Commission is, moreover, fully entitled to fix the amount of the fine by reference to the specific characteristics of the undertaking which is liable for the infringement, in order to achieve that deterrent effect.

115 In fixing the starting amount of the fine at a level higher for those undertakings holding a relatively larger market share than others on the relevant market, the Commission took account of the undertaking's specific responsibility, in the light of the requirement of maintaining free competition and found that it was an individual

factor from which an assessment could be made of the gravity of the conduct of the undertakings concerned. That factor reflects the higher level of responsibility, in a cartel situation, for undertakings which hold a relatively larger share of the relevant market in terms of the damage caused to competition.

116 In that context, moreover, the Commission could also reasonably take account of legal and economic knowledge and infrastructures in very large undertakings such as Akzo which enable them more easily to recognise that their conduct constitutes an infringement and be aware of the consequences stemming from it under competition law.

117 As regards the application of a multiplier by reference to the size and overall resources of the undertakings concerned, the Court notes that, according to settled case-law, where the Commission calculates the fine of an undertaking it may take account, amongst other things, of its size and its economic strength (*Musique diffusion française and Others* v *Commission*, paragraph 37 above, paragraph 120, and Case T-48/98 *Acerinox* v *Commission* [2001] ECR II-3859, paragraphs 89 and 90). In addition, concerning measurement of the financial capacity of members of a cartel, the case-law has recognised the relevance of overall turnover (*Sarrió* v *Commission*, paragraph 68 above, paragraphs 85 and 86). Accordingly, the Commission was entitled to take account of the economic strength of the undertaking concerned.

118 Accordingly, the Commission was entitled to take Akzo's overall turnover as a basis to fix the fine at a level which would have a sufficiently deterrent effect and would take account of the importance of the infrastructures, in terms of legal and economic expertise, which groups of undertakings of such a size have at their disposal. Akzo's line of argument is therefore incorrect in law.

119 Third, as regards Akzo's assertion that the Guidelines are unlawful in so far as they allow the Commission to apply a multiplier such as that used in the present case, it should be borne in mind that the Court has already held that, according to the method laid down in the Guidelines, the calculation of the amount of the fines is carried out by reference to the two criteria referred to in Article 15(2) of Regulation No 17, namely the gravity and the duration of the infringement, whilst respecting the maximum limit in relation to the turnover of each undertaking established by the same provision and that, consequently, the Guidelines do not go beyond the legal framework for fines set out in that provision, as interpreted in the case-law of the Court of First Instance (*LR AF 1998* v *Commission*, paragraph 57 above, paragraphs 219 to 232; Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2003] ECR II-2597, paragraphs 39 to 52, and *TACA*, paragraph 57 above, paragraph 1527). Akzo has not put forward any new factors, other than those already rejected in that case-law (see the abovementioned paragraphs in those judgments).

120 Fourth, as to Akzo's assertion that, in any event, when applying a multiplier such as that used in the present case, the Commission could not take account of the size and overall resources of the Akzo Nobel NV group, to which ANC, the undertaking which committed the infringement, belonged, but at most the size of the turnover achieved by the sale of the product in respect of which the infringement was committed, Akzo disregards the fact that the Commission applied that multiplier in order to ensure that the fines would have a deterrent effect. In considering that, in the present case, it was only by taking the size of the resources of the group of undertakings as a whole as a basis that the objective of having deterrent fines would be achieved, the Commission did not commit an error of assessment giving rise to infringement of Article 15(2) of Regulation No 17.

121 In the light of all the foregoing, the plea alleging infringement of Article 15(2) of Regulation No 17 must be dismissed as unfounded.

Infringement of the obligation to state reasons

122 Akzo criticises the Commission for having failed to state why it applied a multiplier of 2.5 to the basic amount of the fine imposed on it, why that multiplier was identical to the one applied to ADM and why it was based on its overall turnover and not on 50% of Glucona's annual turnover. In that context, Akzo observes that, in the case giving rise to the judgment in *ABB Asea Brown Boveri* v *Commission*, paragraph 108 above, the Commission had applied the same multiplier as that used in the present case but had provided detailed reasons for doing so in that case.

123 The Commission contends that the plea in law should be rejected.

124 The Court observes, with reference to the case-law cited in paragraph 68 above, that, in recitals 389 to 392 of the Decision, the Commission explained on the basis of which factors it had calculated the gravity and the duration of the infringement, explanations which, moreover, allowed Akzo to put forward a number of complaints alleging the unlawfulness of the substance of those factors and allowed the Community judicature to exercise its power of review.

125 Regarding the importance of the multiplier applied to Akzo, the Commission could merely refer to the size of that undertaking, as indicated approximately by the overall turnover achieved by it, and point to the need to ensure that the fine would have a deterrent effect. There was no obligation on it, as part of its duty to state reasons, to indicate the figures relating to the method of calculation underlying that choice (see, to that effect, *Sarrió* v *Commission*, paragraph 68 above, paragraph 80).

126 Likewise, Akzo is incorrect in criticising the Commission for having failed to state why the multiplier applied to the starting amount of the fine imposed on it was identical to the one levied on ADM. The Commission was not required to be more specific about the size of that multiplier by reflecting precisely the relationship between the different groups of undertakings to which the members of the cartel belonged. Rather, as is apparent from recitals 386 to 388 of the Decision, the objective of that multiplier was to fix the fine at a sufficiently high level that it would have a deterrent effect and to take account of the importance of the infrastructures, in terms of legal and economic expertise, which groups of undertakings of such a size have at their disposal. In providing that reasoning, the Commission stated sufficiently that it was on the basis of the size and resources of the groups of undertakings and not the undertakings belonging to those groups that it intended to assess whether the fine would have a deterrent effect.

127 It is, moreover, clear that the application of a multiplier is an application of the differential treatment provided for by the Guidelines. The Decision was thus adopted in a context with which Akzo was quite familiar.

128 Accordingly, the Court finds that, in the present case, the Commission provided sufficient reasons and it is not necessary to consider whether, as Akzo maintains, in other cases the Commission provided more detailed reasons as to the choice of multiplier applied.

129 Accordingly, the plea alleging infringement of the obligation to state reasons must be rejected.

130 Since none of the pleas raised against the legality of the Decision has been upheld, the fine imposed on the applicant in the Decision should not be reduced under the unlimited jurisdiction enjoyed by the Court of First Instance and the action must therefore be dismissed in its entirety.

Costs

131 Under Article 87(2) 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. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the defendant.

132 Since the action has been dismissed in its entirety (see paragraph 130 above), the head of claim put forward by Akzo asking the Court to order the Commission to pay interest and the costs of the bank guarantee (see paragraph 27 above) must be rejected as irrelevant.

133 In any event, it should be borne in mind that the expenses incurred by an undertaking in providing and maintaining a bank guarantee in order to avoid the enforcement of a Commission decision are not expenses incurred for the purpose of the proceedings within the meaning of Article 91(b) of the Rules of Procedure. Similarly, an undertaking's claim that the Commission should be ordered to reimburse the expenses incurred by it during the administrative procedure in competition proceedings must be dismissed. Although under Article 91 of those Rules of Procedure 'the following shall be regarded as recoverable costs ... expenses necessarily incurred by the parties for the purpose of the proceedings', that provision, in referring to 'proceedings', refers only to proceedings before the Court of First Instance and does not include any prior stage (Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraphs 33 and 34, and case-law cited).

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Akzo Nobel NV to pay the costs.**

Azizi Jaeger Dehousse

Delivered in open court in Luxembourg on 27 September 2006.

E. Coulon J. Azizi

Registrar President

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