ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA
EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE
IL-QORTI ĠENERALI TAL-UNJONI EWROPEA
GERECHT VAN DE EUROPESE UNIE
SĄD UNII EUROPEJSKIEJ
TRIBUNAL GERAL DA UNIÃO EUROPEIA
TRIBUNALUL UNIUNII EUROPENE
VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE
SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

12 July 2018 *

(Competition — Agreements, decisions and concerted practices — European market for power cables — Decision finding an infringement of Article 101 TFEU — Concept of an undertaking — Economic succession — Single and continuous infringement — Evidence of the infringement — Public distancing — Duration of participation — Equal treatment — Gravity of the infringement — Unlimited jurisdiction)

In Case T-438/14,

Silec Cable SAS, established in Montereau-Fault-Yonne (France),

General Cable Corp., established in Wilmington, Delaware (United States),

represented by I. Sinan, Barrister, and I. De Beni, lawyer,

applicants,

v

European Commission, represented by C. Giolito and H. van Vliet, acting as Agents, and by D. Bailey, Barrister,

defendant,

ACTION pursuant to Article 263 TFEU for annulment of Commission Decision C(2014) 2139 final of 2 April 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39610 — Power cables) in so far as it concerns the applicants and, in the alternative, an application for a reduction in the amount of the fines imposed on the applicants in that decision,

THE GENERAL COURT (Eighth Chamber),

* Language of the case: English.

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

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 June 2017,

gives the following

Judgment

Background to the dispute

The applicants and the sector concerned

1 The applicants, the company established under French law Silec Cable SAS ('Silec') and the American company General Cable Corporation, are active, inter alia, in the underground and submarine power cable production and supply sector. Shortly before 30 November 2005, Safran SA created Silec with a view to divesting the latter's optical cable and power cable business to the Spanish company Grupo General Cable Sistemas SA, itself a subsidiary of General Cable. Prior to 30 November 2005, that business was run by Safran through a wholly owned subsidiary, Sagem Communications SA. Safran was itself the result of a merger, on 11 May 2005, between Sagem SA and Snecma. Between 20 May 1998 and 11 May 2005, the underground power cable business was operated by Sagem Communications as a separate business unit of Sagem. On 30 November 2005, Safran transferred that business to Silec. On 22 December 2005, Safran sold Silec to General Cable.

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

Administrative procedure

3 By letter of 17 October 2008, the Swedish company ABB AB provided the Commission of the European Communities with a series of statements and documents concerning restrictive commercial practices in the underground and submarine power cable production and supply sector. Those statements and

documents were provided in support of an application for immunity submitted in accordance with the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17, 'the Leniency Notice').

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

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

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

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

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

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

25 June 2014, *Nexans and Nexans France* v *Commission* (C-37/13 P, EU:C:2014:2030), the Court of Justice dismissed that appeal.

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

Contested decision

The infringement at issue

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

12 The Commission found, in the contested decision, that the cartel had two main configurations which formed a composite whole and were therefore an integral part of a single and continuous infringement. More specifically, according to the Commission, the cartel comprised:

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

– the 'European cartel configuration', which involved the allocation of territories and customers by the European producers for projects situated within the European 'home territory' or allocated to the European producers

(see point 3.3 of the contested decision and, in particular, recitals 73 and 74 of that decision).

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

14 The Commission classed the cartel participants into three groups, according to the role each of them had played in implementing the cartel. First of all, it defined the core group as including, on the one hand, the European undertakings: Nexans France, the subsidiary undertakings of Pirelli & C., formerly Pirelli SpA, having participated in turn in the cartel and Prysmian Cavi e Sistemi Energia, and, on the other hand, the Japanese undertakings: Furukawa Electric, Fujikura and their joint venture Viscas, as well as Sumitomo Electric Industries, Hitachi Cable and their joint venture J-Power Systems (recitals 545 to 561 of the contested decision). Next, it identified a group of undertakings which were not part of the core group but which nevertheless could not be regarded merely as fringe players in the cartel. In this group it placed ABB AB, Exsym, Brugg and the entity constituted by Sagem, Safran and Silec (recitals 562 to 575 of the contested decision). Last, the Commission considered that Mitsubishi Cable Industries, SWCC Showa Holdings, LS Cable, Taihan Electric Wire and nkt cables were fringe players in the cartel (recitals 576 to 594 of the contested decision).

Liability of the applicants and the fine imposed on the applicants

15 Silec was held liable on the basis of its direct participation in the cartel from 30 November 2005 to 16 November 2006. The Commission also held Safran and General Cable jointly and severally liable as parent companies of Silec during the period from 30 November to 21 December 2005 and during the period from 22 December 2005 to 16 November 2006 respectively (recitals 866 to 869, 938 to 941 and 955, and Article 1(7)(a) and (b) of the contested decision).

16 In Article 2(i) and (j) of the contested decision, in accordance with recital 1078 of that decision, the Commission imposed the following fines on Silec in respect of the period from 30 November 2005 to 16 November 2006:

– EUR 1 852 500, for which it is jointly and severally liable with General Cable (in its capacity as parent company of Silec from 22 December 2005 to 16 November 2006);

– EUR 123 500, for which it is jointly and severally liable with Safran (in its capacity as parent company of Silec from 30 November to 21 December 2005, and which is not a party to the present proceedings).

17 In calculating the amount of those fines, the Commission applied Article 23(2)(a) of Regulation No 1/2003 and the methodology set out in the Guidelines on the

method of setting fines imposed pursuant to Article 23(2)(a) (OJ 2006 C 210, p. 2; 'the 2006 Guidelines on the method of setting fines').

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

19 In so far as concerns the multiplier to reflect the duration of the infringement, the Commission took, for Silec, the figure 0.91, to reflect the period from 30 November 2005 to 16 November 2006. As for General Cable, the Commission took the figure 0.853, to reflect the period from 22 December 2005 to 16 November 2006. The Commission also included, for Silec, in the basic amount of the fines an additional amount (entry fee) of 19% of the value of sales. The amount thus determined rose to EUR 2 080 000 (recitals 1011 to 1016 of the contested decision).

20 In the second place, as regards adjustments to the basic amounts of the fines, the Commission found there to be no aggravating circumstances that might affect the basic amounts of the fine fixed for each of the cartel participants, with the exception of ABB AB. On the other hand, in so far as mitigating circumstances are concerned, it decided to reflect in the fines the substantially limited role played by various undertakings in the implementation of the cartel. Accordingly, it reduced by 10% the basic amounts of the fines to be imposed on the fringe players in the cartel and by 5% the basic amounts of the fines to be imposed on those undertakings whose involvement had been moderate, including the entity constituted by Sagem, Safran and Silec. The Commission also granted Mitsubishi Cable Industries and SWCC Showa Holdings an additional reduction of 1%, in respect of the period preceding the creation of Exsym, and LS Cable and Taihan Electric Wire, on account of the fact that they had been unaware of certain aspects of the single and continuous infringement and were not liable for them. By contrast, no reduction in the basic amounts of the fines was granted for the

undertakings belonging to the core group of the cartel (recitals 1017 to 1020 of the contested decision). Moreover, the Commission granted, pursuant to the 2006 Guidelines on the method of setting fines, an additional reduction of 3% to Mitsubishi Cable Industries on account of its effective cooperation outside the scope of the Leniency Notice (recital 1041 of that decision).

Procedure and forms of order sought

21 By application lodged at the Registry of the General Court on 13 June 2014, the applicants brought the present action.

22 On 12 September 2016, the General Court (Eighth Chamber, former composition) adopted, pursuant to Articles 89 and 90 of its Rules of Procedure, a measure of organisation of procedure consisting in a written question sent to the applicants. They replied to it within the period prescribed.

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

24 Acting upon a proposal of the Judge-Rapporteur, the General Court (Eighth Chamber) decided to open the oral part of the procedure. The parties presented oral argument and answered the questions put to them by the Court at the hearing on 9 June 2017.

25 The applicants claim that the Court should:

– annul Article 1 of the contested decision in so far as it relates to them;

– in the alternative, reduce the amount of the fines imposed on them;

– order the Commission to pay the costs;

26 The Commission contends that the Court should:

– dismiss the application;

– order the applicants to pay the costs.

Law

27 In the context of the action, the applicants put forward a claim for partial annulment of the contested decision as well as a claim for reduction in the amount of the fines imposed on them. During the hearing, they confirmed that the latter claim was based also on each of the pleas raised in support of the claim for annulment.

28 In support of their action, the applicants put forward five pleas in law. First, they allege that the Commission erred in law and failed to discharge its burden of proof under Article 2 of Regulation No 1/2003 in concluding that Silec had continued to participate in the alleged infringement after its acquisition by General Cable on 22 December 2005. Second, the applicants argue that the Commission erred in law and infringed the principles on the burden of proof and of the presumption of innocence in asserting that Silec was under a positive obligation to distance itself publicly from the alleged cartel. Third, the applicants maintain that the Commission made a manifest error of assessment and infringed the principle of equal treatment in concluding that Silec had participated directly in the alleged cartel from 30 November 2005. Fourth, the applicants argue that the Commission made a manifest error of assessment and infringed the principle of equal treatment in treating Silec differently and inconsistently by comparison with the way it treated other addressees of the contested decision. Fifth, the applicants submit that, at very least, the Commission made a manifest error in assessing the gravity of the infringement and infringed the principles of equal treatment and proportionality in not classing Silec as a fringe player in the cartel.

29 It is therefore necessary to examine in turn the claim for annulment and the claim for reduction of the fines.

Preliminary observations

30 The five pleas for annulment include a recurring line of argument, challenged by the Commission, which is raised in the application as the 'factual background' prior to the five pleas, according to which the Commission did not adequately differentiate the behaviour associated with the assets constituting Silec before and after Silec's acquisition by General Cable. The applicants postulate that the Commission came up with a 'fictional entity' comprising Sagem, Safran and Silec and wrongly attributed the conduct and assets of Sagem and Safran, Silec's predecessors, to Silec and General Cable.

31 It is therefore appropriate to examine, as a preliminary step, whether the Commission did not err in considering that, during the period of the infringement of Article 101(1) TFEU that it found, Silec formed an undertaking with Sagem and Sagem Communications (subsidiary of Safran).

32 It is apparent from the case-law that Article 101 TFEU refers to the activities of 'undertakings' (judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 59) and that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed (judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 112; and of 10 January 2006, *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 107).

33 Moreover, according to the case-law, a change in the legal form and name of an undertaking does not create a new undertaking free of liability for the anti-competitive behaviour of its predecessor, when, from an economic point of view, the two are identical (judgment of 28 March 1984, *Compagnie royale asturienne des mines and Rheinzink* v *Commission*, 29/83 and 30/83, EU:C:1984:130, paragraph 9).

34 In recitals 29 to 31 and 862 to 870 of the contested decision, the Commission considered that the economic entity forming the undertaking at issue during the period of the infringement of Article 101(1) TFEU that it found, was made up of several legal persons:

– (i) a commercial entity (unincorporated) of Sagem, which had been active in the underground power cable sector since 20 May 1998 and, according to the Commission, participated in the infringement from 12 November 2001;

– (ii) on 11 May 2005, Sagem merged with Snecma to form a new associated company called Safran; at the same time, the power cable business was transferred to a wholly owned subsidiary of Safran, called Sagem Communications, which, according to the Commission, continued to participate in the infringement;

– (iii) following an internal restructuring within Safran, the power cable business was transferred, on 30 November 2005, to a new subsidiary, namely Silec, which, according to the Commission, continued to participate in the infringement; and

– (iv) on 22 December 2005, Grupo General Cable Sistemas, a subsidiary of General Cable, acquired Silec, which, according to the Commission, remained within the cartel until 16 November 2006.

35 In that regard, it must be stated that that economic unit, namely the power cable businesses originally owned by Sagem, then by Sagem Communications (subsidiary of Safran) and, finally, by Silec (subsidiary of Safran, then of General Cable), remained the same for the full duration of the infringement of Article 101(1) TFEU found by the Commission.

36 In addition, it is important to note that it is the same natural person, Mr V., who was head of that economic unit for the full duration of the infringement.

37 The Commission was therefore right to consider, in recitals 29 to 31 and 862 to 870 of the contested decision, that Sagem, Sagem Communications (subsidiary of Safran) and Silec constituted the same economic unit or undertaking, which it called ‘Sagem/Safran/Silec’.

38 Moreover, on 30 November 2005, Silec became the legal successor of the assets and liabilities of those power cable businesses. From an economic point of view,

Silec resumed the power cable activities without interruption, having acquired of all the information with regard to them (see recital 865 of the contested decision).

39 Consequently, Silec was the economic successor of Sagem and of Sagem Communications.

40 The Commission was therefore right to find, in Article 1(7)(a) of the contested decision, that Silec was the successor of the power cable businesses owned by the undertaking comprising, other than itself, Sagem and Sagem Communications. Contrary to the applicants' claims, the denomination 'Sagem/Safran/Silec' used by the Commission did not, therefore, refer to a 'fictional entity' used to attribute to Silec the unlawful conduct of the companies that had preceded it, but was merely a reference to the undertaking which operated on the power cables market from 12 November 2001 to 16 November 2006.

41 It follows that the applicant's recurring line of argument, according to which Silec did not form an economic unit or an undertaking with Sagem and Sagem Communications during the period of the infringement of Article 101(1) TFEU that the Commission found, cannot succeed.

42 Regarding the pleas for annulment, the Court considers it opportune to examine the third plea, concerning the starting date of Silec's participation in the cartel fixed at 30 November 2005, before the first plea, relating to Silec's participation in the infringement after its acquisition by General Cable on 22 December 2005, and before the second plea, relating to the concept of 'public distancing' from the cartel.

The third plea, alleging a manifest error of assessment and infringement of the principle of equal treatment so far as concerns the start of Silec's direct participation in the cartel

43 By their third plea, the applicants allege that the Commission committed a manifest error of assessment and violated the principle of equal treatment in concluding that Silec directly participated in the cartel from 30 November 2005. They argue that assigning direct liability for the infringement to Silec in respect of the period from 30 November to 22 December 2005 is 'overly artificial' and that Safran alone should have been held liable for the infringement during that period. In their view, the Commission took different approaches to the cartel's 'sole and direct liability' with regard to the periods before and after the formation of Silec.

44 The Commission disputes the applicants' arguments.

45 It must be recalled that, pursuant to the contested decision, Silec is jointly and severally liable with the legal person capable of exercising decisive influence over it at the time of the infringement, that is to say, Safran on 30 November 2005 and General Cable from 22 December 2005. Article 1(6)(a) of that decision holds Safran liable until 21 December 2005 inclusive, whereas Article 1(7)(b) of that

decision holds General Cable liable for the period from 22 December 2005 to 16 November 2006.

46 Recitals 692 to 706 of the contested decision set out the principles applied by the Commission to determine the addressees of its decision. It was, in its view, necessary to identify 'one or more legal persons to represent the undertaking' (recital 696 of the same decision).

47 It is for the period from 30 November to 21 December 2005 that the Commission held Safran and Silec jointly and severally liable for Silec's participation in the cartel. During that period, Silec, which Mr V. had joined, controlled the infringing assets and was in possession of all the information with regard to the power cable activities (recital 865 of the contested decision). According to the Commission, Silec was directly involved in the cartel. During the same period, Safran exercised decisive influence over Silec and was also held liable for the infringement committed by the undertaking (recital 866 of that decision).

48 In view of that reminder, it is appropriate to examine the applicants' complaint that the Commission erred in concluding that Silec directly participated in the cartel from 30 November 2005, when only Safran should have been held liable for the infringement from 30 November to 21 December 2005.

49 In that regard, it must be noted that, in its response of 16 November 2009 to the Commission's request for information of 20 October 2009, Safran confirmed that the power cable assets constituting the elements of the 'Networks' division of Sagem Communications had been transferred to Silec on 30 November 2005. From that date, Silec took over those assets, including the business capital, the client list, the employees (including Mr V.) and all of the related documents.

50 It is therefore wrong for the applicants to claim that Safran was the legal person exercising direct control over the power cable assets constituting the elements of the 'Networks' division of Sagem Communications during the period from 30 November to 21 December 2005.

51 On the contrary, from 30 November 2005, Silec was a participant in the cartel as the economic successor of Sagem Communications (subsidiary of Safran).

52 According to the case-law, in accordance with the principle of personal responsibility, the legal person transferred may be penalised, as from the date when it was set up, for the period of the infringement during which it itself participated in the infringement (see, to that effect, judgment of 30 September 2009, *Hoechst* v *Commission*, T-161/05, EU:T:2009:366, paragraphs 28, 61, 66 and 67).

53 Consequently, it must be concluded that Silec could, without error, be held jointly and severally liable with Safran (as parent company of Silec and preceding Sagem Communications) as the author of the infringement also for the period from 30 November to 21 December 2005.

54 That conclusion cannot be invalidated by the applicants' arguments.

55 First, the applicants' argument that Silec could be held liable from 30 November to 21 December 2005 only had it been capable of acting independently in the market is based on the mistaken premiss that the liability of a parent company excludes the possibility of holding a subsidiary liable if the subsidiary is incapable of acting independently in the market. It is apparent from the case-law that the liability of a parent company for an infringement is wholly derived from the unlawful conduct of its subsidiary (judgment of 10 April 2014, *Commission and Others* v *Siemens Österreich and Others*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 47). It follows that the subsidiary, as the author of the infringement, can be held liable, even if it does not decide independently upon its own conduct on the market (see, to that effect, judgment of 24 September 2009, *Erste Group Bank* v *Commission*, C-125/07 P, C-133/07 P et C-137/07 P, EU:C:2009:576, paragraphs 81 to 84).

56 Second, regarding the applicants' argument based on Safran's response of 16 November 2009 to the Commission's request for information, according to which '[t]his purely legal restructuring process did not impact the commercial operations of the Power Cable business which continuously operated as a business unit of the former SAGEM Group until its spin-off to General Cable Group', it should be noted that that response confirms, first, that the creation of Silec did not have an impact on the continuous operation of the power cables business as a business unit of Safran, formerly Sagem and Sagem Communications, and, second, that that method of commercial organisation lasted until the date of Silec's sale to General Cable. That response also enabled it to be established that the power cables business was carved out and transferred to Silec, which confirms that Silec was created to direct the cartel's power cables businesses. From 30 November 2005, Silec controlled the infringing assets and was in possession of all the information with regard to the power cable business implicated in the cartel. Consequently, the Commission was justified in concluding that Silec had directly participated in the cartel from 30 November 2005.

57 Third, regarding the applicants' argument that the Commission unjustifiably changed its method of attributing liability, first, to 'Sagem/Safran' and, second, to 'Safran/Silec', it must be stated that this is not borne out by the facts. First, the Commission found that, from 11 May to 29 November 2005, Safran should be held liable for the infringement committed by the undertaking. In that regard, it is appropriate to note that, according to the case-law, the Commission was not required to find Sagem Communications also liable for the same infringement (see, to that effect, judgment of 10 April 2014, *Commission and Others* v *Siemens Österreich and Others*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 50). Second, the Commission found that, from 30 November 2005, Silec and its owner until 21 December 2005, namely Safran, should be held liable for the infringement, and until that latter date. It is for that reason that Safran responded to the Commission's request for information of 20 October 2009 that, during the greater part of the relevant period, between 1998 and 2005, the power

cables business was operated directly by Sagem, then by Sagem Communications and that, from 30 November 2005, the business was operated by Silec, still under the direction of Mr V.

58 In addition, it should be observed that, in holding Silec and Safran jointly and severally liable for the infringement for the period between 30 November to 21 December 2005 and Silec and General Cable jointly and severally liable for the infringement for the period after the acquisition of Silec, namely from 22 December 2005 to 16 November 2006, the Commission treated comparable situations identically. The related complaint of the applicants, alleging infringement of the principle of equal treatment, therefore cannot succeed.

59 It follows from the foregoing that the third plea must be rejected.

The first plea, alleging an error of law and an insufficiency of evidence to prove that Silec participated in the infringement after its acquisition by General Cable

60 By their first plea, the applicants allege that the Commission failed to discharge its burden of proof under Article 2 of Regulation No 1/2003. In their view, the Commission failed to prove that Silec had continued to participate in the alleged infringement after its acquisition by General Cable on 22 December 2005 and until 16 November 2006. The applicants consider that, had the Commission properly analysed and assessed the evidence in its possession, it would have concluded that its findings regarding Silec did not meet the required standard of proof. Moreover, the Commission disregarded the clear change in Silec's conduct after its acquisition by General Cable in execution of the latter's compliance guidelines.

61 The Commission disputes the applicants' arguments.

The requirements of the case-law concerning evidence

62 According to settled case-law, the burden of proving an infringement of Article 101 TFEU rests on the Commission (see judgment of 8 July 1999, *Commission* v *Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 86 and the case-law cited). It is required to produce sufficiently precise and consistent evidence to support the conviction that the infringement was committed (see judgment of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 217 and the case-law cited).

63 However, it is not necessary for every item of evidence produced to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if all the evidence relied on by the Commission, viewed as a whole, meets that requirement (judgments of 1 July 2010, *Knauf Gips* v *Commission*, C-407/08 P, EU:C:2010:389, paragraph 47, and of 24 March 2011, *Aalberts Industries and Others* v *Commission*, T-385/06, EU:T:2011:114, paragraph 45).

64 It is also necessary to take into account that anticompetitive activities take place clandestinely, meetings are held in secret, the associated documentation is reduced to a minimum, the evidence discovered by the Commission is normally only fragmentary and sparse, and, accordingly, in most cases, the existence of an anticompetitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (see, to that effect, judgments of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraphs 55 to 57, of 17 September 2015, *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614, paragraph 26 and the case-law cited, and of 27 June 2012, *Coats Holdings* v *Commission*, T-439/07, EU:T:2012:320, paragraph 42).

65 Moreover, as anti-competitive agreements are known to be prohibited, the Commission cannot be required to produce documents expressly attesting to contacts between the economic operators concerned. The fragmentary and sporadic items of evidence which may be available to the Commission should, in any event, be capable of being supplemented by inferences which allow the relevant circumstances to be reconstituted (see judgment of 12 July 2011, *Toshiba* v *Commission*, T-113/07, EU:T:2011:343, paragraph 82 and the case-law cited).

66 Likewise, given that the Commission is often required to prove the existence of an infringement many years after it was committed, where several of the undertakings involved have not actively cooperated in the investigation, it would be excessive to require it to adduce evidence of the specific mechanism by which the anticompetitive aim was achieved. Indeed, it would be too easy for an undertaking guilty of an infringement to escape any penalty if it were able to base its argument on the vagueness of the information produced with regard to the operation of an illegal agreement in circumstances in which the existence and anticompetitive purpose of the agreement had nonetheless been sufficiently established (judgment of 12 December 2014, *Eni* v *Commission*, T-558/08, EU:T:2014:1080, paragraph 36).

67 Moreover, the Commission must prove not only the participation of an undertaking in an infringement, but also its duration. With regard to determining the duration of the participation of a given undertaking in an infringement, if there is no evidence capable of directly establishing the duration of an infringement, the Commission must adduce, at least, evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates (see judgment of 12 July 2011, *Toshiba* v *Commission*, T-113/07, EU:T:2011:343, paragraph 235 and the case-law cited).

68 Finally, any doubt on the part of the Court must operate to the advantage of the undertaking to which the decision finding an infringement was addressed. The Court cannot therefore conclude that the Commission has established the infringement at issue to the requisite legal standard if it still entertains any doubts

on that point, in particular in proceedings for annulment of a decision imposing a fine. In the latter situation, it is necessary to take account of the principle of the presumption of innocence resulting in particular from Article 48 of the Charter of Fundamental Rights of the European Union. Given the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, the principle of the presumption of innocence applies in particular to the procedures relating to infringements of the competition rules applicable to undertakings that may result in the imposition of fines or periodic penalty payments. It is accordingly necessary for the Commission to produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place (see judgment of 17 May 2013, *Trelleborg Industrie and Trelleborg* v *Commission*, T-147/09 and T-148/09, EU:T:2013:259, paragraph 50 and the case-law cited).

The alleged change in Silec's conduct after its acquisition by General Cable on 22 December 2005

69 In the 'factual background' of the application, the applicants claim that the Commission did not take account of the fact that Silec's conduct underwent a dramatic change after its acquisition by General Cable. They advance several arguments in that regard, which it is appropriate to examine, first, in the context of the present plea, before the evidence put forward by the Commission to establish Silec's participation in the cartel until 16 November 2006.

70 In the first place, the applicants claim, in essence, that General Cable's efforts to introduce compliance guidelines after having acquired Silec brought the latter's participation in the infringement to an end.

71 First of all, it must be pointed out that the Commission did not fail to take account of the compliance guidelines published by General Cable in February 2006 (more than a month after the acquisition of Silec). Those compliance guidelines are mentioned in recitals 939 and 940 of the contested decision, worded as follows:

'(939) General Cable has pointed to the fact that it announced its Code of Ethics and Compliance guidelines immediately upon the acquisition of ownership of Silec. It claims that the staff of Silec promptly followed these policies and thus participation in the infringement ceased.

(940) While the Commission welcomes measures taken by undertakings to avoid cartel infringements in the future, such measures cannot change the reality of the infringement. The specific characteristics of the cartel at issue, and the role that Sagem/Silec played therein, do not support the conclusion that Silec had withdrawn from the cartel upon its acquisition by General Cable. The fact that Silec did not attend the R meeting on 17 February 2006 cannot be adduced as proof or evidence that indicates that Silec distanced itself from the agreements. As is seen in Section 3, it was not uncommon for participants to miss some of the R meetings. The notes of that R meeting

> mention that Silec is "excused" (Recital (392)). While the notes are quite detailed and mention the fact that Brugg has a new organisation, nothing is recorded with regard to an alleged withdrawal of Silec. Similarly, at the A/R meeting on 13 January 2006, the notes fail to mention anything with regard to Silec, even though information about other manufacturers is given (Recital (374)). Further, the evidence shows that the other cartel participants continued to see Silec as a fellow cartelist and that Silec also behaved as such. The fact that [Mr V.] forwards a list of projects Silec would like to have allocated to it on 21 December 2005 (Recital (371)), does not appear to be a "clean break from the alleged cartel" as is claimed by General Cable. Also the references to [Mr V.] in later contacts (Recitals (411) and (414)) provide an indication of continued involvement, especially as it is clear that [Mr J.] and [Mr V.] "always communicate verbally" (Recital (364)). General Cable has adduced no evidence demonstrating that Silec withdrew itself from the arrangements. It is clear that Silec's employees did not comply with the compliance guidelines that General Cable had imposed upon the acquisition. Even though Silec's employees were involved in an infringement prior to the acquisition by General Cable in clear violation of the compliance guidelines they failed to inform General Cable thereof.'

72 Next, it should be recalled that the existence of a competition law compliance programme does not prevent an infringement by an undertaking from being established (see, to that effect, judgments of 28 June 2005, *Dansk Rorindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 373, and of 12 December 2007, *BASF and UCB* v *Commission*, T-101/05 and T-111/05, EU:T:2007:380, paragraph 52; see, also, judgment of 6 March 2012, *UPM-Kymmene* v *Commission*, T-53/06, EU:T:2012:101, paragraphs 123 and 124 and the case-law cited).

73 In the case at hand, this is all the more true given that the compliance guidelines relied on are quite general, refer only to United States antitrust legislation and do not deal with the reaction to the illegal cartels in which an undertaking participated before its acquisition by General Cable.

74 Last but not least, while the measures adopted by the undertakings in order to minimise the risk of committing an infringement of competition law are indeed of value, the assertion that all of General Cable's staff scrupulously observed the compliance guidelines at all times, with the result that it did not participate in the infringement, cannot be accepted without examining the evidence in the file, which is done in paragraphs 91 to 143 below.

75 In the second place, the applicants also claim that the Commission made a 'fundamental mistake' in unfairly assessing Mr V.'s overall behaviour without restricting itself to his conduct after Silec's acquisition by General Cable.

76 First of all, it should be noted that the Commission did not hold Silec liable for the period following its sale to General Cable on the sole ground that Mr V. had

participated in the cartel's activities before that sale. It provided direct and indirect evidence proving Silec's continued participation in the cartel after its acquisition by General Cable, which is examined in paragraphs 91 to 145 below.

77 Next, it is not apparent from the file that Mr V. explicitly drew his contacts' attention to the fact that he had undergone training on compliance with competition law or that he was not continuing his previous participation in any way. Moreover, any element of that nature would be inconsistent with the perception of the other participants of the R meetings, who continued to regard Silec as one of them (see recitals 411 and 414 of the contested decision, examined in paragraphs 123 to 141 below). Even were it true that, as the applicants claim, Mr V. had followed training and was given a copy of General Cable's compliance guidelines, it still does not mean that Silec had ceased its participation in the cartel. It is worth pointing out that Mr V. signed the agreement on the compliance guidelines only on 22 June 2006, approximately six months after Silec's acquisition by General Cable.

78 Last, the fact that, at the time of Silec's acquisition by General Cable, the latter attempted, in the share purchase agreement, to exclude all liability in respect of any anti-competitive behaviour that might have been adopted before that acquisition may indeed be explained by the desire to avoid General Cable inheriting liability for previous violations of competition law, but it has no impact on Silec's participation in the infringement.

79 In the third place, the applicants allege differences in Silec's conduct before and after its acquisition by General Cable, in particular as regards attendance at meetings. In their view, Silec's absence from meetings after its acquisition precluded any participation on its part in the cartel. Thus, Silec did not attend any of the 15 meetings, including R meetings, held between 23 December 2005 and 16 November 2006, whereas representatives of Sagem and Safran attended 23 of the 109 meetings held until 22 December 2005, namely all the meetings they were eligible to attend.

80 First of all, the applicants' claim that absence from the meetings effectively precluded any participation is wrong in law. According to the case-law, it is sufficient for the Commission to show any direct or indirect contact between undertakings of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself or contemplates adopting on the market, where the object or effect of those contacts is to give rise to conditions of competition which do not correspond to the normal conditions of the market in question, taking into account the nature of the products or the services provided, the size and number of the undertakings and also the volume of the market (see judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraph 33 and the case-law cited). While presence at meetings is one way in which undertakings can and do participate in cartels, it is not the only one.

81 Also according to the case-law, the fact that an undertaking has not been present at every meeting and that it has become reluctant over unlawful agreements is not such as to avoid liability (see judgment of 27 June 2012, *Berning & Söhne* v *Commission*, T-445/07, not published, EU:T:2012:321, paragraph 113 and the case-law cited).

82 In the present case, it should be noted, first of all, that the applicants rely on an incorrect number of meetings that supposedly took place after Silec's acquisition by General Cable. While the applicants argue, in view of the references to Annex I to the contested decision contained in the application, that 15 meetings took place during that period, in fact, four of those references concern other communications (#336, 353, 356 and 362). In addition, of those eleven actual meetings, four were A/R meetings, which did not involve Silec (#343, 359, 366 and 375), five were bilateral meetings (#350, 361, 363, 364 and 373), two of which concerned projects of no interest to Silec, and one multilateral meeting intended for discussing projects to be carried out outside the EEA (#376). This leaves only one relevant meeting, namely the R meeting of 17 February 2006 (#351), which Silec apparently missed and whose notes are examined in paragraphs 97 to 105 below.

83 Next, the applicants fail to take account of the manner in which the cartel functioned, namely with two types of meeting: A/R meetings and R meetings. The Commission neither claimed nor established that Sagem and Safran had attended A/R meetings at any point (recitals 568 and 570 of the contested decision). The applicants' assertion that they were absent or that they voluntarily abstained from participating in A/R meetings — meetings at which they were never supposed to be present — is therefore devoid of relevance.

84 In addition, as far as R meetings are concerned, there is no evidence supporting the applicants' assertion regarding the 'perfect attendance' of Sagem or of Safran in the past. On the contrary, it is apparent from the file that Sagem or Safran participated in eleven R meetings out of a total of 18 meetings during the period in question. Therefore, Silec's acquisition by General Cable did not mark a 'clean break' in its participation in the cartel's R meetings. It is thus clear that the contrast between the presence of Sagem or Safran and of Silec at those R meetings before and after the acquisition by General Cable is not as stark as the applicants claim. Furthermore, the Commission provided evidence of continuous contacts between Silec and the other participants in the cartel after General Cable's acquisition of Silec, examined in paragraphs 91 to 145 below.

85 Last, whatever the reasons for Silec's absence from the only R meeting of 2006, it is significant that the other parties to the cartel continued to regard Silec as one of them and considered that it could still be interested in projects allocated during the meetings of the R members of the cartel. Even if it is possible that a certain distrust took hold between Silec and the other R members of the cartel, evidence showing that complaints were made about Silec in relation to its disloyal attitude on numerous occasions [recital 281, recital 322(g) and recital 372(k) of the

contested decision] does not prove that Silec's conduct dramatically changed after its acquisition by General Cable.

86 In the fourth place, the applicants claim that the Commission committed another 'fundamental error' in relation to the duration of its participation, as General Cable assumed operational control only from 23 December 2005, the day after the acquisition that was concluded on 22 December 2005. The significance of that detail is addressed in emails exchanged between Mr V. (Silec) and Mr J. (Nexans France) on 21 and 22 December 2005 (recitals 371 and 372 of the contested decision), which contain a 'declaration of interest' of Mr V. in relation to a number of projects in 'export territories' and one project to be carried out in the EEA. In the applicants' view, those emails date from the period before Silec's acquisition by General Cable and therefore cannot be attributed to the latter.

87 However, it must be pointed out that, in the emails exchanged between Mr V. and Mr J. on 21 and 22 December 2005, neither Mr V. nor any other Silec or General Cable employee actively informed Mr J., the coordinator of the R members of the cartel, that Silec had come under new ownership and, consequently, no longer had interest in the cartel. Those emails do not show any immediate or radical change in Silec's attitude towards the cartel's activities, such that the acquisition of Silec by General Cable did not disrupt Silec's participation in the cartel, let alone bring it to an end. On the contrary, Silec and its new owner, General Cable, stood to benefit from Mr V.'s 'declaration of interest' of 21 December 2005. Therefore, from the moment General Cable acquired Silec, on 22 December 2005, General Cable and Silec formed the undertaking participating in the cartel and enjoying the benefits thereof.

88 Thus, the emails exchanged between Mr V. and Mr J. on 21 and 22 December 2005 clearly indicate that Silec still wanted to be part of the cartel. It appears that it is Mr V. who contacted Mr J., using the expression 'following our conversation from last night' ('*à la suite de notre conversation d'hier soir*'), to remind him of the necessity of not forgetting Silec's 'declaration of interest' in the projects compliant with the functioning of the cartel (see recital 371 of the contested decision).

89 The applicants' claim that the emails exchanged between Mr V. and Mr J. on 21 and 22 December 2005 are to be understood as a 'change of position by [Mr V.] ... in the broader context of the acquisition' of Silec by General Cable is unconvincing. First of all, nothing in those emails indicates that Mr V. changed his position due to the imminent transaction with General Cable. Next, the signs of frustration on Mr J.'s part towards Silec result from previous negotiations with Silec and the other participants of the cartel (recital 371 of the contested decision) and had nothing to do with the acquisition. Moreover, the position adopted by Mr V. in those emails does not differ from that of Silec attempting to use the cartel to serve its own commercial interests, to the detriment of Nexans France and the other members of the cartel. That had occurred on numerous occasions before December 2005 [recital 281 and recital 322(g) of that decision]. Last, in its

email of 21 December 2005, Mr V. specifically asks Mr. J. not to forget the earlier declarations of interest, using the expression 'please do not forget' ('*merci de ne pas perdre la mémoire*'), which clearly refers to the allocation of upcoming projects.

90 It follows that the applicants' arguments that Silec's conduct underwent a significant change after its acquisition by General Cable cannot succeed.

The evidence relied on by the Commission to establish Silec's participation in the cartel until 16 November 2006

– *Mr C.'s email of 17 January 2006*

91 The applicants claim that Silec was viewed 'more as a competitor' than as a participant in the cartel, and cite in that regard an email sent on 17 January 2006 by Mr C., an employee of Prysmian Cavi e Sistemi Energia Srl ('PrysmianCS') to Mr J., an employee of Nexans France. In that email, Mr C. asked Mr J. whether it was true that Mr V., Silec employee, had 'taken major 150 kV business in one of [Nexans France's] preferred markets' [recital 414(b) of the contested decision]. The applicants assert that Silec's attitude, which consisted in 'outright defiance of the alleged Cartel scheme', was to be assessed as independent competitive conduct and not as 'cheating'.

92 That claim of the applicants must be rejected for the following reasons.

93 First of all, it should be noted that Mr C.'s email of 17 January 2006 mentions Silec without indicating that it left or defied the cartel. Moreover, that email states that two other participants in the cartel, PrysmianCS and Nexans France, still regarded Silec as being part of it. That evidence is supported by the notes from the R meeting in Divonne-les-Bains (France) ('Divonne') of 17 February 2006 (see paragraphs 97 to 105 below), at which Silec's continued participation in the cartel was neither discussed nor called into question.

94 Next, it must be recalled that, according to the case-law, sporadic and isolated cases of cheating or failure to apply the cartel by a particular participant, especially where they concern a cartel of long duration, cannot in themselves demonstrate that the undertaking in question conducted itself in a competitive manner (judgment of 13 September 2013, *Total Raffinage Marketing* v *Commission*, T-566/08, EU:T:2013:423, paragraph 254). Thus, a single lapse on the part of Silec in furtherance of its own interests over the rules of the cartel does not prove that it followed a 'truly independent policy' (see, to that effect, judgment of 14 May 2014, *Reagens* v *Commission*, T-30/10, not published, EU:T:2014:253, paragraph 267).

95 Furthermore, the applicants have not proved that Silec clearly and obviously opposed the implementation of the cartel on 17 January 2006, or after that date, especially not to the point of disrupting its functioning. The fact that Silec might

have been less engaged with the cartel at times does not call its continued participation in the cartel into question. That participation is apparent inter alia from the fact that the other members of the cartel continued to refer to Silec in their subsequent correspondence.

96 Last, and in any event, Mr C.'s email of 17 January 2006 ends with the question addressed to Mr J. asking whether or not Mr V. had won, on Silec's behalf, the 150 kV project and thus cannot be taken as proof of pro-competitive conduct. That email only shows that a member of the cartel, namely PrysmianCS, controlled the allocation of projects and had questioned another member, namely Nexans France, in relation to an unexpected result. That is why recital 414 of the contested decision cites that email as an example of the exchanges of sensitive information which took place between the R members of the cartel regarding projects to be carried out within 'European home territory' in 2006. Therefore, that email does not prove that Silec had quietly left the cartel and began to conduct itself in an independent and competitive manner.

– *The notes from the R meeting in Divonne of 17 February 2006*

97 The applicants claim that Mr V.'s absence from the R meeting in Divonne of 17 February 2006 confirms that Silec did not participate in the cartel, in contrast with the consistent practice of Sagem and Safran of attending such meetings.

98 As a preliminary point, it is undisputed that Silec did not participate in the R meeting organised in Divonne on 17 February 2006. However, Silec's absence from that meeting is not in itself decisive, since it was not uncommon for cartel participants, including Silec and its predecessors, to miss some of the R meetings (recital 940 of the contested decision).

99 It should be noted that the minutes of the R meeting in Divonne of 17 February 2006 indicate that 'BC [Brugg]' and 'SG [Silec, ex-Sagem]' were 'excused' (recital 392 of the contested decision). Contrary to the applicants' claims, the use of the term 'excused' in those minutes reveals that Silec had not made it known definitively and unequivocally that it no longer wished to take part in the cartel, so that Nexans France and the other participants might fully understand Silec's position. Silec's mere absence from that meeting was insufficient and could be explained by practical reasons of a rather incidental nature, since that had happened before (see recitals 222 and 281 of that decision).

100 The minutes of the R meeting in Divonne of 17 February 2006 also state: 'Belgium: frame contract: 70 kV to RN and 150 kV to SG', namely that Silec won a 150 kV project in Belgium, which is indicative of its continued participation in the cartel (recital 392 of the contested decision). Furthermore, those minutes explicitly mention in the agenda: 'Security: Little mails + little com', which attests to the undertakings' desire to keep as little incriminating evidence as possible.

101 On the contrary, it should be pointed out that the minutes of the R meeting in Divonne of 17 February 2006 do not indicate that Silec suddenly or definitively left the cartel. However, those minutes refer to recent events likely to be of interest to the R members of the cartel, including that Brugg was part of a 'new organisation'. Similarly, if Silec had changed its conduct after its acquisition by General Cable, there are solid grounds for considering that the participants in the meeting would also have taken note of that event. That is not the case, however.

102 In addition, if Nexans France, the author of the minutes of the R meeting in Divonne of 17 February 2006, had believed that Silec was no longer part of the cartel after its acquisition by General Cable, it would not have invited Silec to that meeting or recorded its absence. That Nexans France noted that Silec had been 'excused' from that meeting indicates that Nexans France expected Silec to participate. Silec's absence from such a meeting to which it had been duly invited therefore does not demonstrate that, in the eyes of the cartel participants, Silec had denounced the collusive agreements to which it had been party (see, to that effect, judgment of 13 September 2010, *Trioplast Industrier* v *Commission*, T-40/06, EU:T:2010:388, paragraphs 47 to 51).

103 In the reply, however, the applicants claim that 'companies do not make neat and "loud" exits'. In that regard, it is sufficient to note that the case-law specifically requires that, in order to exclude its liability, an undertaking must demonstrate 'complete and open dissociation from the whole cartel' (judgment of 2 February 2012, *Denki Kagaku Kogyo and Denka Chemicals* v *Commission*, T-83/08, not published, EU:T:2012:48, paragraph 64). Similarly, neither does Silec's absence from the R meeting in Divonne of 17 February 2006 demonstrate that it did not take advantage of the market-sharing and customer-sharing agreements that were already in place (see, to that effect, judgment of 13 September 2013, *Total Raffinage Marketing* v *Commission*, T-566/08, EU:T:2013:423, paragraph 380).

104 Last, it was in the interests of the participants of the cartel to ensure that those absent were informed of the discussions that took place at the R meeting in Divonne of 17 February 2006. The documents recording the subsequent correspondence between the R members of the cartel confirm that they believed they could contact Mr V. in relation to future plans and that Silec was still involved in the cartel (see paragraphs 106 to 113 and 123 to 141 below).

105 Therefore, Silec's absence from the R meeting in Divonne of 17 February 2006, to which it had been invited and from which it was excused, cannot suffice to prove that it no longer participated in the cartel.

– *The emails exchanged by Mr C., Mr J. and Mr N. from 31 March to 3 April 2006*

106 The applicants dispute the fact that the Commission cites a reference to Silec in emails exchanged from 31 March to 3 April 2006 between Mr C., Mr J. and Mr N., employees of PrysmianCS, Nexans France and Brugg, respectively. They

maintain that those emails simply show that PrysmianCS asked Brugg and Nexans France to contact Mr V., Silec employee.

107 It should be noted, first, that, contrary to what the applicants claim, the contested decision does not rely on the emails exchanged between Mr C., Mr J. and Mr N. from 31 March to 3 April 2006 to demonstrate that Silec received them or had knowledge of them. Rather, those emails show that none of the cartel participants thought that Silec had left the cartel. They make no reference to Silec's supposed prior denunciation of the cartel or rejection of what had been agreed or discussed. If that had actually occurred, it would have been pointless for Mr C. to ask Mr J. to 'make contact with [Mr V.] as well'. The fact that one of the cartel members asked the coordinator of the R members of the cartel, Mr J., to contact a Silec employee, in all likelihood to ensure that Silec, too, would follow Mr C.'s 'recommendation' regarding that 'case at purchasing stage', proves that Silec was still associated with the cartel. The other cartel members' perception of an undertaking's continued participation is a strong indication of such participation.

108 Moreover, contrary to what the applicants suggest, the emails exchanged between Mr C., Mr J. and Mr N. from 31 March and 3 April 2006 show that nobody 'wonder[ed] where Sagem/Safran employees were'. On the contrary, Mr C. asked the coordinator of the R members of the cartel to keep Silec up to date, so that Silec, like Brugg, would follow PrysmianCS' 'recommendation'. That is a reliable indication of Silec's continued participation in the cartel.

– *Mr C.'s email to Mr J. of 3 April 2006*

109 In an email of 3 April 2006, Mr C., of PrysmianCS, asked Mr J., of Nexans France, whether there was 'any news from [Mr V.]', of Silec, regarding a project known as '1.77km 1000SQMM 380kV'. According to the applicants, that email proves that Mr V. had not spoken about the project with Mr C. They maintain that the Commission cannot rely entirely on communications between other cartel members mentioning Silec or the other cartel members' perception of Silec to establish that Silec's participation continued after 22 December 2005.

110 First of all, it must be noted that the Mr C.'s email of 3 April 2006, containing a request to Mr J., the coordinator of the R members of the cartel, for news on Silec's position, suggests that PrysmianCS and Nexans France considered Silec to be party to the cartel and that it should still be taken into consideration for the illegal allocation of projects. If PrysmianCS and Nexans France had not considered Silec still to be party to the cartel after its acquisition by General Cable, Mr C. would not have enquired of Mr J. as to Silec's intentions regarding a specific project.

111 In that regard, the applicants' assertion that the contested decision is based on the 'malicious gossip' that circulated between the aggrieved cartelists is unfounded. Nexans France and PrysmianCS did not actually speculate as to Silec's intentions

or conduct, but talked about the allocation of a project known as '1.77 km 1000SQMM 380kV'. The question in Mr C.'s email of 3 April 2006 asking for 'news from [Mr V.]' proves that the coordinator of the R members of the cartel had already asked Silec whether it wished to obtain that particular project.

112 In addition, it should be noted that, in its email of 3 April 2006, Mr C. did not ask Mr J. whether it was possible to persuade Silec to become a member of the cartel again, as it had never left it. Nor did Mr C. enquire as to Silec's general intentions or future conduct. On the contrary, the question asked in that email concerned a specific project and is thus one of the elements proving that Silec was still participating in the cartel.

113 However, Mr C.'s email of 3 April 2006 does not prove that Mr V. never discussed or indeed refused to discuss that subject with Mr C. or Mr J. Rather, the fact that Mr C. asked Mr J. whether he had news from Mr V. suggests that Mr C. expected Mr V. to be in contact with Mr J. on that matter. That expectation on Mr C.'s part or, at the very least, that plausibility of contact, further supports the proposition that Silec continued to participate in the cartel. Furthermore, Silec produced no evidence demonstrating that it had refused that contact, as well as others, with the cartel members.

– *The document of 10 July 2006 found on Nexans France's premises and presented by the Commission as the notes from a supposed meeting between Silec and AEI Cables*

114 The applicants dispute the probative value of the document of 10 July 2006 found on Nexans France's premises and presented by the Commission as the notes from a supposed meeting between Silec and AEI Cables, and probably Nexans France. They note that AEI Cables is not even regarded as being an alleged member of the cartel and does not appear in any other document in the file. They are of the view that that supposed evidence is based on assertions which are entirely speculative and completely unfounded.

115 The Commission argues that the applicants neither challenge nor doubt the authenticity of the document in question, which, in its view, are the minutes of a meeting that took place on 10 July 2006 between Silec, AEI Cables and Nexans France. It contends that it refers to that meeting, not as evidence of a separate infringement, but as relevant evidence of the factual background revealing that, even after its acquisition by General Cable, Silec could have been willing to meet with one of its competitors, AEI Cables. It adds that the case-law allows it to use deductions (see the case-law cited in paragraphs 64 and 65 above). Last, the Commission notes that the applicants were unable, during the administrative procedure and the present proceedings, to explain why a contemporaneous document found on Nexans France's premises refers to a meeting between Silec and AEI Cables to allocate a project in the EEA.

116 It must be stated that, in relation to the document at issue, the Commission's argument is unconvincing.

117 First, the document at issue is short and lacks detail. Thus, the abbreviation 'SIL' appears there three times, first in the reference 'SIL/AE/', second in the reference 'A[bu]-Dhabi: Al reem: SIL???, UAN cover' and third in the reference 'Portugal: OK SIL220 à venir'. Nothing in that document indicates that it is definitely the notes from a meeting, let alone from a meeting of cartel members. It is also plausible that they are internal notes or thoughts prepared by a Nexans France employee for his or her own reference.

118 However, the applicants' claim that the abbreviation 'SIL' appearing in the document at issue could have many different meanings, for example referring to insulated electrical cables or to silicon should be rejected. In view of the factual background, a reference to Silec remains the most plausible interpretation.

119 Second, the Commission's statement that AEI cables participated in the supposed meeting is hardly plausible. The abbreviation 'AE' appears only once, at the top of the page, beside the abbreviation 'SIL'. While it is hard to understand why an undertaking which is not a member of a cartel would participate in a meeting of cartel members, it is even harder to explain why, if the meeting was indeed about dividing the market, there is no mention of 'AE' or 'AEI' in relation to one of the projects mentioned in the document at issue. In addition, it should be noted, as the applicants have done, that AE Petsche Co. is a former distributor of Nexans France, so that document could possibly be referring to Nexans France's business with that company rather than to AEI cables.

120 It is apparent from the foregoing that a plausible interpretation of the document at issue is that a Nexans France employee wrote an information note on the market summarising Nexans France's connections in a certain number of countries, including Portugal and the United Arab Emirates, in reference to Silec.

121 In those circumstances, there is reason to doubt the Commission's interpretation that the document at issue is a note from a meeting between Silec and AEI Cables, and probably Nexans France, aimed at inveigling AEI Cables into the cartel. In accordance with the case-law cited in paragraph 68 above, that doubt must operate to the applicants' advantage.

122 However, it should be considered, contrary to the applicants' claims, that the most plausible interpretation of the abbreviation 'SIL' in the document at issue is indeed a reference to Silec. In that regard, that document suggests at the very least that, in the mind of a Nexans France employee, Silec was still a member of the cartel to be taken into consideration for the allocation of a project in Portugal and, potentially, the United Arab Emirates.

– *The emails exchanged between Mr K. and Mr V. on 16 November 2006*

123 Recital 411 of the contested decision describes an email exchange of 16 November 2006 between Mr K., an employee of Brugg, and Mr. V. (Silec), with Mr J. (Nexans France) in copy. Mr K.'s email simply contained a subject entitled 'Quote' and the text 'Dear [Mr V.], Please note that we need to receive instruction by today' and 'If we do not receive anything we will quote as our convenience'. Mr V. responded the same day as follows: 'Dear [Mr K.], According to our phone conversation, I have noticed your agreement to receive instructions on Monday, November 20'.

124 The applicants claim that the email exchange between Mr K. and Mr V. of 16 November 2006 is the only direct contact between Silec and its competitors in the eleven months following Silec's acquisition by General Cable. They also argue that Mr V. responded to Mr K.'s email in an evasive and unresponsive manner, that he simply pushed the matter off to another date to avoid action and that there is no evidence in the file that any action was taken on that email.

125 It is necessary to examine in detail the circumstances of the email exchange between Mr K. and Mr V. of 16 November 2006.

126 First, on 16 November 2006, Mr K. sent Mr V. an email which had a subject entitled 'Quote' and which addressed him by his first name. The wording and informal tone of the email indicate that that correspondence was part of a continuum. The lack of detail on such a 'quote' also suggests that Mr V. knew what it was about and that that email followed on from contacts between Silec (probably through Mr V.) and Brugg (probably through Mr K.) on the matter of that 'quote'. As is the custom within the cartel, Mr K. also put Mr J., coordinator of the R members of the cartel, in copy in that email.

127 Second, on receiving Mr K.'s request for 'instructions', Mr V. showed neither surprise nor dismay. Nor did he refer Mr K. to a meeting or to an event before the occasion on which Silec informed the other members of the cartel that it had left it.

128 Third, later on 16 November 2006, Mr V. responded to Mr K. that, as a follow-up to their telephone conversation, he had taken good note of his agreement to receive instructions on Monday, 20 November 2006. It is clear from the foregoing that, between 9am (the time of Mr K.'s message) and 3:05pm (the time of Mr V.'s response), the two men discussed by telephone the manner in which Silec and Brugg would deal with those 'quotes', in particular with when Mr K could expect to receive 'instructions' from Mr V.

129 Fourth, Mr V. also put Mr J., coordinator of the R members of the cartel, in copy in his response to Mr K. The applicants' claim that Mr V.'s email of 16 November 2006 was not intended to discuss the cartel's activities is inconsistent with such a communication. Mr V. had no legitimate business reason to put Mr J. in copy in that email, whereas there was an improper motive for it related to the cartel,

namely to inform one of Silec's competitors, Nexans France, of Silec's desire to provide instructions to another competitor, Brugg, for 20 November 2006.

130 On the basis of the emails exchanged between Mr K. and Mr V. on 16 November 2006, the following findings can be made.

131 First, Mr V.'s response to Mr K.'s email of 16 November 2006 is evidence that Silec continued to participate voluntarily in the cartel.

132 Second, in his email of 16 November 2006, Mr V. did not mention any past event, from 22 December 2005, by which Silec put a clear end to its participation in the cartel.

133 Third, the reference to a telephone conversation of 16 November 2006 demonstrates how Silec and Brugg ensured that the risk of being discovered was reduced, by means of oral communications and a minimum of documentation (see recitals 94 and 95 of the contested decision).

134 Fourth, it is apparent from the wording and informal tone of Mr K.'s email that Mr V. already had knowledge of the 'Quote' in its subject. That suggests, contrary to what the applicants maintain, that the emails exchanged between Mr K. and Mr V. on 16 November 2006 did not take place 'after 11 months of no contact'. That evidence is in addition to the other evidence of Silec's continued participation in the cartel.

135 Fifth, Mr V. not only responded to Mr K.'s email of 16 November 2006 by talking with him on the telephone the same day, but also confirmed that Silec would continue its contacts with Brugg, one of its competitors, on 20 November 2006. It is thus apparent that Mr V. was told by that competitor that it agreed to await instructions from Silec and that Mr J., coordinator of the R members of the cartel, was simultaneously informed of that agreement.

136 Sixth, there is nothing in the file to indicate that Mr V. attempted to contact the general counsel of Silec or of General Cable concerning the allocation of underground power cable projects in accordance with General Cable's compliance guidelines. Those read as follows: 'However, it cannot be overemphasised that an immediate request for advice should be made to the General Counsel if you have doubt as to whether or not a particular transaction of course of conduct may violate antitrust laws'.

137 Those findings are not called into question by the applicants' claims.

138 First, regarding the applicants' claim that Mr V. responded to Mr K.'s email of 16 November 2006 in an evasive and unresponsive manner, it is sufficient to state that, on the contrary, he specifically agreed to give Brugg instructions four calendar days after his response.

139 Second, regarding the applicants' claim that there is no evidence in the file that any action was taken on Mr V.'s email of 16 November 2006, it is ineffective. It is sufficient to note that Mr V. responded to Mr K. first by referring to a telephone conversation they had previously had, then by indicating that Brugg had agreed 'to receive instructions on Monday, November 20'. The use of the term 'instructions' in that context shows that Silec confirmed that it would give Brugg, one of its direct competitors, advice on how to provide a quote for a given power cable project.

140 Third, regarding the applicants' claim that the emails exchanged between Mr K. and Mr V. on 16 November 2006 are the only direct contact between Silec and its competitors in eleven months following Silec's acquisition by General Cable, it is unfounded, in view, in particular, of the wording and informal tone of those emails, which indicate that that correspondence was part of a vacuum. In addition, and in any event, it is significant that Mr V. did not respond by stating that Silec had come under new ownership, that it had not wished to participate in the R meetings of the cartel since December 2005, that it no longer wanted to be contacted or that it was refusing to cooperate in future.

141 It follows that the emails exchanged between Mr K. and Mr V. on 16 November 2006 provide contemporaneous and convincing evidence that Silec continued its participation in the cartel until that date.

142 Furthermore, it should be pointed out that the same person, Mr V., participated in the cartel for a duration of the infringement. Part of the background of the evidence examined in paragraphs 123 to 141 above consists in an email sent by Mr V. on 22 December 2005 (see paragraphs 86 to 89 above), which declares an interest in the illegal allocation of a number of projects to be carried out in 'export territories' and one project to be carried out in the EEA. That is further evidence that Silec actively participated in the cartel at the time of its acquisition by General Cable.

Conclusion on the evidence

143 It must be concluded that the body of evidence on which the Commission relies in the contested decision is sufficiently precise and consistent to demonstrate Silec's participation in the cartel between 22 December 2005, the date of its acquisition by General Cable, and 16 November 2006, the date Silec sent an email to Brugg and to Nexans France, its competitors, in relation to a 'quote'.

144 That conclusion is not invalidated by the Court's assessment of the document found on Nexans France's premises and presented by the Commission as the notes from a supposed meeting between Silec and AEI Cables (see paragraphs 114 to 122 above). Nor is it called into question by the applicants' claims concerning the change in Silec's conduct after its acquisition by General Cable on 22 December 2005 (see paragraphs 69 to 90 above).

145 It must therefore be concluded that the Commission established to the requisite legal standard that Silec continued to participate in the cartel from 22 December 2005 to 16 November 2006.

146 It follows from the foregoing that the first plea must be rejected.

The second plea, alleging an error of law in the interpretation and application of the notion of public distancing

147 By their second plea, the applicants argue that the Commission erred in law and infringed the principles of the presumption of innocence and of the burden of proof and the principle '*in dubio reo*' in asserting that Silec was under a positive obligation to distance itself publicly from the alleged cartel, or at least in asserting that the fact that it did not distance itself publicly from the cartel was sufficient to demonstrate its continued participation. More specifically, the applicants allege that the Commission erred in interpreting and applying the public distancing test and consequently infringed the principle of the presumption of innocence and reversed the burden of proof in assuming that Silec continued its participation in the alleged infringement initiated by its economic predecessor Sagem or Safran simply on the basis that it did not publicly distance itself from the alleged cartel after it was acquired by General Cable (recital 940 of the contested decision, cited in paragraph 71 above).

148 According to the applicants, the case-law related to the public distancing test only allows the Commission to presume (i) that an undertaking that participated in an anti-competitive meeting without publicly distancing itself from what was discussed adhered to the anti-competitive object of the meeting and (ii) that, in case of a single and continuous infringement, the illicit conduct continued uninterruptedly between two specific dates. That case-law, however, does not apply to the present case, since Silec did not participate in any cartel meeting and did not continue the conduct of Sagem or of Safran.

149 The Commission disputes the applicants' arguments.

150 According to settled case-law, in the case of a cartel operating via periodic meetings between its members, the only way in which it can be concluded that an undertaking has definitively ceased to belong to the cartel is if it has publicly distanced itself from the content of the cartel (see, to that effect, judgment of 28 April 2010, *Amann & Söhne and Cousin Filterie* v *Commission*, T-446/05, EU:T:2010:165, paragraph 241 and the case-law cited).

151 It is for the undertaking to prove its firm and unambiguous disapproval of the cartel by distancing itself from it publicly and, given that it is a means of excluding liability, that notion must be interpreted narrowly. A party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery (see, to that

effect, judgments of 2 February 2012, *Denki Kagaku Kogyo and Denka Chemicals* v *Commission*, T-83/08, not published, EU:T:2012:48, paragraph 53, and of 27 June 2012, *YKK and Others* v *Commission*, T-448/07, not published, EU:T:2012:322, paragraphs 113 to 116 and the case-law cited).

152 In addition, public distancing from the cartel is required in the case of participation of an undertaking in an anti-competitive meeting, in order to rebut the presumption that such a meeting is unlawful. By contrast, with regard to participation in an infringement that took place over several years rather than in individual anti-competitive meetings, the absence of public distancing forms only one factor amongst others to take into consideration with a view to establishing whether an undertaking has actually continued to participate in an infringement or has, on the contrary, ceased to do so (judgment of 17 September 2015, *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614, paragraphs 20 to 23).

153 In the case at hand, it should be noted at the outset that, contrary to the applicants' claims, the Commission did not rely solely on Silec's lack of public distancing after its acquisition by General Cable on 22 December 2005 to conclude that Silec had not ceased its participation in the cartel before 16 November 2006. On the contrary, it demonstrated Silec's direct and continued participation in the cartel until 16 November 2006 and invoked the absence of public distancing only in combination with the other abovementioned evidence, which must be assessed not in isolation, but in its entirety.

154 Therefore, the Commission also relied on the body of evidence proving that Silec had continued to participate in the cartel, particularly the emails exchanged between Mr V. and Mr J. on 21 and 22 December 2005 (recital 371 of the contested decision and paragraphs 86 to 89 above), the emails exchanged by Mr K. and Mr V. on 16 November 2006 (recitals 411 and 414 of that decision and paragraphs 123 to 141 above) and the fact that, in the meantime, the other participants in the cartel continued to treat Silec as one of them. In particular, Mr V.'s email of 16 November 2006 provides decisive evidence since, far from denouncing an attempt to draw Silec into previous collusion, Mr V. put Mr J., coordinator of the R members of the cartel, in copy in his message, referred to a previous telephone conversation with Mr K. and agreed with the latter 'to receive instructions on Monday, November 20'. Those emails also prove that Silec was still regarded as a cartel member not only by the members of the core group of the cartel, namely Nexans France and PrysmianCS, but also by the more marginal players in that group, such as Brugg.

155 Moreover, the fact that Silec was excused from the only R meeting that took place between 22 December 2005 and 16 November 2006, the one in Divonne on 17 February 2006, does not constitute public distancing from the cartel and does not mean that, in the eyes of the cartel participants, Silec did not consider itself bound by existing agreements in the context of the single and continuous infringement.

156 According to the case-law, it is the understanding which the other members of a cartel have of the intention of the undertaking concerned which is of critical importance when assessing whether it sought to distance itself from the unlawful agreement (see, to that effect, judgments of 20 January 2016, *Toshiba Corporation* v *Commission*, C-373/14 P, EU:C:2016:26, paragraph 62, and of 11 July 2014, *Esso and Others* v *Commission*, T-540/08, EU:T:2014:630, paragraph 40). That is not the case here.

157 In those circumstances, it must be found that Silec's lack of public distancing from the cartel is at the very least relevant, without constituting the sole decisive element.

158 That finding cannot be invalidated by the applicants' arguments.

159 First, regarding the applicants' argument that the notion of public distancing was defined in the context of participation in the cartel meetings and cannot be applied to the continued participation in a single and continuous infringement, it is sufficient to recall that, according to the case-law of the Court of Justice, in the context of an infringement extending over several years, the absence of public distancing forms a factual situation on which the Commission can rely in order to prove that an undertaking's anti-competitive conduct has continued, provided that, in a case where, over the course of a significant period of time, several collusive meetings have taken place without the participation of the representatives of the undertaking at issue, the Commission also bases its findings on other evidence (judgment of 17 September 2015, *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614, paragraph 28). Such is the case here (see the assessment of the first plea and paragraphs 153 and 154 above).

160 Second, concerning the applicants' argument that the case-law of the General Court (judgments of 12 September 2007, *Coats Holdings and Coats* v *Commission*, T-36/05, not published, EU:T:2007:268, paragraph 91, and of 30 November 2011, *Quinn Barlo and Others* v *Commission*, T-208/06, EU:T:2011:701, paragraph 51) reaffirms that the concept of tacit approval by absence of public distancing is inapplicable where the anti-competitive nature of a meeting has not been established beyond reasonable doubt, it should be considered that that case-law does not mean, however, that an absence of public distancing from the cartel is irrelevant to determining the duration of Silec's participation in the cartel.

161 Third, regarding the applicants' argument that it is possible to terminate participation in a cartel even without an express declaration, in accordance with paragraph 161 of the judgment of 16 June 2011, *Gosselin Group* v *Commission* (T-208/08 and T-209/08, EU:T:2011:287, paragraph 161), it should be recalled that, in that paragraph, the Court also reaffirms the principle that the date of the latter documentary evidence can determine the duration of the participation in a cartel. In the case at hand, the Commission reached precisely such a conclusion, since it acknowledged, in recital 938 of the contested decision, that Silec's file

contained no evidence of its participation in the cartel after 16 November 2006. In those circumstances, Silec's participation in the cartel ceased without an express declaration. Before that date, however, there is evidence that Silec continued to belong to the cartel, meaning that the applicants' claim that Silec tacitly withdrew from the cartel has no basis.

162 Fourth, contrary to the applicants' claims, it is without erring that the Commission, in recital 940 of the contested decision, relied on the judgment of 24 March 2011, *Tomkins* v *Commission* (T-382/06, EU:T:2011:112, paragraphs 49 to 53), in which the Commission had established that Tomkins' subsidiary, Pegler, had continued to participate in the infringement after the last meeting it had attended on 3 May 2000, namely until 22 March 2001. As far as that particularity is concerned, the facts of the case that gave rise to that judgment resemble those of the present case. First, the cartel at issue in that judgment was characterised by its multilateral, bilateral and ad hoc contacts (judgment of 24 March 2011, *Tomkins* v *Commission*, T-382/06, EU:T:2011:112, paragraph 51), as is the cartel in the present case (recitals 66 and 94 of the contested decision). Second, it happened frequently in the case that gave rise to that judgment (judgment of 24 March 2011, *Tomkins* v *Commission*, T-382/06, EU:T:2011:112, paragraph 52) that a cartel participant did not attend every meeting, like in the present case (recital 940 of that decision). Third, in the case that gave rise to that judgment, Pegler's absence was not interpreted by the other cartel participants as a withdrawal from the companies in question and the Commission duly based its conclusions on the duration of the infringement on the last probative item of evidence showing anti-competitive contact (judgment of 24 March 2011, *Tomkins* v *Commission*, T-382/06, EU:T:2011:112, paragraph 53), like in the present case so far as concerns Silec's absence from the R meeting in Divonne of 17 February 2006 (recital 938 to 941 of the same decision).

163 It follows that, in the case at hand, the Commission correctly interpreted and applied the criterion of public distancing from the cartel.

164 Moreover, the applicants' claim that the Commission reversed the burden of proof also has no basis. The apportionment of the burden of proof is likely to vary, inasmuch as the evidence on which a party relies may be of such a kind as to require the other party to provide an explanation, failing which it is permissible to conclude that the burden of proof has been discharged (judgment of 13 September 2010, *Trioplast Industrier* v *Commission*, T-40/06, EU:T:2010:388, paragraph 40). In the case at hand, the content and tone of the emails exchanged between Mr K. and Mr V. on 16 November 2006 suggest that Silec's participation in the cartel continued without interruption from 22 December 2005 to 16 November 2006. In those circumstances, it is relevant that the applicants have not produced anything proving that Silec distanced itself publicly from the cartel shortly after its acquisition by General Cable or in the period which followed that acquisition. The Commission was thus entitled to conclude that Silec was liable on the basis of the evidence mentioned in the contested decision, including — but

not limited to — the fact that Silec had not distanced itself publicly from the cartel.

165 It follows that, in the case at hand, the Commission did not reverse the burden of proof by requiring Silec to demonstrate its public distancing from the cartel. Therefore, the applicants' related complaints that the presumption of innocence and principle of '*in dubio pro reo*' were infringed, cannot succeed.

166 It follows from the foregoing that the second plea must be rejected.

The fourth plea, alleging infringement of the principle of equal treatment in relation to the duration of Silec's participation in the cartel

167 By their fourth plea, the applicants claim that the Commission made a manifest error of assessment and infringed the principle of equal treatment in treating Silec differently from other addressees of the contested decision, and the South Korean company LS Cable in particular, in its determination of the duration of its participation in the cartel. Comparing the situation of Silec after its acquisition by General Cable with that of LS Cable, they maintain that the Commission ought to have concluded that there was no convincing evidence of Silec's participation in the cartel after 22 December 2005.

168 The applicants complain that the Commission wrongly concluded that the other participants continued to perceive Silec as a member of the cartel, unlike LS Cable. They refer in particular to an email of 5 September 2007, sent by Mr I., an employee of Exsym, to Mr J., employee of Nexans France, following a bilateral meeting held between them in Tokyo (Japan) on 3 September 2007, which concerned 'discussions with LS Cable' (recital 431 of the contested decision). That email was sent more than two years after the date at which LS Cable ceased to commit the infringement (recitals 931 and 932 of that decision). They maintain that the emails exchanged between Mr K. and Mr V. on 16 November 2006 (see paragraphs 123 to 141 above), with Mr J. in copy, must be dealt with in the same manner, that is to say, as insufficient evidence of Silec's participation until that date.

169 The Commission disputes the applicants' arguments.

170 As a preliminary point, it must be recalled that, in Article 1(11) of the contested decision, the Commission found that LS Cable was involved in the infringement from 15 November 2002 to 26 August 2005. It then found that there was no convincing evidence of LS Cable's involvement after 26 August 2005, even though there were indications that it might have been involved for a longer period of time (recital 933 of the contested decision).

171 According to settled case-law, the principle of equal treatment requires that comparable situations must not be treated differently, and different situations must not be treated in the same way unless such treatment is objectively justified (see

judgments of 27 June 2012, *Bolloré* v *Commission*, T-372/10, EU:T:2012:325, paragraph 85 and the case-law cited, and of 19 January 2016, *Mitsubishi Electric* v *Commission*, T-409/12, EU:T:2016:17, paragraph 108 and the case-law cited).

172 In the case at hand, it is clear that Silec and LS Cable were in different situations. That finding results, inter alia, from the following considerations.

173 In the first place, the period of time between the latter two items of evidence concerning LS Cable was longer than 24 months, between 26 August 2005 and 5 September 2007 (recital 933 of the contested decision). However, there was no comparable lapse between the evidence incriminating Silec, which had participated in the cartel from 22 November 2005 to 16 November 2006. Only eleven months passed between 22 December 2005, the date of Silec's acquisition by General Cable, and 16 November 2006, the date on which Silec had contacts with its competitors, Brugg and Nexans France, without even taking into account continued contacts between Silec and the cartel members during that period.

174 Regarding the applicants' objection that the alleged lapse between the anti-competitive contacts which occurred between Silec and other cartel members is comparable to the lapse between the contacts found in the case of LS Cable, it must be considered that, even if there were a lapse between the evidence of anti-competitive contacts shown in Mr V.'s emails of 21 December 2005 (recital 371 of the contested decision) and of 16 November 2006 (recital 411 of that decision), that lapse cannot be compared to the 24 months between the date when LS Cable ceased to participate in the cartel (recital 931 of that decision) and a subsequent reference to LS Cable in the email of one of the cartel members (recital 933 of the same decision). In the context of a cartel extending over many years, each lapse of less than a year between firm indications of Silec's participation is negligible. Direct and indirect documentary evidence of Silec's actions in 2006 is sufficiently proximate in time for it to be reasonable to accept that its participation in the infringement continued uninterruptedly until 16 November 2006 (see, to that effect, judgment of 11 December 2003, *Adriatica di Navigazione* v *Commission*, T-61/99, EU:T:2003:335, paragraph 125).

175 In the second place, there is no evidence corroborating LS Cable's participation in the cartel after 26 August 2005 (recital 933 of the contested decision). On the contrary, there is a body of evidence, in particular the emails exchanged between Mr K. and Mr V. on 16 November 2006 (see paragraphs 123 to 141 above), proving that Silec had continued contacts with the other cartel participants after its acquisition by General Cable and participated in the cartel continuously until 16 November 2006 (recitals 411, 414 and 938 to 941 of that decision).

176 With regard to the complaint relating to Mr I.'s email of 5 September 2007 addressed to Mr J. and referring to 'discussions with LS Cable' (recital 431 of the contested decision), the Commission acknowledged that it was 'some evidence' that LS Cable continued to be regarded as a party to the cartel (recital 933 of the contested decision). However, the Commission concluded that there was no

convincing evidence of LS Cable's continued participation in the cartel between 26 August 2005 and 5 September 2007. Its conclusion was based inter alia on the 24-month period which had passed since LS Cable's last contact, too long to conclude that the latter had continued to participate in the cartel during that period. In addition, the Commission noted that LS Cable was a fringe player and that its previous participation in the cartel had been limited. LS Cable had participated only in some meetings (recital 584 of that decision) and, though involved in the allocation of underground projects in the export territories (recital 585 of that decision), it made genuine efforts to compete for projects to be carried out within the EEA, going against the 'home territory' principle agreed by the cartel.

177 Silec's situation, however, is different. Silec, with its predecessors Sagem and Sagem Communications (subsidiary of Safran), was involved in many of the cartel's activities. More specifically, it played an active role in the allocation of projects within the European 'home territory'. That role is borne out by Mr V.'s email of 21 December 2005, the day before Silec's acquisition by General Cable, by Mr V.'s email of 16 November 2006 and by the references made to Silec by the other cartel members during the allocation of projects between those two dates.

178 More specifically, it is appropriate to highlight three differences between Mr I.'s email to Mr J. of 5 September 2007, sent by Exsym to Nexans France and making reference to LS Cable, on the one hand, and the emails exchanged on 16 November 2006 between Mr K. and Mr V., that is to say, between Silec and Brugg with Nexans France in copy, on the other.

179 First, the factual background of that correspondence is different. Mr I.'s email of 5 September 2007 makes a brief, unexpected reference to LS Cable, approximately two years after the last reliable piece of evidence of the company's collusive activities (recitals 352 and 931 of the contested decision). However, in the case at hand, the emails exchanged between Mr K. and Mr V. on 16 November 2006 are accompanied by reliable indications of continued illicit contacts between Silec and the other cartel members since 21 December 2005.

180 Second, the content of that correspondence also differs. Mr I.'s email of 5 September 2007 indicates that LS Cable told one of the cartel members that 'it seems too late to make this arrangement'. As is indicated in recital 933 of the contested decision, that indirect allusion does not suffice to prove that LS Cable participated continuously in the cartel from 26 August 2005 to 5 November 2007. On the contrary, the content of the emails exchanged between Mr K. and Mr V. on 16 November 2006 proves that Silec had not withdrawn from the cartel and confirms its continued participation in the cartel until that date.

181 Third, the reaction to that correspondence was different. The Commission found no evidence proving that LS Cable had responded or reacted to Mr I.'s email of 5 September 2007, whereas there is evidence that Mr V., of Silec, responded to

Mr K.'s email of 16 November 2006. It is significant that Silec showed neither surprise nor dismay at being contacted by one of its competitors. That lack of surprise or rejection on Silec's part regarding Brugg's email moreover weakens the applicants' position that Brugg and Nexans France were Silec's former accomplices and suggests, instead, that Silec was still cooperating with its competitors (recital 941 of the contested decision). Silec responded by referring to a telephone conversation with its counterpart Brugg, indicating that it noted Brugg's 'agreement to receive instructions on Monday, November 20' (recital 411 of that decision). Brugg and Silec thus agreed that Silec would provide instructions on the 'quote', that is to say, would cooperate, and Silec gave the impression that it was actually going to do it. Contrary to what the applicants suggest, it is not necessary that the Commission prove that action was taken on Mr K.'s email of 16 November 2006. Such an email constituted direct contact between competitors and suffices to suggest that Silec was still involved in the collusive activities.

182 It is therefore appropriate to reject the applicants' complaint that the emails exchanged between Mr K. and Mr V. on 16 November 2006 involving Silec (see paragraphs 123 to 141 above) are elements comparable to Mr I.'s email of 5 September 2007 concerning CS Cable (recital 431 of the contested decision).

183 Moreover, to the extent that the applicants reiterate their recurring line of argument concerning the economic unit referred to by the Commission as 'Sagem/Safran/Silec' and distinguish the conduct of Silec's predecessors from its conduct when it was under General Cable's control, the preliminary observations made in paragraphs 30 to 41 above should be recalled. It may be true that Silec's cooperation with the R members of the cartel became less visible and its contacts fewer in number in 2006. It is usual to keep a low profile at times in a cartel operated over a long period of time, given the legal risks, to which the parties have made frequent reference (recital 632 of the contested decision). However, the fact that there is evidence of continued contacts, though less frequent, between Silec and its competitors proves its continued participation in the cartel until 16 November 2006.

184 Similarly, regarding the applicants' objection that Silec did not continue to participate in the cartel after its acquisition by General Cable, it should be noted that the undertaking's conduct did not fundamentally change after 21 December 2005. As is indicated in recital 940 of the contested decision, it was not uncommon for participants to miss some of the R meetings and for illicit contacts to occur orally. The references to Mr V. in several emails exchanged in March and April 2006 show that Silec was regarded by the other participants as tacitly approving the cartel activities underway (recitals 411 and 941 of that decision). That fact is supported by emails exchanged between Mr K. and Mr V. on 16 November 2006, which clearly prove Silec wanted to provide Brugg with 'instructions' relating to a 'quote'. In addition, Mr V. put in copy in his email of 16 November 2006 Mr J., of Nexans France, who was the coordinator of the

R members of the cartel. Silec's conduct was thus markedly different from that of LS Cable.

185 It follows that the nature and duration of the infringement committed by LS Cable were different from those of Silec's infringement.

186 Conversely, it must be noted that the Commission treated Silec and LS Cable in a comparable manner to the extent that their respective situations were comparable. In the same way the Commission found that Silec continued to take part in the cartel until 16 November 2006, partly since the other cartel members still considered it as such, LS Cable was held liable for the same reason until 26 August 2005. In the same way the Commission found it could not prove that Silec had continued to participate in the cartel beyond 16 November 2006 on account of lack of evidence, it arrived at the same finding in relation to LS Cable for the period beyond 26 August 2005.

187 Incidentally, even if the Commission had found that LS Cable had been a party to the cartel for a shorter period of time than was actually the case, that conclusion would have no impact on the duration of Silec's participation in the cartel. The impossibility of establishing longer involvement on the part of LS Cable does not amount to unequal treatment towards Silec, all the more given that the duration of Silec's infringement is supported by documents on the file.

188 In that regard, the Court of Justice has recently recalled that, when an undertaking has, by its conduct, infringed Article 101 TFEU, it cannot escape being penalised on the ground that another economic operator has not been fined. An undertaking on which a fine has been imposed for its participation in a cartel, in breach of the competition rules, cannot request the annulment or reduction of that fine, on the ground that another participant in the same cartel was not penalised in respect of a part, or all, of its participation in that cartel (see, to that effect, judgment of 9 March 2017, *Samsung SDI and Samsung SDI (Malaysia)* v *Commission*, C-615/15 P, not published, EU:C:2017:190, paragraphs 37 and 38 and the case-law cited).

189 Consequently, the Commission did not commit an error or infringe the principle of equal treatment in determining the duration of Silec's participation in the cartel.

190 It follows from the foregoing that the fourth plea must be rejected.

The fifth plea, alleging a manifest error in the assessment of the gravity of the infringement and infringements of the principles of equal treatment and proportionality in characterising Silec as a non-fringe player in the cartel

191 By their fifth plea, the applicants allege that, at very least, the Commission made a manifest error of assessment and infringed the principles of equal treatment and proportionality in taking the view that Silec was not to be regarded as a fringe player, despite a degree of involvement that distinguished it from the undertakings

which formed the core group and that was comparable to that of the fringe players. They consider that Silec's conduct was different from that of Sagem and Safran and state that it did not attend a single meeting during the period of its alleged participation in the cartel. They submit in this connection that the Commission's assessment of the gravity and extent of Silec's infringement on the basis of the conduct adopted by Sagem and Safran over a period of five years (from 2001 to 2005) prior to the formation of Silec is an outright distortion of the principle of personal responsibility while Safran remains in existence. They put forward an alternative complaint that the Commission failed to take account of the fact that Silec did not commit any 'hard core cartel offences'.

192 The Commission disputes the applicants' arguments.

193 It is apparent from the case-law that, when an undertaking (within the meaning of paragraph 32 above) infringes the competition rules, according to the principle of personal responsibility, it is for that undertaking, to answer for that infringement (see, to that effect, judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C-97/08 P, EU:C:2009:536, paragraph 56 and the case-law cited).

194 Nevertheless, the infringement of EU competition law must be imputed unequivocally to a legal person on whom fines may be imposed (judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C-97/08 P, EU:C:2009:536, paragraph 57). Consequently, when such an infringement is found to have been committed, it is necessary to identify the natural or legal person who was responsible for the operation of the undertaking at the time when the infringement was committed, so that it can answer for it (judgment of 17 December 1991, *Enichem Anic* v *Commission*, T-6/89, EU:T:1991:74, paragraph 236; see, to that effect, judgment of 16 November 2000, *Cascades* v *Commission*, C-279/98 P, EU:C:2000:626, paragraph 78).

195 According to Article 23 of Regulation No 1/2003, in fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement. As is apparent from the 2006 Guidelines on the method of setting fines, the Commission's methodology when calculating fines consists of two stages. First, the Commission determines a basic amount for each undertaking or association of undertakings. That basic amount makes it possible to reflect the gravity of the infringement at issue, by taking into account, in accordance with point 22 of those guidelines, a number of factors specific to it, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented. Second, the Commission may adjust that amount upwards or downwards in the light of aggravating or mitigating circumstances which characterise the participation of each of the undertakings concerned (see, to that effect, judgment of 25 October 2011, *Aragonesas Industrias y Energía* v *Commission*, T-348/08, EU:T:2011:621, paragraphs 260 and 264 and the case-law cited).

196 In the present case, the Commission set the proportion of the value of sales to reflect the gravity of the infringement at 19% for the European undertakings, which includes the economic unit referred to by it as 'Sagem/Safran/Silec', and at 17% for the other undertakings (recitals 997 to 1010 of the contested decision). In so far as concerns the multiplier to reflect the duration of the infringement, the Commission took, for Silec, the figure 0.91, to reflect the period from 30 November 2005 to 16 November 2006. As for General Cable, the Commission took the figure 0.853, to reflect the period from 22 December 2005 to 16 November 2006. Moreover, Silec being the new operator of the activity previously operated by Sagem Communications (subsidiary of Safran), one additional amount was apportioned between Silec and Safran proportionally to the period that each of them participated in the infringement (recital 1014 of that decision).

197 Regarding adjustments to the basic amount of the fines, in so far as mitigating circumstances are concerned, the Commission decided to reflect in the amount of the fine of each undertaking the role it played in the implementation of the cartel. Accordingly, it reduced by 10% the basic amounts of the fines to be imposed on the marginal cartel participants and by 5% the basic amounts of the fines to be imposed on those undertakings whose involvement had been moderate, which include the economic unit it has called 'Sagem/Safran/Silec' (recitals 1032 and 1033 of the contested decision).

198 The applicants claim, in essence, that Silec's conduct can be distinguished from that of Sagem and Safran (through its subsidiary Sagem Communications), and maintain that they should have benefitted from an additional reduction of 5%, since their participation was comparable to that of the fringe players in the cartel.

199 In that regard, it should be noted that the applicants rely on the recurring line of argument that Silec became an undertaking separate from Sagem and Safran after its acquisition by General Cable on 22 December 2005 and accordingly raise the argument that it is only Silec's conduct after that date that is relevant to the assessment of the gravity of the infringement it committed.

200 That argument cannot be accepted.

201 First of all, it should be recalled that Article 1(7)(a) of the contested decision, addressed to the legal person referred to as 'Silec Cable SAS', which was created on 30 November 2005 and which, according to the Commission, participated in the cartel from that date until 16 November 2006 as the successor of the businesses owned by the economic entity 'Sagem/Safran'. The economic entity referred to by the Commission as 'Sagem/Safran/Silec' constitutes the undertaking which, according to the Commission, participated in the infringement from 12 November 2001 to 16 November 2006. Therefore, the Commission was justified in assessing the gravity of the infringement committed by that undertaking.

202 It is true that the undertaking the Commission referred to as 'Sagem/Safran/Silec' did not take part in the undertaking from the outset and did not attend any A/R meetings. However, it was involved in the European cartel configuration, inter alia in the allocation of a number of projects to be carried out within the EEA (recitals 568 to 570 of the contested decision). The email of 21 December 2005 (see paragraphs 86 to 89 above) containing a 'declaration of interest' by Silec is in line with that. Such involvement contributes to making that undertaking a 'moderate player' in the cartel rather than a 'fringe player'

203 Moreover, it should be pointed out that General Cable is not liable for events prior to its acquisition of Silec. Article 1(7)(b) of the contested decision holds General Cable liable for the infringement committed by the undertaking from 22 December 2005, the date on which General Cable acquired Silec. It follows that, contrary to the applicants' claims, they are not being held liable for the gravity and extent of the infringement committed before 22 December 2005. The applicants are, however, being held liable for the infringement committed by the undertaking after that date.

204 For the sake of completeness, it must be noted that the applicants have not provided any evidence in support of the claim that Silec's position or conduct radically changed from 22 December 2005. They have inter alia failed to prove a complete and open dissociation from the whole cartel, within the meaning of the case-law (judgment of 2 February 2012, *Denki Kagaku Kogyo and Denka Chemicals* v *Commission*, T-83/08, not published, EU:T:2012:48, paragraph 64), as follows from the examination of the second plea (see paragraphs 147 to 166 above). They also downplay Silec's participation in the cartel after its acquisition by General Cable, which cannot be reduced to 'only ... one contact'. The participation of an undertaking in a cartel is not limited to the number of presences at meetings or to the number of mentions in Annex I to the contested decision. Recital 1028 of that decision underlines, in particular, that not having attended certain meetings does not by itself constitute a mitigating circumstance. Silec's participation must be placed in the context of events shortly before the acquisition, including the emails exchanged between Mr V. and Mr J. on 21 and 22 December 2005 (recital 371 of that decision), the statements made by other undertakings indicating Silec was still regarded as a party to the cartel (recital 414 of the same decision) and, last, the emails exchanged between Mr K. and Mr V. on 16 November 2006. They prove in particular that Silec was ready to be contacted by competitors and to give instructions to a competitor in relation to a quote for a project, thereby confirming that, from that latter date, Silec was still participating in the cartel.

205 Consequently, even if it was relevant to assess the gravity of an infringement by relying on the degree of individual participation of each legal person by taking into account changes in its control, the fact remains that the evidence outlined in paragraph 204 above do not show that Silec's participation was more limited after its acquisition by General Cable.

206 Moreover, the applicants' alternative complaint that the Commission failed to take account of the fact that Silec did not commit any 'hard core cartel offences' must be rejected. It was for the Commission, subject to review by the Court, to assess the gravity of the infringement committed by each undertaking. Thus, it found in recitals 998 to 1010 of the contested decision that the global cartel in question was among the most harmful restrictions of competition and involved undertakings with a considerable market presence in the EEA. It is why the gravity percentage was set at 19% for Silec and the other R members of the cartel (recital 1010 of that decision). It therefore did not 'merge' the activities of Silec with those of Sagem or of Safran, but assessed the gravity of the infringement committed by the undertaking which included Sagem, Safran (through its subsidiary Sagem Communications) and Silec.

207 Last, in so far as the applicants attempt to compare Silec's role in the cartel with that of nkt cables, it has to be stated that that comparison is hardly favourable to Silec. While both undertakings participated in several R meetings and neither of them established the cartel or participated in A/R meetings, the main difference between them hinges on the fact that nkt cables did not play an active role in the allocation of projects to be carried out within the European 'home territory' (recital 594 of the contested decision), whereas the undertaking referred to as 'Sagem/Safran/Silec' did play such a role and was not a fringe player in the cartel (recital 570 of that decision).

208 Consequently, it must be concluded that the Commission examined the gravity of the infringement without committing any error and without infringing the principles of equal treatment and proportionality. The reduction of 5% of the amount of the fine imposed on Silec reflected the degree of its participation in the cartel and was a correct exercise of the discretion conferred on the Commission by Regulation No 1/2003 and by the 2006 Guidelines on the method of setting fines.

209 It follows from the foregoing that the fifth plea must be rejected.

The claim for reduction in the amount of the fines imposed

210 By their second head of claim, the applicants request the Court, in the alternative, to reduce the amount of the fines imposed on them. In that regard, they use as a basis each of the pleas raised in support of the claim for annulment.

211 It follows from the case-law that the review of legality is supplemented by the unlimited jurisdiction which the EU Courts were afforded by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU. That jurisdiction empowers the competent Court, in addition to carrying out a mere review of legality with regard to the penalty, to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the fine or penalty payment imposed. It must, however, be pointed out that the exercise of unlimited jurisdiction is not equivalent to an own-motion review and that proceedings before the EU Courts are *inter partes*. With the exception of pleas involving matters of

public policy which the Court is required to raise of its own motion, such as the failure to state reasons for a contested decision, it is for the applicant to raise pleas in law against that decision and to adduce evidence in support of those pleas (judgment of 8 December 2011, *KME Germany and Others* v *Commission*, C-389/10 P, EU:C:2011:816, paragraphs 130 and 131).

212 In the present case, it should be noted, first, that, since no irregularity or illegality vitiates the contested decision, the claim for reduction in the amount of the fine submitted by the applicants cannot in any event be accepted, in so far as it asks the Court to draw conclusions, with respect to the amount of the fine, from such illegalities or irregularities. Second, it should be noted that there is no evidence capable of justifying a reduction in the amount of the fine.

213 Accordingly, the claim for reduction in the amount of the fines imposed on the applicant must be rejected.

214 It follows from all the foregoing considerations that the action must be dismissed in its entirety.

Costs

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

216 Since the applicants have been unsuccessful, they must be ordered to bear their own costs and, in addition, to pay those incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the action;

2. Orders Silec Cable SAS and General Cable Corp. to pay the costs.

Collins Kancheva Barents

Delivered in open court in Luxembourg on 12 July 2018.

E. Coulon

Registrar President

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