JUDGMENT OF THE COURT (Fifth Chamber)

16 November 2000 *

In Case C-297/98 P,

SCA Holding Ltd, established in Aylesford (United Kingdom), represented by J. Pheasant and N. Bromfield, solicitors, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 11 Rue Goethe,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 14 May 1998 in Case T-327/94 *SCA Holding* v *Commission* [1998] ECR II-1373, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall, Legal Adviser, and R. Lyal, of its Legal Service, acting as Agents, with an address for

* Language of the case: English.

service in Luxembourg at the Chambers of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, P. Jann and L. Sevón, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 May 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 29 July 1998, SCA Holding Ltd brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 14 May 1998 in Case T-327/94 *SCA Holding* v *Commission* [1998] ECR II-1373 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed its application for annulment of Commission Decision 94/601/EC of 13 July 1994 relating to a proceeding under Article 85 of the EC Treaty (IV/C/33.833 — Cartonboard) (OJ 1994 L 243, p. 1, hereinafter 'the Decision').

Facts

2 In the Decision the Commission imposed fines on 19 producers supplying cartonboard in the Community on the ground that they had infringed Article 85(1) of the EC Treaty (now Article 81(1) EC).

3 According to the contested judgment, the Decision followed informal complaints lodged in 1990 by the British Printing Industries Federation, a trade organisation representing the majority of printed carton producers in the United Kingdom, and by the Fédération Française du Cartonnage, and investigations which Commission officials, acting pursuant to Article 14(3) of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87) had carried out in April 1991, without prior notice, at the premises of a number of undertakings and trade associations operating in the cartonboard sector.

4 The evidence obtained from those investigations and following requests for information and documents led the Commission to conclude that from mid-1986 until at least (in most cases) April 1991 the undertakings concerned had participated in an infringement of Article 85(1) of the Treaty. The Commission therefore decided to initiate a proceeding under Article 85 of the Treaty and, by letter of 21 December 1992, served a statement of objections on each of the undertakings concerned, all of which submitted written replies. Nine undertakings requested an oral hearing.

5 At the end of that procedure the Commission adopted the Decision, which includes the following provisions:

'*Article 1*

Buchmann GmbH, Cascades SA, Enso-Gutzeit Oy, Europa Carton AG, Finnboard — the Finnish Board Mills Association, Fiskeby Board AB, Gruber & Weber GmbH & Co. KG, Kartonfabriek "de Eendracht" NV (trading as BPB de Eendracht NV), NV Koninklijke KNP BT NV (formerly Koninklijke Nederlandse Papierfabrieken NV), Laakmann Karton GmbH & Co. KG, Mo Och Domsjö AB (MoDo), Mayr-Melnhof Gesellschaft mbH, Papeteries de Lancey SA, Rena Kartonfabrik A/S, Sarrió SpA, SCA Holding Ltd (formerly Reed Paper & Board (UK) Ltd), Stora Kopparbergs Bergslags AB, Enso Española SA (formerly Tampella Española SA) and Moritz J. Weig GmbH & Co. KG have infringed Article 85(1) of the EC Treaty by participating,

— in the case of Buchmann and Rena from about March 1988 until at least the end of 1990,

— in the case of Enso Española, from at least March 1988 until at least the end of April 1991,

— in the case of Gruber & Weber from at least 1988 until late 1990,

— in the other cases, from mid-1986 until at least April 1991,

in an agreement and concerted practice originating in mid-1986 whereby the suppliers of cartonboard in the Community

— met regularly in a series of secret and institutionalised meetings to discuss and agree a common industry plan to restrict competition,

— agreed regular price increases for each grade of the product in each national currency,

— planned and implemented simultaneous and uniform price increases throughout the Community,

— reached an understanding on maintaining the market shares of the major producers at constant levels, subject to modification from time to time,

— increasingly from early 1990, took concerted measures to control the supply of the product in the Community in order to ensure the implementation of the said concerted price rises,

— exchanged commercial information on deliveries, prices, plant standstills, order backlogs and machine utilisation rates in support of the above measures.

...

Article 3

The following fines are hereby imposed on the undertakings named herein in respect of the infringement found in Article 1:

...

(xvi) SCA Holding Limited, a fine of ECU 2 200 000;

...'

6 The contested judgment also sets out the following facts:

'13 According to the Decision, the infringement took place within a body known as the "Product Group Paperboard" (hereinafter "the PG Paperboard"), which comprised several groups or committees.

14 In mid-1986 a group entitled the "Presidents Working Group" (hereinafter "the PWG") was established within that body. This group brought together senior representatives of the main suppliers of cartonboard in the Community (some eight suppliers).

15 The PWG's activities consisted, in particular, in discussion and collaboration regarding markets, market shares, prices and capacities. In particular, it took broad decisions on the timing and level of price increases to be introduced by producers.

16 The PWG reported to the "President Conference" (hereinafter "the PC"), in which almost all the managing directors of the undertakings in question participated (more or less regularly). The PC met twice each year during the period in question.

17 In late 1987 the Joint Marketing Committee (hereinafter "the JMC") was set up. Its main task was, on the one hand, to determine whether, and if so how, price increases could be put into effect and, on the other, to prescribe the methods of implementation for the price initiatives decided by the PWG, country-by-country and for the major customers, in order to achieve a system of equivalent prices in Europe.

18 Lastly, the Economic Committee discussed, *inter alia*, price movements in national markets and order backlogs, and reported its findings to the JMC or, until the end of 1987, to the Marketing Committee, the predecessor of the JMC. The Economic Committee was made up of marketing managers of most of the undertakings in question and met several times a year.

19 According to the Decision, the Commission also took the view that the activities of the PG Paperboard were supported by an information exchange organised by Fides, a secretarial company, whose registered office is in Zurich, Switzerland. The Decision states that most of the members of the PG Paperboard sent periodic reports on orders, production, sales and capacity utilisation to Fides. Under the Fides system, those reports were collated and the aggregated data were sent to the participants.

20 Throughout the period of the infringement Reed Paper & Board Ltd ("Reed P&B") owned Colthrop Mill ("Colthrop").

21 Until July 1988 Reed P&B was a subsidiary of Reed International plc. In July 1988, a management buy-out of several companies of the Reed International group resulted in the formation of Reedpack Ltd ("Reedpack") and the acquisition of Reed P&B by Reedpack.

22 In July 1990, the Swedish group, Svenska Cellulosa Aktiebolag ("SCA") acquired Reedpack and, consequently, Reed P&B and several factories, including Colthrop. Reed P&B first changed its name on 1 February 1991 to SCA Aylesford Ltd ("SCA Aylesford") and then on 4 February 1992 to SCA Holding Ltd ("SCA Holding").

23 In May 1991 Colthrop was sold to the Field Group Ltd, which resold it in October 1991 to Mayr-Melnhof AG. At the date of the latter transaction, Colthrop had already been incorporated as a limited company under the name Colthrop Board Mill Ltd.

24 According to the Decision, Reed P&B participated in the infringement in question, in particular by participating in certain meetings of the JMC and of the PC. Moreover, as SCA Holding is merely another name for SCA Aylesford and Reed P&B and they are therefore merely one and the same entity, the Commission considered that the Decision should be addressed to SCA Holding (point 155 et seq. of the Decision).'

7 Sixteen of the eighteen other undertakings held to be responsible for the infringement and four Finnish undertakings, members of the trade association Finnboard, and as such held jointly and severally liable for payment of the fine imposed on Finnboard, also brought actions against the Decision (Cases T-295/94, T-301/94, T-304/94, T-308/94 to T-311/94, T-317/94, T-319/94, T-334/94, T-337/94, T-338/94, T-347/94, T-348/94, T-352/94 and T-354/94, and Joined Cases T-339/94 to T-342/94).

The contested judgment

8 According to the contested judgment, the appellant sought annulment of Articles 1 and 3 of the Decision in so far as it was concerned and, in the alternative, reduction of the fine imposed on it by the Decision.

The application for annulment of the Decision

9 The appellant relied on three pleas in law in support of its action for annulment.

10 Those pleas were rejected by the Court of First Instance. Having regard to the pleas put forward by the appellant in support of its appeal, only the passages of the contested judgment relevant to the complaint that SCA Holding was not the correct addressee of the Decision and that it should not have been held responsible for Colthrop's conduct will be set out below.

11 The Court of First Instance stated as follows in that regard:

'61 It is common ground that Colthrop was the factory at which cartonboard was manufactured and that throughout the full period of the infringement that factory was owned by Reed P&B, then by SCA Aylesford Ltd and lastly by SCA Holding.

62 Reed P&B, SCA Aylesford Ltd and SCA Holding (the applicant) are, however, the names successively adopted by one and the same legal person.

63 The circumstances of this case do not therefore give rise to any question of succession. The Court has held (in Case T-6/89 *Enichem Anic* v *Commission* [1991] ECR II-1623, paragraphs 236 to 238) that an undertaking's infringement must be attributed to the legal person responsible for the operation of that undertaking when the infringement was committed. While that legal person exists, responsibility for the undertaking's infringement follows that legal person, even though the assets and personnel which

contributed to the commission of the infringement have been transferred to third persons after the period of the infringement.

64 The Commission was therefore entitled to address the Decision to the legal person which was responsible for the unlawful conduct found during the period of the infringement and which still existed when the Decision was adopted.

65 Thus, even if Colthrop could be regarded as an undertaking within the meaning of Article 85 of the Treaty and on the day when the Decision was adopted it was owned by the legal person Colthrop Board Mill Ltd, the applicant's arguments would at the very most show only that the Commission had a choice as regards the addressee of the Decision. In those circumstances, the Commission's choice cannot therefore be validly called into question.

66 Furthermore, Reed P&B appeared in the list of members of the PG Paperboard.

67 According to point 143 of the Decision, the Commission, in principle, addressed the Decision to the entity named in the membership list of the PG Paperboard, except that:

"(1) where more than one company in a group participated in the infringement;

or

(2) where there is express evidence implicating the parent company of the group in the participation of the subsidiary in the cartel,

the proceedings have been addressed to the group (represented by the parent company)".

68 Since the Commission did not consider that either of the two conditions for making an exception to the principle in point 143 was satisfied, it was entitled to decide not to address the Decision to the successive parent companies of Reed P&B/SCA Aylesford/SCA Holding.

69 This plea must therefore be rejected as unfounded.'

The application for annulment or reduction of the fine

12 Before the Court of First Instance the appellant relied on five pleas in support of its application for annulment or reduction of the fine.

13 Those pleas were rejected by the Court of First Instance. Having regard to the pleas put forward in the present appeal, only the grounds of the contested judgment relating to the three following pleas will be set out below.

The plea that the Commission did not apply to SCA Holding/Colthrop the criteria adopted for fixing fines or did so in a discriminatory manner

14 Before the Court of First Instance, the appellant complained, *inter alia*, that the Commission had not reduced its fine, even though it had not contested, in its reply to the statement of objections, the essential factual allegations on which the Commission relied as against Colthrop.

15 The Court of First Instance rejected the plea on the following grounds:

'155 ... the Court observes that in its reply to the statement of objections the applicant states as follows:

> "SCA Holding is handicapped in its defence because no one at SCA has any knowledge of the activities of PG Paperboard or of the conduct outlined in the Statement [of objections]. Moreover, SCA has never been in the cartonboard business and has no knowledge of the industry. SCA Holding therefore cannot and does not take a position as to the existence or scope of the alleged infringement."

156 The Commission correctly considered that the applicant, by replying in that way, did not conduct itself in a manner which justified a reduction in the fine on grounds of cooperation during the administrative procedure. A reduction on that ground is justified only if the conduct enabled the Commission to establish an infringement more easily and, where relevant, to bring it to an end (see Case T-13/89 *ICI* v *Commission* [1992] ECR II-1021, paragraph 393).

157 An undertaking which expressly states that it is not contesting the factual allegations on which the Commission bases its objections may be regarded as having furthered the Commission's task of finding infringements of the Community competition rules and bringing them to an end. In its decisions finding infringements of those rules, the Commission is entitled to take the view that such conduct constitutes an acknowledgement of the factual allegations and thus proves that those allegations are correct. Such conduct may therefore justify a reduction in the fine.

158 The situation is different where the essential allegations made by the Commission in its statement of objections are contested by an undertaking in its reply to that statement, or where the undertaking does not reply or merely states, as the applicant did, that it is not expressing any view on the Commission's factual allegations. By adopting such an attitude during the administrative procedure the undertaking does not further the Commission's task of finding infringements of the Community competition rules and bringing them to an end.

159 Consequently, when the Commission states in the first paragraph of point 172 of the Decision that it has awarded reductions in the fines to be imposed on undertakings which did not contest the essential factual allegations upon which it relied against them, those reductions can be considered to be lawful only in so far as the undertakings concerned have expressly stated that they are not contesting those allegations.

160 Even if the Commission applied an unlawful criterion by reducing the fines imposed on undertakings which had not expressly stated that they were not contesting the factual allegations, it is necessary that respect for the principle of equal treatment be reconciled with the principle of legality, according to which a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party (see, for example, Case

134/84 *Williams* v *Court of Auditors* [1985] ECR 2225, paragraph 14). For that reason, as the applicant's argument is directed specifically at establishing its right to an unlawful reduction in the fine, the first part of the plea cannot be upheld.'

The plea alleging that, in view of the appellant's innocence and the aims of Article 15(2) of Regulation No 17, the fine imposed on it was unreasonably high in absolute terms and disproportionate

16 Before the Court of First Instance the appellant submitted that the level of the fine imposed on it (7.5% of Colthrop's total turnover on the relevant market and 9% if inter-company sales were deducted) was considerably higher than the level of fines imposed in comparable cases, taking into account the nature of the company, the size of its operations, and the extent of its involvement in the infringement. It also submitted that the fine imposed was disproportionately high in comparison with those imposed on undertakings with an appreciable turnover outside the relevant market, which was contrary to the requirements laid down by the Court of First Instance in Case T-77/92 *Parker Pen* v *Commission* [1994] ECR II-549, paragraph 94. Lastly, it submitted, referring to the arguments which it had adduced in support of its plea that it was not the correct addressee of the Decision, that in the present case the fine had been imposed on an innocent bystander, contrary to Article 15(2) of Regulation No 17.

17 In response the Court of First Instance stated as follows:

'174 The first and second parts of the plea should be considered together.

175 Under Article 15(2) of Regulation No 17, the Commission may by decision impose on undertakings fines ranging from ECU 1 000 to ECU 1 000 000, or a sum in excess thereof but not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85(1) of the Treaty. In fixing the amount of the fine, regard is to be had to both the gravity and the duration of the infringement. As is apparent from the case-law of the Court of Justice, the gravity of infringements falls to be determined by reference to numerous factors including, in particular, the specific circumstances and context of the case and the deterrent character of the fines; moreover, no binding or exhaustive list of the criteria which must be applied has been drawn up (order in Case C-137/95 P *SPO and Others* v *Commission* [1996] ECR I-1611, paragraph 54).

176 The criteria for assessing the gravity of the infringement may include the volume and value of the goods in respect of which the infringement was committed, the size and economic power of the undertaking and, consequently, the influence which it was able to exert on the market. It follows that, on the one hand, it is permissible, for the purpose of fixing the fine, to have regard both to the total turnover of the undertaking, which gives an indication, albeit approximate and imperfect, of the size of the undertaking and of its economic power, and to 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. On the other hand, it follows that it is important not to confer on one or the other of those figures an importance which is disproportionate in relation to the other factors and that the fixing of an appropriate fine might not be the result of a simple calculation based on total turnover (see Joined Cases 101/80 to 103/80 *Musique Diffusion Française and Others* v *Commission* [1983] ECR 1825, paragraphs 120 and 121).

177 In the present case, the Commission determined the general level of fines by taking into account the duration of the infringement (point 167 of the Decision) and the following considerations (point 168):

"— collusion on pricing and market sharing are by their very nature serious restrictions on competition,

— the cartel covered virtually the whole territory of the Community,

— the Community market for cartonboard is an important industrial sector worth some ECU 2 500 million each year,

— the undertakings participating in the infringement account for virtually the whole of the market,

— the cartel was operated in the form of a system of regular institutionalised meetings which set out to regulate in explicit detail the market for cartonboard in the Community,

— elaborate steps were taken to conceal the true nature and extent of the collusion (absence of any official minutes or documentation for the PWG and JMC; discouraging the taking of notes; stage-managing the timing and order in which price increases were announced so as to be able to claim they were 'following', etc.),

— the cartel was largely successful in achieving its objectives".

178 Furthermore, basic levels of 9 or 7.5% were applied in order to determine the amount of the fine to be imposed on the "ringleaders" of the cartel and on its "ordinary members" respectively....

179 It should be pointed out, first, that when assessing the general level of fines the Commission is entitled to take account of the fact that clear infringements of the Community competition rules are still relatively frequent and that, accordingly, it may raise the level of fines in order to strengthen their deterrent effect. Consequently, the fact that in the past the Commission applied fines of a certain level to certain types of infringement does not mean that it is estopped from raising that level, within the limits set out in Regulation No 17, if that is necessary in order to ensure the implementation of Community competition policy (see, *inter alia*, *Musique Diffusion Française and Others* v *Commission*, cited above, paragraphs 105 to 108, and *ICI* v *Commission*, cited above, paragraph 385).

180 Second, the Commission rightly argues that, on account of the specific circumstances of the present case, no direct comparison could be made between the general level of fines adopted in the present decision and those adopted in the Commission's previous decisions, in particular in the *Polypropylene* decision, which the Commission itself considered to be the most similar to the decision in the present case. Unlike in the *Polypropylene* decision, no general mitigating circumstance was taken into account in the present case when determining the general level of fines. Moreover, the adoption of measures to conceal the existence of the collusion shows that the undertakings concerned were fully aware of the unlawfulness of their conduct. Accordingly, the Commission was entitled to take into account those measures when assessing the gravity of the infringement, because they constitute a particularly serious aspect of the infringement distinguishing it from infringements previously found by the Commission.

181 Third, the Court notes the lengthy duration and obviousness of the infringement of Article 85(1) of the Treaty which was committed despite the warning which the Commission's previous decisions, in particular the *Polypropylene* decision, should have provided.

182 On the basis of those factors, the criteria set out in point 168 of the Decision justify the general level of fines set by the Commission.

183 In that context, the Court must also reject the applicant's argument that no account could have been taken of Colthrop's size and economic power because its total turnover in 1990 was the same as its turnover on the Community cartonboard market in that same year.

184 First, the Commission took account of the abovementioned criteria for assessing the gravity of the infringement. Second, when it assesses the gravity of an infringement, the Commission is not obliged to take into account the relationship between the total turnover of an undertaking and the turnover produced by the goods which are the subject-matter of the infringement (judgment in *Musique Diffusion Française and Others* v *Commission*, cited above, paragraph 121, and order in *SPO and Others* v *Commission*, cited above, paragraph 54).

185 Furthermore, since the turnover of the undertakings implicated in the same infringement must be taken as a basis for determining the relationship between the fines to be imposed, the Commission rightly calculated the fines for each of those undertakings by applying the relevant percentage rate of the fine to an identical reference turnover for the undertakings concerned, so that the figures obtained would be as comparable as possible.

186 The first and second parts of the plea must therefore be rejected as unfounded.

187 The third part of the plea, which is based on the proposition that the applicant is an "innocent bystander", must also be rejected. It suffices to point out that the Court has found that the Commission was entitled to address the Decision to the applicant.

188 This plea must therefore be rejected in its entirety.'

The plea alleging infringement of the duty to state reasons in regard to the fines

18 Before the Court of First Instance the appellant stated that it had become aware of certain key aspects of the reasoning and criteria applied by the Commission for the purpose of calculating the fines only through a recording of the press conference given by the Commissioner responsible for competition policy on the day on which the Decision was adopted. Although the case-law does not require the Commission to disclose the exact calculations of the fines imposed, that does not mean that its reasoning need not be transparent.

19 The Court of First Instance held as follows in that regard:

'195 It is settled law that the purpose of the obligation to give reasons for an individual decision is to enable the Community judicature to review the legality of the decision and to provide the party concerned with an adequate indication as to whether the decision is well founded or whether it may be vitiated by some defect enabling its validity to be challenged; the scope of that obligation depends on the nature of the act in question and on the context in which it was adopted (see, *inter alia*, Case T-49/95 *Van Megen Sports* v *Commission* [1996] ECR II-1799, paragraph 51).

196 As regards a decision which, as in this case, imposes fines on several undertakings for infringement of the Community competition rules, the scope of the obligation to state reasons must be assessed in the light of the fact that the gravity of infringements falls to be determined by reference to numerous factors including, in particular, the specific circumstances and context of the case and the deterrent character of the fines; moreover, no binding or exhaustive list of criteria to be applied has been drawn up (order in *SPO and Others* v *Commission*, cited above, paragraph 54).

197 Moreover, when fixing the amount of each fine, the Commission has a margin of discretion and cannot be considered to be obliged to apply a precise mathematical formula for that purpose (see, to the same effect, the judgment in Case T-150/89 *Martinelli* v *Commission* [1995] ECR II-1165, paragraph 59).

198 In the Decision, the criteria taken into account in order to determine the general level of fines and the amount of individual fines are set out in points 168 and 169 respectively. Moreover, as regards the individual fines, the Commission explains in point 170 that the undertakings which participated in the meetings of the PWG were, in principle, regarded as "ringleaders" of the cartel, whereas the other undertakings were regarded as "ordinary members". Lastly, in points 171 and 172, it states that the amounts of fines imposed on Rena and Stora must be considerably reduced in order to take account of their active cooperation with the Commission, and that eight other undertakings were also to benefit from a reduction, to a lesser extent, owing to the fact that in their replies to the statement of objections they did not contest the essential factual allegations on which the Commission based its objections.

199 As has already been observed, in the proceedings before this Court the Commission has supplied additional evidence relating to the method of calculating the fines which it applied in this case.... It explained that it had taken account of the cooperative attitude of some undertakings during the

procedure before it and that on that basis two of them had been awarded a reduction of two thirds in the amount of their fines, whilst others had received a reduction of one third.

200 Moreover, it is apparent from a table produced by the Commission containing information as to the fixing of the amount of each individual fine that, although those fines were not determined by applying the abovementioned figures alone in a strictly mathematical way, those figures were, nevertheless, systematically taken into account for the purposes of calculating the fines.

201 However, the Decision does not state that the fines were calculated on the basis of the turnover of each undertaking on the Community cartonboard market in 1990. Furthermore, the basic rates of 9 and 7.5% applied to calculate the fines imposed on the undertakings considered to be "ringleaders" and those considered to be "ordinary members" do not appear in the Decision. Nor does it set out the rates of reduction granted to Rena and Stora, on the one hand, and to eight other undertakings, on the other.

202 In the present case, first, points 169 to 172 of the Decision, interpreted in the light of the detailed statement in the Decision of the allegations of fact against each of its addressees, contain a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and duration of the infringement committed by each of the undertakings in question (see, to the same effect, Case T-2/89 *Petrofina* v *Commission* [1991] ECR II-1087, paragraph 264).

203 Second, where, as in the present case, the amount of each fine is determined on the basis of the systematic application of certain precise figures, the indication in the Decision of each of those factors would

permit undertakings better to assess whether the Commission erred when fixing the amount of the individual fine and also whether the amount of each individual fine is justified by reference to the general criteria applied. In the present case, the indication in the Decision of the factors in question, namely the reference turnover, the reference year, the basic rates adopted, and the rates of reduction in the amount of fines would not have involved any implicit disclosure of the specific turnover of the addressee undertakings, a disclosure which might have constituted an infringement of Article 214 of the Treaty. As the Commission has itself stated, the final amount of each individual fine is not the result of a strictly mathematical application of those factors.

204 The Commission also accepted at the hearing that nothing prevented it from indicating in the Decision the factors which had been systematically taken into account and which had been divulged at a press conference held on the day on which that decision was adopted. In that regard, it is settled law that the reasons for a decision must appear in the actual body of the decision and that, save in exceptional circumstances, explanations given *ex post facto* cannot be taken into account (see Case T-61/89 *Dansk Pelsdyravlerforening* v *Commission* [1992] ECR II-1931, paragraph 131, and, to the same effect, *Hilti* v *Commission*, cited above, paragraph 136).

205 Despite those findings, the reasons explaining the setting of the amount of fines stated in points 167 to 172 of the Decision are at least as detailed as those provided in the Commission's previous decisions on similar infringements. Although a plea alleging insufficient reasons concerns a matter of public interest, there had been no criticism by the Community judicature, at the moment when the Decision was adopted, as regards the Commission's practice concerning the statement of reasons for fines imposed. It was only in the judgment of 6 April 1995 in Case T-148/89 *Tréfilunion* v *Commission* [1995] ECR II-1063, paragraph 142, and in two other judgments given on the same day (T-147/89 *Société Métallurgique de Normandie* v *Commission* [1995] ECR II-1057, summary publication, and Case T-151/89 *Société des Treillis et Panneaux Soudés* v *Commission* [1995] ECR II-1191, summary publication) that this Court stressed for the first time that it is desirable for undertakings to be able to

ascertain in detail the method used for calculating the fine imposed without having to bring court proceedings against the Commission's decision in order to do so.

206 It follows that, when it finds in a decision that there has been an infringement of the competition rules and imposes fines on the undertakings participating in it, the Commission must, if it systematically took into account certain basic factors in order to fix the amount of fines, set out those factors in the body of the decision in order to enable the addressees of the decision to verify that the level of the fine is correct and to assess whether there has been any discrimination.

207 In the specific circumstances set out in paragraph 205 above, and having regard to the fact that in the procedure before the Court the Commission showed itself to be willing to supply any relevant information relating to the method of calculating the fines, the absence of specific grounds in the Decision regarding the method of calculation of the fines should not, in the present case, be regarded as constituting an infringement of the duty to state reasons such as would justify annulment in whole or in part of the fines imposed.

208 This plea cannot therefore be upheld.'

20 In conclusion, the Court of First Instance dismissed the application and ordered the appellant to pay the costs.

The appeal

21 In its appeal the appellant seeks to have the contested judgment set aside and Article 1 of the Decision annulled in so far as it is concerned and, in the alternative, cancellation or at least reduction of the fine imposed on it.

22 In support of its appeal the appellant relies on two pleas alleging that the Court of First Instance was wrong, first, to reject its arguments that it should not have been the addressee of the Decision and, second, to confirm the fine imposed on it.

The first plea

23 The first plea is in three parts alleging, first, that the Court of First Instance failed to state adequate reasons and that it erred in law in holding that there was no issue of succession in the particular circumstances; second, that it erred in law in concluding that the Commission was entitled to choose, as between entities belonging to different corporate groups, which entity should be the addressee of the Decision; and third, assuming the Commission was entitled to choose, that the Court of First Instance erred in law in holding that the Commission's choice from amongst different corporate groups, of the entity to be the addressee of the Decision, could not validly be called in question.

24 The appellant complains, in essence, that the Court of First Instance held that there was no issue of succession in the present case without determining whether Colthrop was an undertaking within the meaning of Article 85 at the time of the infringement and whether there had been functional and economic continuity between that undertaking and the entity owned by Colthrop Board Mill Ltd at

the date of the Decision. According to the appellant, the legal person which is most closely identified with the undertaking involved in the infringement should be made liable for the infringement. The reference made by the Court of First Instance, in paragraph 63 of the contested judgment, to the judgment in Case T-6/89 *Enichem Anic* v *Commission* [1991] ECR II-1623 is irrelevant because the facts in that case cannot be compared to those in the present case.

25 According to paragraph 63 of the contested judgment, which refers to the judgment in *Enichem Anic* v *Commission*, cited above, 'an undertaking's infringement must be attributed to the legal person responsible for the operation of that undertaking when the infringement was committed. While that legal person exists, responsibility for the undertaking's infringement follows that legal person, even though the assets and personnel which contributed to the commission of the infringement have been transferred to third persons after the period of the infringement'.

26 It was on those grounds that the Court of First Instance concluded, having found that Colthrop was the factory at which cartonboard was manufactured (paragraph 61) and that it was owned, throughout the period of the infringement, by the company which changed its name successively to Reed P&B, SCA Aylesford Ltd and SCA Holding (paragraph 62), that the Commission was 'entitled to address the Decision to the legal person which was responsible for the unlawful conduct found during the period of the infringement and which still existed when the Decision was adopted' (paragraph 64 of the contested judgment).

27 The reasoning of the Court of First Instance, as set out above, cannot be called in question. It falls, in principle, to the legal or natural person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, at the date of the Decision finding the infringement, the operation of the undertaking was no longer its responsibility, for example where, as in the present case, the undertaking in question acquired a separate legal personality.

28 In the present case, the Court of First Instance found that the legal person which directed the operation of Colthrop throughout the infringement still existed when the Decision was adopted, that only its name had changed on several occasions, and that that legal person was in fact the appellant. Such a finding of fact cannot be called in question in appeal proceedings.

29 It follows that the Court of First Instance did not err in finding that there was no issue of succession in the present case, such an issue presupposing, specifically, the attribution to one person of responsibility for the anti-competitive conduct of another person, which is not the case here. Nor did it err in law in holding that the appellant had to be the addressee of the Decision because it had directed Colthrop during the period of the infringement, albeit under a different name.

30 Moreover, as the Court of First Instance found in paragraph 66 of the contested judgment, a finding which lay within its exclusive competence, that conclusion is corroborated by the fact that Reed P&B, the appellant under its former name, was included in the list of members of the PG Paperboard, the body within which the cartel was organised.

31 In those circumstances, there is no need to examine the two other complaints submitted by the appellant concerning, more specifically, paragraph 65 of the contested judgment, because, even if they were well founded, they are not such as to call in question the Court of First Instance's conclusion that the anti-competitive actions of Colthrop had to be attributed to the appellant.

32 The first plea must therefore be rejected.

The second plea

33 The second plea is also in three parts. First, the Court of First Instance is alleged to have erred in law in holding that the position adopted by the appellant during the administrative procedure did not warrant a reduction of the fine. Second, it is alleged to have erred in law in holding that the Decision did not contain a defective statement of reasons which justified the annulment or reduction of the fine. Third, it is alleged to have erred in law in not taking into consideration, when reviewing the level of the fine, the fact that the Commission chose to address the Decision to the appellant rather than to other legal entities belonging to other groups of companies.

The first part of the second plea

34 In the first part of its second plea the appellant complains that the Court of First Instance held, in paragraph 156 of the contested judgment, that the position which it adopted during the administrative procedure could not be treated in the same way as that of undertakings which had not contested the facts on which the Commission had based its objections and which had had their fines reduced on that ground. It claims that the position which it adopted, namely of not commenting on the existence of the facts constituting the infringement alleged against it, was warranted by the fact that it had no information from which it could assess whether the Commission's allegations were true. By acting in this way, it nevertheless furthered the Commission's task.

35 Contrary to the Commission's submissions, this complaint is not inadmissible. Far from questioning mere findings of fact by the Court of First Instance, it disputes the legal assessment that, when considering the question of reduction of the fine, the position of an undertaking which does not contest the facts alleged against it is not to be treated in the same way as that of an undertaking which simply refrains from commenting on the reality of those facts.

36 The Court of First Instance correctly held in that regard, in paragraph 156 of the contested judgment, that a reduction in the fine on grounds of cooperation during the administrative procedure is justified only if the conduct of the undertaking in question enabled the Commission to establish the existence of an infringement more easily and, where relevant, to bring it to an end.

37 It must be held, with the Court of First Instance, that an undertaking which, as appears from paragraph 158 of the contested judgment, merely states during the administrative procedure, as did the appellant, that it is not expressing any view on the Commission's factual allegations, and thus does not acknowledge the correctness of those allegations, does not in fact further the Commission's task. Where the undertaking involved does not expressly acknowledge the facts, the Commission will have to prove those facts and the undertaking is free to put forward, at the appropriate time and in particular in the procedure before the Court, any plea in its defence which it deems appropriate.

38 The first part of the second plea must therefore be rejected.

The second part of the second plea

39 In the second part of the second plea, the appellant complains that the Court of First Instance erred in law in that it did not find that the Decision contained an inadequate statement of reasons and did not annul it on that ground, despite having found in paragraph 201 of the contested judgment that the Commission had failed to set out in the Decision the factors which it had systematically taken into account in order to set the amount of the fines.

40 The appellant adds that such information should, in accordance with settled case-law referred to by the Court of First Instance in paragraph 204 of the contested

judgment, have been set out in the actual body of the Decision and that the explanations given subsequently by the Commission to the press or during the proceedings before the Court of First Instance cannot be taken into account. Indeed, the Court of First Instance found specifically in that regard, again in paragraph 204, that the Commission had accepted at the hearing that nothing had prevented it from indicating those matters in the Decision. In those circumstances, the Court of First Instance could not take account of the fact that 'the Commission had showed itself to be willing to supply any relevant information relating to the method of calculating the fines' (paragraph 207 of the contested judgment).

41 The appellant also complains that the Court of First Instance limited the temporal scope of the interpretation, in regard to the fixing of fines, which it gave as to the requirements of Article 190 of the EC Treaty (now Article 253 EC) in its judgments in *Tréfilunion* v *Commission*, *Société Métallurgique de Normandie* v *Commission* and *Société des Treillis et Panneaux Soudés* v *Commission*, cited above (hereinafter 'the Welded Steel Mesh judgments'), referred to in paragraph 205 of the contested judgment, despite the fact that the Court of Justice has always held that the interpretation which it gives to a rule of Community law clarifies and defines the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force, save where it is provided to the contrary in the judgment giving that interpretation.

42 According to the Commission, the Court of First Instance held in paragraph 202 of the contested judgment that points 169 to 172 of the Decision contained 'a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and the duration of the infringement committed by each of the undertakings in question'.

43 Paragraphs 203 to 207 of the contested judgment are, according to the Commission, superfluous in that they refer to the consequences of the Welded Steel Mesh judgments. The Commission contends, moreover, that the appellant's reading of those judgments is incorrect. In those judgments the Court of First Instance found, as it did in the contested judgment, that the statement of reasons for the Commission's decision was adequate, while expressing the wish that there should be greater transparency as to the method of calculation adopted. At most,

the position adopted by the Court of First Instance reflects the principle of good administrative practice, in the sense that addressees of decisions should not be forced to bring proceedings before the Court of First Instance in order to ascertain all the details of the method of calculation used by the Commission. However, such considerations could not in themselves constitute a ground of annulment of the Decision.

44 Last, the Commission states that the implications to that effect of the Welded Steel Mesh judgments have recently been confirmed by the Court of First Instance. According to that Court, the information which it is desirable that the Commission should communicate to the addressee of a Decision must not be regarded as an additional statement of reasons, but solely as the translation into figures of the criteria set out in the Decision in so far as they are themselves capable of being quantified (see, in particular, Case T-151/94 *British Steel* v *Commission* [1999] ECR II-629, paragraphs 627 and 628; Joined Cases T-305/94 to 307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraphs 1180 to 1184).

45 It is necessary, first, to set out the various stages in the reasoning adopted by the Court of First Instance in response to the plea alleging infringement of the duty to state reasons in regard to the calculation of the fines.

46 The Court of First Instance first of all referred, in paragraph 195 of the contested judgment, to the settled case-law to the effect that the purpose of the obligation to give reasons for an individual decision is to enable the Community judicature to review the legality of the decision and to provide the party concerned with an adequate indication as to whether the decision is well founded or whether it may be vitiated by some defect enabling its validity to be challenged, the scope of that obligation being dependent on the nature of the act in question and on the context in which it was adopted (see, in particular, besides the case-law cited by the Court of First Instance, Case C-22/94 *Irish Farmers Association and Others* v *Ministry for Agriculture, Food and Forestry, Ireland, and the Attorney General* [1997] ECR I-1809, paragraph 39).

47 The Court of First Instance then explained in paragraph 196 of the contested judgment that as regards a decision which, as in this case, imposes fines on several undertakings for infringement of the Community competition rules, the scope of the obligation to state reasons must be assessed in the light of the fact that the gravity of the infringements depends on numerous factors including, in particular, the specific circumstances and context of the case and the deterrent character of the fines; moreover, no binding or exhaustive list of criteria to be applied has been drawn up (order in *SPO and Others* v *Commission*, cited above, paragraph 54).

48 In that regard, the Court of First Instance held in paragraph 202 of the contested judgment that:

'points 169 to 172 of the Decision, interpreted in the light of the detailed statement in the Decision of the allegations of fact against each of its addressees, contain a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and duration of the infringement committed by each of the undertakings in question'.

49 However, in paragraphs 203 to 207 of the contested judgment the Court of First Instance qualified, somewhat ambiguously, that statement in paragraph 202.

50 It is clear from paragraphs 203 and 204 of the contested judgment that the Decision does not indicate the precise figures systematically taken into account by the Commission in fixing the amount of the fines, which it could, however, have disclosed and which would have enabled the undertakings better to assess whether the Commission had erred when fixing the amount of each individual fine and whether that amount was justified by reference to the general criteria applied. The Court added, in paragraph 205, that according to the Welded Steel Mesh judgments it is desirable for undertakings to be able to ascertain in detail the method used for calculating the fine imposed without having to bring court proceedings against the Commission's decision in order to do so.

51 It concluded, in paragraph 207 of the contested judgment, that there had been an 'absence of specific grounds in the Decision regarding the method of calculation of the fines', which was justified in the specific circumstances of the case, namely the disclosure of the method of calculating the fines during the proceedings before the Court of First Instance and the novelty of the interpretation of Article 190 of the Treaty given in the Welded Steel Mesh judgments.

52 Before examining, in the light of the arguments submitted by the appellant, the correctness of the findings by the Court of First Instance regarding the consequences which disclosure of calculations during the proceedings before it and the novelty of the Welded Steel Mesh judgments may have in regard to fulfilment of the obligation to state reasons, it is necessary to determine whether fulfilment of the duty to state reasons laid down in Article 190 of the Treaty required the Commission to set out in the Decision, not only the factors which enabled it to determine the gravity and duration of the infringement, but also a more detailed explanation of the method of calculating the fines.

53 The Court of First Instance has jurisdiction in two respects over actions contesting Commission decisions imposing fines on undertakings for infringement of the competition rules.

54 First, under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) it has the task of reviewing the legality of those decisions. In that context, it must in particular review compliance with the duty to state reasons laid down in Article 190 of the Treaty, infringement of which renders a decision liable to annulment.

55 Second, the Court of First Instance has power to assess, in the context of the unlimited jurisdiction accorded to it by Article 172 of the EC Treaty (now Article 229 EC) and Article 17 of Regulation No 17, the appropriateness of the amounts of fines. That assessment may justify the production and taking into account of additional information which is not as such required, by virtue of the duty to state reasons under Article 190 of the Treaty, to be set out in the decision.

56 As regards review of compliance with the duty to state reasons, the second subparagraph of Article 15(2) of Regulation No 17 provides that '[i]n fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement'.

57 In those circumstances, in the light of the case-law referred to in paragraphs 195 and 196 of the contested judgment, the essential procedural requirement to state reasons is satisfied where the Commission indicates in its decision the factors which enabled it to determine the gravity of the infringement and its duration. If those factors are not stated, the decision is vitiated by failure to state adequate reasons.

58 The Court of First Instance correctly held in paragraph 202 of the contested judgment that the Commission had satisfied that requirement. It must be observed, as the Court of First Instance observed, that points 167 to 172 of the Decision set out the criteria used by the Commission in order to calculate the fines. First, point 167 concerns in particular the duration of the infringement. It also sets out, as does point 168, the considerations on which the Commission relied in assessing the gravity of the infringement and the general level of the fines. Point 169 contains the factors taken into account by the Commission in determining the amount to be imposed on each undertaking. Point 170 identifies the undertakings which were to be regarded as 'ringleaders' of the cartel, and which should accordingly bear special responsibility in comparison with the other undertakings. Lastly, points 171 and 172 of the Decision set out the effect on the amount of the fines of the cooperation by various manufacturers with the Commission during its investigations in order to establish the facts or when they replied to the statement of objections.

59 The fact that more specific information, such as the turnover achieved by the undertakings or the rates of reduction applied by the Commission, were communicated subsequently, at a press conference or during the proceedings before the Court of First Instance, is not such as to call in question the finding in paragraph 202 of the contested judgment. Where the author of a contested decision provides explanations to supplement a statement of reasons which is already adequate in itself, that does not go to the question whether the duty to state reasons has been complied with, though it may serve a useful purpose in

relation to review by the Community court of the adequacy of the grounds of the decision, since it enables the institution to explain the reasons underlying its decision.

60 Admittedly, the Commission cannot by a mechanical recourse to arithmetical formulae alone, divest itself of its own power of assessment. However, it may in its decision give reasons going beyond the requirements set out in paragraph 57 of this judgment, in particular by indicating the figures which, especially in regard to the desired deterrent effect, influenced the exercise of its discretion when setting the fines imposed on a number of undertakings which participated, in different degrees, in the infringement.

61 It may indeed be desirable for the Commission to make use of that possibility in order to enable undertakings to acquire a detailed knowledge of the method of calculating the fine imposed on them. More generally, such a course of action may serve to render the administrative act more transparent and facilitate the exercise by the Court of First Instance of its unlimited jurisdiction, which enables it to review not only the legality of the contested decision but also the appropriateness of the fine imposed. However, as the Commission has submitted, the availability of that possibility is not such as to alter the scope of the requirements resulting from the duty to state reasons.

62 Consequently, the Court of First Instance could not, consistently with Article 190 of the Treaty, find, as it did in paragraph 206 of the contested judgment, that 'the Commission must, if it systematically took into account certain basic factors in order to fix the amount of fines, set out those factors in the body of the decision'. Nor, without contradicting itself in the grounds of its judgment, could it, after finding in paragraph 202 of the contested judgment that the Decision contained 'a relevant and sufficient statement of the criteria taken into account in order to determine the gravity and duration of the infringement committed by each of the undertakings in question', then refer, as it did in paragraph 207 of the contested judgment, to 'the absence of specific grounds in the Decision regarding the method of calculation of the fines'.

63 However, the error of law so committed by the Court of First Instance is not such as to cause the contested judgment to be set aside, since, having regard to the considerations set out above, the Court of First Instance validly rejected, notwithstanding paragraphs 203 to 207 of the contested judgment, the plea of infringement of the duty to state reasons in regard to calculation of the fines.

64 As there was no obligation on the Commission, as part of its duty to state reasons, to indicate in the Decision the figures relating to the method of calculating the fines, there is no need to examine the various objections raised by the applicant which are based on that erroneous premiss.

65 The second part of the second plea must therefore be rejected.

The third part of the second plea

66 In the third part of the second plea the appellant complains that the Court of First Instance, when reviewing the level of the fine, did not take account of the fact that the Commission had made a choice between the legal entities belonging to various groups of companies, even assuming, which the appellant disputes, that the Commission was entitled to make such a choice.

67 The appellant states that by selecting it as addressee of the Decision rather than another legal entity the Commission chose to attribute the infringement wholly to it. That fact should, in accordance with principles of fairness and proportionality, have been taken into account when it assessed the gravity and duration of the

infringement as well as the level of the fine. The fine should have been fixed, at the very most, by reference to the period of the infringement corresponding to the period during which Colthrop was owned by the appellant.

68 It follows from paragraphs 25 to 31 of this judgment that Colthrop's anti-competitive acts could properly be attributed to the appellant because it directed, albeit under a different name, the operation of Colthrop throughout the period of the infringement. As a result, there can be no question of apportioning responsibility for the infringement between several companies and the appellant's argument is therefore irrelevant.

69 The third part of the second plea must therefore be rejected.

70 It follows that the appeal must be rejected in its entirety.

Costs

71 Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the Commission has asked for costs to be awarded against the appellant and the latter has been unsuccessful in all its pleas, the appellant must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders SCA Holding Ltd to pay the costs.**

La Pergola Wathelet Edward

Jann Sevón

Delivered in open court in Luxembourg on 16 November 2000.

R. Grass — Registrar

A. La Pergola — President of the Fifth Chamber