JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

8 July 2004 *

In Case T-50/00,

Dalmine SpA, established in Dalmine (Italy), represented by M. Siragusa and F. Moretti, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M. Erhart and A. Whelan, acting as Agents, and A. Dal Ferro, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision 2003/382/EC of 8 December 1999 relating to a procedure under Article 81 of the EC Treaty (Case IV/E-1/35.860-B seamless steel tubes) (OJ 2003 L 140, p. 1) or, alternatively, for a reduction in the amount of the fine imposed on the applicant,

* Language of the case: Italian.

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

composed of: N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 19, 20 and 21 March 2003,

gives the following

Judgment

Facts and procedure [1]

1 The present case concerns Commission Decision 2003/382/EC of 8 December 1999 relating to a proceeding under Article 81 of the EC Treaty (Case IV/E-1/35.860-B seamless steel tubes) (OJ 2003 L 140, p. 1; 'the contested decision').

...

1 — The grounds of the present judgment relating to the background to the dispute are not reproduced. They are set out at paragraphs 2 to 33 of the judgment of the Court of First Instance in Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501.

Procedure before the Court

34 By seven applications lodged at the Registry of the Court of First Instance between 28 February and 3 April 2000, Mannesmann, Corus, Dalmine, NKK, Nippon, Kawasaki and Sumitomo brought actions against the contested decision.

35 By order of 18 June 2000, the Court, after hearing the parties, decided to join the seven cases for the purposes of the oral procedure, in accordance with Article 50 of the Rules of Procedure of the Court of First Instance. Following the joinder of the cases, all the applicants were able to consult all the files relating to the present proceedings at the Court Registry. Certain measures of organisation of procedure were also adopted.

36 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure. The parties presented oral argument and answered the questions put by the Court at the hearing on 19, 20 and 21 March 2003.

Forms of order sought

37 The applicant claims that the Court should:

— annul the contested decision in whole or in part;

— in the alternative, cancel the fine imposed on it or reduce its amount;

— order the Commission to pay the costs.

38 The Commission contends that the Court should:

— dismiss the action in its entirety;

— order the applicant to pay the costs.

The claim for annulment of the contested decision

39 Dalmine stated at the hearing that, as it had received a non-confidential summary of the undisclosed sections of certain documents on the file by way of measures of organisation of procedure ordered by the Court, it abandoned its plea alleging infringement of its rights of defence on the basis of the confidentiality of those documents during the administrative procedure.

1. *The pleas alleging infringement of essential procedural requirements during the administrative procedure*

The legality of the questions put by the Commission during its investigation

Arguments of the parties

40 The applicant states that its right not to incriminate itself was infringed by the Commission's biased questions in the course of the investigation. The purpose of

those questions was to compel it to admit the existence of an infringement, which is contrary to the case-law of the Court of Justice (Case 374/87 *Orkem* v *Commission* [1989] ECR 3283, paragraphs 34 and 35). The applicant therefore claims that the contested decision should be annulled to the extent that it is based on the answers to those questions.

41 On 13 February and 22 April 1997 the Commission questioned the applicant pursuant to Article 11(5) of Regulation No 17. The Commission sought to elicit an admission from Dalmine that it was present at certain meetings between producers of steel pipes and tubes and that the purpose of those meetings was unlawful, by describing the unlawful practices in question, namely in particular the agreements to observe domestic markets and on prices, to which it had to admit to being a party. The Commission requested the applicant to refer, inter alia, to 'the decisions taken ..., the sharing keys discussed or fixed by geographic area and their period of validity, the prices discussed or fixed by geographical area and their period of validity by specifying the type thereof'. The Commission criticised Dalmine for its reluctance to answer those questions.

42 On 12 June 1997 the Commission again requested Dalmine to provide the information sought. The Commission took the view that the answers given by Dalmine were still incomplete and, on 6 October 1997, adopted a decision requiring the applicant to supply the information requested within 30 days or face a periodic penalty payment. The applicant claims that that decision, against which it brought an action (order in *Dalmine* v *Commission*, paragraph 7 above), was prejudicial to it.

43 The Commission denies that it asked questions compelling Dalmine to incriminate itself.

44 The Commission further points out that undertakings and associations of undertakings are free not to reply to questions put to them under Article 11 of Regulation No 17 (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 ('Cement')* [2000] ECR II-491, paragraph 734). It is only where an undertaking provides inaccurate information that Article 15(1)(b) of Regulation No 17 makes provision for possible penalties.

Findings of the Court

45 The present plea, like the judgment in *Orkem* v *Commission*, paragraph 40 above (paragraph 32) concerns the rights of defence of undertakings (see also *Mannesmannröhren-Werke* v *Commission*, paragraph 8 above, paragraph 63). It follows from that case-law that an undertaking in receipt of a request for information pursuant to Article 11(5) of Regulation No 17 is recognised as having a right to silence only to the extent that it is compelled to provide answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to prove, or face a periodic penalty payment (*Orkem*, paragraph 35, and *Mannesmannröhren-Werke*, paragraph 67).

46 On the other hand, it is settled case-law that undertakings are under no obligation to provide answers pursuant to that rule following a simple request for information under Article 11(1) of Regulation No 17 and they cannot therefore claim that their right not to incriminate themselves has been infringed when they voluntarily replied to such a request (see, to that effect, *Cement*, paragraph 44 above, paragraph 734).

47 In the present case, even if it were open to Dalmine in the present proceedings to put forward arguments disputing the lawfulness of the questions raised when it did

not bring an admissible application against the decision of 6 October 1997 within the period prescribed in Article 230 EC (see, on that point, the order in *Dalmine* v *Commission*, paragraph 7 above, dismissing as inadmissible Dalmine's action against the decision of 6 October 1997), it suffices to note that the contested decision can be unlawful in this regard only to the extent that the questions which were the subject of the decision of 6 October 1997 induced an admission on its part of the existence of the infringements found in the contested decision, within the meaning of *Orkem* v *Commission*, paragraph 40 above. However, whilst the Commission asked a long series of questions in its initial request of 22 April 1997, the only questions which it addressed to Dalmine in the decision of 6 October 1997 concerned the production of documents and purely objective information and therefore were not capable of inducing Dalmine to admit the existence of an infringement.

48 As for the questions asked of the Argentine companies Techint Group and Siderca, which, together with Dalmine, were threatened with periodic penalty payments on the ground that the three companies constituted a single undertaking (recital 13 and the second paragraph of Article 2 of the decision of 6 October 1997), it is true that the last indent of question 2, which was again put to those companies in the decision of 6 October 1997 and appears in an annex thereto, is similar to the last indent of questions 1.6, 1.7 and 2.3 put to Mannesmann in a decision of 15 May 1998, and that the Court, on the basis of *Orkem*, paragraph 40 above, annulled that indent in its judgment in *Mannesmannröhren-Werke* v *Commission*, paragraph 8 above.

49 However, apart from the fact that the Commission did not ask Dalmine directly, as a legal person, to supply that information, the last indent of the question merely refers to the relations between the European and Latin American producers, a part of the agreement alleged in the SO which was not analysed in the contested decision.

50 In those circumstances, it must be acknowledged that that aspect of the Commission decision of 6 October 1997 cannot have induced Dalmine to incriminate itself by

reference to the infringement constituted by the market-sharing agreement concluded between the Japanese and European producers referred to in Article 1 of the contested decision. Thus, even if the Commission did act unlawfully in that respect, that cannot have had the slightest impact on the content of the contested decision and cannot therefore render it unlawful.

51 It follows from the foregoing that the present plea must be rejected.

Consistency between the statement of objections and the contested decision as regards the evidence relied upon

Arguments of the parties

52 Dalmine states that it is incumbent on the Commission to communicate to the undertakings incriminated all documents on which it based its complaints (*XXIII*rd *Report on Competition Policy*, pp. 113 and 114). In the present case, the Commission cited, both in the SO and in the contested decision, the inculpatory documents which it did not attach to the SO.

53 The following documents were not annexed to the SO:

— a fax letter from Sumitomo dated 12 January 1990, cited in paragraph 70 of the SO and reproduced at page 4785 of the Commission's file and mentioned in recital 71 to the contested decision;

— a report by Vallourec from 1994, cited in paragraph 119 of the SO, and reproduced at page 14617 of the Commission's file and mentioned in recital 92 to the contested decision.

54 Also, the contested decision cites certain documents which, although annexed to the SO, were not referred to in the SO itself, namely the minutes of examinations of Mr Benelli, Mr Jachia and Mr Ciocca on 2, 5 and 8 June 1995, on 6 September 1995 and on 21 February 1996 (reproduced at page 8220b of the Commission's file and cited in recital 54 to the contested decision).

55 The stance thus taken by the Commission considerably complicated Dalmine's examination of the inculpatory evidence. Whilst the contested decision refers to the documents by the number under which they were registered, the SO and the file which Dalmine was able to examine at the Commission's premises were organised differently. The Commission thus irremediably prejudiced the rights of the defence, which in itself constitutes a ground for annulment of the contested decision. In the alternative, Dalmine submits that the inculpatory documents in question should be excluded from the argument, and the legality of the contested decision assessed without reference to them (Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775, paragraph 98).

56 The Commission points out that Dalmine was given the opportunity of analysing all the documents cited in the SO or its annexes on 3 March 1999 when it was given access to the file. There was thus no breach of the rights of the defence (*Cement*, paragraph 44 above, paragraph 144).

57 The Commission adds that the document reproduced at page 8220b of its administrative file is cited in paragraph 46 of the SO.

58 Lastly, documents annexed to a SO but not mentioned in it 'may be used in the [contested] decision as against the applicant if he could reasonably deduce from the SO the conclusions which the Commission intended to draw from them' (*Cement*, paragraph 44 above, paragraph 323).

Findings of the Court

59 In order to allow the undertakings and associations of undertakings in question to defend themselves effectively against the objections raised against them in the SO, the Commission has an obligation to make available to them the entire investigation file, except for documents containing business secrets of other undertakings, other confidential information and internal documents of the Commission (*Cement*, paragraph 44 above, paragraph 144).

60 However, the fact that a document is referred to in a statement of objections without being annexed thereto does not, in principle, constitute an infringement of the rights of the defence provided that the addressees have access to that document before they are required to reply to the statement of objections.

61 As regards the two documents in the present case which were cited in the SO but not annexed thereto, the Commission asserts, without being contradicted on the point by Dalmine, that Dalmine had access to those documents on 3 March 1999.

62 As for the argument that the way in which access to the file was organised in the present case made it more difficult to identify the two documents in question, that alleged difficulty did not affect Dalmine's ability to defend itself in the present case since it stated in its reply that it was able to obtain them when it had access to the Commission's file.

63 In any event, the two documents in question are relied on as much in the SO as in the contested decision to describe the general context rather than the specific nature of the infringements found in the contested decision, so that the fact that there is no reference to those documents in the contested decision has no bearing on the merits of that decision. The fax from Sumitomo of 12 January 1990 is referred to in the section describing the Europe-Japan Club, which appears in both documents and which refers to 'special markets', i.e. the markets of non-member countries. As for the Vallourec report for 1994, it is briefly mentioned in a footnote (footnote 65 in the SO and footnote 30 in the contested decision) for the purposes of establishing the fact, which Dalmine does not deny, that '[o]n 22 February 1994, Valtubes (a subsidiary of Vallourec) took control of [Corus's] Scottish plants specialising in heat processing and VAM threading and set up the company Tubular Industries Scotland Limited (TISL), the leader on the North Sea market for threaded pipes with premium or standard joints'.

64 As for the documents which, although annexed to the SO were not referred to therein, namely the minutes of the examinations of Mr Benelli, Mr Jachia and Mr Ciocca, it suffices to note that both the SO and the contested decision refer to the statements made by 'several Dalmine managers' (see paragraph 46 of the SO and recital 54 to the contested decision) and quote in full only that made by Mr Biasizzo (see paragraph 58 of the SO and recital 64 to the contested decision). Therefore the Commission referred to those documents in the SO and those references were sufficient in the present case, in the light of the Commission's subsequent use of that evidence in the contested decision, to enable Dalmine to defend itself effectively in that respect during the administrative procedure.

65 In those circumstances, the present plea must be rejected.

The admissibility of certain evidence

66 Dalmine submits that some of the evidence which the Commission uses against it in breach of its rights of defence is inadmissible. It submits that the improper use of

this evidence ought to entail the annulment of the contested decision. In the alternative, the evidence in question must be excluded from the argument and consequently the validity of the contested decision must be assessed without reference to that evidence.

The sharing key document

— Arguments of the parties

67 The applicant maintains that the sharing key document is inadmissible as evidence of the Article 1 and 2 infringements because the Commission did not disclose the identity of its author or its source. Without that information, the authenticity and probative value of this evidence must be treated with caution.

68 Moreover, recital 85 to the contested decision implies that the author of that document was not present at the meeting held in Tokyo on 5 November 1993, even though the document is relied on as evidence of the agreement to respect markets supposedly concluded on that occasion. In those circumstances, Dalmine submits that it is unable to defend itself against that document.

69 The Commission replies that identifying the person who gave it the sharing key document is not necessary to the applicant's exercise of its rights of defence.

70 The Commission also points out that it is not required to reveal the identity of its informants. It refers in this connection to point II of its Notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles [81] and [82] of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ 1997 C 23, p. 3, 'the Notice on access to the file').

71 Furthermore, a number of pieces of evidence in the file, particularly those listed in recitals 121 and 122 to the contested decision, corroborate the terms of the sharing key document.

— Findings of the Court

72 The prevailing principle of Community law is the unfettered evaluation of evidence and the sole criterion relevant in that evaluation is the reliability of the evidence (Opinion of Judge Vesterdorf, acting as Advocate General, in Case T-1/89 *Rhône-Poulenc* v *Commission* [1991] ECR II-867, II-869; see also, to that effect, Joined Cases C-310/98 and C-406/98 *Met-Trans and Sagpol* [2000] ECR I-1797, paragraph 29, and Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99 *Vela and Tecnagrind* v *Commission* [2002] ECR II-4547, paragraph 223). Moreover, it may be necessary for the Commission to protect the anonymity of its informants (see, to that effect, Case 145/83 *Adams* v *Commission* [1985] ECR 3539, paragraph 34) and that fact alone cannot require the Commission to set aside evidence in its possession.

73 Consequently, whilst Dalmine's arguments may be relevant in evaluating the reliability and, therefore, the probative value of the sharing key document, it should not be regarded as inadmissible evidence which should be removed from the file.

The minutes of the examinations of the former directors of Dalmine

— Arguments of the parties

74 Dalmine objects to the use of the statements given by some of its former managers to the Public Prosecutor of Bergamo (Italy) in connection with a criminal case.

75 First of all, it claims that the Commission seriously prejudiced its rights of defence by failing to inform it promptly that it was in possession of these confidential statements. The Commission requested those documents from the Autorità Garante della Concorrenza e del Mercato (the Italian Competition Authority) on 16 January 1996 and waited three years before sending them to Dalmine with the SO. In that it remained ignorant of the use that might be made of the documents, Dalmine considers that it was thereby prevented from defending itself.

76 Second, Dalmine complains that it was a serious breach of the rules of procedure on the Commission's part to use statements made in criminal proceedings which had no connection with the investigation for which it was responsible. The Commission is not entitled to rely on those statements in a context other than that in which they were obtained.

77 At the hearing Dalmine pointed out in that respect that according to the case-law of the Court of Justice, in particular the judgment in Case C-67/91 *Asociación Española de Banca Privada and Others ('Spanish banks')* [1992] ECR I-4785, paragraph 35 et seq.), an undertaking's right to professional secrecy and rights of defence would be infringed if a national authority were to rely, as against that

undertaking, on evidence obtained in an investigation conducted for a purpose different from that of the case in point. That principle ought to be applied by analogy to the present case, in so far as the Commission used evidence obtained in a criminal investigation at national level.

78 Third, the context in which the former managers made those statements, namely in order to defend themselves against corruption charges, undermines their probative value. In particular, since persons in that situation, unlike witnesses, are not required to tell the truth, their statements as to the existence of an illegal cartel are neither reliable nor valid.

79 The Commission rejects those allegations.

80 First of all, it points out that the way in which it obtained the minutes in question was legal. It had the agreement of the Italian Competition Authority and the express authorisation of the competent deputy public prosecutors (annex 15 to the SO, page 8220b 1, and annex 1). Dalmine puts forward no legal basis on which it would be entitled to be informed in advance of the SO that the Commission had those minutes. In any event, even if such a right did exist, its infringement would not affect the rights of defence.

81 The Commission stated at the hearing that the minutes of the statements made by the former managers of Dalmine to an Italian prosecutor were communicated to it by the Italian Competition Authority, which received them from the Public Prosecutor. The Italian authorities acted lawfully in sending those minutes and their use by the Commission was therefore not unlawful.

82 Lastly, the Commission submits that the minutes in question contain indications that, taken together with information obtained from other sources, appear to be conclusive.

— Findings of the Court

83 It should be noted first of all that, as the Commission rightly points out, Dalmine puts forward no legal basis on which it would be entitled to be informed, before receiving the SO, of the fact that the Commission had in its possession the minutes of the statements made by some of its former managers to the Bergamo prosecutor. When the Commission requests information from undertakings which it suspects have participated in an infringement, it is under no obligation to inform them of the evidence already in its possession. The communication of that information might prejudice the effectiveness of the Commission's investigation in that it would enable the undertakings in question to identify what information was already known to the Commission and therefore what information could still be concealed from it.

84 As for Dalmine's argument alleging an infringement of the procedural rules and based on an analogy drawn with the case-law of the Court of Justice, in particular the *Spanish banks* case, paragraph 77 above, it should be noted that that case-law concerns the use by national authorities of information obtained by the Commission pursuant to Article 11 of Regulation No 17. That situation is expressly governed by Article 20 of Regulation No 17.

85 It follows from Article 20 of Regulation No 17 and also from that case-law that the lawfulness of the transmission to a national authority by the Commission of information obtained pursuant to Regulation No 17 and the lawfulness of the prohibition on the direct use of that information as evidence by that national authority are matters for Community law.

86 On the other hand, the lawfulness of the transmission to the Commission by a national prosecutor or the authorities competent in competition matters of information obtained in application of national criminal law and its subsequent use by the Commission are in principle questions covered by the national law governing the conduct of investigations by those national authorities and also, in the case of court proceedings, by the jurisdiction of the national courts. In an action brought under Article 230 EC, the Community judicature has no jurisdiction to rule on the lawfulness, as a matter of national law, of a measure adopted by a national authority (see, by analogy, Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, paragraph 9, and Case T-22/97 *Kesko* v *Commission* [1999] ECR II-3775, paragraph 83).

87 In the present case, Dalmine merely states that the purpose of the investigation during which the relevant statements were made differs from that of the Commission's investigation. It is not apparent from its arguments that the issue of the lawfulness of the transmission and use of the minutes in question at Community level was even brought before a competent Italian court. Nor, in any event, does it adduce any evidence to show that that use was contrary to the applicable provisions of Italian law.

88 Moreover, the case-law cited by Dalmine is based on the need to protect the rights of defence and professional secrecy of undertakings which supply information requested by the Commission in accordance with Article 11 of Regulation No 17 in the course of a specific investigation conducted for a purpose of which they are aware (*Spanish banks*, paragraph 77 above, paragraphs 36 to 38). In the present case, however, the minutes in question relate to statements made personally by former directors of Dalmine and not on behalf of that company.

89 The Commission's use of that evidence against Dalmine does not infringe the rights of defence or the right to professional secrecy, or even to privacy, of the authors of those statements, since they are not in issue in the present proceedings.

90 The remainder of Dalmine's arguments only affect the reliability and therefore the probative value of its managers' statements and not the admissibility of that evidence in the present proceedings. Accordingly, those arguments are not relevant in the context of the present plea.

91 In the light of the foregoing, this plea must be rejected.

The lawfulness of the Commission's investigation decision of 25 November 1994

Arguments of the parties

92 Dalmine disputes the legality of the Commission decision adopted on 25 November 1994 pursuant to Article 14(3) of Regulation No 17, of which it was not an addressee. By that decision the Commission ordered investigations to be carried out at certain undertakings in connection with the existence of cartels prohibited by Article 81 EC or Article 53 of the EEA Agreement. Some of the documents which the Commission obtained during the investigations carried out on the basis of that decision were used against Dalmine.

93 This plea has two parts.

94 First of all, Dalmine submits that, by its decision of 25 November 1994, the Commission unlawfully extended the scope of the inquiry in which the EFTA Surveillance Authority had asked it to collaborate. By letter of 17 November 1994, that authority had asked the Commission to carry out certain investigations

concerning possible infringements of Article 56 of the EEA Agreement in connection with steel tubes used in the Norwegian offshore oil industry. Dalmine emphasises that that request did not mention the existence of infringements of the Community competition rules.

95 Dalmine submits that the Commission should have confined itself to the terms of the EFTA Surveillance Authority's request until such time as the Authority had decided that there was no infringement of the EEA Agreement but that intra-Community trade might be affected. Nevertheless, the Commission decided, on 25 November 1994, to extend its remit to investigating possible infringements of Article 81 EC. Dalmine submits that that decision infringed its rights of defence, constituted a misuse of powers and breached the procedural rules set out in Article 8(3) of Protocol 23 to the EEA Agreement.

96 Second, Dalmine complains that the Commission failed to address to it its decision of 25 November 1994. In its letter of 17 November 1994, the EFTA Surveillance Authority had informed the Commission that it suspected that Dalmine was participating in a cartel on the Norwegian market, yet the Commission failed to include Dalmine among the addressees of its decision of 25 November 1994.

97 That omission prejudiced Dalmine's rights of defence. Dalmine maintains that the Commission ought to have alerted it on 25 November 1994 to the fact that its conduct was potentially unlawful. A person under suspicion is entitled to be so informed. Although the Commission carried out its first investigations at Dalmine's premises on 13 February 1997, it waited until 11 May 1999 before sending it documents which had been in its possession since December 1994.

98 Moreover, such an omission is discriminatory. Had the Commission addressed its decision of 25 November 1994 to Dalmine, Dalmine would then have been in a position to bring the conduct at issue to an end, as did the addressees of the decision.

99 The contested decision should, therefore, be annulled. In the alternative, the documents sent to the Commission by the EFTA Surveillance Authority should be withdrawn from the argument and the lawfulness of the contested decision assessed without reference to them. Last, Dalmine submits that the infringement should be regarded as having come to an end on 25 November 1994, the date on which the Commission should have informed it that it was under suspicion.

100 The Commission rejects those complaints.

101 First of all, it disputes the allegation that its powers of inquiry are circumscribed by the terms of the request made to it by the EFTA Surveillance Authority. It points out that it may commence an inquiry of its own motion. It submits that, a fortiori, it is entitled to act of its own motion where it receives information from the EFTA Surveillance Authority, which has no power to block or limit that power. When it decided to carry out an investigation, the Commission cannot have known whether its findings would be relevant for the purposes of Article 53 of the EEA Agreement or Article 81 EC, which are both applicable where a cartel between undertakings affects intra-Community trade.

102 Secondly, the Commission states that Dalmine's position differed from that of the addressees of its decision of 25 November 1994. When it became clear that Dalmine was involved in a cartel, the Commission resolved to carry out an investigation at Dalmine's premises and gave Dalmine access to its own file.

Findings of the Court

103 As regards Dalmine's argument, forming the first limb of the present plea, alleging that the Commission unlawfully extended the scope of the investigation in which the

EFTA surveillance authority requested its cooperation, it should be noted first of all that in its Opinion of 10 April 1992 (Opinion 1/92 [1992] ECR I-2821), the Court held that the provisions of the EEA Agreement submitted to it, in particular Article 56 on the sharing of competences between the EFTA Surveillance Authority and the Commission in the field of competition, were compatible with the EC Treaty.

104 In arriving at that conclusion in respect of Article 56 of the EEA Agreement, the Court held, in particular, at paragraphs 40 and 41 of that opinion that the competence of the Community to enter into international agreements in the field of competition necessarily implies that the Community may accept rules made by virtue of an agreement as to the sharing of the respective competences of the contracting parties in the field of competition, provided that those rules do not change the nature of the powers of the Community and of its institutions as conceived by the Treaty.

105 It therefore follows from Opinion 1/92 that Article 56 of the EEA Agreement does not alter the nature of the Community's powers in the field of competition as laid down by the EC Treaty.

106 In that regard it is apparent as much from a reading of Article 56 of the EEA Agreement itself as from the detailed description of that provision in the introduction to Opinion 1/92, in the section entitled 'Summary of the Commission's request', that all cases falling within the Community's jurisdiction in respect of competition before the entry into force of the EEA Agreement remain subject to the Commission's exclusive jurisdiction after its entry into force. All cases in which trade between the Member States of the European Community is affected continue to fall within the Commission's jurisdiction whether or not there is also an effect on trade between the Community and the EFTA States and/or between the EFTA States themselves.

107 In the light of the foregoing the provisions of the EEA Agreement cannot be interpreted in such a way as to deprive the Commission, even temporarily, of its power to apply Article 81 EC to an anti-competitive agreement affecting trade between the Community's Member States.

108 In the present case, in its decision of 25 November 1994 initiating an investigation in the steel pipes and tubes sector, the Commission invoked Article 81 EC and Regulation No 17 as the legal basis. In the course of that investigation it exercised the powers accorded to it under Regulation No 17 to obtain the evidence relied upon in the contested decision and, finally, it penalised the infringing agreements exclusively on the basis of Article 81 EC in Articles 1 and 2 of that decision.

109 It follows from the foregoing that the first limb of the present plea must be rejected.

110 As regards the second limb of the present plea, there is no right under Community law to be informed of the state of the administrative procedure before the statement of objections is formally issued. If Dalmine's contention were to be upheld, it would give rise to a right to be informed of an investigation in circumstances where suspicions exist in respect of an undertaking, which would seriously hamper the work of the Commission.

111 As for the argument alleging discrimination on the basis that Dalmine did not have the opportunity to put an end in good time to the infringements imputed to it, the Commission found that the infringement found in Article 1 of the contested decision only existed until 1 January 1995 (see paragraph 317 et seq. below and the judgments of 8 July 2004 in Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501, and Case T-44/00

Mannesmannröhren-Werke v *Commission* [2004] ECR II-2223). As the investigations were carried out on 1 and 2 December 1994 (see recital 1 to the contested decision), it must be found that Dalmine was only informed of the existence of the investigation one month before the end of the infringement period imputed to it or even after the infringement had ended if the infringement period is confined to that found in the abovementioned judgments.

112 In those circumstances, even if Dalmine had immediately decided to put an end to its unlawful conduct, it would have been impossible for it to put an end to the anti-competitive effects of the market-sharing agreement before the end of the infringement period and thus to reduce its duration. Accordingly, Dalmine's argument is irrelevant to the infringement found in Article 1 of the contested decision.

113 As for the infringement found in Article 2 of the contested decision, it suffices to state that Dalmine and Vallourec suspended application of their supply contract only after receiving the SO in January 1999, whereas the first investigation at Dalmine's premises was carried out in February 1997. If Dalmine did not take steps to put an end to the infringing conduct in February 1997, there is no reason to suppose that it would have done so following any investigation in December 1994.

114 It follows from the foregoing that the present plea must be rejected in its entirety.

Access to the file

Arguments of the parties

115 Dalmine maintains that it has not been given access to the whole of the file. The Commission withheld the documents transferred by the EFTA Surveillance

Authority notwithstanding Dalmine's request to see them. The Commission asserted that they were internal documents, offering no other explanation, and without reference to their content, and, in particular, without distinguishing between documents containing opinions of the EFTA Surveillance Authority and documents merely obtained by that Authority, as it should have done in accordance with footnote 19 of its Notice on access to the file. Dalmine thus claims that it may have been denied access to certain inculpatory evidence contained in the EFTA Surveillance Authority's file.

116 Moreover, Dalmine complains that the Commission failed to indicate, in respect of the entire file, which documents had been obtained during the investigations carried out pursuant to its decision of 25 November 1994, even though these might constitute inculpatory evidence (recital 53 to the contested decision).

117 The Commission's response to those complaints is that, during the administrative procedure, it is not required to communicate to the undertakings concerned documents which are not in its investigation file and which it does not intend to use against them in its final decision (*Cement*, paragraph 44 above, paragraph 383). Nor is it required to grant access to internal documents during the administrative procedure.

Findings of the Court

118 Point II A 2 of the Notice on access to the file provides as follows:

'In order to simplify administration and increase efficiency, internal documents will, in future, be placed in the file of internal documents relating to cases under investigation (non-accessible) containing all internal documents in chronological

order. Classification in this category is subject to the control of the Hearing Officer, who will if necessary certify that the papers contained therein are "internal documents".

The following, for example, will be deemed to be internal documents:

...

(c) correspondence with other public authorities concerning a case [19];

...'

119 Footnote number 19 to the Notice on access to the file, referred to by Dalmine, states:

'It is necessary to protect the confidentiality of documents obtained from public authorities; this rule applies not only to documents from competition authorities, but also to those from other public authorities, Member States or non-member countries. ... A distinction must be made, however, between the opinions or comments expressed by other public authorities, which are afforded absolute protection, and any specific documents they may have furnished, which are not always covered by the exception. ...'

120 It follows from the wording of point II A 2 of the Notice on access to the file that the control carried out by the hearing officer in order to assess that the documents in the file are internal documents is not a routine step in the administrative procedure. Since, according to the wording of that point, the hearing officer 'will' carry out such a control 'if necessary', it must be concluded that where the classification of certain documents as 'internal documents' is not in dispute, there is no need for him to carry out such a control. Moreover, it was for Dalmine to raise the matter with the hearing officer so that he could check whether the documents sent to the Commission by the EFTA Surveillance Authority and classified as internal documents were indeed internal documents.

121 In reply to a written question from the Court requesting production of all correspondence between the Commission and Dalmine concerning access to internal documents, the two parties produced a letter from Dalmine dated 7 June 1999. In that letter, Dalmine stated, inter alia, that it was not in a position to identify the documents obtained by the EFTA Surveillance Authority and sent by that authority to the Commission. Dalmine requested the Commission to send it that evidence so that it would have access to the entire file in its case. However, Dalmine did not request in its letter of 7 June 1999 that the Hearing Officer check whether or not the documents thus sent to the Commission were internal documents.

122 The Commission also produced a letter which it sent to Dalmine on 11 May 1999, enclosing the EFTA Surveillance Authority's decision of 25 November 1994 to request the Commission to carry out investigations within the Community, in accordance with Article 8(3) of Protocol No 23 of the EEA Agreement, and the decisions adopted by the Commission to carry out such investigations, pursuant to Article 14(3) of Regulation No 17.

123 In reply to another question from the Court, the Commission stated that the documents it received from the EFTA Surveillance Authority were placed in the

administrative file and appear at pages 1 to 350 thereof under the heading 'Internal documents — non disclosable'. It is not in dispute that Dalmine, like the other addressees of the SO, had access to the Commission's administrative file between 11 February and 20 April 1999. Dalmine was therefore able to establish that there were 350 pages of internal documents to which the Commission was refusing it access, and its failure to request that a check be made as to whether they were internal documents cannot therefore be attributed to the fact that it was unaware of their existence.

124 In this connection, the fact that those documents are documents of the EFTA Surveillance Authority which were subsequently transferred to the Commission, and not internal Commission documents as Dalmine might have thought before receiving the letter of 11 May 1999, has no relevance to the assessment of the present plea. It follows from footnote 19 of the Note on access to the file that internal documents received from other public authorities, both Community and non-Community, must benefit from the same protection as internal Commission documents.

125 It should in any event be noted that the Court requested the Commission, by way of a measure of organisation of procedure, to produce a list setting out the content of pages 1 to 350 of its administrative file. It is apparent from that list that all the documents in issue are undeniably internal documents so that, in any event, the fact that the Hearing Officer did not carry out a check cannot have affected Dalmine's ability to defend itself or, therefore, have infringed its rights of defence.

126 Lastly, in relation to Dalmine's complaint that it was impossible for it to identify the inculpatory documents obtained as a result of the investigations, it suffices to note that Dalmine had access to the whole administrative file. Since the lawfulness of the investigations is no longer in doubt (see paragraphs 103 to 114 above), the present difficulty raised by Dalmine, even if it were genuine, cannot have affected its rights of defence. Moreover, apart from claiming that the documents in question were obtained unlawfully, Dalmine has not specified how the way in which they were obtained might have affected its rights.

127 In the light of the foregoing, the present plea must be rejected.

2. *The substantive pleas*

The superfluous grounds in the contested decision

Arguments of the parties

128 Dalmine takes issue with the Commission's decision to mention in the contested decision certain facts which, although they have no connection with the alleged infringements, are potentially harmful. It points out that the findings in respect of cartels in markets outside the Community and price-fixing (paragraphs 54 to 61, 70 to 77, 121 and 122 of the contested decision) were not found to be infringements in Articles 1 and 2 of the contested decision. Those grounds are therefore superfluous for the purposes of the contested decision. Dalmine fears that those findings may nevertheless subsequently serve as a basis for actions in damages brought by other undertakings.

129 It its reply to the SO and at the hearing, Dalmine requested the Commission to leave out of the contested decision any reference to facts other than those constituting the infringements. It did so in order to protect itself against claims by third parties. The Commission failed to respond.

130 In support of those complaints, Dalmine relies on respect for professional secrecy as protected by Article 287 EC and Article 20(2) of Regulation No 17, which imposes on the Commission an obligation of 'official secrecy' (see the Opinion of Advocate General Lenz in Case 53/85 *Akzo Chemie* v *Commission* [1986] ECR 1965, at page 1977).

131 Dalmine also emphasises that the Commission is required to publish only the 'main content' of the decision and must 'have regard to the legitimate interest of undertakings in the protection of their business secrets' (Article 21(2) of Regulation No 17). According to Dalmine, the 'main content' of a decision in a competition matter is the operative part and the principal grounds on which the Commission based the decision. It does not include allegations which have no relevance to the finding of infringement of Article 81(1) EC. Dalmine requests the Court to annul the irrelevant findings and to draw the appropriate consequences for the validity of the contested decision.

132 The Commission states that, when it lodged its defence, it was still considering applications for confidential treatment of certain information in the contested decision with a view to its publication in the Official Journal. Dalmine could thus have asked for certain passages in the decision not to be published.

133 The Commission denies that the contested decision contains any information publication of which could expose Dalmine to actions in damages by third parties. The fact that certain practices were not deemed to be constituent elements of the infringement of Article 81(1) EC cannot harm Dalmine.

Findings of the Court

134 It suffices to state that there is no rule of law which enables the addressee of a decision to challenge some of the grounds of that decision by way of an action for annulment under Article 230 EC unless those grounds produce binding legal effects such as to affect that person's interests (see, to that effect, Joined Cases T-125/97 and T-127/97 *Coca-Cola* v *Commission* [2000] ECR II-1733, paragraphs 77 and 80 to 85). The grounds of a decision are not in principle capable of producing such effects. In the present case, the applicant has not shown how the contested grounds are capable of producing effects such as to change its legal position.

135 It follows that the present plea cannot be upheld.

The infringement found in Article 1 of the contested decision (the Europe-Japan Club)

136 Dalmine does not deny that there was an agreement between the addressees of the contested decision, but states that it did not concern the domestic Community markets and is therefore not affected by the prohibition laid down in Article 81(1) EC. It puts forward two types of plea in this connection.

Pleas concerning the analysis of the relevant market and of the conduct of the addressees of the contested decision on that market

— Arguments of the parties

137 Dalmine submits that the contested decision does not contain a sufficient statement of reasons for the purposes of Article 253 EC and that it is vitiated by an error in the

application of Article 81 EC. In particular, the Commission failed to make a thorough analysis of the relevant market and was thus unable to assess whether the conditions for applying Article 81(1) EC were satisfied and therefore infringed that provision.

138 Dalmine denies that the producers of seamless pipes and tube agreed to respect each other's domestic markets. The infringements concern only two types of product: standard thread OCTG and project line pipe, yet the Commission failed to provide data in respect of these products on which it might be ascertained whether the conditions for application of Article 81(1) EC, namely a restriction of competition and an effect on trade between Member States, were satisfied. It in fact relied on data which related to a much broader range of products (see, for example, annexes 1, 3 and 4 to the contested decision). The Commission thus concluded that national steel pipe and tube producers were predominant in their own national markets.

139 Dalmine claims that the Commission would have reached a quite different conclusion had it confined its examination to the situation in the market for the relevant products. Dalmine in fact sells only a very small quantity of standard thread OCTG in the Italian market, contrary to what the table set out in recital 68 to the contested decision might suggest, whilst other producers to which the contested decision was addressed sold much larger quantities of that product in that market. The predominance alleged by the Commission applies solely to sales of premium thread OCTG to Italian oil companies.

140 Dalmine observes that Mr Biasizzo's statements are unreliable as inculpatory evidence, for the reasons set out at paragraph 78 above. Moreover, those statements can only have referred to sales of OCTG, because line pipe fell outside the scope of his commercial activities during the infringement period. Since the majority of sales of OCTG to Agip were of premium products, those statements must relate to only a

small proportion of the sales of one of the products at issue. Those statements also contradict the data in the annexes to the contested decision.

141 Dalmine does believe that it enjoys a relatively strong position, by comparison with its competitors among the addressees of the contested decision, in sales of project line pipe in the Italian market. Nevertheless, project line pipe represents only a small proportion of the line pipe sold in the Italian market. Moreover, during the relevant period, Dalmine sold considerable quantities of project line pipe in the United Kingdom market and smaller quantities in Germany and France. Furthermore, it criticises the Commission for neglecting the fact that, for certain purposes, welded steel pipes and tubes are substitutable for project line pipe. Lastly, imports of OCTG and line pipe originating in non-member countries other than Japan considerably reduced Dalmine's economic power on the Italian market for those products.

142 The Commission replies that it assessed the effect of the cartel at the Community level.

143 The table in recital 68 to the contested decision establishes that the arrangements for sharing national markets were adhered to for the relevant products. Those data are confirmed by the Vallourec statements and the statements which Dalmine's managers made to the Bergamo public prosecutor. As regards those managers, the Commission refutes the criticism that Mr Biasizzo's statements are unreliable.

144 As regards the situation in the Italian market, the Commission points out that Dalmine's annual sales of standard thread OCTG and project line pipe in that market between 1990 and 1995 stood at 13 506 tonnes per annum on average

(Dalmine's reply to a request from the Commission pursuant to Article 11 of Regulation No 17). Over the same period, the total sales achieved by all of the eight undertakings involved in the cartel amounted to 14 869 tonnes (see annex 2 to the contested decision: the volume of standard thread OCTG delivered in Italy (1 514 tonnes) plus the volume of project line pipe delivered in Italy (13 355 tonnes)). It follows that Dalmine had 91% of the Italian market for the relevant products during the period concerned.

— Findings of the Court

145 As far as the alleged infringement of Article 253 EC is concerned, it is settled case-law that the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see, for example, Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 86, and Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63). It is sufficient if, in its decisions, the Commission sets out the facts and legal considerations having decisive importance in the context of those decisions (see, to that effect, Case T-111/96 *ITT Promedia* v *Commission* [1998] ECR II-2937, paragraph 131).

146 In the light of that case-law, the complaints directed against grounds of a Commission decision included purely for the sake of completeness must be rejected outright since they cannot lead to the decision's being annulled (see, by analogy, Case C-122/01 P *T. Port* v *Commission* [2003] ECR I-4261, paragraph 17; see also paragraph 134 above).

147 It should be noted in this connection that the Commission is not required, in order to establish an infringement of Article 81 EC, to demonstrate an adverse effect on competition when it has established the existence of an agreement or concerted practice having as its object the restriction of competition (Case T-143/89 *Ferriere Nord* v *Commission* [1995] ECR II-917, paragraph 30 et seq., and Case T-141/94 *Thyssen Stahl* v *Commission* [1999] ECR II-347, paragraph 277).

148 In the present case, the Commission relied primarily on the anti-competitive object of the market-sharing agreement, covering the German, United Kingdom, French and Italian markets in order to establish the infringement found in Article 1 of the contested decision and it relied on documentary evidence for that purpose (see, in particular, recitals 62 to 67 to the contested decision and *JFE Engineering and Others* v *Commission*, paragraph 111 above, paragraphs 173 to 337).

149 It follows that recital 68 to the contested decision, concerning the effects of that agreement, is an alternative ground and is therefore included purely for the sake of completeness in the general scheme of the part of the grounds of the contested decision dealing with the infringement found in Article 1 of the contested decision. Thus even if Dalmine were able to show that those alternative grounds were inadequate, Article 1 of the contested decision could not be annulled if the anti-competitive object is established to the requisite legal standard in the present case (see paragraph 152 below). Consequently, the plea alleging a breach of the duty to state reasons in that regard is inoperative and must therefore be rejected.

150 Moreover, in so far as Dalmine alleges that the facts found in the contested decision do not constitute an infringement of Article 81 EC, it must be held that the arguments put forward in support of that complaint relate essentially to the claim that the impugned agreement had no practical effects since it specifically covers standard OCTG and project line pipe.

151 Thus, once again, since the Commission is not required to demonstrate an adverse effect on competition in order to establish an infringement of Article 81 EC when it has established the existence of an agreement having as its object the restriction of competition (see paragraph 147 above and the case-law cited there), and since it relied primarily on the anti-competitive object of the market-sharing agreement, Dalmine's arguments concerning the effects of the agreement are irrelevant in the present context.

152 However, Dalmine also challenged the probative value of Mr Biasizzo's statements, stating, in particular, that he was principally responsible for sales of OCTG and not project line pipe. It suffices to note in this regard that, in the contested decision, the Commission relied on a body of evidence relating to the object of the agreement in question, the relevance of which Dalmine does not question, particularly on the concise yet explicit statements of Mr Verluca, and not merely on the single piece of evidence whose probative value is challenged by Dalmine. Thus, even if those criticisms were merited, they alone could not result in the annulment of the contested decision.

153 In any event, Mr Biasizzo's statement is corroborated by other statements made by colleagues of his which are contained in the Commission's file and on which the Commission relies before the Court but which are not referred to in the contested decision. In particular, it is apparent from Mr Jachia's statement of 5 June 1995, set out at page 8220 b S6 of the Commission's file, that there was an agreement 'to respect the areas belonging to the different undertakings' and from that of Mr Ciocca of 8 June 1995, set out at page 8220 b S3 of the Commission's file, that 'there is a world-wide cartel of manufacturers of pipes and tubes'.

154 Moreover, without it being necessary to resolve the dispute between the parties as to the precise period during which Mr Biasizzo was responsible for sales of the two products covered by the contested decision, it is not in dispute in the present case that he was responsible for Dalmine's sales of OCTG during a substantial part of the infringement period, and for the sales of project line pipe over several months at least during that period, so that he had direct knowledge of the facts he was describing.

155 It must be concluded in this regard that Mr Biasizzo's statement is reliable, particularly to the extent that it corroborates Mr Verluca's statements as to the existence of the agreement to share domestic markets described by the latter (see, to that effect, *JFE Engineering and Others* v *Commission*, paragraph 111 above, paragraph 309 et seq.).

156 Finally, in so far as Dalmine claims that the market-sharing agreement, sanctioned by Article 1 of the contested decision, had no effect on trade between Member States, it should be noted that, for a decision, agreement or practice to be capable of affecting trade between Member States, it must be possible to foresee with a sufficient degree of probability and on the basis of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States (Case T-395/94 *Atlantic Container Line and Others* v *Commission* [2002] ECR II-875, paragraphs 79 and 90). It follows that there is no need for the Commission to show that trade has actually been so affected (*Atlantic Container*, paragraph 90) but that actual or potential effect must not be insignificant (Case C-475/99 *Ambulanz Glöckner* [2001] ECR II-8089, paragraph 48).

157 An agreement the object of which is to share national markets within the Community, such as that sanctioned by Article 1 of the contested decision, necessarily has the potential effect of reducing the volume of trade between Member States, which would be realised if the agreement was implemented. It is clear therefore that that requirement was satisfied in respect of the infringement found in Article 1 of the contested decision.

158 In the light of the foregoing, all of the pleas and arguments put forward by Dalmine concerning the analysis of the relevant market in respect of the infringement found in Article 1 of the contested decision must be rejected.

Dalmine's role in the infringement

— Arguments of the parties

159 Dalmine claims that its part in the infringement found in Article 1 of the contested decision did not have an appreciable effect on competition. Given its modest position in the Italian market for standard thread OCTG and project line pipe, it could not have acted as ringleader among the seamless steel pipe and tube producers. Moreover, it did not comply with the terms of the cartel and was perceived by the other producers as undisciplined. Given the characteristics of the market and the lack of any mechanism for imposing penalties to reinforce compliance with the cartel rules, the cartel did not harm the interests of the competitors or customers of the addressees of the contested decision. Dalmine complains that the Commission failed to take account of those factors and failed to distinguish its situation from that of the other firms to which the decision was addressed.

160 The Commission states that Dalmine's argument is baseless. The only relevant question when deciding whether an undertaking has infringed Article 81(1) EC is whether its conduct in the market is the result of a concurrence of wills.

— Findings of the Court

161 It should again be noted that the Commission took into account the restrictive object of the market-sharing agreement to which Dalmine was a party, so that any lack of evidence of the anti-competitive effects of Dalmine's individual conduct has no bearing on the finding of infringement against it in Article 1 of the contested

decision (see, to that effect, *Cement*, paragraph 44 above, paragraphs 1085 to 1088, and paragraph 147 above and the case-law cited there). Moreover, the Commission relied primarily on documentary evidence, in particular in recitals 62 to 67 to the contested decision, in order to demonstrate that Dalmine took part in that infringement (see also paragraph 152 above).

162 As for the fact that Dalmine claims to have retained its freedom of action in practice, it should be pointed out that, according to settled case-law, where an undertaking takes part in meetings between undertakings which have an anti-competitive object without publicly distancing itself from what occurred at them, thereby giving the impression to the other participants that it subscribed to the cartel resulting from those meetings, it may be considered to have participated in the cartel in question (Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 232; Case T-12/89 *Solvay* v *Commission* [1992] ECR II-907, paragraph 98; Case T-141/89 *Tréfileurope* v *Commission* [1995] ECR II-791, paragraphs 85 and 86, and *Cement*, paragraph 44 above, paragraph 1353).

163 It follows from the foregoing that the present plea cannot be upheld. Consequently, the application for annulment of Article 1 of the contested decision must be rejected.

The infringement found in Article 2 of the contested decision

The terms of the contract of supply between Corus and Dalmine

— Arguments of the parties

164 Dalmine challenges the Commission's finding that certain provisions of the supply contract with Corus are unlawful. The Commission seems to suggest, in recital 153

to the contested decision, that even though the contracts to supply Corus are not measures implementing the fundamentals on respect for domestic markets concluded within the Europe-Japan Club, certain of their provisions are in any event prohibited by Article 81(1) EC.

165 First of all, it disputes the legal assessment of the clauses determining the quantities of goods to be sold to Corus.

166 In recital 153 to the contested decision, the Commission asserts that '... [b]y defining the quantities [of plain end pipes] to be delivered to [Corus] in percentage terms instead of fixed amounts, Vallourec, [Mannesmann] and Dalmine undertook, for the benefit of a competitor, to deliver quantities which were unknown in advance', which Dalmine disputes.

167 Dalmine states that, since Corus's needs fluctuated unpredictably according to trends in demand, Corus could not risk committing itself to purchasing fixed quantities of plain end pipes each year for a period of five years.

168 Moreover, Dalmine denies that it undertook to supply Corus with unspecified quantities of plain end pipes. Article 4 of the supply contract specifies how the quantities were determined by the parties. The clause provides:

'For any particular calendar month's requirements, [Corus] will each month confirm the tonnage required 3 months in advance (and for example, by the end of January April tonnage will be confirmed). [Corus] will then specify the order details of the

monthly tonnage 2 months in advance (and for example by the end of February details for April will be confirmed). Changes to order details will be accepted by Dalmine up to 10 days before the calendar month of manufacture. Further changes may be effected after this deadline only by agreement in writing between the parties.'

169 That clause further provides that:

'Formal operational and technical liaison meetings will be held between [Corus] and Dalmine every calendar month in order to ensure orderly supply, the establishment of a forecasting programme of deliveries (at least three calendar months in advance).'

170 Dalmine thus denies having declined to take advantage of any increase in demand for threaded pipes in exchange for a quota of the supply to Corus of plain end pipes.

171 First of all, the market for threaded pipes is closed to Dalmine because the VAM threading technology is controlled by Vallourec and because its output of standard thread OCTG is very small. Dalmine cannot therefore be reproached for not competing with Corus in the United Kingdom premium thread OCTG market, in which it is not even present.

172 Secondly, Dalmine rejects the allegation in recital 153 to the contested decision that it would not have undertaken, together with Mannesmann, to deliver unspecified quantities of plain end pipes to Corus if in addition it had not been given an assurance that Corus would not take advantage of this to increase its share of the

market in threaded pipes. That assurance was, according to the contested decision, given in the form of an option to rescind in the event of quantifiable losses (clause 9 (c) of the supply contract between Dalmine and Corus). Dalmine disputes that interpretation. The termination clause addressed not the possibility of losses arising from the inability to profit directly from increased demand for threaded tubes, but the possibility of losses arising from a prolonged fall in demand for those products and, consequently, in Corus's consumption of plain end pipes.

173 Secondly, Dalmine disputes the Commission's interpretation of the method of calculating contract prices. In recital 153 to the contested decision, the Commission states that Corus was required to communicate to Mannesmann and Dalmine both the price and quantity of threaded pipes sold, although that is confidential information. The contested decision also criticises the fact that the price charged for plain end pipes depended on the price at which Corus sold them after threading.

174 Those assessments are unfounded and the reasons given for them are inadequate. As regards the alleged exchange of confidential information, Dalmine states that Corus did not inform it of the price which it charged for threaded pipes. Admittedly, that price was one element used in the mathematical formula for calculating the price paid by Corus for plain end pipes. However, it was Corus that was responsible for the calculation and Dalmine knew only the final result. In the event of disagreement over the price thus calculated, Dalmine was entitled to consult an independent third party. That mechanism made it possible to safeguard the confidentiality of the prices charged by Corus.

175 The Commission defends its conclusion that the contractual mechanism for calculating the quantities of goods to be sold was restrictive of competition.

176 As regards the validity of the clause for determining the contract price, the Commission emphasises that the formula adopted linked the prices of plain end pipes to that of threaded pipes. Vallourec, Mannesmann and Dalmine therefore had no interest in competing with Corus on the price of threaded pipes in the United Kingdom.

177 The Commission is convinced that the formula for calculating the price of plain end pipes set out in clause 6 of the supply contract involved information which competing firms ought not to have exchanged.

— Findings of the Court

178 The object and effect of the three supply contracts are described by the Commission in recital 111 to the contested decision:

'The object of these contracts was the supply of plain ends to the leader of the North Sea OCTG market, and their purpose was to maintain a domestic producer in the United Kingdom with a view to securing respect for the fundamentals in the Europe-Japan Club. The main object and effect of the contracts was to share between [Mannesmann], Vallourec and Dalmine (Vallourec from 1994) all the requirements of their competitor, [Corus]. The contracts made the purchase prices of the plain ends dependent on the prices of the pipes and tubes threaded by [Corus]. They also contained a restriction on [Corus's] freedom of supply (on Vallourec's from 1994) and forced it to communicate to its competitors the selling prices applied and the quantities sold. In addition, [Mannesmann], Vallourec (until February 1994) and Dalmine undertook to supply a competitor ([Corus], then Vallourec from March 1994) with quantities not known in advance.'

179 The terms of the supply contracts adduced before the Court, in particular the contract concluded between Dalmine and Corus on 4 December 1991, essentially confirm the facts set out in recital 111 and recitals 78 to 82 and 153 to the contested decision. Taken as a whole, those contracts divide Corus's requirements for plain end pipes, at least from 9 August 1993, between the three other European producers (40% for Vallourec, 30% for Dalmine and 30% for Mannesmann). Moreover, each contract provides that the price payable by Corus for plain end pipes is to be determined on the basis of a mathematical formula which takes account of the price it receives for its threaded pipes.

180 It follows from those findings that the object and/or, at the very least, the effect of the supply contracts was to substitute a negotiated division of the profit from sales of threaded pipes on the British market for the risks of competition, at least between the four European producers (see, by analogy, as regards concerted practices, *Cement*, paragraph 44 above, paragraph 3150).

181 By each of the supply contracts, Corus bound its three Community competitors in such a way that any actual or potential competition on their part on its domestic market disappeared at the cost of sacrificing its freedom of supply. Those competitors lost sales of plain end pipes if Corus's sales of threaded pipes fell. Moreover, the profit margin on the sales of plain end pipes which the three suppliers undertook to make also fell in proportion to the price Corus obtained for its threaded pipes and could even become a loss. In those circumstances, it was virtually inconceivable that those three producers were seeking to provide effective competition for Corus on the British market for threaded pipes, in particular on price (see recital 153 to the contested decision).

182 On the contrary, by agreeing to conclude such contracts, each of Corus's three Community competitors was assured of indirect participation in Corus's domestic market and also of a share in the profits realised on that market. In return for those benefits they in effect abandoned the possibility of selling threaded pipes on the

United Kingdom market and, at least from the date of signature of the third contract on 9 August 1993, which allocated the remaining 30% to Mannesmann, of supplying a larger quantity of the plain end pipes purchased by Corus than had been allocated to each of them in advance.

183 Moreover, Corus's competitors accepted the onerous, and therefore commercially unusual, obligation to supply Corus with quantities of pipes which were defined in advance solely by reference to Corus's sales of threaded pipes. That undertaking reinforced the interdependence between those producers and Corus to the extent that, as inevitable suppliers, the producers were dependent upon Corus's commercial policy. Dalmine's argument that the quantities of pipes to be supplied were fixed three months in advance, according to the rules laid down in Article 4 of its supply contract with Corus, is irrelevant, since that provision did not enable Dalmine to limit the quantity of plain end pipes to be supplied, which depended solely on Corus's requirements.

184 Even if the Commission's analysis in the first indent of recital 153 to the contested decision concerning the possibility of rescinding the contract were unfounded, that fact would have no bearing on the anti-competitiveness of the contracts entered into by Corus and the three other Community producers, including Dalmine. Accordingly, there is no need to resolve that ancillary factual dispute in these proceedings.

185 If the supply contracts had not existed, it is perfectly clear that the European producers concerned other than Corus would, but for the fundamentals, ordinarily have had a genuine or at the very least a potential business interest in competing with Corus on the United Kingdom market for threaded pipes and in competing amongst themselves to supply Corus with plain end pipes.

86 As for Dalmine's arguments concerning the practical obstacles which prevented it from directly selling premium and standard OCTG on the United Kingdom market, those obstacles are not sufficient to show that it would never have been able to sell those products on that market had it not been for the supply contract it entered into with Corus and subsequently with Vallourec. On the assumption that conditions on the United Kingdom market for OCTG improved, it cannot be precluded that Dalmine would have been able to obtain a licence to sell premium thread pipes on that market or that it might have increased its production of standard OCTG in order to sell those products in that market. It follows that, by signing the supply contract in question, it in fact accepted constraints on its commercial policy, as described in paragraphs 182 to 185 above.

87 Moreover, each of the contracts was concluded for an initial period of five years. That relatively long period confirms and reinforces the anti-competitive nature of those contracts, especially since Dalmine and Corus's other two suppliers abandoned the possibility of taking direct advantage of any growth in the United Kingdom market for threaded pipes during that period.

88 Furthermore, as the Commission states at recital 111 to the contested decision, the price-fixing formula for plain end pipes set out in all three supply contracts entailed an unlawful exchange of business information (see recital 153 to the contested decision) which at the risk of compromising the independence of the commercial policy of the competing undertakings must remain confidential (*Thyssen Stahl*, paragraph 147 above, paragraph 403, and Case T-151/94 *British Steel* v *Commission* [1999] ECR II-629, paragraph 383 et seq.).

89 Dalmine's argument that the information concerning the price paid by Corus's customers was not disclosed to its suppliers cannot exculpate the signatories of the supply contracts in the circumstances of the present case.

190 It is true that Corus did not communicate to the other parties to the contracts the price it received for its threaded pipes as such. Consequently, the assertion in recital 111 to the contested decision that the supply contracts 'forced [Corus] to communicate to its competitors the selling prices applied ...' exaggerates the scope of the contractual obligations in that respect. However, the Commission rightly stated in recital 153 to the contested decision and before the Court that the price of threaded pipes was calculated on the basis of the price paid for plain end pipes, so that the three suppliers concerned received precise information as to the direction, timing and extent of any fluctuation in the price of threaded pipes sold by Corus.

191 Not only does the communication of that information to competitors infringe Article 81(1) EC, but in addition the nature of that infringement is essentially the same irrespective of whether it was the actual prices of threaded pipes or merely information about fluctuations in those prices that was communicated. In those circumstances, the inaccuracy pointed out in the preceding paragraph is insignificant in the wider context of the infringement found in Article 2 of the contested decision and therefore has no bearing on the finding of that infringement.

192 In the light of the foregoing, the complaints relating to the terms of the supply contract between Dalmine and Corus must be rejected in their entirety.

Pleas relating to the existence of a cartel and to Dalmine's participation therein

— Arguments of the parties

193 Dalmine denies that the Corus supply contracts are the fruit of any cartel. It states that it first concluded, and subsequently extended, a supply contract with Corus in

order to increase its sales of plain end pipes in the United Kingdom market. That was a perfectly legitimate commercial objective which the Commission chose to ignore, preferring simply to examine Corus's position on the relevant market (recital 152 to the contested decision).

194 Dalmine takes issue with the Commission's interpretation of the documents referred to in recital 80 to the contested decision, whereby it implies that the purpose of the Corus supply contracts was to keep prices in the United Kingdom market artificially high. The documents on which the Commission bases this view predate the conclusion of the supply contracts and merely contemplate possible scenarios. In reality, the documents in question show that it was Vallourec's view that by giving preferential treatment to the European producers in the United Kingdom market in 1990 it would be possible to keep prices high. Similarly, those documents show that Corus did not exclude the possibility of obtaining supplies from UTM, Siderca and Tubos de Acero de México SA (see the minute entitled 'Meeting of 24/7/90 with British Steel').

195 Dalmine also takes issue with the Commission's analysis of the delivery times. The delivery time of five or six weeks required by Corus could only be met by European firms, on account of both transport time and production time following receipt of a firm order. Corus required Dalmine to accept amendments to orders up until 10 days before the month of manufacture. In those circumstances, it is contradictory for the Commission to conclude that delivery times were not crucial and, moreover, to criticise the producers for having undertaken to supply unspecified quantities of goods.

196 Next, Dalmine contests the probative value of that evidence, in particular that mentioned in recitals 78 and 80 to the contested decision. The Commission formed its view on an incorrect reading of the documents in question. Far from establishing

the truth of the Commission's allegations, the internal documents of Vallourec on which the Commission relies do no more than suggest possible consequences of the closure of Corus's production plant in Clydesdale. The documents contain no indication of an agreement to share the United Kingdom market.

197 Dalmine submits that the hypothesis of such an agreement is contradicted by the fact that Mannesmann concluded a supply contract with Corus three years after the discussions in 1990 between Corus and Vallourec, which form the basis of the Commission's argument that there was an unlawful agreement.

198 Dalmine denies that it participated in any agreement with the other European producers to share the United Kingdom market even on the assumption that such an agreement did exist. It points out, first of all, that, according to the contested decision, between 1990 and 1991, Vallourec and Corus agreed that Corus would obtain its supplies from the Community producers (see recital 110 to the contested decision). As is clear from the contested decision, those discussions did not involve Dalmine and the Commission is wrong to charge it with participating in that agreement. Thus, the Commission cannot complain that Dalmine concluded a supply contract with Corus on 4 December 1991.

199 Dalmine submits that the evidence put forward in support of the Commission's argument relates solely to Vallourec and Corus (see recitals 78, 91, 110, 146 and 152 to the contested decision). Dalmine believes that it is not in a position to defend effectively itself against such evidence, which relates exclusively to third parties.

200 Next, Dalmine disputes the Commission's finding that it subsequently joined in the agreement between Vallourec and Corus when Corus contemplated withdrawing from the market and disposing of its seamless pipe and tube production plant. The

evidence referred to in recital 91 to the contested decision relates to a meeting between Corus, Mannesmann, Vallourec and Dalmine on 29 January 1993. Those discussions preceded the conclusion of a supply contract between Mannesmann and Corus, on 9 August 1993. Dalmine infers from that circumstance that there was no agreement between the European producers on 29 January 1993. Moreover, the Commission seems to complain that Dalmine agreed to Vallourec's acquisition of Corus's business and emphasises that it had no involvement whatsoever in that transaction. It does, however, indicate that it wished to retain an outlet in the United Kingdom market and that, from that aspect, it wished to continue selling plain end pipes in the United Kingdom market after Vallourec acquired Corus's business.

201 Moreover, the Commission inferred the existence of a cartel from Vallourec's decision that after purchasing Corus's seamless tube business it would renew the supply contracts which Corus had previously concluded with Mannesmann and Dalmine. Dalmine disputes that, emphasising that the decision was Vallourec's own, on which Dalmine had no influence, and that the parties made their own choices in accordance with their own commercial interests.

202 Lastly, Dalmine asserts that the effects on the market of the supply contract it entered into with Corus are insignificant. Of the 20 400 tonnes of plain end pipes which it sold in the United Kingdom market, only 20% were processed as standard thread OCTG (see annex 2 to the contested decision). That represents no more than 3% of United Kingdom consumption, 1.4% of Community consumption and 0.08% of world consumption.

203 The Commission disputes those arguments, contending that no legitimate interest of Corus's required it to conclude the contracts.

204 First of all, the supply contracts in question formed part of the fundamentals, which sought to ensure respect for domestic markets, agreed within the Europe-Japan Club (recital 146 to the contested decision). When, in 1990, Corus partially abandoned production of certain types of seamless pipes and tubes, there was a risk that the clause designed to protect the United Kingdom market would lose its effect. Corus and Vallourec mentioned this problem in July 1990 during their negotiations for the extension of the licence granted by Vallourec to Corus for use of the VAM joint technology.

205 The Commission maintains that it has proved to the requisite legal standard that a cartel existed between those two undertakings. It refers in that regard to Vallourec's minute of the meeting with British Steel of 24 July 1990 referred to, inter alia, in recital 80 to the contested decision. The Commission also refers to Vallourec's note headed 'Réflexions stratégiques', mentioned in the same recital, which it claims also supports its argument.

206 The Commission rejects the argument based on the time between the 1990 discussions between Vallourec and Corus and the signature, on 9 August 1993, of the contract between Corus and Mannesmann. There is no reason in the present case to preclude the existence of a cartel before the supply contract with Mannesmann was concluded. The Commission emphasises that, in any event, the prohibition laid down by Article 81(1) EC applies to any agreement, regardless of its form. It states that it has amply demonstrated the existence of an agreement to respect domestic markets in the context of the infringement found in Article 1 of the contested decision.

207 Furthermore, it is clear from the evidence referred to in recitals 65, 67, 84 and 91 to the contested decision that the discussions held in 1990 between Vallourec and Corus concerning the consequences of Corus's gradual withdrawal from the market and the closure of its Clydesdale plant were closely connected with the agreement to respect domestic markets.

208 Dalmine, which was party to the agreement to respect domestic markets, stated that the problems arising from Corus's restructuring needed to be resolved at European level and considered it appropriate to conclude a supply contract with Corus alongside those concluded by Vallourec and Mannesmann. Dalmine was clearly aware that by concluding such a contract it was helping to implement the agreement to respect domestic markets and to coordinate its own business activities with those of its direct competitors.

— Findings of the Court

209 It should first of all be stated that since the infringement found in Article 2 of the contested decision is based on the restrictions on competition contained in Corus's supply contracts themselves, the considerations in respect of those contracts set out above in relation to the preceding pleas are sufficient to establish the existence of that infringement.

210 Regardless of the precise extent of collusion between the four European producers, it must be held that each of them signed one of the supply contracts, restricting competition and forming part of the infringement of Article 81 EC found in Article 2 of the contested decision. Whilst Article 2(1) of the contested decision states that the supply contracts were concluded 'in the context of the infringement mentioned in Article 1', recital 111 makes clear that it is the very fact of having entered into those anti-competitive agreements that constitutes the infringement found in Article 2 of the contested decision.

211 Therefore, even if Dalmine did succeed in showing that, objectively viewed, the conclusion of its supply contract with Corus was in its commercial interests, that would not undermine the Commission's argument that that contract was unlawful.

Anti-competitive practices are very often in the individual commercial interest of the undertakings, at least in the short term. In light of those findings, it is not necessary to resolve the dispute between the parties as to the importance for Corus of the delivery times, since the thrust of Dalmine's argument in that regard is to show that it was in Corus's commercial interests to have three European suppliers.

212 As the existence of the infringement found in Article 2 of the contested decision has been established to the requisite legal standard, it is not strictly necessary to examine the Commission's reasoning with regard to the collusion between the four European producers. Similarly, for the purposes of considering the present plea there is no need to analyse all of Dalmine's arguments in respect of the body of evidence other than the supply contracts on which the Commission relies in order to demonstrate that such collusion took place.

213 However, in so far as the degree of collusion between the four Community producers in respect of the infringement found in Article 2 of the contested decision is relevant to the examination of certain other pleas in the present case, it must be examined.

214 It should be noted in that context that conduct which forms part of an overall plan pursuing a common anti-competitive objective can be regarded as constituting a single agreement (see, to that effect, *Cement*, paragraph 44 above, paragraph 4027). If the Commission shows that, where an undertaking has participated in cartels, it knew or ought to have known that in doing so it was a party to a single agreement, its participation in the cartels concerned may constitute the expression of its accession to that agreement (see, to that effect, *Cement*, paragraphs 4068 and 4109).

215 In that regard, the document dated 23 March 1990 and entitled 'Réflexions contrat VAM' ('Reflections on the VAM contract') is particularly relevant. Under the heading 'Scenario II', Mr Verluca, a director of Vallourec, states that it may be possible to 'persuade the Japanese not to intervene on the UK market and that the problem should be settled among Europeans'. He continues: 'In that case, plain ends would effectively be shared between [Mannesmann], [Vallourec] and Dalmine'. In the following paragraph he states that: 'it would probably be in our interest to link [Vallourec's] sales to both the price and the volume of VAM sold by [Corus]'.

216 Since that last proposal precisely reflects the essential terms of the contract concluded between Vallourec and Corus 16 months later, it is clear that that strategy was in fact adopted by Vallourec and that the contract was signed in order to put it into effect.

217 Moreover, the fact that an almost identical contract was then signed by Corus and each of the other European members of the Europe-Japan Club, namely Dalmine and then Mannesmann, so that Corus's requirements for plain end pipes were in fact shared between the three other European members of the Europe-Japan Club from August 1993, just as Mr Verluca had envisaged, confirms that those three contracts must have been concluded for the purpose of carrying out the common strategy proposed in the context of the collusion existing within that club.

218 That conclusion is buttressed by the evidence put forward by the Commission in the contested decision, in particular in recital 91, which is worded as follows:

'On 21 January 1993 [Corus] sent Vallourec (and probably [Mannesmann] and Dalmine as well) outline proposals for a seamless pipe and tube restructuring agreement for discussion at a meeting at Heathrow on 29 January 1993 between

Mannesmann, Vallourec, Dalmine and [Corus] (page 4628 [of the Commission's file, that is, the first page of the document entitled "Outline proposals for a seamless pipe and tube restructuring agreement"]). The document states: "[Corus] has indicated its intention to withdraw eventually from seamless tube manufacture. It seeks to do this in an orderly and controlled manner in order to avoid disruption in the supply of tubes to its customers and to assist these producers who acquire the business to retain the order load ... Discussions have been held over the last six months between [Corus] and other producers interested in acquiring assets from [Corus] and [Corus] believes that there is a consensus to proceed along the lines described in this paper". One of the proposals consisted in transferring the OCTG [pipe and tube] activities to Vallourec while maintaining in force the contracts for the supply of plain ends between [Corus] and Vallourec, [Mannesmann] and Dalmine, without changing the proportions. The same day, a meeting took place between [Mannesmann] and [Corus], in the course of which [Mannesmann] "agreed that Vallourec should take the lead in the future ownership of the OCTG Business" (page 4626 [of the Commission's file, which is a single-page fax sent on 22 January 1993 by Mr Davis of Corus to Mr Patrier of Vallourec]). The Dalmine document entitled "Seamless steel tube system in Europe and market evolution" (page 2053 [of the Commission's file]), dated May/August 1993, stated that a solution to the [Corus] problem which was appropriate to everybody could only be found in a European context; the fact that Vallourec was acquiring the [Corus] plant was also accepted by Dalmine.'

219 It should further be noted that in its memorandum entitled 'Réflexions stratégiques', cited at recital 80 to the contested decision, Vallourec expressly envisaged that Dalmine and Mannesmann would collude with it in supplying Corus with plain end pipes. Moreover, in recital 59 to the contested decision, the Commission relies on the document '(g) Japanese', in particular on the timetable which appears on the fourth page of that document (page 4912 of the Commission's file), to show that the European producers held preparatory meetings before meeting the Japanese producers so as to coordinate their positions and issue joint proposals within the Europe-Japan Club.

220 It follows from the documentary evidence relied on by the Commission in the contested decision and referred to above that the four Community producers actually met to coordinate their approach within the Europe-Japan Club before attending the intercontinental meetings of that club, at least in 1993. It is further established that the closure of Corus's threading plant at Clydesdale and its absorption by Vallourec, and also the supply of plain end pipes to Vallourec by Dalmine and Mannesmann, were discussed at those meetings. It is therefore inconceivable that Dalmine was not aware of the strategy drawn up by Vallourec and the fact that its supply contract with Corus formed part of a wider anti-competitive context affecting both standard thread OCTG and plain end pipes.

221 As for Dalmine's argument that the third supply contract, between Corus and Mannesmann, was entered into well after the other two, so that the Commission could not infer from that fact the existence of a single infringement involving the four European producers, it must be held that the absence of a contract between Mannesmann and Corus before 1993 cannot undermine the Commission's argument in relation to the objective pursued by the three other producers, namely Corus, Vallourec and Dalmine, when they signed the other two contracts in 1991. Whilst the strategy of sharing the supplies of plain end pipes was fully implemented only from the time when Corus had three suppliers, the signature of those two contracts covering 70% of its requirements for plain end pipes constituted a significant, albeit partial, implementation of that plan.

222 Furthermore, as the Commission pointed out before the Court, the reference in the document entitled 'Outline proposals for a seamless pipe and tube restructuring agreement' of 21 January 1993 to the fact that Mannesmann already supplied plain end pipes to Corus, far from being irreconcilable with the signature of a supply contract by Corus and Mannesmann in August 1993, as Dalmine submits, reinforces the Commission's analysis. Whilst it was purely in the interest of prudence that the Commission found that Mannesmann committed the infringement found in Article 2 of the contested decision only from 9 August 1993, because its signature of a supply contract with Corus on that date was definite proof of its participation in the

infringement, it follows from the reference set out above that Mannesmann was obliged to supply Corus with plain end pipes from January 1993.

223 Thus, it is apparent from the evidence relied upon by the Commission in the contested decision that Vallourec conceived the strategy of protecting the United Kingdom market and concluded a supply contract with Corus which, in particular, substituted the first stage in the implementation of that strategy. Dalmine and Mannesmann then joined them, as is shown by the fact that each of those two undertakings concluded a supply contract with Corus.

224 In the light of the foregoing, it must be held that the Commission was correct to find in the contested decision that the supply contracts constituted the infringement found in Article 2 of the contested decision and therefore proved its existence to the requisite legal standard. It should also be held, in so far as it may be relevant, that the supplementary evidence relied upon by the Commission confirms the validity of its argument that those contracts formed part of a wider common European policy affecting standard thread OCTG.

225 Finally, as regards arguments that the anti-competitive effects of the contract between Dalmine and Corus were insignificant, it suffices to note that even on the assumption that that circumstance is established, it has no bearing on the existence of the infringement found in Article 2 of the contested decision, since the anti-competitive objective of the contract and of the strategy which it helped to implement has been proved.

226 Consequently, the pleas relating to the existence of a cartel and to Dalmine's participation therein are rejected.

The pleas relating to the relevant market and the link with the infringement found in Article 1 of the contested decision

— Arguments of the parties

227 Dalmine maintains that the Corus supply contracts related to products which did not form part of the relevant market and that the Commission could not properly find that they gave rise to a restriction of competition in that market.

228 It states that the Commission took the view that these supply contracts formed part of the agreement to respect markets declared unlawful in Article 1 of the contested decision. That assessment implies, logically, that those contracts affect competition in the same product market as that to which the agreement referred to in Article 1 relates. However, according to Dalmine, that is not so: the supply contracts relate to products other than those covered by the Article 1 agreement. 80% of them related to plain end pipes intended for processing into premium thread OCTG, whereas the agreement concluded within the Europe-Japan Club related only to standard thread OCTG. The Commission's reasoning is thus flawed and the contested decision is inadequately reasoned.

229 Dalmine maintains that the supply contracts concluded with Corus were not measures implementing the infringement referred to in Article 1 of the contested decision. It claims that the purpose of the alleged agreement between Vallourec and Corus could not have been to deny the Japanese producers access to the European markets because they already had significant shares of the United Kingdom market. Moreover, the Commission's evidence shows that Vallourec was not convinced that the closure of the Clydesdale plant might increase competition from the Japanese producers in that market.

230 From 1991 onwards, Corus was obtaining supplies of plain end pipes from foreign producers. Thus, the question of 'domestic' production in the United Kingdom, as envisaged by the part of the fundamentals dealing with the observance of domestic markets by the Europe-Japan Club, no longer arises. It is therefore wrong to include sales of plain end pipes by Vallourec, Mannesmann and Dalmine to Corus in the share of the 'domestic producer' in the table set out in recital 68 to the contested decision.

231 In the alternative, Dalmine submits that, should the Court find that its supply contract with Corus can be linked with the infringement referred to in Article 1 of the contested decision, any flaw in the grounds on which the finding of the infringement made in Article 2 is based would also affect the validity of Article 1.

232 The Commission replies that it amply explained, in recitals 146 to 155 of the contested decision, the mechanism whereby the supply contracts were intended to implement the fundamentals concerning respect for domestic markets concluded within the Europe-Japan Club.

233 As regards Dalmine's allegations concerning the level of prices in the United Kingdom, the Commission reiterates that the level was high.

— Findings of the Court

234 It should be noted first of all that the Commission found in Articles 1 and 2 of the contested decision that there were two separate infringements affecting two adjacent product markets. Thus, there is nothing wrong in itself in the fact that the relevant

market for the purposes of the infringement found in Article 2 of the contested decision is the market for plain end pipes whilst that for the purposes of the infringement found in Article 1 of the contested decision is the market for standard thread OCTG, in accordance with the relevant market definitions set out in recital 29 to the contested decision.

235 There is no rule of Community law which says that the Commission cannot make a finding of two separate infringements of Article 81(1) EC in the same decision. The relevant economic situations may be complex so that two independent but connected markets may be affected by two infringements which it is logical to sanction in the same decision because those infringements themselves are separate but connected.

236 Thus, in the present case, the Commission described a situation in which agreements between European producers affecting the United Kingdom market for plain end pipes were conceived, at least in part, with the objective of protecting the United Kingdom market downstream from Japanese imports of standard threaded OCTG. The Commission could not have taken adequate account of all the facts it had discovered in the course of its investigation without addressing the various anti-competitive practices existing on those two connected markets (see, by analogy, although under appeal, Case T-5/02 *Tetra Laval* v *Commission* [2002] ECR II-4381, paragraphs 142 to 147 and 154 to 162).

237 As for Dalmine's criticisms concerning the link between the two infringements, they can have no impact on the merits of Article 2 of the contested decision since the infringement found in that article has been established to the requisite legal standard on the basis of the terms of the supply contracts alone (see paragraphs 178 to 192 above). However those arguments should be examined in so far as the Commission relied on the link between the two infringements to establish the infringement found in Article 1 of the contested decision and in so far as it also relied on that link in recital 164 to the contested decision, when assessing the amount of the fines.

238 The wording of recital 111, cited in full at paragraph 178 above, makes clear that one of the objectives of the cartel it describes was in fact to safeguard the United Kingdom market for standard OCTG within the framework of the fundamentals, but that the cartel also had a separate anti-competitive object and effect on the United Kingdom market for plain end pipes. It should be noted therefore that the Commission provided a statement of reasons to the requisite legal standard in respect of that part of its reasoning concerning the link between the two infringements found in the contested decision.

239 As regards Dalmine's argument that Corus was no longer a national producer of standard thread OCTG because it purchased its plain end pipes from other European producers, Vallourec's documents make clear that their author, Mr Verluca, was more optimistic about the possibility of making the Japanese producers comply with the fundamentals if Corus agreed to purchase only plain end pipes produced in the Community than if it imported plain end pipes from other continents. Thus, since Corus decided to close its threading plant at Clydesdale, the recommended solution for the protection of the British market, namely the transformation of British-produced plain end pipes into threaded pipes, was abandoned, but that does not mean that all attempts to maintain the protection of the British market from Japanese producers was considered impossible, as Dalmine supposes.

240 On the other hand, it is apparent from the file that in Vallourec's view it was necessary to seek another solution which would best enable it to maintain the status quo. The solution which it drew up in order to achieve that objective was to supply Corus with plain end pipes produced exclusively in the Community. It is immaterial whether that solution was effective, since it is clear from the evidence that one of the objectives pursued by the European producers in signing the supply contracts was to maintain the domestic status of the United Kingdom market in the face of Japanese producers (see paragraph 213 et seq. above).

241 Dalmine's argument that it was wrong to take account of the sales of plain end pipes by Vallourec, Mannesmann and Dalmine to Corus in the 'domestic producer' part of the table set out in recital 68 to the contested decision must be rejected for the same reasons. The taking account of those sales corresponds to the assimilation of plain end pipes produced in Europe and threaded by Corus, and then by TISL (a subsidiary of Vallourec) with threaded pipes produced in Britain.

242 Moreover, the Commission's analysis in relation to the infringement found in Article 2 of the contested decision, as set out in recital 111 to that decision, is not undermined by the fact that only some of the plain end pipes covered by the supply contracts were transformed into standard OCTG, the remainder being intended for the production of premium thread OCTG. Provided that it is established that a certain proportion of those plain end pipes was transformed into standard OCTG, then a link between the two infringements is established and, therefore, the finding of the infringement in Article 2 of the contested decision supports that of the infringement in Article 1 of the contested decision.

243 According to Dalmine itself, 20% of the plain end pipes supplied under the supply contract concluded between it and Corus were intended for transformation into standard thread pipes. Article 6(b) of both that contract and the contracts concluded by Corus with Vallourec and Mannesmann confirm that sales of standard ('buttress threaded casing') OCTG and premium ('VAM') OCTG were taken into account in calculating the price Corus had to pay for the plain end pipes. That calculation method only makes sense if a certain proportion of the plain end pipes thus supplied had to be transformed into standard OCTG.

244 However, it should be stated, in so far as far it may be relevant, that the Commission's assertion in the first sentence of recital 164 to the contested decision, that the supply contracts constituting the infringement found in Article 2 of the contested decision were merely a means of implementing the infringement found in Article 1 of the contested decision, goes too far since that implementation was one

objective of the second infringement amongst several separate but connected anti-competitive objects and effects. The Court held in *JFE Engineering*, paragraph 111 above (paragraph 569 et seq.), that the Commission misconstrued the principle of equal treatment in that it failed to take account of the infringement found in Article 2 of the contested decision in fixing the amount of the fines imposed on European producers notwithstanding that the object and effects of that infringement went beyond their contribution to the continuation of the Europe-Japan agreement (see, in particular, paragraph 571 of that judgment).

245 Whilst the unequal treatment referred to in the preceding paragraph ultimately provides a ground for reducing the amount of the fines imposed on the Japanese applicants, the analytical error behind that treatment does not constitute a ground for annulling Article 2 of the contested decision or Article 1 in the present proceedings.

246 It follows from the foregoing that the pleas in law relating to the relevant market and the link between the two infringements found in Articles 1 and 2 of the contested decision must be rejected. Consequently, the application for annulment of Article 2 of the contested decision cannot be upheld.

The claim for annulment of or reduction in the amount of the fine

247 Dalmine claims, with reference to the pleas previously put forward, that Article 4 of the contested decision, which imposes a fine of EUR 10.8 million on it, and recitals 156 to 175 to the contested decision should be annulled. In the alternative, it seeks a reduction in the amount of the fine. It criticises the Commission for not having correctly applied the criteria for setting the amount of fines, in particular 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.

1. *The gravity of the infringement*

248 Dalmine disputes the Commission's assessment of the gravity of the infringement.

The definition of the relevant market and the effects of the infringement

Arguments of the parties

249 Dalmine complains that, in assessing the gravity of the infringement, the Commission failed to give full consideration to its effects, as required by the Guidelines (point 1 A). The Commission failed to restrict its examination in the present case to the relevant market, as it was required to do.

250 The relevant product market is the market for standard thread OCTG and project line pipe. The Commission established that the geographic market for standard thread OCTG is a worldwide market and that the geographic market for line pipe is 'at least the European market' (recitals 35 and 36 to the contested decision). Nevertheless, it proceeded to ignore that definition of the relevant market and, in its assessment of the importance of the infringement, merely took account of sales of the relevant products in the Community market.

251 For standard thread OCTG, the Commission ought to have referred to the worldwide market. It would then have reached the conclusion that the sales achieved by the addressees of the contested decision represented in total 13.5% of the relevant market, those achieved in the European market representing 0.75% of the relevant market.

252 As regards project line pipe, restricting the relevant geographic market to Europe cannot, according to Dalmine, justify restricting it to the territory of the Community. The Commission ought to have included the Norwegian offshore area in its assessment of the effects of the cartel constituting the infringement.

253 Moreover, Dalmine takes issue with the Commission's conclusion that Germany, France, Italy and the United Kingdom accounted for most of the consumption of the relevant products in the Community (recital 161 to the contested decision). The relevant geographical market for both types of goods is much wider than the territory of the Community.

254 Lastly, Dalmine submits that the fundamentals on respect for domestic markets concluded within the Europe-Japan Club had only a negligible effect on sales of OCTG in general in its own national market, Italy. As for project line pipe, since the Commission failed to express a position on whether welded pipes could be substituted for seamless ones, it is impossible to assess the real effect of the agreement.

255 The Commission states, in response to these points, that it set the amount of the fine in accordance with the provisions of Regulation No 17. The basic amount was set by reference to the gravity and duration of the infringement.

256 The tubes forming the subject-matter of the infringement referred to in Article 1 of the contested decision are only a part of the tubes intended for the oil and gas industry. Standard thread OCTG and project line pipe sold in the Community by the addressees of the contested decision accounted for 19% of Community consumption of seamless OCTG and line pipe, whereas more than 50% of consumption was met by OCTG and line pipe not covered by the agreement and more than 21% of consumption by imports from non-Member countries other than Japan.

257 The Commission also states that it clearly recognised that the infringement had a limited impact on the market. Furthermore, its analysis concentrated on the Community market, but that is not inconsistent with the geographic definition of the OCTG market (recital 35 to the contested decision).

Findings of the Court

258 Under Article 15(2) of Regulation No 17, the Commission may impose fines of from EUR 1 000 to EUR 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. In fixing the amount of the fine within those limits, regard is to be had both to the gravity and duration of the infringement.

259 Neither Regulation No 17, nor the case-law nor the Guidelines state that fines must be fixed in direct proportion to the size of the market affected, that factor being just one amongst others. In accordance with Regulation No 17, as interpreted by the

case-law, the fine imposed on an undertaking for an infringement of the competition rules must be proportionate to the infringement as a whole and, in particular, to the gravity of that infringement (see, to that effect, Case T-83/91 *Tetra Pak* v *Commission* [1994] ECR II-755, paragraph 240, and, by analogy, Case T-229/94 *Deutsche Bahn* v *Commission* [1997] ECR II-1689, paragraph 127). As the Court stated in paragraph 120 of its judgment in Joined Cases 100/80 to 103/80 *Musique diffusion française and Others* v *Commission* [1983] ECR 1825, regard must be had to a large number of factors, the nature and importance of which vary according to the type of infringement in question and the particular circumstances of the case (see also, by analogy, *Deutsche Bahn* v *Commission*, cited above, paragraph 127).

260 It should further be noted that whilst the Commission did not refer expressly to the Guidelines in the contested decision, when determining the amount of the fine imposed on the applicant it none the less applied the method of calculation which it imposed on itself in the Guidelines.

261 Whilst the Commission enjoys a margin of discretion when fixing the amount of fines (Case T-150/89 *Martinelli* v *Commission* [1995] ECR II-1165, paragraph 59, and, by analogy, *Deutsche Bahn*, paragraph 259 above, paragraph 127), it may not depart from rules which it has thus imposed on itself (see *Hercules Chemicals*, paragraph 162 above, paragraph 53, confirmed on appeal in Case C-51/92 P *Hercules Chemicals* v *Commission* [1999] ECR I-4235, and the case-law cited there). Thus, the Commission must take account of the terms of the Guidelines in fixing the amount of the fines, in particular of the mandatory provisions therein. However, the Commission's margin of discretion and the limits thereto do not in any event prejudice the exercise of the Community judicature's unlimited jurisdiction.

262 According to point 1 A of the Guidelines, '[i]n assessing the gravity of the infringement, account must be taken of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market'. The Commission states in recital 159 to the contested decision that it took account of those three criteria in assessing the gravity of the infringement.

263 However, in recital 161 to the contested decision, the Commission relied essentially on the nature of the offending conduct of all the undertakings to support its finding that the infringement found in Article 1 of the contested decision was 'very serious'. It referred in this regard to the seriously anti-competitive nature of the market-sharing agreement, the fact that it jeopardised the proper functioning of the single market, the deliberate nature of the infringement and secret and institutionalised nature of the system designed to restrict competition. The Commission also took account in recital 161 of the fact that 'the four Member States in question account for most of the consumption of seamless OCTG and line pipe in the Community and therefore constitute an extended geographic market'.

264 On the other hand, in recital 160 to the contested decision the Commission stated that 'the specific impact of the infringement on the market has been limited' because the two specific products covered by the infringement, namely standard OCTG and project line pipe, represented just 19% of Community consumption of seamless OCTG and line pipe and that welded pipes could meet part of the demand for seamless pipes given the technological progress in their manufacture.

265 Thus, in recital 162 to the contested decision, after characterising that infringement as 'very serious', the Commission pointed out, on the basis of the factors listed in recital 161, the relatively low volume of sales of the products in question in the four Member States concerned by the addressees of the contested decision (EUR 73 million per year). That reference to the size of the market affected corresponds to

the assessment of the limited impact of the infringement on the market in recital 160 to the contested decision. The Commission therefore decided to impose an amount to reflect gravity of just EUR 10 million. The Guidelines provide in principle for an amount 'above [EUR] 20 million' for an infringement in that category.

266 It is necessary to examine whether the Commission's approach set out above is unlawful in the light of the criticisms put forward by Dalmine.

267 As regards Dalmine's arguments in relation to the relevant markets, recitals 35 and 36 to the contested decision represent the definition of the relevant geographic markets as they ought to normally exist were it not for unlawful agreements having the object or effect of artificially dividing them. Further, it is clear from the contested decision read as a whole, in particular recitals 53 to 77, that the conduct of the Japanese and European producers in each domestic market or, in certain cases, in the market for a certain region of the world was determined by specific rules which varied from one market to another and were the result of commercial negotiations within the Europe-Japan Club.

268 Thus, Dalmine's arguments concerning the small percentage of the worldwide and European markets for standard OCTG and project pipe line represented by the sales of those products by the eight addressees of the contested decision must be rejected as irrelevant. It is the fact that the infringement found in Article 1 of the contested decision had the object and, at least to a certain extent, the effect of excluding each of the addressees from the domestic markets of the other undertakings, including the market of the four largest Member States of the European Communities in terms of consumption of steel pipes, that constitutes a 'very serious' infringement according to the assessment made in the contested decision.

269 Dalmine's argument concerning the small volume of sales of standard OCTG and the significant extent to which welded pipes competed with project line pipe on its own domestic market is irrelevant, since its participation in the market-sharing infringement is the consequence of the undertaking it gave not to sell the products covered by the contested decision in other markets. Thus, even if the circumstances on which it relies were established to the requisite legal standard, they would not undermine the Commission's conclusion as to the gravity of the infringement committed by Dalmine.

270 It should, moreover, be noted that the fact, referred to by Dalmine, that the infringement found in Article 1 of the contested decision concerns just two specific products, namely standard OCTG and project line pipe and not all OCTG and line pipe, was expressly mentioned by the Commission in recital 160 to the contested decision as a factor which limited the specific impact of the infringement on the market (see paragraph 264 above). Similarly, in the same recital, the Commission refers to the increasing competition from welded pipes (see also paragraph 264 above). It must therefore be held that the Commission has already taken those factors into account in its assessment of the gravity of the infringement in the contested decision.

271 In the light of the foregoing, it must be considered that the reduction referred to at paragraph 265 above of the amount fixed to reflect gravity to 50% of the minimum amount ordinarily imposed in the case of a 'very serious' infringement takes sufficient account of the limited impact of the infringement on the market in the present case.

272 It should also be noted in that regard that fines are intended to have a deterrent effect in competition cases (see, in that respect, the fourth paragraph of point 1 A of the Guidelines). Thus, given the large size of the undertakings to which the

contested decision was addressed, noted in recital 165 to the contested decision (see also paragraph 281 et seq. below), any greater reduction of the amount fixed to reflect gravity could have deprived the fines of their deterrent effect.

The assessment of the individual conduct of the undertakings and the failure to distinguish between the undertakings on the basis of their size

Arguments of the parties

273 Dalmine criticises the Commission's failure to take account of the individual conduct and the size of each of the undertakings concerned. According to the Guidelines, the Commission is required to apply weightings to the amounts of the fines to reflect those factors.

274 Dalmine asserts that its position in the market is marginal. Standard OCTG represented only 7.3% of its total sales between 1990 and 1995. As regards project line pipe, as the Commission failed to take into account the effect of sales of welded pipes and tubes on the markets for seamless pipes and tubes, it cannot have reached a definitive conclusion. Moreover, Dalmine did not properly perform the anti-competitive agreements imputed to it, retaining instead a certain freedom of action within the Europe-Japan Club, since it continued to sell OCTG and line pipe in Europe and elsewhere.

275 Moreover, Dalmine complains that, in setting the amount of the fine, the Commission failed to have regard to the size and turnover in the relevant market of each of the undertakings concerned. Fairness and the principle of proportionality

require that the firms are not treated the same, but that their conduct is sanctioned in accordance with their individual role and the effect on the market of their participation in the infringement.

276 Dalmine submits that it was unjustly punished since, of all the addressees of the contested decision, it was one of the smallest. It takes issue with the peremptory refusal of the Commission, which, in recital 165 to the contested decision, states that '[a]ll the firms covered by this decision are large firms. There is therefore no need to differentiate between the amounts adopted'. Its business was limited to producing certain types of seamless pipes and tubes and it cannot therefore be compared to companies with much broader businesses and considerably higher turnovers.

277 The Commission states that Dalmine participated in an agreement to respect domestic markets, which constitutes a very serious infringement of Article 81(1) EC. It emphasises, in this connection, that Dalmine has not challenged the truth of the facts found in the contested decision. Dalmine also took part in the infringement found in Article 2 of the contested decision. The fact that it may have acted somewhat more independently than the other members of the cartel is not in itself an attenuating circumstance (Case T-327/94 *SCA Holding* v *Commission* [1998] ECR II-1373, paragraph 142). In any event, the autonomy Dalmine claims to have retained within the Europe-Japan Club is irrelevant and is contradicted by its virtual monopoly on the Italian market, by its active participation in the discussions about the acquisition of Corus's business and, lastly, by the contract it entered into with Corus pursuant to the fundamentals on respect of domestic markets agreed within the Europe-Japan Club.

278 As the Commission found in the contested decision that the eight undertakings to which it was addressed were all large firms, and given the relatively small overall impact of the infringement on the markets, Dalmine's argument does not suffice to

demonstrate that the Commission exceeded the limits of its discretion in the present case by not applying the sixth paragraph of point 1 A of the Guidelines.

279 The Commission also argues in response to those arguments that Dalmine's turnover for 1998 amounted to EUR 669 million (recital 17 to the contested decision). It is therefore a large undertaking. The fact that it is not as large as the other addressees of the contested decision does not mean that it is entitled to a reduction in its fine.

Findings of the Court

280 It should first of all be noted that the reference in Article 15(2) of Regulation No 17 to the limit of 10% of worldwide turnover is relevant solely for the purpose of calculating the upper limit of the fine which the Commission is able to impose (see the first paragraph of the Guidelines and *Musique diffusion française* v *Commission*, paragraph 259 above, paragraph 119) and does not mean that the amount of the fine imposed on each undertaking must be proportionate to its size.

281 On the other hand, the sixth paragraph of point 1 A of the Guidelines, which apply in the present case (see paragraph 272 above), provide that the Commission may 'in some cases ... apply weightings to the amounts determined within each of the three categories [of infringements] in order to take account of the specific weight and, therefore, the real impact of the offending conduct of each undertaking on competition'. That paragraph states that that approach is appropriate 'particularly where there is considerable disparity between the sizes of the undertakings committing infringements of the same type'.

282 However, it follows from the use of the expression 'in some cases' and the term 'particularly' in the Guidelines that a weighting according to the individual size of the undertakings is not a systematic step in the calculation which the Commission is required to take, but an option of which it may avail itself in appropriate cases. It is settled case-law that the Commission has a discretion as to whether or not to take certain factors into account when it determines the amount of the fines it intends to impose, by reference, in particular, to the particular circumstances of the case (see, to that effect, order in Case C-137/95 P *SPO and Others* v *Commission* [1996] ECR I-1611, paragraph 54, and judgments in Case C-219/95 P *Ferriere Nord* v *Commission* [1997] ECR I-4411, paragraphs 32 and 33, and Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 465; see also, to that effect, Case T-309/94 *KNP BT* v *Commission* [1998] ECR II-1007, paragraph 68).

283 Given the wording of the sixth paragraph of point 1 A of the Guidelines as set out above, it must be held that the Commission has retained a certain margin of discretion as to whether it is appropriate to weight the fines according to the size of each undertaking. Thus, in determining the amount of the fines, the Commission is not required, where fines are imposed on several undertakings involved in the same infringement, to ensure that the final amount of the fines reflects the difference in overall turnover of the undertakings concerned (see, to that effect, albeit that they are subject to appeal, Case T-23/99 *LR AF 1998* v *Commission* [2002] ECR II-1705, paragraph 278, and Case T-213/00 *CMA CGM and Others* v *Commission* [2003] ECR II-913, paragraph 385).

284 In the present case, the Commission found in recital 165 to the contested decision that all the undertakings covered by the decision were large undertakings and that there was therefore no need to differentiate between the amounts of the fines on that basis. Dalmine disputes that analysis and points out that it is one of the smallest of the undertakings to which the contested decision was addressed, its turnover in

1998 being just EUR 667 million. In fact the difference in overall turnover in all products between Dalmine and the largest of the undertakings concerned, Nippon, whose turnover for 1998 was EUR 13 489 million, is substantial.

285 However, the Commission emphasised in its defence, without being contradicted by Dalmine, that Dalmine is not a small or a medium-sized undertaking. Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ 1996 L 107, p. 4), which applied when the contested decision was adopted, states, inter alia, that such undertakings must have fewer than 250 employees and have either an annual turnover not exceeding EUR 40 million or a balance-sheet total not exceeding EUR 27 million. In Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36), those two thresholds were revised upwards to EUR 50 million and EUR 43 million respectively.

286 The Court does not have any figures for the number of people employed by Dalmine or for its balance-sheet total, but Dalmine's turnover for 1998 was more than 10 times higher than the limit laid down in the Commission's successive recommendations concerning that criterion. Thus, on the basis of the information provided to the Court, it must be found that the Commission did not err in finding, in recital 165 to the contested decision, that all the undertakings to which the contested decision was addressed were large.

287 Moreover, it should be noted that the amount of the fine imposed on Dalmine in the contested decision, namely EUR 10.8 million, represents only around 1.62% of its worldwide turnover in 1998, which was EUR 667 million. The amount of its fine without a reduction on the grounds of cooperation would have been EUR 13.5 million, or less than 2% of that figure. Those figures are very substantially below the 10% limit referred to above.

288 As for Dalmine's argument alleging that the impact of its conduct on the market was minimal, because its market position was no more than marginal, it should be pointed out once again that Dalmine's argument regarding the small volume of sales of standard OCTG and the significant extent to which welded pipes competed with project line pipe on its own domestic market is irrelevant, since its participation in the infringement consisting in a market-sharing agreement is the consequence of the undertaking it gave not to sell the products in question on other markets (see paragraph 269 above). Thus, even if the facts it relies upon were established to the requisite legal standard, they could not undermine the Commission's conclusion as to the gravity of the infringement committed by Dalmine.

289 It should also be noted in that connection that each producer gave the same undertaking, namely not to sell standard OCTG and line pipe on the domestic market of each of the other members of the Europe-Japan Club. As stated in paragraph 263 above, the Commission primarily relied on the extremely anti-competitive nature of that undertaking in determining that the infringement found in Article 1 of the contested decision was 'very serious'.

290 Since Dalmine is the only Italian member of the Europe-Japan Club, it must be found that its participation in that agreement was sufficient to extend its geographical scope to the territory of a Member State of the Community. It must therefore be found that its participation in the infringement had an appreciable impact on the Community market. That circumstance is much more relevant, for the purposes of assessing the specific impact of Dalmine's participation in the infringement found in Article 1 of the contested decision on the markets for the products referred to in that article, than a mere comparison of the overall turnover of each of the undertakings.

291 As for Dalmine's alleged independence of action within the Europe-Japan Club, the fact that an undertaking which has been proved to have participated in collusion to share markets with its competitors did not behave on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account as an attenuating circumstance when determining the amount of the fine to be imposed (*SCA Holding* v *Commission*, paragraph 277 above, paragraph 142). An

undertaking which despite colluding with its competitors follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit.

292 The second indent of point 3 of the Guidelines must therefore be interpreted as meaning that the Commission is required to find that failure to implement a cartel constitutes an attenuating circumstance only if the undertaking which relies on that circumstance is able to show that it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation and that it did not give the appearance of complying with the agreement and thereby incite other undertakings to implement the cartel in question.

293 As the Court held in *Cement*, paragraph 44 above (paragraph 1389), an undertaking which does not distance itself from what was agreed at meetings in which it participated in principle has 'full responsibility for the fact that it participated in the agreement or concerted practice'. It would be too easy for undertakings to minimise the risk of having to pay a heavy fine if they could take advantage of an unlawful agreement or concerted practice and then enjoy a reduction in the fine on the ground that they only played a limited role in the implementation of the infringement, when their attitude incited other undertakings to behave in a manner more harmful to competition.

294 Similarly, as regards the argument that Dalmine played a passive role in the cartel and that its conduct in doing so constitutes an attenuating circumstance under the first indent of point 3 of the Guidelines, Dalmine does not deny having participated in the meetings of the Europe-Japan Club. It has been held above in relation to the pleas seeking annulment of Article 1 of the contested decision, and in *JFE Engineering and Others* v *Commission*, paragraph 111 above, that respect for domestic markets is one of the questions discussed at those meetings.

295 In the present case, Dalmine does not even claim that its participation in the meetings of the Europe-Japan Club was more sporadic than that of the other members of that club, which, according to the case-law might have justified a reduction in its favour (see, in that respect, Case T-317/94 *Weig* v *Commission* [1998] ECR II-1235, paragraph 264). Nor does it put forward any specific circumstance or evidence apt to show that its approach at the meetings in question was purely passive or 'follow-my-leader'. On the contrary, as stated in paragraph 290 above, the Italian market was included in the market-sharing agreement only because of Dalmine's membership of the Europe-Japan Club. In those circumstances, the Commission cannot be criticised for not reducing Dalmine's fine under the first indent of point 3 of the Guidelines.

296 Thus even if it were established in the present case that Dalmine made a limited number of sales on the other Community markets covered by the infringement, that circumstance would not suffice to cast doubt on its liability in the present case since, by its presence at the Europe-Japan Club meetings, it adhered or at least gave the other participants to believe that it adhered in principle to the terms of the anti-competitive agreement concluded at those meetings. It is apparent from the file, in particular from the figures in the table in recital 68 to the contested decision, that the market sharing envisaged by the cartel was implemented, at least to a certain extent, and that the cartel necessarily had a real impact on competitive conditions on the Community markets.

297 In the light of the foregoing, it was reasonable for the Commission, in the circumstances of the present case, to set the same amount to reflect gravity for the fine imposed on all the undertakings to which the contested decision was addressed. Nor, for the record, did the Commission infringe the principle of equal treatment in that regard.

298 Having regard to all the arguments and circumstances considered above, the Court, in the exercise of its unlimited jurisdiction, sees no reason to alter the amount of the fines in the present case on the basis of differences in situation or size between the undertakings to which the contested decision was addressed.

2. *The duration of the infringement*

Arguments of the parties

299 Dalmine disputes the Commission's assessment of the duration of the infringement. Although the Europe-Japan Club first met in 1977, the infringement period cannot have begun until 1 January 1991 because of the agreements on the voluntary restraint of exports concluded between the Commission and the Japanese authorities (recital 108 to the contested decision). Dalmine claims that the Commission overlooked in the contested decision the fact that on 28 December 1989 the Commission and the Japanese Government extended those voluntary restraint agreements until 31 December 1990.

300 Dalmine further submits that the infringement period came to an end towards the end of 1994, after the Commission carried out its first investigations in December 1994. It asserts that it never subsequently attended any meeting with the Japanese producers.

301 In any event, the flaws in the administrative procedure preclude a finding of infringement against the applicant after the investigations carried out on 1 and 2 December 1994.

302 Consequently, the duration of the infringement attributable to Dalmine should be reduced to less than four years, i.e. to the period 1 January 1991 to 2 December 1994. According to the Guidelines, the infringement is of a medium duration, which may lead to an increase of 10% per year or 30% in all. Dalmine therefore requests the Court to review the amount of the fine imposed on it.

303 The Commission observes that, according to the Guidelines, for infringements of one to five years (said to be of 'medium' duration), it may increase the basic amount of the fine by up to 50%. As regards the beginning of the infringement in the present case, it merely states that it found that it ran from and included 1990.

304 As regards the end of the infringement, the Commission insists that, in his statement of 17 September 1996, Mr Verluca acknowledged that contacts with the Japanese firms had ceased a little more than a year beforehand (recital 142 to the contested decision). As the investigations were carried out in December 1994, the Commission correctly determined that the duration of Dalmine's infringement was at least five years, from 1990 to 1994 inclusive.

Findings of the Court

305 In recital 108 to the contested decision the Commission stated that it could have taken into account the existence of the infringement from 1977, but that it chose not to do so because of the voluntary restraint agreements. Thus, in Article 1 of the contested decision, it took into account the existence of the infringement only from 1990. That approach plainly represents a concession on the Commission's part towards the addressees of the contested decision.

306 Neither of the parties maintained before the Court that that concession should be called in question in the present case. Consequently, the present proceedings will not examine the lawfulness of that concession or whether it was appropriate to make it, but only whether after expressly making the concession in the grounds of the contested decision, the Commission correctly applied it in the present case. In that regard, it must be borne in mind that the Commission must adduce precise and consistent evidence to found the firm conviction that the infringement has been committed, since it bears the burden of proof as regards the existence of the infringement and, accordingly, its duration (Joined Cases 29/83 and 30/83 *CRAM and Rheinzink* v *Commission* [1984] ECR 1679, paragraph 20; 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 Osakeytiö and Others* v *Commission ('Wood Pulp II')* [1993] ECR I-1307, paragraph 127; Joined Cases T-68/89, T-77/89 and T-78/89 *SIV and Others* v *Commission* [1992] ECR II-1403, paragraphs 193 to 195, 198 to 202, 205 to 210, 220 to 232, 249, 250 and 322 to 328; and Case T-62/98 *Volkswagen* v *Commission* [2000] ECR II-2707, paragraphs 43 and 72).

307 Thus, the concession described above makes the alleged cessation of the voluntary restraint agreements the determining criterion for the purpose of assessing whether the infringement should be considered to have existed in 1990. Since the agreements in question were concluded at international level between the Japanese Government, represented by the Japanese International Ministry of Trade and Industry, and the Community, represented by the Commission, it must be held that the Commission should have kept the documentation confirming the date on which the agreements ended, in accordance with the principle of sound administration. Therefore, it ought to have been able to adduce that documentation before the Court. However, the Commission stated before the Court that it had searched its archives but that it was unable to produce the documents confirming the date of cessation of those agreements.

308 Although, in general terms, an applicant cannot generally shift the burden of proof to the defendant by relying on circumstances which it was not in a position to prove, the concept of burden of proof cannot be applied to the Commission's advantage in the present case as regards the date on which the international agreements which the applicant concluded came to an end. The Commission's inexplicable inability to

adduce evidence relating to a circumstance which is of direct concern to it deprives the Court of the possibility of adjudicating with all the facts before it as regards the date on which the agreements ended. It would be contrary to the principle of the sound administration of justice to require that the consequences of that inability on the Commission's part be borne by the undertakings to which the contested decision was addressed, which, unlike the Commission, were not in a position to provide the missing evidence.

309 In those circumstances it must be held that, exceptionally, it was for the Commission to adduce the evidence of the date on which the agreements came to an end. However, the Commission has not adduced evidence of the date on which the voluntary restraint agreements came to an end either in the contested decision or before the Court.

310 In any event, the Japanese applicants adduced evidence that the voluntary restraint agreements were extended until 31 December 1990, at least at the Japanese level, which supports the applicant's argument in these proceedings (*JFE Engineering and Others* v *Commission*, paragraph 111 above, paragraph 345). In joined cases where all the parties have had the opportunity to consult all the files, the Court may of its own motion take account of the evidence in the files in the parallel cases (see, to that effect, Case T-113/89 *Nefarma and Bond van Groothandelaren in het Farmaceutische Bedrijf* v *Commission* [1990] ECR II-797, paragraph 1, and Case T-116/89 *Prodifarma and Others* v *Commission* [1990] ECR II-843, paragraph 1). In this instance, the Court is required to adjudicate in cases which were joined for the purpose of the oral procedure, which have as their subject-matter the same decision making a finding of infringement and in which all the applicants have requested the Court to review the amount of the fines which they were ordered to pay. Thus, the Court takes notice, in the present case, of the evidence adduced by the four Japanese applicants.

311 Furthermore, Dalmine is requesting the Court not only to annul the contested decision so far as concerns the duration of the infringement found in Article 1 of the

contested decision but also, in the exercise of its unlimited jurisdiction conferred in accordance with Article 229 EC, by Article 17 of Regulation No 17, to reduce the amount of its fine in order to take account of that reduction in duration. That unlimited jurisdiction has the consequence that when the Court varies the contested measure by amending the amount of the fines imposed by the Commission, it must take into account all of the relevant factual circumstances (*Limburgse Vinyl Maatschappij*, paragraph 282 above, paragraph 692). In those circumstances and given that all the applicants challenged the fact that the Commission found there to be an infringement from 1 January 1990 it would not be appropriate for the Court to make a separate assessment of the situation of each of the applicants in the circumstances of the present case by reference solely to the facts on which they have chosen to base their case and without regard to those which other applicants or the Commission may have invoked.

312 Furthermore, neither Dalmine, nor, *a fortiori*, the Commission has claimed that the voluntary restraint agreements were still in force in 1991.

313 In those circumstances, the Court finds for the purposes of these proceedings, that the voluntary restraint agreements between the Commission and the Japanese authorities remained in force during 1990.

314 It follows from the foregoing that, in the light of the concession made by the Commission in the contested decision, the duration of the infringement found in Article 1 of the contested decision must be reduced by one year. Thus, Article 1 of the contested decision must be annulled in so far as it finds that the infringement which it imputes to Dalmine existed before 1 January 1991.

315 As regards the date on which the infringement came to an end, it should be noted that at the hearing, in response to a question from the Court, the Commission stated

that in the contested decision, 1995 was not taken into account in calculating the amount of the fines. Dalmine then stated that it accepted that interpretation of the contested decision.

316 Thus, the only point in issue between the parties to the present case concerns the question whether the Commission was entitled to find that the infringement found in Article 1 of the contested decision continued after the date of the investigations, i.e. on 1 and 2 December 1994. It was held at paragraph 112 above that Dalmine's argument is irrelevant as regards the infringement found in Article 1 of the contested decision since that infringement continued for only about 30 days after those investigations. In any event, even if Dalmine's arguments were well founded in that regard, there would be no need to amend the amount of its fine to take account of such an insignificant difference in duration.

317 It follows from the foregoing that the duration of the infringement found in Article 1 of the contested decision is four years, from 1 January 1991 to 1 January 1995. Accordingly, the amount of the fine imposed on Dalmine must be reduced to take account of that fact.

3. *The failure to take account of certain attenuating circumstances*

Arguments of the parties

318 Dalmine criticises the Commission for having failed to take account of certain attenuating circumstances which justified a reduction in the amount of its fine. It concedes that the Commission took account, as an attenuating circumstance, of the crisis in the steel industry, and reduced the fine by 10% on that ground. However, Dalmine submits that other circumstances justified a greater reduction in the amount of the fine.

319 More specifically, Dalmine points to its minor and exclusively passive role in the infringement, the few effects of the infringement and the fact that it ceased the infringement immediately the Commission carried out its investigations on 1 and 2 December 1994. It further maintains that, having regard to the structure of the market and to competition in the Italian market and in the Community as a whole, it cannot be accused of having committed an infringement deliberately.

320 As those points were overlooked the amount of the fine is clearly disproportionate to the applicant's involvement in the infringement. The basic amount of the fine is equivalent to 16% of the total proceeds from its sales of the products in question in 1998 (ITL 179.5 million) in the world market, to 38% of its sales in the Community market and to 95% of its sales throughout the infringement period in Germany, France, Italy and the United Kingdom.

321 The Commission contends that the fact that Dalmine put an end to its unlawful conduct after the initial investigations is not an attenuating circumstance. Its secondary role and its alleged independence within the cartel are hardly relevant.

322 Dalmine cannot attenuate its liability by invoking that of the other addressees of the contested decision. It never openly dissociated itself from the cartel and did not play a purely passive role. On the contrary, it proposed that the issues raised by Corus's withdrawal from the market be resolved 'at European level'.

323 The Commission submits that the deliberate nature of Dalmine's infringement is incontestable and that there is no need to prove that it was aware that it was infringing Article 81(1) EC. On the contrary, it is sufficient that it could not have

been unaware that the conduct with which it is charged had as its object the restriction of competition (Case 246/86 *Belasco and Others* v *Commission* [1989] ECR 2117, paragraph 41, and Case 19/77 *Miller* v *Commission* [1978] ECR 131). It is unlikely that an undertaking like Dalmine could have been unaware of the most elementary rules in force prohibiting the restriction of competition (see in that regard, point 1 A of the Guidelines).

Findings of the Court

324 It must be borne in mind, first of all, that in the present case the Commission granted a reduction of 10% of the amount of the fine on the ground of an attenuating circumstance, namely the crisis affecting the steel industry at the material time.

325 It must also be borne in mind that the Commission must comply with its own Guidelines when setting fines. However, the Guidelines do state that in calculating the fines the Commission must always take account of each of the individual attenuating circumstances set out at point 3. Point 3, entitled '[a]ttenuating circumstances' provides that 'the basic amount will be reduced where there are attenuating circumstances such as: ...'. Although the circumstances in the list at point 3 of the Guidelines are certainly among those which may be taken into account by the Commission in a specific case, it is not required to grant a further reduction as a matter of course when an undertaking puts forward evidence of the existence of one of those circumstances. Whether it is appropriate to grant a reduction of the fine on grounds of attenuating circumstances must be determined on the basis of a global assessment which takes account of all the relevant circumstances.

326 According to case-law prior to the adoption of the Guidelines which indicated that the Commission had a discretion allowing it to take or not to take certain factors into consideration when fixing the amount of the fines which it proposed to impose, by reference in particular to the particular circumstances of the case (see, to that effect, the order in *SPO and Others* v *Commission*, paragraph 282 above, paragraph 54, and *Ferriere Nord* v *Commission*, paragraph 282 above, paragraphs 32 and 33, and *Limburgse Vinyl Maatschappij*, paragraph 282 above, paragraph 465; see also to that effect *KNP BT* v *Commission*, paragraph 282 above, paragraph 68). Thus, in the absence of a mandatory indication in the Guidelines of the attenuating circumstances which may be taken into account, it must be held that the Commission retained a certain discretion when making a global assessment of the size of any reduction in the fines to reflect attenuating circumstances.

327 In any event, it suffices to point out that Dalmine's argument concerning its minor and passive role in the infringement found in Article 1 and its alleged independence of action has already received a reply in paragraphs 280 to 297 above. Similarly, the complaints alleging that the effects of that infringement were minimal and that the fine was generally disproportionate were examined in paragraphs 258 to 272 above.

328 As regards the argument that the applicant ceased the infringement immediately, it must be held that that 'termination of the infringement as soon as the Commission intervenes', as stated in point 3 of the Guidelines, can logically constitute an attenuating circumstance only if there are reasons to suppose that the undertakings concerned were encouraged to cease their anti-competitive conduct by the interventions in question. It appears that the purpose of that provision is to encourage undertakings to terminate their anti-competitive conduct immediately when the Commission launches an investigation into it.

329 It follows from the foregoing, in particular, that the fine cannot be reduced on that basis where the infringement has already come to an end before the date on which the Commission first intervenes or where the undertakings concerned have already taken a firm decision to put an end to it before that date.

330 Furthermore, a reduction applied in such circumstances would duplicate the reduction for duration which, in accordance with the Guidelines, is applied in calculating the fine. Duration is taken into account for the specific purpose of imposing a heavier penalty on undertakings which infringe the competition rules over a prolonged period than on those whose infringements are of short duration. Thus, a reduction in the amount of a fine on the ground that an undertaking terminated its unlawful conduct before the Commission first intervened would have the effect of benefiting for a second time those responsible for infringements of that duration.

331 It should be noted in the present case that in the judgment in *JFE Engineering and Others* v *Commission*, paragraph 111 above, the Court considered in the light of the pleas in law and arguments put forward by the applicants in those cases, that they should not be found to have committed the infringement after 1 July 1994 since there was no evidence of a meeting of the Europe-Japan Club in autumn 1994 in Japan in accordance with the practice followed until then. That fact makes it clear that the infringement had probably ceased or that it was at least in the process of coming to an end when the Commission carried out its investigations on 1 and 2 December 1994.

332 It follows that the fact that the unlawful conduct constituting the infringement found in Article 1 of the contested decision did not continue after the date of the Commission's first investigations does not justify a reduction in the amount of the fine imposed on Dalmine in the circumstances of the present case.

333 As for Dalmine's arguments that it did not commit the infringement found in Article 1 of the contested decision deliberately, the Commission established that it was a party to an agreement having an anti-competitive object. Where an agreement is specifically intended to restrict competition, the participation of an undertaking in that agreement can only be deliberate, irrespective of the structural considerations involved. Moreover, it is clear from the case-law that undertakings cannot justify having taken part in an infringement of the competition rules by claiming that they were forced into it by the conduct of other traders (see, to that effect, *Cement*, paragraph 44 above, paragraph 2557). Thus, Dalmine cannot rely on the market structure or the conduct of its competitors to exculpate it in the present case.

334 In the light of all of the foregoing and given that the Commission has already reduced the fines to take account of the attenuating circumstance that the steel pipe and tube sector was in a state of economic crisis (see paragraphs 168 and 169 of the contested decision), all of Dalmine's arguments alleging a failure to accord a further reduction on the ground of other allegedly attenuating circumstances must be rejected.

4. *Dalmine's cooperation during the administrative procedure*

Arguments of the parties

335 Dalmine claims that the Commission failed to comply with the Leniency Notice and infringed the principle of equal treatment. It maintains that its situation is

comparable to Vallourec's and criticises the Commission's failure to reduce its fine on account of its cooperation during the investigation.

336 It states that, on 4 April 1997, in reply to questions put by the Commission during its initial investigations, it had informed the Commission that:

'[The fundamentals] may reflect the position of the Community seamless steel pipes and tubes sector ... This position has developed on two lines: implementation of a rationalisation process ...; contacts with the Japanese industry, whose production capacity was exceeding demand. Those contacts related to exports of pipes and tubes (particularly, those intended for the oil industry) to zones other than the EC (Russia and China) and they were also intended to limit exports [of pipes and tubes] to the EC after the closure of [Corus's] mills and, consequently, to protect the Community seamless pipe and tube industry' (Annex 3 to the application and recital 65 to the contested decision).

337 That information demonstrates the extent of the applicant's cooperation during the investigation and there are no objective reasons for treating Vallourec and Dalmine differently in this regard.

338 The Commission rejects those claims and refers to the grounds set out in recitals 172 and 173 to the contested decision in order to substantiate its decision not to grant a further reduction in the amount of the fine. Such a reduction can be granted only to undertakings which, by their active cooperation, enable the Commission to establish an infringement more easily (*SCA Holding* v *Commission*, paragraph 277 above, paragraph 156). Dalmine's cooperation was not decisive in the investigation,

since it consisted solely in not substantially contesting the facts established by the Commission.

339 Vallourec's attitude cannot be compared to Dalmine's. Vallourec was the only undertaking to provide the Commission with substantial evidence concerning the existence and terms of the cartel. That evidence considerably facilitated the Commission's task of establishing the infringements.

Findings of the Court

340 It is settled case-law that in appraising the cooperation shown by undertakings the Commission is not entitled to disregard the principle of equal treatment, a general principle of Community law which is infringed only where comparable situations are treated differently or different situations are treated in the same way, unless such difference of treatment is objectively justified (Joined Cases T-45/98 and T-47/98 *Krupp Thyssen Stainless and Acciai speciali Terni* v *Commission* [2001] ECR II-3757, paragraph 237 and the case-law there cited).

341 It should also be borne in mind that a reduction in the amount of the fine on grounds of cooperation is justified only if the conduct made it easier for the Commission to establish infringements of the Community competition rules and to put an end to them (Case T-347/94 *Mayr-Melnhof* v *Commission* [1998] ECR II-1751, paragraph 309 and the case-law there cited).

342 In the present case, Mr Verluca's statements, made in his capacity as representative of Vallourec in reply to questions put to that company by the Commission, constitute the key evidence in the file in the present case.

343 It is true that in so far as undertakings provide the Commission, at the same stage of the administrative procedure and in similar circumstances, with similar information concerning the conduct imputed to them the extent of the cooperation provided by them must be regarded as comparable (see, by analogy, *Krupp Thyssen Stainless and Acciai speciali Terni* v *Commission*, paragraph 340 above, paragraphs 243 and 245).

344 However, whilst Dalmine's answers to the questions were of some use to the Commission, they merely confirm, albeit less precisely and less explicitly, some of the information already provided by Vallourec in the form of Mr Verluca's statements.

345 It must therefore be held that the information provided by Dalmine to the Commission before the SO was sent is not comparable to that provided by Vallourec and is not sufficient to justify a reduction in the fine imposed on Dalmine over and above 20% reduction granted to it for not contesting the facts. Although its decision not to contest the facts may have made the Commission's task significantly easier, the same cannot be said of the information provided by Dalmine before the SO was issued.

346 It follows that the present plea must be rejected.

The calculation of the fine

347 It follows from the foregoing that the fine imposed on Dalmine must be reduced to take account of the fact that the duration of the infringement found in Article 1 of the contested decision is fixed at four years instead of five.

348 Since the method of calculating the amount of the fines laid down in the Guidelines and used by the Commission in the present case has not been challenged as such, the Court, in the exercise of its unlimited jurisdiction, considers that that method should be applied in the light of the conclusion reached in the preceding paragraph.

349 Thus, the basic amount of the fine is fixed at EUR 10 million, increased by 10% for each year of infringement, i.e. 40% in total, giving a figure of EUR 14 million. That amount must then be reduced by 10% on the ground of the attenuating circumstances, in accordance with recitals 168 and 169 to the contested decision, and then by 20% on the ground of cooperation, which gives a final total for Dalmine of EUR 10 080 000 instead of EUR 10 800 000.

Costs

350 Under Article 87(3) of the Rules of Procedure, the Court may order that the costs be shared or that each party bear its own costs where each party succeeds on some and fails on other heads. Since each party has failed on one or more heads in the present case, it is appropriate to order the applicant and the Commission to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Annuls Article 1(2) of Commission Decision 2003/382/EC of 8 December 1999 relating to a proceeding under Article 81 EC (Case IV/E-1/35.860-B seamless steel tubes) in so far as it finds that the infringement imputed to the applicant by that provision existed before 1 January 1991;**

2. **Fixes the amount of the fine imposed on the applicant in Article 4 of Decision 2003/382 at EUR 10 080 000;**

3. **Dismisses the remainder of the application;**

4. **Orders the applicant and the Commission to bear their own costs.**

Forwood Pirrung Meij

Delivered in open court in Luxembourg on 8 July 2004.

H. Jung J. Pirrung

Registrar President

Table of contents