

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

15 December 2016(*)

(Competition — Agreements, decisions and concerted practices — Smart card chips — Decision finding an infringement of Article 101 TFEU — Exchanges of commercially sensitive information — Rights of defence — Infringement by object — Proof — Limitation — Single and continuous infringement — 2006 Guidelines on the method of setting fines — Value of sales)

In Case T-758/14,

Infineon Technologies AG, established in Neubiberg (Germany), represented by I. Brinker, U. Soltész and P. Linsmeier, lawyers,

applicant,

v

European Commission, represented by A. Biolan, A. Dawes, J. Norris-Usher and P. Van Nuffel, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for the annulment of Commission Decision C(2014) 6250 final of 3 September 2014 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39574 — Smart Card Chips) or, in the alternative, for a reduction in the fine imposed on the applicant,

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich, President, J. Schwarcz and V. Tomljenović (Rapporteur), Judges,

Registrar: A. Lamote, Administrator,

having regard to the written part of the procedure and further to the hearing on 28 April 2016,

gives the following

Judgment

Background to the dispute

- 1 By Decision C(2014) 6250 final of 3 September 2014 relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39574 — Smart Card Chips) ('the contested decision'), the European Commission held that there had been an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area (EEA) in the smart card chips sector ('the infringement at issue'). That infringement, in which four undertakings had participated, first, the applicant, Infineon Technologies AG, secondly, Koninklijke Philips Electronics NV and its wholly owned subsidiary Philips France SAS, (together 'Philips'), thirdly, Samsung Electronics Co., Ltd, and Samsung Semiconductor Europe GmbH (together 'Samsung') and, fourthly, Renesas Electronics Corp., which succeeded Renesas Technology Corp., which had been created by Hitachi Ltd and Mitsubishi Electric Corp., and Renesas Electronics Europe Ltd (together 'Renesas'), lasted from 24 September 2003 to 8 September 2005 (recital 1 and Article 1 of the contested decision).

- 2 According to the Commission, the infringement at issue, which was a single and continuous infringement, consisted, for the four undertakings mentioned in paragraph 1 above, in the coordination of their market behaviour by means of the exchange of commercially sensitive information concerning pricing generally and prices charged to specific customers, contract negotiation, production capacity or utilisation of that capacity and their future conduct on the market. There are other manufacturers of smart card chips operating in the EEA, such as Atmel, ST Microelectronics and NXP. In so far as NXP is concerned, the Commission states that that undertaking had taken over the activities of Philips from the date of its establishment, on 29 September 2006. The Commission found that NXP had not participated in the infringement at issue (recital 49 and Article 1 of that decision).
- 3 The Commission states that smart card chips are used in SIM cards for mobile telephones, bank cards, identity cards and passports and pay-TV cards and in various other applications. Smart card chips comprise two principal elements: a processing unit and some form of memory. The market for smart card chips can be split into two segments according to the main application, namely SIM applications, which are used mainly for mobile phones ('SIM chips'), and FSID applications, also called 'non-SIM' applications, for banking, security and ID ('non-SIM chips') (recitals 3 and 6 of the contested decision).
- 4 In the relevant market, on the supply side, the Commission states that, at the time of the infringement at issue, there were six large manufacturers, namely, Samsung, the applicant, Renesas, Atmel, Philips and ST Microelectronics. In 1999 and 2000, the principal players on the European market were Siemens, Philips, ST Microelectronics and the applicant. Between 2001 and 2004, the market saw the entry of Samsung and Atmel. In 2004-2005, Philips took the first steps to withdraw from the lower-end applications market to focus its attention on higher-end products (recital 35 of the contested decision). On the demand side, the Commission states that the market was very concentrated, with only four main customers, including Schlumberger Smart Cards and Terminals ('Schlumberger'), Oberthur Card Systems and Gemplus. Each of those main customers was active in both SIM and non-SIM chips. According to the Commission, 70% of worldwide sales of smart card chips took place in Europe during the period of the infringement at issue and the market for smart card chips was characterised by a substantial volume of trade between Member States of the European Union (recitals 36, 42 and 43 of the contested decision and footnote 45 to the contested decision).
- 5 On 22 April 2008, Renesas informed the Commission about a cartel in the smart card chips sector and submitted an application for immunity from fines pursuant to the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17, 'the Leniency Notice'). On 23 September 2008, the Commission adopted a conditional decision granting Renesas immunity in accordance with point 18 of the Leniency Notice (recital 44 of the contested decision).
- 6 Between 21 and 23 October 2008, the Commission carried out on-the-spot inspections pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) at the premises of several companies operating in the smart card chips sector (recital 45 of the contested decision).
- 7 On 27 October 2008, at 6:55 am, NXP and all the subsidiaries which it controlled directly or indirectly applied for a reduction of fines pursuant to the Leniency Notice (recital 46 of the contested decision).
- 8 Also on 27 October 2008, at 9:24 am, Samsung and all the subsidiaries which it controlled directly or indirectly applied for immunity from fines or a reduction of fines pursuant to the Leniency Notice (recital 47 of the contested decision).
- 9 Between 5 November 2008 and 16 June 2014, pursuant to Article 18 of Regulation No 1/2003, the Commission sent requests for information to various companies operating in the smart card chips sector, including the addressees of the contested decision (recital 48 of the contested decision).
- 10 On 28 March 2011, the Commission initiated proceedings, pursuant to Article 11(6) of Regulation No 1/2003, against Philips, Renesas and Samsung (recital 49 of the contested decision).

- 11 On 31 March 2011, the Commission informed NXP that it did not intend to address a statement of objections to it or impose a fine. For those reasons, the Commission considered that there was no ground to grant it a reduction of fines under the Leniency Notice. Indeed, according to the Commission, since, in substance, the business of Philips was not transferred to NXP until 29 September 2006 and the period of the infringement at issue had ended, as regards Philips, on 9 September 2004, NXP could not be held liable for the infringement committed by Philips (recital 49 of the contested decision).
- 12 In April 2011, the Commission initiated settlement discussions, in accordance with Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101] and [102 TFEU] (OJ 2004 L 123, p. 18), with Renesas, Samsung and Philips. Those discussions were discontinued in October 2012 (recital 51 of the contested decision).
- 13 On 18 April 2013, the Commission sent a statement of objections ('the Statement of Objections') to Renesas, Hitachi, Mitsubishi Electric Corp., Samsung, the applicant and Philips. In their observations on the Statement of Objections, the applicant and Philips disputed the authenticity of certain documents provided by Samsung after the settlement procedure. Samsung replied to those observations and provided the Commission with further documents on 6 September 2013 (recitals 52 and 53 of the contested decision).
- 14 On 9 October 2013, the Commission issued a letter of facts by which it informed the parties of Samsung's reply regarding the contesting of the authenticity of the documents which it had provided and of the new documents which it had provided (recital 54 of the contested decision).
- 15 On 13 November 2013, the applicant and Philips replied to Samsung's observations on the letter of facts.
- 16 The hearing was held on 20 November 2013 (recital 55 of the contested decision).
- 17 Between the date of the hearing and 7 July 2014, certain parties to the administrative procedure submitted observations, either at the Commission's request or spontaneously (recital 56 of the contested decision).
- 18 On 25 July 2014, the Commission issued a new letter of facts by which it informed the parties to the administrative procedure of the translations which it intended to use in the event of debate concerning certain documents in Korean and of the existence of two documents submitted by Samsung supporting the authenticity of the evidence it had provided after the settlement discussions (recital 57 of the contested decision).
- 19 On 3 September 2014 the Commission adopted the contested decision. In its submission, the main documentary evidence relied upon to prove the existence of the infringement at issue consisted of the documents submitted by Renesas, NXP and Samsung (recital 58 of the contested decision).
- 20 In the contested decision, after describing the sector in question (recitals 2 to 43 of the contested decision) and the investigation which it had conducted (recitals 44 to 58 of the contested decision), in the first place, the Commission explains the principal elements of the infringement at issue.
- 21 First, in so far as concerns the context in which contacts between competitors had taken place, the Commission submits that the market for smart card chips was characterised by a constant fall in prices, downstream pressure on prices from the largest customers of smart card chip manufacturers, imbalances in the demand/supply ratio resulting from an increase in demand, constant, rapid technological development and the structure of contract negotiations with customers (recitals 59 to 68 of the contested decision).
- 22 Secondly, as regards the principal features of the infringement at issue, the Commission concludes that the cartel functioned through a network of bilateral contacts between the addressees of the contested decision either in face-to-face meetings or in telephone conversations, which were weekly in 2003 and 2004. According to the Commission, through contacts on pricing, in particular on the specific prices

proposed to the principal customers, minimum price levels and target prices, the sharing of views on price developments for the coming semester and pricing intentions, and also through contacts on production capacity and capacity utilisation, future market conduct as well as contract negotiations vis-à-vis common customers, the addressees of the contested decision coordinated their pricing policy for smart card chips. The timing of the collusive contacts may be explained by the timing of the business cycle (recitals 69 to 79 of the contested decision).

- 23 Thirdly, as regards contacts between the parties to the administrative procedure, the Commission states that the contacts which took place before or after the period of the infringement at issue are part of the body of evidence and may be referred to in the contested decision. Thus, in Table No 4 of the contested decision, the Commission sets out all the contacts which took place between two or more of the addressees of the contested decision between 16 April 2001 and the meeting of 24 September 2003, which give a better understanding of the infringement at issue, as well as all the contacts that took place between two or more addressees of the contested decision between 24 September 2003 and 8 September 2005, which corresponds to the period of the infringement. Next, the Commission gives details of the content of each of those contacts (recitals 80 to 132 of the contested decision).
- 24 In the second place, the Commission applies Article 101 TFEU and Article 53 of the EEA Agreement to the facts of the case.
- 25 First, the Commission considers that the conduct of the undertakings sanctioned in the contested decision, whose headquarters, sales facilities, production plant and product marketing functions are inter alia in the EEA, affected competition on the internal market and trade between Member States (recitals 133 to 137 of the contested decision).
- 26 Secondly, as regards the evidence provided by Samsung that was contested by the applicant and Philips, the Commission considers, in substance, that, with the exception of a document that had been altered, without any clear explanation of the circumstances in which the alteration was made, and which was not therefore relied on to prove the infringement at issue, the other documents must be regarded as credible proof of the infringement (recitals 140 to 205 of the contested decision).
- 27 Thirdly, as regards the product and geographic scope of the infringement, the Commission considers that, contrary to what the applicant and Philips argue, the infringement at issue concerned not only SIM chips, but also non-SIM chips. In this connection, it points out, in particular, that it is not obliged to engage in a relevant market definition when conducting a cartel investigation and that it has contemporary documentary evidence that shows that non-SIM chips were the subject of anticompetitive discussions (recitals 206 to 230 of the contested decision).
- 28 Fourthly, as regards the nature of the infringement at issue, the Commission submits that the conduct of the undertakings sanctioned in the contested decision constituted a concerted practice for the purposes of Article 101(1) TFEU and Article 53 of the EEA Agreement. It also considers that, although the competitors were in touch essentially through bilateral contacts, those bilateral contacts were linked one with another by their subject-matter and timing, through open references to each other and by the communication of the information gathered. The competitors also consciously used market fairs and other industry gatherings for the purposes of bilateral contacts between them. It was also common knowledge among the competitors, according to Renesas, that bilateral contacts and exchanges of commercially sensitive information were taking place, at least between Samsung and its competitors. The Commission contests the arguments made by the applicant and Philips to the effect, in particular, that the information exchanged was not sensitive (recitals 231 to 275 of the contested decision).
- 29 Fifth, as regards the classification of the infringement at issue, the Commission considers it to be a single and continuous infringement, given that there are objective grounds to assume the single anticompetitive aim of the participants in the collusive contacts and their common pattern of behaviour. First of all, the collusive practices in question had the same economic aim, in particular, in view of the aggressive entry into the market of Samsung and Atmel and the pressure exerted by two of the largest customers, Axalto (formerly Schlumberger) and Gemplus. The cartel members had sought to 'limit the impact [on the competitors] that the challenging market developments ... entailed', 'to manage the

continued price drops and squeezed margins’, so as to ‘slow down the price decrease inherent to the smart card chip market’. Next, several factors, such as the common characteristics of the contacts, the identity of the people participating in the contacts, the timing of the contacts or their proximity in time, confirm that those collusive contacts were linked and complementary in nature and that, by interacting, they contributed to the realisation of the set of anticompetitive effects within the framework of a global plan having a single objective. As regards awareness of the infringement at issue, the Commission states that Samsung and Renesas had each engaged in collusive contacts with the three other undertakings sanctioned in the contested decision. According to the Commission, Philips had contacts with Samsung and Renesas, and it was common knowledge, according to Renesas, that Samsung had contacts with its competitors. As regards the applicant, it had had direct contacts with Samsung and Renesas, although there is no evidence that the applicant had contacts with Philips or that it had the subjective impression of participating in the whole of the infringement at issue, and so it could be held liable for that infringement only in so far as it participated in collusive arrangements with Samsung and Renesas (recitals 276 to 315 of the contested decision).

30 Sixth, the Commission considers, in substance, that the conduct of the undertakings in question had the object of restricting competition in the European Union and had an appreciable effect on trade between Member States and between contracting parties to the EEA Agreement (recitals 316 to 334 of the contested decision).

31 In the third place, in so far as concerns the duration of the infringement at issue, the Commission states that it is not possible to ascertain the exact dates on which the participants started or stopped their collusive contacts and on which the cartel started to or ceased to produce its effects. In particular, as regards the applicant, the Commission submits that the infringement at issue lasted from 24 September 2003 to 31 March 2005. As regards Philips, the infringement lasted from 26 September 2003 to 9 September 2004 (recitals 336 to 345 of the contested decision).

32 In the fourth place, as regards the addressees of the contested decision, the Commission considers, in particular, that the applicant participated in the infringement at issue through the involvement of certain of its employees. Moreover, as regards Philips, the Commission considers that Philips France, which was a subsidiary wholly owned, directly or indirectly, by Koninklijke Philips, participated in the infringement at issue through the involvement of one of its employees. The Commission presumes that Koninklijke Philips exerted a decisive influence over the market conduct of Philips France, given their shareholding links and other factual elements which corroborate the fact that Koninklijke Philips exerted a decisive influence over its subsidiaries (recitals 353 to 389 of the contested decision).

33 In the fifth place, as regards corrective measures, the Commission states that, since it is impossible to determine with certainty that the infringement at issue has ceased, it intends to require the undertakings in question to bring that infringement to an end, in accordance with Article 7 of Regulation No 1/2003. It also intends to impose fines in accordance with Article 23(2) of Regulation No 1/2003 and the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; ‘the 2006 Guidelines’) (recitals 390 to 394 of the contested decision).

34 First of all, the Commission submits that the infringement at issue was committed intentionally (recital 395 of the contested decision).

35 Next, as regards the value of sales to be taken into consideration, the Commission states that, in this case, it is departing from the principle that the last full business year of an undertaking’s participation in an infringement is taken into account, in view of the short duration of the infringement at issue, which spanned three calendar years, and in view of the considerable difference in the duration of the involvement of the various parties in the administrative procedure. The Commission therefore considers it appropriate to use a proxy for the annual value of sales based on the actual value of sales made of cartelised products by the undertakings during the months of their active participation in the infringement at issue (recitals 398 to 404 of the contested decision).

36 Also, as regards the calculation of the basic amounts of the fines, the Commission considers it appropriate to use a multiplier of 16% to reflect the gravity of the infringement at issue and finds the duration of the infringement to be 11 months and 14 days in the case of Philips, 18 months and 7 days

in the applicant's case, 23 months and 2 days in the case of Renesas and 23 months and 15 days in the case of Samsung. It adds that an additional amount of 16% of the value of sales should be taken into account (recitals 405 to 420 of the contested decision).

37 Moreover, as regards adjustments to the calculation of the basic amounts of the fines and deterrence, the Commission considers there to be no aggravating circumstances. On the other hand, it grants the applicant a 20% reduction in its fine on account of the fact that it is liable for the single and continuous infringement only to the extent that it participated in collusive arrangements with Samsung and Renesas, not with Philips. Furthermore, it applies a factor of 1.4 to Samsung's fine, 1.2 to Hitachi's fine and 1.1 to Mitsubishi's fine (recitals 421 to 431 of the contested decision).

38 Lastly, after noting that the amounts of the fines calculated as mentioned above do not exceed the limit of 10% of total turnover of the undertakings concerned, the Commission submits, in connection with the grant of reductions in the fines under the Leniency Notice, that Renesas is entitled to immunity from fines, and that Samsung, which furnished information which provided significant added value, is entitled to a reduction of 30% of the fine that would otherwise have been imposed (recitals 432 to 456 of the contested decision).

39 In Article 1 of the contested decision, the Commission concludes that, 'for its coordination with Samsung and Renesas', the applicant participated in a single and continuous infringement relating to smart card chips and covering the entire EEA from 24 September 2003 to 31 March 2005, (Article 1(a)), that Philips participated in that infringement from 26 September 2003 to 9 September 2004 (Article 1(b)), that Renesas participated in that infringement from 7 October 2003 to 8 September 2005 (Article 1(c)) and that Samsung participated in that infringement from 24 September 2003 to 8 September 2005 (Article 1(d)).

40 In Article 2 of the contested decision, the Commission imposes fines of EUR 82 784 000 on the applicant (Article 2(a)), EUR 20 148 000 on Philips (Article 2(b)), EUR 0 on Renesas (Article 2(c)) and EUR 35 116 000 on Samsung (Article 2(d)).

Procedure and forms of order sought

41 By application lodged at the Registry of the General Court on 13 November 2014, the applicant brought the present action.

42 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure and, by way of a measure of organisation of procedure adopted on the basis of Articles 89 and 90 of its rules of procedure, requested the Commission to provide it with certain documents relating to its forensic assessments on the authenticity of an email, to which reference was made in recital 168 of the contested decision. The Commission acceded to that request on 17 March 2016, and the applicant submitted its observations on the documents provided by the Commission. In those observations, the applicant stated that the Commission had not provided all the documents requested by the Court.

43 By letter of 12 April 2016, the Commission provided the Court with additional documents relating to its forensic assessments on the authenticity of an email, to which reference was made in recital 168 of the contested decision.

44 The parties presented oral argument and replied to questions from the Court at the hearing on 28 April 2016.

45 By measure of inquiry of 30 May 2016, the Court, on the basis of Articles 91 and 92 of the Rules of Procedure ordered the Commission to produce the documents that it had not submitted in the context of the measure of organisation of procedure referred to in paragraph 42 above. The Commission complied with that measure of inquiry within the prescribed period, and the applicant submitted its observations on those documents on 7 July 2016.

46 The oral procedure was closed on 8 July 2016.

47 The applicant claims that the Court should:

- annul the contested decision in so far as it relates to it, in particular Article 1(a), Article 2(a) and Article 4, paragraph 2, thereof;
- in the alternative, order a substantial reduction in the fine imposed on it under Article 2(a) of the contested decision;
- order the Commission to pay the costs.

48 The Commission contends that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

Law

49 The applicant puts forward six pleas in law in support of its action. By the first plea, it alleges infringement of its rights of defence, in particular, in that the Commission failed to adopt a second statement of objections and organise a second hearing. By the second plea, it alleges breach of the principles of sound administration and of observance of the rights of the defence, in that the Commission adopted a ‘fast track process’. The third plea alleges infringement of Article 101(1) TFEU. By the fourth plea, which it puts forward in the alternative, the applicant alleges misapplication of the concept of a single and continuous infringement. The fifth plea alleges miscalculation of the fine. The sixth plea alleges infringement of the 2006 Guidelines and of the principle of proportionality.

The first plea, alleging infringement of the applicant’s rights of defence

50 The applicant argues that the Commission has infringed its rights of defence. It submits that the Commission should have issued a second statement of objections and organised a second hearing, rather than sending a second letter of facts on 28 July 2014, since the Commission had materially altered its case in legal and factual terms after issuing the Statement of Objections. It sets out four principal complaints in this connection.

51 The Commission contests those arguments.

The first complaint, alleging infringement of the rights of the defence due to the communication at a late stage of the Samsung email of 3 November 2003

52 The applicant submits, in substance, that the Commission infringed its rights of defence for having sent to it at a late stage an electronic version of Samsung’s email of 3 November 2003 (‘the email of 3 November 2003’).

53 It should be borne in mind, first, that, under Article 48 of the Charter of Fundamental Rights of the European Union, ‘respect for the rights of the defence of anyone who has been charged shall be guaranteed’.

54 Article 27(2) of Regulation No 1/2003 provides that the rights of defence of the parties concerned are to be fully respected in the proceedings.

55 Article 11 of Regulation No 773/2004 is worded as follows:

‘1. The Commission shall give the parties to whom it has addressed a statement of objections the opportunity to be heard before consulting the Advisory Committee referred to in Article 14(1) of Regulation (EC) No 1/2003.

2. The Commission shall, in its decisions, deal only with objections in respect of which the parties referred to in paragraph 1 have been able to comment.’

- 56 According to the case-law, the right of access to the Commission's file, which is the corollary of the principle of respect for the rights of the defence, means that the Commission must give the undertaking concerned the opportunity to examine all the documents in the investigation file which may be relevant for its defence. Those documents comprise both incriminating and exculpatory evidence, save where the business secrets of other undertakings, the internal documents of the Commission or other confidential information are involved (see 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 68 and the case-law cited).
- 57 If a procedural document before the Commission which may be categorised as inculpatory evidence, because the Commission relied on that document to support its objection concerning the existence of an infringement, was not communicated, it is for the undertaking concerned to show that the result at which the Commission arrived in its decision would have been different if that document which was not communicated and on which the Commission relied to make a finding of infringement against it had to be disallowed as evidence (see, to that effect, 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, paragraphs 71 and 73).
- 58 As a preliminary point, it should be pointed out that, as is apparent from recitals 57 and 168 of the contested decision, the applicant does not contest (i) that both the PDF version, initially, and the electronic version of the email of 3 November 2003, subsequently, were communicated to it by the Commission in the second letter of facts on 25 July 2014 and (ii) that it provided its observations on the second letter of facts, with an expert report on the authenticity of that email, within the period that the Commission had set for it, namely 4 August 2014.
- 59 It is therefore necessary to examine whether, by granting a period of 5 working days, between 25 July 2014 and 4 August 2014, to enable the applicant to provide its observations on the second letter of facts, and in particular on the authenticity of the email of 3 November 2003, the Commission granted an insufficient period to enable the applicant to defend itself properly.
- 60 It should be observed at the outset that the period that the Commission must grant an undertaking to provide its observations on a letter setting out the facts should take account of the relative complexity and the volume of the evidence submitted.
- 61 In the present case, it must be stated that a period of five working days was an extremely short period, in view of the circumstances of the case, to enable the applicant to exercise fully its rights of defence, given that, in its submission, it was required, in particular to have recourse to IT experts to examine the authenticity of the email in question and to provide its observations in that regard.
- 62 Such a finding does not however on its own permit the inference, in the present case, that the Commission infringed the applicant's rights of defence.
- 63 First, it should be noted, that, as the Commission observes and the applicant does not contest, the applicant did not seek from the Hearing Officer an extension of the period set, as it was entitled to do, in accordance with Article 9(1), in conjunction with recital 17, of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011, L 275, p. 29).
- 64 Moreover, it should be noted that the applicant did in fact respond within the period set to the second letter of facts, by providing in particular a forensic IT report to the Commission. That therefore tends to indicate that, notwithstanding the short period set by the Commission, the applicant was in a position to usefully exercise its rights of defence.
- 65 Second, and in any event, it must be stated that, like the first independent expert report that it submitted to the Commission in response to the second letter of facts, the second independent expert report, of 12 November 2014, that the applicant provided to the Court does not conclude that the email of 3 November 2003 was not authentic, but that that email was not handled in accordance with good practice in the field of electronic evidence, so that 'its authenticity [is] indemonstrable', or that that expert had insufficient technical data to 'demonstrate its authenticity'. The applicant's claim that it did

not have a sufficient period to submit before 4 August 2014 a forensic IT report as complete as the expert report of 12 November 2014 that it submitted to the Court would not invalidate therefore, in any event, the finding that, even if that period had been longer, the result at which the Commission arrived in the contested decision would not have been different within the meaning of the case-law cited in paragraph 57 above.

66 In those circumstances, it must be held that the fact that the Commission granted a period of five days to the applicant to respond to the second letter of facts and provide its observations on the authenticity of the email of 3 November 2003 cannot be considered to be an infringement of its rights of defence.

67 The other arguments that the applicant puts forward in that regard are also unconvincing.

68 First, in so far as the applicant refers in its pleadings and at the hearing to the decision of the European Ombudsman of 13 November 2014, stating that the Ombudsman underlined the importance of the authenticity of the email of 3 November 2003 and that the applicant did not have enough time to respond to the second letter of facts, it should be pointed out that the importance of the question of the authenticity of that email has no bearing on the question whether the applicant's rights of defence were infringed. In addition, and in any event, it should be pointed out that, as is apparent from paragraph 49 of the Ombudsman's decision of 13 November 2014, that decision does not take a view on whether the applicant's rights of defence were infringed but concludes solely that, by providing the applicant on 25 July 2014 the electronic version of the email of 3 November 2003 which was already in its possession since 10 January 2014, the Commission did not act in accordance with the principle of sound administration. Or, even if that were the case, that would however have no bearing on the finding that, for the two reasons set out in paragraphs 63 to 65 above, the Commission did not infringe the applicant's rights of defence.

69 Second, in so far as the applicant contests the Commission's argument that it is apparent from an email of 31 July 2014 that the applicant had indicated to the Commission that it did not consider it necessary to request an extension of the five-day period, such an argument must be rejected as ineffective. Even on the assumption that that email could not be interpreted as an explicit admission by the applicant that an extension was not necessary, the fact remains that is not apparent either from that email or from the applicant's arguments that it had requested an extension of that period. Moreover, the applicant's argument, in that regard, that it did not request an extension since the Commission's services had clearly indicated to it that they expected a quick response to the second letter of facts is unconvincing. If the applicant was of the view that the Commission had not granted it a sufficient period of time in which to exercise usefully its rights of defence, it was then for the applicant to exercise its right to ask for an extension with the Hearing Officer, which it failed to do in the present case.

70 Third, in so far as the applicant claims that it is for the Commission to prove the authenticity of an email where that authenticity is challenged and there are reasonable doubts about that authenticity, such an argument must be rejected as ineffective in the context of this plea, since it has no bearing on the finding of a possible infringement by the Commission of the applicant's rights of defence in that it gave the applicant only five days to communicate to it its observations on the authenticity of the email of 3 November 2003.

71 In the light of all the foregoing considerations, the first complaint of the first plea must be rejected as unfounded.

The second complaint, relating to the communication by the Commission of its 'forensic assessment[s]'

72 The applicant submits that the Commission infringed its rights of defence to the extent that, as is apparent from recitals 166 to 168 of the contested decision, (i) the Commission did not grant its request to order an independent forensic expert report and (ii) the Commission did not communicate to it its 'forensic assessment[s] on the authenticity of the email of 3 November 2003.

73 In the first place, as regards the complaint that the Commission allegedly infringed the applicant's rights of defence, on the ground that it refused to order an independent expert report, it should be borne in mind that, if an undertaking that is the subject of a procedure which may lead to the imposition of a

fine for infringement of competition law requests the Commission to obtain certain documents, it is for the Commission to examine that request. It has a margin of discretion in deciding whether it should obtain the documents in question. The parties to a procedure have no unconditional right to the Commission's obtaining certain documents, since it is for the Commission to decide how it conducts the investigation of a case. The Commission cannot be required to carry out further investigations where it considers that the preliminary investigation of the case has been sufficient.

- 74 In the present case, the applicant does not put forward any argument to establish that, in view of its forensic assessments (recitals 166 to 169 of the contested decision) and the evidence that it otherwise had in its possession which tend to confirm the content of the email in question (recitals 171 to 173 of the contested decision), the Commission ought to have asked for an additional independent expert's report. It should be pointed out that such a finding applies a fortiori, in the present case, since the applicant does not contest that, as the Commission observed in recital 167 of the contested decision, its forensic IT report does not conclude that the email of 3 November 2003 is not authentic, but that 'the email cannot be considered authentic [beyond] reasonable doubt', as the Commission stated in recital 167 of the contested decision.
- 75 In the second place, the applicant complains that that the Commission failed to send it its internal forensic IT report on the authenticity of the email of 3 November 2003.
- 76 In that regard, first, it is common ground that the Commission did not provide the applicant with its 'forensic assessment[s]', to which reference is made in recital 168 of the contested decision, during the administrative procedure. It was only in responding to the measures of organisation of procedure and inquiry of the Court that the applicant was able to acquaint itself with those assessments.
- 77 Second, it must be stated that, in its forensic assessments, the Commission considered, in essence, as is stated in in recital 168 of the contested decision, that there were several objective reasons which could explain why there were different versions of the email of 3 November 2003, and that it was not a fake email. Accordingly, contrary to what the Commission contends, those assessments constitute inculpatory evidence, within the meaning of the case-law cited in paragraph 57 above, since they led the Commission to find that the email of 3 November 2003 constituted credible evidence of the applicant's participation in the infringement at issue.
- 78 In that regard, it should be pointed out that, contrary to the Commission's assertion, it is apparent from recitals 166 to 169 of the contested decision that, in finding that the email of 3 November 2009 was credible, the Commission relied in the contested decision on its own forensic assessment of that email in order to conclude that, contrary to the findings of the independent expert report provided by the applicant, that email constituted credible evidence. Accordingly, even though those forensic assessments do not constitute material evidence of the infringement at issue, they were relevant to the applicant's defence, in that they enabled the applicant to know the reasons why the Commission, whose task it is to establish the existence of the infringement at issue, considered that the email of 3 November 2003 was credible.
- 79 Moreover, in so far as the Commission contends that its forensic assessments constitute 'internal' assessments, it must be stated that, on the contrary, it relies, in recital 168 of the contested decision, on those assessments in finding that the email of 3 November 2003 was credible and to invalidate the findings of the expert report provided by the applicant. Accordingly, those assessments cannot be regarded as an internal Commission document, but constitute inculpatory evidence.
- 80 It is apparent from the foregoing considerations that, contrary to its contention, the Commission should have provided the applicant with its forensic assessments.
- 81 Accordingly, and in the light of the finding set out in paragraph 80 above, it is necessary to ascertain whether, as required by the case-law cited in paragraph 57 above, the applicant has established that the result at which the Commission arrived in the contested decision would have been different if the Commission had provided the applicant with those forensic assessments.
- 82 First, it must be stated that the applicant has not put forward any argument aimed at rejecting the explanations provided by the Commission in recitals 168 to 170 of the contested decision, giving

reasons for why there were different printouts of the email of 3 November 2003, so that the existence of those differences did not permit the inference that that email was fake.

83 Second, it should be pointed out that, as was found in paragraph 78 above, the forensic IT report provided by the applicant does not permit the inference that the Commission erred in finding that the email of 3 November 2003 was credible. Moreover, it must be stated that, as is indicated in recital 173 of the contested decision, the holding of the meeting to which the email of 3 November 2003 refers is corroborated by another email of 7 November 2003 the content of which the applicant does not contest.

84 Third, and in any event, it must be stated that the applicant does not put forward any argument or evidence establishing that, if, during the administrative procedure, it had had at its disposal the forensic assessments on which the Commission relied in the contested decision, and a copy of which it received in the context of the procedure before the Court, the contested decision or the procedure would have been different.

85 In those circumstances, it must be held that, even if the Commission failed in its obligation to communicate to the applicant the forensic assessments which led it to find that the email of 3 November 2003 was authentic, that has no effect on the result at which the Commission arrived in the contested decision.

86 The second complaint of the first plea must therefore be rejected as unfounded.

The third complaint, based on the communication at a late stage of the statement of the Samsung employee, Mr K.

87 By its third complaint, first, the applicant complains that the Commission sent it at a late stage, on 28 July 2014, the statement of the Samsung employee, Mr K., even though that statement had been provided to the Commission on 11 April 2014, as is apparent from recital 179 of the contested decision. The applicant also complains that the Commission failed to adopt a new statement of objections, in order to enable it to submit in an appropriate manner its observations on the authenticity of that statement, by submitting counter-evidence.

88 Second, the applicant observes that the statement of the Samsung employee, Mr K., has no probative value, since a false statement does not constitute a criminal offence in the Republic of Korea and that that statement should have been made available to the applicant in the context of a new statement of objections.

89 In the first place, the argument that the Commission infringed the applicant's rights of defence by communicating only at a late stage the statement of the Samsung employee, Mr K., must be rejected as unfounded.

90 Even if it should be considered (i) that the Commission was slow to communicate that document to the applicant in the second letter of facts even though it had been in its possession from April 2014 and (ii) that the period of five working days (between 25 July 2014, the date on which the Commission communicated to it by email the second letter of facts, and 4 August 2014, the date by which the Commission requested the applicant to provide its observations on that document) is considered to be extremely short, the fact remains that, as was found in paragraph 63 above, the applicant did not request an extension of that five-day period, and that it provided its observations in that regard to the Commission. Moreover, the applicant does not put forward any argument supporting the conclusion that a longer period would have enabled it to establish that the statement of the Samsung employee, Mr K., was not authentic.

91 Moreover, the fact that the Commission waited until 25 July 2014 to send the statement of the Samsung employee, Mr K., to the applicant, whereas it was in its possession from April 2014, does not alter the conclusion that the applicant failed to establish that the period granted to provide its observations was insufficient or that a longer period would have altered the administrative procedure or the tenor of the contested decision.

92 In those circumstances, the applicant's first argument must be rejected in its entirety as unfounded.

93 In the second place, the applicant's argument, put forward in the reply, that the statement of the Samsung employee, Mr K., has no probative value, since a false statement does not constitute a criminal offence in the Republic of Korea, must be rejected as unfounded. As the Commission correctly found in recital 180 of the contested decision, the fact that there are no criminal penalties, in the Republic of Korea, in respect of false affidavits does not deprive that statement of its probative value, since Samsung, as an applicant under the Leniency Notice, risked losing the benefit of that leniency if it made a false statement. For that same reason, it is necessary to reject as unfounded the argument put forward by the applicant at the hearing that Samsung had a specific interest, in the present case, in 'embellishing the facts', after the discussions with the Commission in the context of the settlement had failed, in order to maximise the reduction that it might be able to obtain under the Leniency Notice. Whilst it is true that any applicant for a fine reduction has an interest in providing as much information as possible capable of constituting significant added value, in order to obtain the greatest possible reduction in the amount of the fine, the fact remains that, if it makes a false statement, it would expose itself to the risk of losing any reduction in the amount of the fine.

94 In the third place, in so far as the applicant submits that the statement of the Samsung employee, Mr K., should have been made available to the applicant in the context of a new statement of objections, and not merely in the context of the second letter of facts, it should be borne in mind that, according to the case-law, the decision is not necessarily required to be an exact replica of the statement of objections. The Commission must be permitted in its final decision to take account of the responses of the undertakings concerned to the statement of objections. In that regard, it must be able not only to accept or reject the arguments of the undertakings concerned, but also to carry out its own assessment of the facts put forward by those undertakings in order either to abandon such complaints as have been shown to be unfounded or to supplement and redraft its arguments, both in fact and in law, in support of the complaints which it maintains. Thus it is only if the final decision alleges that the undertakings concerned have committed infringements other than those referred to in the statement of objections or takes into consideration different facts that there will be an infringement of the rights of the defence (judgment of 14 March 2013, *Dole Food and Dole Germany v Commission*, T-588/08, EU:T:2013:130, paragraph 588).

95 In the present case, it must be held that the statement of the Samsung employee, Mr K. does not accuse the applicant of a new infringement and does not give rise to objections different from those referred to in the Statement of Objections, which the applicant does not indeed submit. As is apparent from recital 180 of the contested decision, the statement of the Samsung employee, Mr K., confirms that he was the author of two documents in English, which — it is not contested — were provided to the applicant in the Statement of Objections, and which explain why those documents were written in English.

96 In those circumstances, the third argument, and, therefore, the third complaint as a whole, must be rejected as unfounded.

The fourth complaint, based on the Commission's new approach as regards the applicant's involvement in a single and continuous infringement

97 The applicant submits that it was not put in a position to submit its observations on the new approach taken by the Commission in the contested decision regarding its involvement in a single and continuous infringement. The infringement of its rights of defence does not stem from a reduction in the scope of the Commission's objections, but from the fact that the Commission altered its reasoning. The applicant claims that the Commission should therefore have adopted a new statement of objections.

98 It should be borne in mind that, as is apparent from the case-law set out in paragraph 94 above, it is only if the final decision alleges that the undertakings concerned have committed infringements other than those referred to in the statement of objections or takes into consideration different facts that there will be an infringement of the rights of the defence.

99 In the present case, it must be stated that, as the applicant observes, although the Commission considered, at the stage of the statement of objections (see paragraph 198 of that statement), that the

applicant had had contacts with Renesas and Samsung and that it was aware of all the anticompetitive discussions between the other members of the cartel, the Commission nonetheless found — after examining the applicant's observations — in recitals 312 and 313 of the contested decision, that it was liable for the infringement at issue only in so far as it had participated in collusive arrangements with Samsung and Renesas and that it could not be demonstrated that the applicant had the subjective perception of participating in the whole of that infringement, since there was no evidence establishing that it was aware of the bilateral contacts among the other participants in the cartel or could reasonably have foreseen them.

100 It is apparent therefore from the foregoing that the applicant had the opportunity to provide its observations in response to that specific objection concerning its participation in the infringement at issue and that its observations led the Commission to adopt in its regard in the contested decision, not a new objection which would have been separate from the first objection, but a less severe assessment of that objection.

101 In those circumstances, the applicant was not entitled to obtain a new statement of objections.

102 In the light of all the foregoing, the fourth complaint and the first plea in its entirety must therefore be rejected as unfounded.

The second plea, alleging breach of the principles of sound administration and of observance of the rights of the defence, in that the Commission adopted a 'fast track process'

103 The applicant argues, in substance, that the Commission conducted a 'fast track' procedure with regard to it, which constituted a breach of the principle of sound administration and of its rights of defence. It sets out six principal complaints in this connection.

104 The Commission contests those arguments.

105 As a preliminary point, it should be borne in mind, as is stated in paragraphs 53 and 54 above, that, under Article 48 of the Charter of Fundamental Rights, respect for the rights of the defence of anyone who has been charged is to be guaranteed and that Article 27(2) of Regulation No 1/2003 provides that the rights of defence of the parties concerned are to be fully respected in the proceedings.

106 Moreover, according to the case-law, during an administrative procedure before the Commission, the Commission is required to observe the procedural guarantees provided for by EU law (see judgment of 9 September 2015, *LG Electronics v Commission*, T-91/13, not published, EU:T:2015:609, paragraph 108 and the case-law cited).

107 The guarantees afforded by the EU legal order in administrative proceedings include, in particular, the principle of sound administration, which entails the duty on the part of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 9 September 2015, *LG Electronics v Commission*, T-91/13, not published, EU:T:2015:609, paragraph 109 and the case-law cited).

108 It is in the light of those principles that the applicant's six complaints must be examined.

The first complaint, alleging failure to take additional investigative steps

109 The applicant observes, in essence, first, that the procedure conducted against it was opened five years after the start of the investigation in April 2008, next, that there was a significant lapse of time between the Statement of Objections, adopted in April 2013, and the second letter of facts, issued on 28 July 2014 and, lastly, that the contested decision was adopted five weeks after the second letter of facts, so as to ensure that the imposition of a fine on Philips would not be time-barred in September 2014, whereas the limitation period with regard to the applicant would have been reached only on 31 March 2015. Consequently, the applicant claims that it was not able to present a proper defence against the new evidence, that its reply could not be taken into account and that the Commission failed to take the investigative steps that were necessary. The applicant requests the Court to order the Commission to provide it with the Hearing Officer's report referring to similar concerns.

110 In that regard, it must be stated that, in so far as the applicant complains that the Commission, in essence, failed to take additional investigative steps, it has been held that the Commission is not required to reply to all the arguments of the party concerned, to carry out further investigations or to hear witnesses put forward by the party concerned, where it considers that the preliminary investigation of the case has been sufficient (see, to that effect, judgment of 11 March 1999, *Thyssen Stahl v Commission*, T-141/94, EU:T:1999:48, paragraph 110). In the present case, the applicant does not put forward any specific argument which tends to show that the failure to take additional investigative steps led the Commission not to examine carefully and impartially all the relevant aspects in the individual case.

111 Moreover, in so far as the applicant complains that the Commission, first, sent it the Statement of Objections only in April 2013, even though the investigations had started in 2008, and, second, that it sent it the second letter of facts only on 28 July 2014, whereas the Statement of Objections had been sent in April 2013, it must be stated that, even if those periods must be regarded as excessive in the present case, the applicant does not put forward any specific argument supporting the conclusion that the result at which the Commission arrived in the contested decision would have been different if the Commission had acted within a shorter timeframe.

112 In the light of the foregoing, the first complaint must be rejected as unfounded, without its being necessary, as the applicant requests the Court, to order the Commission to communicate the Hearing Officer's report. That report constitutes a purely internal Commission document, which is not intended to supplement or correct the undertakings' arguments and which therefore does not constitute a decisive factor which the Union judicature must take into account when exercising its power of review (see judgment of 30 September 2009, *Hoechst v Commission*, T-161/05, EU:T:2009:366, paragraph 176 and the case-law cited). Moreover, even if that report had concluded that the applicant had been given excessively short periods of time, the fact remains that the applicant fails to establish that that would have had effects on the result at which the Commission arrived in the contested decision.

113 In those circumstances, the first complaint of the second plea must be rejected as unfounded.

The second complaint, alleging that the period granted to the applicant to provide its observations on the email of 3 November 2003 was too short

114 The applicant argues that, by allowing it a period of five days, in the middle of the summer holiday period, to submit its observations on the electronic version of the email of 3 November 2003, the Commission prevented it from conducting a thorough and diligent examination of that email. The applicant adds that it did not seek to obtain an extension of that five-day period, since the Commission had made clear to the applicant that the contested decision would be adopted at the end of the summer break and that it could not expect any extension.

115 It should be noted at the outset that that complaint is similar to the one put forward by the applicant under the first complaint of its first plea, in which it pleads infringement of the rights of the defence on account of the five-day period that the Commission gave it to respond to its second letter of facts. For the same reasons as those set out in paragraphs 61 to 66 above, that complaint must be rejected as unfounded.

116 In those circumstances, the second complaint of the second plea must be rejected.

The third complaint, on the need to request an independent expert's report of the electronic version of the email of 3 November 2003

117 The applicant submits that the Commission should have requested an independent expert's report on the electronic version of the email of 3 November 2003 instead of carrying out its own forensic assessment of that email. It adds that such an expert's report was the only conceivable option, since it had no reliable evidence of the authenticity of the email.

118 It should be noted at the outset that this complaint is similar to the first argument put forward by the applicant under the first complaint of its third plea (see paragraph 110 above). It must therefore be

rejected as unfounded for the same reason, namely, in essence, that the Commission has some latitude in deciding on additional steps to be taken and that, in the present case, the applicant failed to establish, in the light of the expert reports provided to it and its own forensic assessments, that such a request was necessary.

The fourth complaint, relating to the affidavit of the Samsung employee, Mr K.

- 119 The applicant puts forward two principal arguments relating to the affidavit of the Samsung employee, Mr K.
- 120 First, the applicant complains that the Commission gave it access only to the statement of the Samsung employee, Mr K., while that affidavit makes reference to another statement of 29 August 2013. It adds that, in response to a request for disclosure of that document, the Commission replied to it, on 11 August 2014, that that other statement did not exist. According to the applicant, the Commission based the contested decision on a statement that it had never seen, which shows the lack of diligence with which it conducted the administrative procedure.
- 121 As a preliminary point, it is sufficient to observe that, as the Commission explained in its observations on the first plea, it is apparent from point 7 of the transcript of the affidavit of the Samsung employee, Mr K., that the latter stated that the response provided by Samsung to the Commission on 6 September 2013, in response to the Commission's request for information, 'fairly reflects my recollections as transmitted to outside counsel on 29 August 2013'.
- 122 Since therefore a statement by an employee of Samsung to its lawyer in order to respond to a request from the Commission for information was at issue, it must be held that the Commission was under no obligation to request the party concerned to provide it with such a statement.
- 123 It is common ground that the response that Samsung provided on 6 September 2013 to the Commission's request for information reproduced, in essence, the content of the statements of its employee to its lawyer, and that that response of Samsung to the Commission was communicated to the applicant. Accordingly, the applicant had knowledge of the evidence on which the Commission relied to incriminate it.
- 124 Moreover, and in any event, it must be observed that the exchanges between Samsung and its external lawyer, for the purpose of defending Samsung in a Commission investigation, are protected by the rule of privilege between lawyers and clients, so that the Commission was not entitled to ask Samsung to provide it with those exchanges and, a fortiori, to communicate them to the applicant. According to the case-law, the confidentiality of communications between lawyers and clients, which must be protected, is subject to two cumulative conditions, namely that the exchange with the lawyer must be connected to 'the client's rights of defence' and that the exchange must emanate from 'independent lawyers', that is to say 'lawyers who are not bound to the client by a relationship of employment' (judgment of 14 September 2010, *Akzo Nobel Chemicals and Akros Chemicals v Commission*, C-550/07 P, EU:C:2010:512, paragraphs 40 and 41). Those two conditions were fulfilled in the present case.
- 125 Second, the applicant observes that there is no indication that false statements by the Samsung employee, Mr K., could result in perjury charges. Accordingly, it claims that the affidavit of the Samsung employee, Mr K., lacks any probative value.
- 126 In that regard, it should be borne in mind that, as was already explained in paragraph 93 above, the fact that false statements by the Samsung employee, Mr K. do not constitute a criminal offence does not deprive his statements of any credibility, since such statements were liable to result in Samsung's losing any right to a reduction in the fine under the Leniency Notice.
- 127 The fourth complaint of the second plea must, therefore, be rejected.

The fifth complaint, alleging that the period granted to the applicant to provide further statements from its employees in response to the second letter of facts was insufficient

- 128 By its fifth complaint, the applicant observes that, if it had been given longer to submit its observations in response to the second letter of facts, it could have obtained further statements from its employees in addition to those which it sent to the Commission on 5 August 2014, but it was unable to do so because of the holiday period.
- 129 That argument must be rejected as unfounded. As was found in paragraphs 64 and 70 above, since the applicant did not request an extension of the period for lodging its observations in response to the second letter of facts, it cannot rely on the fact that it had insufficient time to provide more statements than those submitted. Moreover, and in any event, the applicant does not put forward any argument, or any evidence, which tends to establish that the procedure or the contested decision would have been different if it had provided the Commission with those statements.
- 130 The fifth complaint of the second plea must therefore be rejected as unfounded.

The sixth complaint, alleging failure to take into account the applicant's arguments regarding sales directly or indirectly connected with the infringement at issue

- 131 The applicant argues that the Commission, which had sent it a formal request for information on 13 August 2014, to which it had replied on 25 August 2014, did not take that reply into account in the contested decision, which was adopted six working days later, which would explain why the contested decision remains silent as regards the applicant's observations on the taking into account of non-SIM chips and crypto chips.
- 132 In that regard, it is sufficient to refer to recitals 399 to 403 of the contested decision to find that the Commission did examine and reply to the applicant's numerous arguments aimed at establishing, in essence, that only sales of SIM chips could be taken into account for the purposes of calculating the fine.
- 133 The sixth complaint of the second plea, and the second plea in its entirety, must therefore be rejected as unfounded.

The third plea, alleging infringement of Article 101(1) TFEU

- 134 The applicant complains, in essence, that the Commission infringed Article 101(1) TFEU. This plea is divided into four parts.

The first part, alleging a failure to identify, in the contested decision, unlawful contacts in which the applicant had participated

- 135 The applicant puts forward two main complaints. By its first complaint, it submits that the Commission did not clearly identify which contacts, among the 11 in which it had been involved, were supposedly anticompetitive. In that regard, it notes that the Commission listed 11 unlawful contacts in Table No 4 of the contested decision. The Commission stated, on the one hand, in recital 296 of the contested decision, that only seven contacts appeared problematic and, on the other, in recital 243 of that decision, that eight unlawful contacts were identified.
- 136 As a preliminary point, it must be pointed out that, as the Commission expressly recognises in its defence, it was wrong in stating, in recital 296 of the contested decision, that the applicant's employees, Mr L. and Mr D., had participated three times and twice respectively in unlawful contacts, whereas it is apparent from Table No 4 of the contested decision that they had participated in a total of 11 unlawful contacts during the period of the infringement at issue, and that, as is apparent from recitals 90, 96, 97, 100, 110, 116, 122, 124, 126 and 127 of the contested decision, the Commission found unlawful discussions during each of those contacts which took place during the infringement period in respect of which the applicant was penalised.

- 137 Accordingly, even though the Commission erred in recital 296 of the contested decision, which it recognises, that error does not permit the inference that the contested decision does not indicate sufficiently clearly in which unlawful contacts the applicant participated. That finding is supported by the fact that the applicant criticises, in the context of the second part of the third plea (see

paragraph 142 below), the fact that the Commission relies mainly on two of the 11 other contacts engaged in by the applicant cited in the contested decision.

- 138 The first complaint must therefore be rejected as unfounded.
- 139 By its second complaint, the applicant observes that the Commission should have distinguished in the contested decision between the applicant's 'own' contacts and those in which the other competitors participated.
- 140 In that regard, it should be noted that, even though the Commission found, in recital 314 of the contested decision, that the applicant could not be held liable for the bilateral contacts among the other participants in the cartel, such a finding did not however constitute an obstacle, in the contested decision, to the Commission's examining and identifying the contacts in which the applicant had participated, in the context of the account of the contacts in which its competitors and the applicant had engaged. By taking this approach, the Commission was fully in a position to know the aspects of the infringement at issue that it relied on against the applicant to penalise it.
- 141 In those circumstances, the second complaint, and the first part of the third plea, must be rejected as unfounded.

The second part, disputing the reliability of the evidence provided by Samsung

- 142 The applicant puts forward, in essence, five complaints seeking to demonstrate that Samsung is not a credible witness.
- 143 In the first place, it should be borne in mind that this part, according to which, in essence, Samsung does not constitute a credible witness, supports the plea alleging that the Commission was wrong to find the existence of an infringement of Article 101(1) TFEU. As the Commission rightly contended in its pleadings and at the hearing, even if the view should be taken that Samsung does not constitute a credible witness and that all its statements and the documentary evidence that it provided should be rejected, the fact remains that that would not call in question the Commission's findings, which are based on the statements and the documentary evidence submitted by Renesas, establishing that the applicant had anticompetitive contacts with Renesas, such as the contact of 31 March 2005 (see paragraphs 193 to 201 below).
- 144 For that reason alone, the second part of the third plea must be rejected as unfounded, and it is not necessary to examine the applicant's arguments that the Commission was wrong to find the existence of an infringement of Article 101(1) TFEU in light of the fact that the evidence adduced by Samsung is not credible.
- 145 In the second place, and for the sake of completeness, it should be noted that the five complaints that the applicant puts forward in that regard are aimed at showing either that Samsung is not a credible witness, or that the statements and evidence on which the Commission relied, concerning the contacts of 3 and 7 November 2003, are not credible. Those complaints should therefore be examined separately.
- 146 First, as regards the question of Samsung's credibility as a witness, it must be stated that it is apparent from recitals 156 to 161 of the contested decision that the Commission found that Samsung constituted a credible witness for the four main following reasons. First of all, Samsung's statements and the documents provided by Samsung were confirmed by Renesas. Next, Samsung admitted the existence of the infringement at issue from the time that it lodged its application for a reduction in the fine under the Leniency Notice, four days after the inspections. Moreover, the evidence that it provided before being acquainted with the evidence that had come to the Commission's knowledge is consistent with the evidence lodged by Renesas and NXP. In addition, NXP provided numerous items of evidence of meetings with Samsung, including written evidence of a meeting between it and Samsung, mentioning a meeting between Samsung and the applicant, two days earlier. Lastly, the applicant's participation in unlawful meetings was confirmed by Samsung, the applicant, and Renesas, as well as by documents collected during the inspection at the applicant's premises.

- 147 It is apparent therefore from the findings in paragraph 146 above that the Commission found Samsung was a credible witness in so far as the statements and documents that it provided, including before being aware of the material that the Commission had in the file, had been corroborated by Renesas and NXP.
- 148 It must be observed, in that regard, that, of all the arguments put forward by the applicant and aimed at discrediting Samsung as a reliable witness, none calls in question the Commission's findings, in recitals 156 to 161 of the contested decision, that Samsung's statements and the evidence that it provided and some of which incriminated the applicant had been corroborated, elsewhere, by other members of the cartel.
- 149 First of all, it should be pointed out that, even if it were true that, as the applicant claims by its first complaint, all the evidence originated from the same source, that is to say from the Samsung employee, Mr K., whom Samsung's lawyers described as 'distracted', 'not necessarily consistent', 'not very diligent', that the Commission does not address the fact that Samsung provided in October 2012 new evidence and that Samsung's explanation about that delay is not credible, the fact remains that none of those factors would be capable of casting doubt on the Commission's finding that Samsung's statements and evidence on the applicant's involvement in unlawful contacts were corroborated either by contemporaneous evidence, or by Renesas. The applicant's arguments must therefore be rejected as ineffective.
- 150 Moreover, the fact that, as the applicant submits by its third complaint, the Commission decided, as is stated in recital 205 of the contested decision, not to take account of an email of 13 April 2004, on the ground that it had been altered by Samsung 'with no clear explanation on the circumstances of the alteration', has no bearing on the finding that, in addition to the document concerning that email, Samsung's statements and the evidence provided on the applicant's involvement in unlawful contacts were corroborated elsewhere either by contemporaneous evidence, or by Renesas (see, in that regard, the five contacts examined in the third part of the third plea, in paragraphs 159 to 208 below).
- 151 In those circumstances, the applicant's argument that Samsung did not constitute a credible witness must be rejected as unfounded.
- 152 Second, as regards the question whether the evidence used by the Commission to establish that the contacts of 3 and 7 November 2003 was reliable, it is necessary to examine the other complaints put forward by the applicant.
- 153 As regards, first of all, the applicant's observation, made as a preliminary point, that the Commission in essence relied, from the 11 contacts cited in the contested decision, on the contacts of 3 and 17 November 2003, which is apparent from 52 of the 58 recitals of the contested decision dealing with those two contacts, it must be stated that, as the Commission observes, even if it is true that those two contacts were dealt with at length in the contested decision, that is because the applicant and Philips contested them, and because the Commission therefore replied to their observations. Furthermore, and in any event, it should be pointed out that the Commission also found nine other unlawful contacts, in respect of which it should be pointed out that, as is apparent from the third part of the third plea (see paragraphs 159 to 208 below), at least four contacts in addition to that of 3 November 2004 establish to the requisite legal standard the existence of the infringement at issue. Accordingly, that argument should, in all events, be rejected as ineffective and, in any case, unfounded.
- 154 As regards, next, the applicant's second complaint, that the lack of credibility of the documents provided by Samsung is illustrated by the fact that, on 6 September 2013, that is five years after its application for a reduction in the fine under the Leniency Notice, Samsung provided further new documents, and by the explanation given, that those documents were available in the mailbox of another Samsung employee, Mr B, is not credible, it must be rejected as unfounded. The mere fact that Samsung handed over documents at a very advanced stage of the administrative procedure does not constitute evidence or proof that those documents are not authentic. An applicant under the Leniency Notice is required to cooperate with the Commission, in accordance with point 12(a), and in point 24 of that notice, throughout the procedure, by providing it with all relevant evidence that it discovers during its internal investigations.

155 As regards, moreover, the applicant's fourth complaint, that the contacts of 3 and 17 November 2003 are not, contrary to the Commission's assertion in recitals 152, 157 and 158 of the contested decision, supported by statements of Renesas, Samsung and NXP, it must be stated that, in those recitals, the Commission does not contend that those two contacts were corroborated by evidence from sources other than Samsung, but that, of the 11 contacts in which the applicant participated, certain contacts are proved by several sources, such as the contemporaneous evidence adduced by NXP establishing that a meeting was held between Samsung and Philips on 26 September 2003, during which the meeting between Samsung and the applicant of 24 September 2003 was raised. The applicant's complaint is therefore founded on an incorrect reading of the contested decision. In addition, and in any event, as the Commission observes, the contacts of 3 and 17 November 2003 are established by means of evidence from the time of the facts by the Samsung employee and therefore have very high probative value (see, to that effect, judgment of 13 September 2013, *Total Raffinage Marketing v Commission*, T-566/08, EU:T:2013:423, paragraph 82).

156 As regards, lastly, the applicant's fifth complaint, put forward in its pleadings and at the hearing, that the Commission failed to take account of the fact that any statement by an applicant under the Leniency Notice can be regarded as reliable only if it is corroborated by other evidence, it is sufficient to point out that, although it is true that statements of leniency applicants are on their own insufficient if they are contested by another party to the procedure, the fact remains that it is sufficient that those statements are corroborated by contemporaneous evidence, without its being necessary that that evidence originates from the same applicant under the Leniency Notice.

157 Furthermore, in so far as the applicant submits that the Commission applied 'double standards', since the Commission was very strict when deciding on the reduction to be given in Samsung's fine, and at the same time considered that the evidence provided by Samsung was sufficiently credible in proving the existence of the infringement at issue, that argument cannot succeed. The fact that the Commission considers that an applicant under the Leniency Notice does not deserve to obtain the maximum reduction in the band of fine in which it is placed does not mean that the Commission considers that the evidence provided is not reliable, but that, in view of the other material that it has to prove the infringement at issue, the evidence adduced by the party concerned, whilst reliable, did not provide it with significant added value such as to justify the granting of a maximum reduction in the amount of the fine.

158 The second part of the third plea must therefore be rejected as unfounded.

The third part of the third plea, alleging lack of evidence of the existence of an infringement of Article 101 TFEU

159 The applicant argues that the Commission has not provided sufficient evidence of the existence of an infringement of Article 101 TFEU. In its submission, none of the 11 contacts that it had with its competitors infringes competition law.

160 In that regard, it should be noted that the applicant does not contest the Commission's finding that prices were determined, in principle, on an annual basis, which is apparent indeed from the discussions in which the applicant took part. In those circumstances, it is sufficient to examine, for 2003 to 2005, whether the applicant participated in one or, as the case may be, in two anticompetitive discussions, during each of those three years, with Samsung or Renesas, in order to find whether or not there was an infringement of Article 101 TFEU. In those circumstances, the Court considers it appropriate to examine, as a preliminary point, five contacts between the applicant and Samsung or Renesas, namely the contacts of 24 September 2003 (first contact), of 3 November 2003 (second contact), of 18 March 2004 (sixth contact), of the 1 to 8 June 2004 (seventh contact), and of 31 March 2005 (eleventh contact), those first and last contacts marking, according to the Commission, the beginning and the end respectively of the applicant's participation in the infringement at issue. It is therefore only in the event that those five contacts do not make it possible to establish the existence of the infringement at issue that the Court will examine whether or not the other contacts, such as that of 17 November 2003, which — the applicant submits in its pleadings and at the hearing — were not unlawful, contribute to establishing the existence of that infringement.

- The first contact, of 24 September 2003, between the applicant and Samsung
- 161 The applicant states that it does not dispute that a meeting was held, on 24 September 2003, between its employee, Mr L., and the Samsung employee, Mr K. However, contrary to what the Commission states in recital 90 of the contested decision, no sensitive information was exchanged during that meeting.
- 162 First, it must be stated that the applicant admits that it had a meeting with Samsung on 24 September 2003.
- 163 Second, it should be noted that, in its pleadings, the applicant does not contest the content of the exchanges held between Samsung and it. However, it claims, in essence, that the information exchanged was not competitively sensitive. It thus complains that the Commission erred in that regard and failed to respond to the applicant's arguments in that respect.
- 164 It should be noted, in that regard, first of all, that, as the Commission in essence states in recital 90 of the contested decision, it is apparent from notes taken by the Samsung employee, Mr K., that Samsung and the applicant exchanged on their current and future capacities, as well as on their strategy relating to the migration of their products to new technologies. Thus, it is stated in those notes that, apart from the fact that the applicant expected a 'supply shortage', it [at the time had] three (3) factories ... in operation', that, 'depending on the price change of the DRAMs, there may be supply problems next year', that 'factories are running at 90% of [their] full capacity', and that 'there will not be supplemental capacity in 2004'.
- 165 Furthermore, as regards the prices of the products in question, the applicant and Samsung exchanged, notably on proposed prices in 2003 for large customers, stating in particular that prices for 64 K SIM card chips were 1.1 US dollars (USD) and that the price was 5 to 10% higher for 68 K products, as well as on proposed prices for 2004, stating that the products would initially go under USD 1, falling to EUR 0.8 at the end of the year.
- 166 The Court shares the Commission's view that such an exchange of information on current and future prices, as well as on capacities, is capable, in particular on a market where supply and demand are concentrated, of influencing directly the commercial strategy of competitors.
- 167 The applicant's arguments, in that regard, are not capable of invalidating that finding.
- 168 First, in so far as the applicant submits that the Commission erred in finding that such an exchange of information was unlawful, it must be stated that none of its arguments can cast doubt on the finding that, at the very least, the applicant and Samsung exchanged on price forecasts for the following year. In addition, the fact that those forecasts might have been incorrect in no way alters the finding that such an exchange is capable of restricting competition. Moreover, even if the data on capacities exchanged in 2003 was public, that would have no bearing on the finding that Samsung and the applicant had unlawfully exchanged confidential information relating to their prices and future capacities.
- 169 Second, in so far as the applicant submits that such an exchange of information does not constitute a restriction of competition by object, it must first be recalled that, to be caught by the prohibition laid down in Article 101(1) TFEU, an agreement, a decision by an association of undertakings or a concerted practice must have 'as [its] object or effect' the prevention, restriction or distortion of competition in the internal market.
- 170 According to the case-law, certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects (see judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 49 and the case-law cited).
- 171 That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition (see

judgment of 11 September 2014, *CB v Commission*, C-67/13 P, EU:C:2014:2204, paragraph 50 and the case-law cited).

- 172 It has already been held that the provision of sensitive business information, such as an exchange of future price increases, has — where that information is given to one or more competitors — an anticompetitive effect inasmuch as the independence of the undertakings concerned in their conduct on the market is modified as a result. Where such practices occur, the Commission is not obliged to prove their anticompetitive effects on the relevant market if they are capable in an individual case, having regard to the specific legal and economic context, of resulting in the prevention, restriction or distortion of competition within the internal market (see judgment of 16 September 2013, *Wabco Europe and Others v Commission*, T-380/10, EU:T:2013:449, paragraph 78 and the case-law cited).
- 173 In the present case, the economic factors characterising the market in question, which the Commission observed in recital 59 of the contested decision and the applicant did not contest, are that prices for smart card chips were constantly falling, that there was downstream pressure on pricing and margins from the largest customers, of whom, moreover, there were very few, that there were imbalances in the ratio between demand and supply resulting from an increase in demand and constant, rapid technological development, and the structure of contract negotiations, which consisted in smart card manufacturers negotiating their supply contracts in parallel with their customers.
- 174 Those factors are capable of establishing that the undertakings to which the contested decision was addressed would take advantage of an exchange of sensitive information concerning their competitors' strategic policies in terms of prices, capacity and technological development. The exchange of that information on the market for smart card chips, as described in paragraph 173 above, was capable, as the Commission observed in recitals 287 and 288 of the contested decision, of enabling the competitors 'to limit the impact that the challenging market developments ... entailed for them', 'to manage the continued price drops and squeezed margins', in order to 'slow down the price decrease inherent to the smart card chip market'.
- 175 It must therefore be held that, in the light of the economic and legal context of the market in question, the Commission did not err in finding that the exchange of information in the present case, in particular concerning future prices, constituted an infringement by object.
- 176 In so far as the applicant claims that the Commission failed to demonstrate that the discussions relating to capacity were liable to restrict competition, that argument must be rejected as unfounded. Since the Commission identified the reasons why it considered that the exchange of information on capacities was, in the light of the market characteristics, capable of restricting competition, it was not required to demonstrate the existence of anticompetitive effects on the market to categorise the practice at issue as an infringement. Moreover, even if the exchange of information on capacities was not on its own sufficient to make a finding of an infringement by object, the applicant nevertheless does not call in question the fact that the Commission was right to find that the exchange of information on future prices constituted an infringement by object.
- The second contact, of 3 November 2003, between the applicant and Samsung
- 177 The applicant observes, in essence, that, in order to find that the contact of 3 November 2003 was unlawful, the Commission relied on an email, of the same date, of the Samsung employee, Mr K., which does not constitute authentic and, therefore, credible evidence.
- 178 First of all, it should be noted that recital 96 of the contested decision is worded as follows:

'On 3 November 2003, Mr [K.] of Samsung internally reported to Mr [B.] in an email on a phone call received on the same day from Mr [L.] of [the applicant]. [The applicant] called to ask for Samsung's opinion on a price increase of a competitor. Mr [K.] told him that "I told him that they can manage with just not lowering the price". He also asked Mr [L.] to "discuss next year's price with [Mr B.]", so he drew Mr [B.]'s attention to a future call from [the applicant]. Mr [K.] also expressed his expectation that there would be "a discussion" with [the applicant] at a meeting planned for 17 November in Munich (Germany). Then he explained that "I understand that [the applicant's] price is slightly higher than ours now. Last time (early October) they said that they would lower the price by 10-15%. I think

they are going to stick to that price”. Finally, he warned his colleague in Europe as follows: “Be careful not to leave any documents or records when you contact competitors but only make oral communications to avoid any problems with the Antitrust Laws”. That email shows that Samsung and [the applicant] discussed and exchanged future price information. [The applicant] contests the authenticity of the document and therefore the occurrence and the content of the contact.’

- 179 Moreover, it should be borne in mind that the principle which prevails in EU law is that of the unfettered evaluation of evidence, from which it results, first, that, where evidence has been obtained lawfully, its admissibility cannot be contested before the General Court and, second, that the only relevant criterion for the purpose of assessing the probative value of evidence lawfully adduced relates to its credibility (see, to that effect, judgment of 25 January 2007, *Dalmine v Commission*, C-407/04 P, EU:C:2007:53, paragraphs 49 and 63).
- 180 In order to assess the probative value of a statement or document, it is necessary to carry out an overall and concrete assessment of that statement or document (see, to that effect and by analogy, 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 165).
- 181 In the present case, in the first place, it must be stated that, as the Commission contends, it is in the light (i) of the fact that no expert report concluded that the email of 3 November 2003 did not constitute authentic contemporaneous evidence — which the applicant has not indeed established before the Court — and (ii) of the fact that there was a body of evidence resulting from other evidence according to which the unlawful discussions mentioned in that email took place, that the Commission could reasonably conclude that the applicant had participated in such discussions.
- 182 As regards all the applicant’s arguments aimed at establishing that there could be reasonable doubts as to the authenticity of the email of 3 November 2003, namely that there were several email printouts of that document and that the two expert reports found, in essence, that it was not possible to be sure of its authenticity, first, it must be stated that the applicant has not proved that the objective reasons advanced by the Commission stating why there are several versions of that email are incorrect.
- 183 Second, and in any event, it must be stated that, as the Commission correctly observed, in recitals 172 and 173 of the contested decision, it is apparent from the email of the Renesas employee, Mr H., of 7 October 2003 that the Samsung employee, Mr K., told him that he spoke with the applicant and Philips ‘who agree for 64 K that [EUR 0.95 for the first half of 2004] and [0.90 EUR for the second half of 2004 was] market pricing’. Those prices correspond to those discussed during the contacts of 26 September and 3 November 2003. Moreover, the Commission also refers to an email of 7 November 2003 from the Samsung employee, Mr K., who states that he spoke with the applicant’s employee, Mr L. during the week in question. The fact that, as the applicant observes, those documents do not make explicit the dates and the exact content of the discussions held does not however call in question the finding that they confirm that discussions between those competitors were held.
- 184 Third, the applicant’s argument that the content of the conversation referred to in the email of 3 November 2003, is implausible, since the applicant’s employee, Mr L., was in charge of business development, but not pricing, is unconvincing. As the Commission observed in connection with the contact between the applicant and Samsung on 24 September 2003, and as was found in paragraph 178 above, the applicant’s employee, Mr L., had been previously involved in unlawful discussions with Samsung, so that his involvement in unlawful discussions with Renesas also cannot be considered implausible, contrary to the applicant’s assertion.
- 185 In the second place, in so far as the applicant submits, in essence, that that contact does not constitute a restriction of competition by object, it is sufficient to note that the Commission is not required to establish in respect of each unlawful discussion that the discussion constitutes such a restriction, provided that it establishes that the practices in question, taken together, constitute a restriction of competition by object.
- 186 The complaint relating to the second contact must therefore be rejected as unfounded.

– The sixth contact, of 18 March 2004, between the applicant and Renesas

187 The applicant claims that, although it is correct that a meeting was held between Renesas and it on 18 March 2004 at its premises, it was just a meeting in the context of the negotiations on granting a license for the 32-bit controller, and that no anticompetitive topics were discussed on this occasion.

188 It is apparent from recital 110 of the contested decision that, relying on an internal Renesas email of 18 June 2004, the Commission observed that Renesas referred to a meeting of one of its employees, at the margins of the official meeting, with one of the applicant's employees. With respect to that meeting at the margins of the official meeting, Renesas concluded, in essence, as regards capacities, that '[the applicant] [was] booked out [in the second quarter] and may have capacity issues [in the third quarter]' and that the applicant '[was] considering [a] price increase particularly for 16 K product[s].'

189 In that regard, it must be stated that, even if, as the applicant submits, the information relating to its capacities had been made public, the fact remains that, as regards however its pricing strategy, the applicant informed Renesas of its intention to increase its prices for 16 K chips, which constitutes confidential information, capable of influencing Renesas's market conduct. Even if such information were of a general nature, in so far as it does not specify the amount of the increase in question, it constituted confidential information that Renesas deemed relevant in the context of elaborating its pricing strategy. The fact that, as the applicant submits, Renesas and it 'were working at full capacity', and therefore potentially in a position to increase prices, does not alter the conclusion that Renesas's pricing strategy was necessarily influenced by the fact that the applicant had communicated to Renesas its intention, which was confidential, to increase its prices for an entire specific category of products. The exchange of such confidential information between competitors led necessarily to a distortion of competition.

190 In those circumstances, the applicant's arguments that the Commission was wrong to consider that the contact of 18 March 2004, between Renesas and the applicant, was not unlawful, must be rejected as unfounded.

– The seventh contact, of 1 to 8 June 2004, between the applicant and Samsung

191 The applicant claims that the Commission relied on a very ambiguous internal Samsung email, concerning contacts that Samsung allegedly had with the applicant at the Beijing 'Card show' trade fair, from 1 to 8 June 2004. First, that email, which constitutes the only evidence of that contact, and which was drafted three weeks afterwards, makes no reference to any contact between competitors. The information probably comes from public presentations during that trade fair or information originating from customers whom the applicant visited during that period. Second, the other information was of no competitive relevance.

192 It is apparent from recital 216 of the contested decision that the Commission observed, in essence, that, on the one hand, the applicant and, on the other, Samsung and Renesas, had exchanged information, in particular on the applicant's future sales, stating that 'recently 16 K's sales has been reduced' by the applicant's refusing 'to supply major customers with 16 K [products] for [the fourth quarter]', as well as on its pricing intentions for 64 K products, stating that Samsung 'wants to keep the price flat next year.'

193 First, in so far as the applicant denies having participated in any of the bilateral exchanges with Samsung and claims that the information exchanged probably originates from its customers or from public presentations at the trade fair in which those undertakings participated, it must be stated that the information in question appears in an email collected by the Commission during its on-the-spot inspections at Samsung's premises and that it is written by two Samsung employees, reporting on their 'Asia Tour'. Accordingly, the information in question should be recognised as having high probative value. The fact that the email was written on 29 June 2004, that is three weeks after the 'Card show' trade fair in Beijing, does not alter the finding that it was written by Samsung employees who participated directly in that trade fair, relatively shortly after that trade fair took place.

194 Moreover, contrary to the applicant's assertion, the report in question tends to show that it obtained information directly from its competitors, and not from its customers or from information made public during the trade fair. The information set out by the Commission appears in a section 'Competitor information' of the report in question, which is separate from the section concerning other general

information on the trade fair or its customers. The fact that that report contains inverted commas to indicate 'we have learned the lesson' confirms also that that information was disclosed by Samsung to the applicant. That first argument of the applicant must therefore be rejected as unfounded.

195 Second, in so far as the applicant asserts that the information in question was not anticompetitive, its arguments must be rejected as unfounded. In that regard, it is sufficient to note, as the Commission did, that, as regards Samsung's statement that, for 64 K chips, it wished to keep prices flat the following year, Samsung thus communicated to the applicant confidential information on its pricing intentions.

196 In those circumstances, it must be held that the applicant's complaint related to the seventh contact, of 1 to 8 June 2004, must be rejected as unfounded.

– The eleventh contact, of 31 March 2005, between the applicant and Renesas

197 The applicant does not contest that a meeting took place between its employee, Mr S., and the Renesas employee, Mr B. However, it disputes the Commission's version of events in recital 130 of the contested decision and submits that the information exchanged was either not competitively sensitive, did not originate from it, or was incorrect.

198 First, it should be noted, in that regard, that the applicant does not contest that its employee, Mr S., and the Renesas employee, Mr B., might have exchanged information on 31 March 2005, even though it contests the Commission's version of events.

199 Second, it is apparent from the email to Renesas of 1 April 2005, in particular, that the applicant stated to Renesas that it 'cannot follow 72 K Axalto requested price USD 0.63 (average price between Atmel and Samsung)' and that its 'bad situation' during the first quarter and its 'terrible' situation for the second quarter stemmed precisely from the fact that its market share with the customer Axalto had dramatically dropped against those of Atmel and Samsung.

200 In that regard, even if it were true that, as the applicant claims, it was known on the market that its situation was bad at that time because its new 'pad-in-line' was not successful, the fact remains that it informed Renesas that it could not align itself with the prices charged by Atmel and Samsung for the customer Axalto, thereby informing Renesas of its commercial strategy.

201 Moreover, even if, as the applicant submits, it had not sold any 72 K chips in 2005, such a finding would not alter the assessment that the applicant informed its competitor that it would not therefore compete for that product at that price, so that it reduced the uncertainty that should have existed, in that regard, between the competitors.

202 It is apparent from the foregoing that the applicant therefore exchanged on 31 March 2005 competitively sensitive information with Renesas.

203 The applicant's other arguments aimed at casting doubt on that finding cannot succeed.

204 In so far as the applicant states that the Renesas employee, Mr B., was employed by the French subsidiary of that company and merely acted as a sales agent for the parent company, that has no bearing, as the Commission rightly observes, on the finding that he participated on behalf of Renesas in unlawful discussions with the applicant.

205 Furthermore, in so far as the applicant submits that the Commission had never previously identified the Renesas employee, Mr B., as a participant in any anticompetitive meetings, such an argument is unfounded. As is apparent from Table No 4 of the contested decision, the Commission identified the Renesas employee, Mr B., as having participated in anticompetitive discussions on 10 September 2004.

206 In those circumstances, the applicant's complaint, based on the eleventh contact in which it participated on 31 March 2005, must be rejected as unfounded.

207 It is apparent from all the foregoing considerations that the Commission did not err in finding that the applicant had participated in anticompetitive discussions with Samsung and Renesas between

24 September 2003 and 31 March 2005.

208 The third part of the third plea must therefore be rejected as unfounded.

The fourth part, alleging the non-severable nature of the infringement

209 The applicant argues that, given that the infringement at issue is not severable, the Court will have no choice but to annul the contested decision in its entirety if, in particular, it finds that the contacts of 3 and 17 November 2003, which are fundamental to the Commission's reasoning, were not anticompetitive.

210 The Commission contests those arguments.

211 In that regard, it should be borne in mind that, as was found in paragraph 160 above, the applicant did not contest that prices on the relevant market were as a rule set annually. Since it was found, in the third part of this plea, that the Commission had not erred in finding that the applicant participated in five unlawful contacts between 2003 and 2005, the fact that it was allegedly wrong to find that the other contacts that it relied upon, such as that of 17 November 2003, were not in actual fact anticompetitive, would not alter the finding that the applicant participated in a single and continuous infringement during those three years. Accordingly, contrary to the applicant's submission at the hearing, even if the contacts other than the five ones mentioned above did not infringe Article 101 TFEU, the fact remains that the Commission proved to the requisite legal standard that it had participated in the infringement at issue.

212 The fourth part of the third plea must therefore be rejected as unfounded.

The fourth plea, alleging misapplication of the concept of a single and continuous infringement

213 The applicant argues that the Commission misapplied the concept of a single and continuous infringement in imposing a fine on it on account of its participation in such an infringement when it was not responsible for the contacts among its competitors. In addition, the Commission should not have imposed on it the same basic amount for calculating the fine as that imposed on the other addressees of the contested decision. It puts forward six complaints in this connection.

214 The Commission contests those arguments.

215 In that regard, it should be recalled that, as was stated in paragraph 28 above, the Commission found, in recitals 285 to 315 of the contested decision that, with the exception of the applicant, the other addressees of the contested decision had all participated in a single and continuous infringement, given that there were objective grounds to assume that the single aim, in the collusive contacts and their common pattern of behaviour, was anticompetitive. The collusive practices in question had the same economic aim. In particular, in view of the aggressive entry into the market of Samsung and Atmel and the pressure exerted by two of the largest customers, Axalto and Gemplus, the cartel members had sought to 'limit the impact [on the competitors] that the challenging market developments ... entailed', 'to manage the continued price drops and squeezed margins', so as to 'slow down the price decrease inherent to the smart card chip market'. Moreover, several factors, such as the common characteristics of the contacts, the identity of the people participating in the contacts, the timing of the contacts or their proximity in time, confirm that those collusive contacts were linked and complementary in nature and that, by interacting, they contributed to the realisation of the set of anticompetitive effects within the framework of a global plan having a single objective. As regards awareness of the infringement at issue, the Commission stated that Samsung and Renesas engaged in collusive contacts with the three other undertakings sanctioned in the contested decision. According to the Commission, Philips had contacts with Samsung and Renesas, and it was common knowledge, according to Renesas, that Samsung had contacts with its competitors. As regards the applicant, it had had direct contacts with Samsung and Renesas, although there is no evidence that the applicant had contacts with Philips or that it had the subjective impression of participating in the whole of the infringement at issue, and so it could be held liable for that infringement only in so far as it participated in collusive arrangements with Samsung and Renesas.

- 216 According to the case-law, so far as concerns, in the first place, the finding of a single infringement, it is for the Commission to establish that the agreements or concerted practices in issue, although they relate to distinct goods, services or territories, form part of an overall plan knowingly implemented by the undertakings in question with a view to achieving a single anticompetitive objective (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 258 and 260 and the case-law cited, and of 8 July 2008, *Lafarge v Commission*, T-54/03, not published, EU:T:2008:255, paragraph 482).
- 217 Links of complementarity between agreements or concerted practices constitute objective indicia of an overall plan. Such links exist if those agreements or concerted practices are intended to deal with one or more consequences of the normal pattern of competition and, through their interaction, contribute to the attainment of a single anticompetitive objective. The Commission is required to examine in that regard all the facts capable of establishing or of casting doubt on that overall plan (see, to that effect, judgments of 8 July 2008, *Lafarge v Commission*, T-54/03, not published, EU:T:2008:255, paragraph 483, and of 28 April 2010, *Amann & Söhne and Cousin Filterie v Commission*, T-446/05, EU:T:2010:165 paragraph 92 and the case-law cited).
- 218 As regards, in the second place, the participation of an undertaking in a single infringement, it should be recalled that the agreements and concerted practices referred to in Article 101(1) TFEU are necessarily the result of collaboration by several undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. Accordingly, the mere fact that each undertaking takes part in the infringement in ways particular to it does not suffice to exclude its liability for the entire infringement, including its liability for conduct which, in practical terms, is put into effect by other participating undertakings, but which has the same anticompetitive object or effect (judgments of 6 March 2012, *UPM-Kymmene v Commission*, T-53/06, not published, EU:T:2012:101, paragraph 53, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 60).
- 219 Thus, an undertaking which has participated in a single and continuous infringement through conduct of its own which falls within the concept of an agreement or concerted practice having an anticompetitive object within the meaning of Article 101(1) TFEU and is intended to help bring about the infringement as a whole may also be liable for conduct put into effect by other undertakings in the context of the same infringement throughout the period of its participation in the infringement (judgments of 6 March 2012, *UPM-Kymmene v Commission*, T-53/06, not published, EU:T:2012:101, paragraph 52, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 61).
- 220 However, the fact that there is a single and continuous infringement does not necessarily mean that an undertaking participating in one or more aspects can be held liable for the infringement as a whole. The Commission still has to establish that that undertaking was aware of the other undertakings' anticompetitive activities at EU level or that it could reasonably have foreseen them. The mere fact that there is identity of object between an agreement in which an undertaking participated and an overall cartel does not suffice to render that undertaking responsible for the overall cartel. It should be recalled that Article 101(1) TFEU does not apply unless there exists a concurrence of wills between the parties concerned (see judgments of 19 May 2010, *IMI and Others v Commission*, T-18/05, EU:T:2010:202, paragraph 88 and the case-law cited, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 62).
- 221 Accordingly, it is only if the undertaking knew or should have known when it participated in an agreement that in doing so it was joining in the cartel as a whole that its participation in the agreement concerned can constitute the expression of its accession to that cartel (judgments of 16 November 2011, *Low & Bonar and Bonar Technical Fabrics v Commission*, T-59/06, not published, EU:T:2011:669, paragraph 61; of 30 November 2011, *Quinn Barlo and Others v Commission*, T-208/06, EU:T:2011:701, paragraph 144, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 63). In other words, the Commission must show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the unlawful conduct planned or put into effect by other undertakings in pursuit of

the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk (judgments of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraphs 83, 87 and 203; of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 42; of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 50, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 61).

222 The undertaking concerned must therefore be aware of the general scope and the essential characteristics of the cartel as a whole (see, to that effect, judgments of 14 December 2006, *Raiffeisen Zentralbank Österreich and Others v Commission*, T-259/02 to T-264/02 and T-271/02, EU:T:2006:396, paragraphs 191 and 193; of 24 March 2011, *Aalberts Industries and Others v Commission*, T-385/06, EU:T:2011:114, paragraphs 111 to 119, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 64).

223 Where that is the case, the fact that an undertaking did not take part in all the constituent elements of a cartel or that it played only a minor role in the elements in which it did participate must be taken into consideration only when the gravity of the infringement is assessed and, as the case may be, in determining the amount of the fine (judgments of 8 July 1999, *Commission v Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 90; of 14 May 1998, *Buchmann v Commission*, T-295/94, EU:T:1998:88, paragraph 121, and of 10 October 2014, *Soliver v Commission*, T-68/09, EU:T:2014:867, paragraph 65).

224 It is in the light of that case-law that is necessary to examine the six complaints of the applicant aimed at establishing that the Commission was not entitled to hold it liable for the infringement at issue, since it had participated in collusive practices only with Samsung and Renesas.

– The first complaint, alleging a contradiction in the contested decision

225 By its first complaint, the applicant claims that the Commission contradicted itself in the contested decision. In its submission, while the Commission found, in recitals 314 and 424 of the contested decision, that it could not be held liable for the bilateral contacts among the other participants, the Commission found in recital 311 of the contested decision and Article 1 of that decision that it had infringed Article 101 TFEU by participating in a single infringement. In the applicant's submission, the Commission was therefore wrong to find that it had participated, unknowingly, in a single and continuous infringement, which contradicts and is contrary to the case-law.

226 It should be noted, as a preliminary point, that, as the Commission rightly contends, and as is apparent from the case-law cited in paragraph 218 above, the finding of the existence of a single infringement is separate from the question whether liability for that infringement is imputable to an undertaking in its entirety.

227 In the present case, as regards the grounds of the contested decision, the Commission found the existence of a single and continuous infringement, in so far as all the addressees of the contested decision, including the applicant, participated knowingly in an infringement whose objective was identical, namely in particular to maintain prices or avoid their reduction (recitals 285 to 289 of the contested decision). Moreover, as regards the applicant in particular, the Commission recognised that it did not have evidence establishing that the applicant was aware or should have been aware of relations between Samsung and Renesas, between Samsung and Philips and between Renesas and Philips; this meant that the Commission was unable to impute to the applicant liability for the infringement at issue as a whole (recitals 310 to 313 of that decision). It is in those circumstances that the Commission found, in recital 314 of the contested decision, that it did not have sufficient evidence to hold the applicant liable for the actions of the other participants and, in recital 315 of that decision, that there was a single and continuous infringement in respect of which each of the participants would be held liable to the extent of its awareness of the infringement at issue as a whole.

228 As regards the operative part of the contested decision, it must be stated that the Commission mentions, in Article 1 thereof, 'the following undertakings [which participated in an infringement of Article 101 [TFEU]] by participating, during the periods indicated, in a single and continuous

infringement regarding smart card chips ...’, whilst specifying, with respect to the applicant, that it had participated in that infringement ‘for its coordination with Samsung and Renesas’.

229 It is apparent therefore from the contested decision that, although, in the operative part, the Commission found, without drawing any distinction between the four addressees of that decision, that they had all participated in the infringement at issue, the grounds of that decision unambiguously indicate that the Commission considered that those undertakings had participated in a single and continuous infringement, without prejudice to the fact that the applicant could not, unlike the three other undertakings punished, be held liable for the infringement at issue in its entirety.

230 In that regard, it should be borne in mind that, according to the case-law, the operative part of an act is indissociably linked to the statement of reasons for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (judgment of 15 May 1997, *TWD v Commission*, C-355/95 P, EU:C:1997:241, paragraph 21).

231 In the present case, in the light of the explicit wording of recitals 314 and 315 of the contested decision, it must be held that the operative part must be understood as meaning that, as the Commission recognised at the hearing in reply to the Court’s questions, it does not impute to the applicant liability for the infringement at issue as a whole, unlike the other addressees of the contested decision, but imputes to it liability for that infringement to the extent that it engaged in unlawful contacts with Samsung and Renesas. Although the operative part of the contested decision is admittedly worded awkwardly, which the Commission moreover admitted at the hearing in reply to the Court’s questions, the fact remains that the operative part of that decision is not at odds with its grounds.

232 The first complaint must therefore be rejected as unfounded.

The second complaint, alleging infringement of the principles of equal treatment and of proportionality

233 By its second complaint, the applicant claims that the Commission infringed the principle of equal treatment and the principle of proportionality. The applicant puts forward two separate arguments in that regard.

234 First, the Commission infringed the principle of equal treatment in so far as it applied a gravity multiplier of 16% to all the participants, even though the applicant was not involved in all the anticompetitive contacts.

235 Second, the Commission infringed the principle of proportionality. The granting of a reduction of 20% on account of mitigating circumstances does not compensate for the erroneous assessment the Commission made in setting a uniform gravity percentage for all addressees of the contested decision when the applicant was not liable for the infringement at issue.

236 It must be pointed out that, as is stated in paragraphs 35 and 36 above, the Commission considered that it was appropriate to use a multiplier of 16% in respect of the gravity of the infringement and the additional amount (recitals 405 to 420 of the contested decision) and that it granted a reduction of 20% in the amount of the fine to the applicant because it was liable for the infringement at issue only to the extent that it had participated in collusive arrangements with Samsung and Renesas, and not with Philips.

237 In that regard, it must be stated that the Court of Justice has already held that the General Court was right to take the view that it was open to the Commission to take into account the relative gravity of the participation of an undertaking in an infringement and the particular circumstances of the case when assessing the gravity of the infringement or when adjusting the basic amount of the fine according to the mitigating and/or aggravating circumstances.

238 That option is not only consistent with the case-law, since the undertaking’s individual conduct must, in any event, be taken into account when the amount of the fine is determined, but is also foreseen by the Commission in the 2006 Guidelines. While, under point 20 of those guidelines, the gravity of the

infringement must be assessed on a case-by-case basis for all types of infringement, taking account of all relevant circumstances of the case, point 27 thereof also provides that, in setting the fine, the Commission may take into account circumstances that result in an increase or decrease in the basic amount of that fine, on the basis of an overall assessment which takes account of all the relevant circumstances, a list of examples of aggravating and mitigating circumstances being indicated in points 28 and 29 of those guidelines.

239 It is apparent therefore from the case-law set out in paragraphs 232 and 233 above that, by applying to all the addressees of the contested decision which participated in the infringement at issue a multiplier of 16% for the gravity of the infringement but by granting a reduction of 20% to the applicant alone on the ground that it had participated only in certain aspects of that infringement, the Commission did not infringe either the principle of equal treatment, since it granted a reduction to the applicant which was only partially liable for the infringement at issue, unlike the other undertakings, or the principle of proportionality. In that regard, it must be stated that the applicant does not put forward any specific argument permitting the inference that a reduction of 20% in the amount of the fine is not proportionate, in the present case, to the fact that it had participated only partially in the infringement at issue.

240 The applicant's second complaint must therefore be rejected as unfounded.

The third complaint, alleging infringement of the principle *nulla poena sine lege*

241 The applicant claims that, by finding the applicant liable, the Commission infringed the principle *nulla poena sine lege*, laid down in Article 48 of the Charter of Fundamental Rights and in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

242 In that regard, it is sufficient to observe that, as was held in the context of the first complaint of this plea, the Commission was right to find the existence of an infringement in which the applicant had partially participated, and in respect of which it had to be held partially liable. It is apparent in particular from Articles 101 and 103 TFEU as well as from Article 23 of Regulation No 1/2003 that the commission of such an infringement may be punished by the imposition of a fine.

243 Accordingly, the applicant's third complaint must be rejected as unfounded.

The fourth complaint, alleging that there are no precedents for the Commission's approach

244 By its fourth complaint, the applicant claims that, contrary to the Commission's finding, the present case is unprecedented and can be distinguished therefore from the circumstances which gave rise to the judgments of 6 December 2012, *Commission v Verhuizingen Coppens* (C-441/11 P, EU:C:2012:778), and of 14 March 2013, *Fresh Del Monte Produce v Commission* (T-587/08, EU:T:2013:129).

245 It must be stated that, on the assumption that the Commission's approach is unprecedented in its earlier decisions or in the case-law, that would not, in any event, permit the inference that that approach is unlawful, since its lawfulness must be assessed in the light solely of the relevant legal provisions. Moreover, it is apparent from the case-law that, if an undertaking has directly taken part in one or more of the forms of anticompetitive conduct comprising a single and continuous infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other offending conduct planned or put into effect by those other participants in pursuit of the same objectives, or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it had participated directly and for the conduct planned or put into effect by the other participants, in pursuit of the same objectives as those pursued by the undertaking itself, where it has been shown that the undertaking was aware of that conduct or was able reasonably to foresee it and was prepared to take the risk (judgment of 6 December 2012, *Commission v Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 44).

246 It must therefore be stated, without it being necessary to examine the other judgments to which the applicant refers, that the applicant is wrong to submit that the Commission attributed, for the first time in the contested decision, a single infringement to an undertaking which had not participated in all the aspects of such an infringement.

247 The fourth complaint must therefore be rejected as unfounded.

The fifth complaint, alleging that the contested decision differs from the Statement of Objections

248 By its fifth complaint, the applicant claims that the Commission's approach in the contested decision is different from that in the Statement of Objections, in which the Commission had taken the view that the applicant had been aware of the contacts between competitors other than Renesas and Samsung.

249 It is sufficient to note in that regard that that complaint is identical to the fourth complaint of the first plea (see paragraph 97 above). It must therefore be rejected as unfounded for the same reasons as those set out in paragraphs 98 to 102 above.

The sixth complaint, alleging that the first two conditions of a single and continuous infringement are not fulfilled

250 By its sixth complaint, the applicant claims that the first two conditions of a single infringement are not fulfilled, namely (i) the existence of a single anticompetitive aim — inasmuch as a party that is ignorant of the actions of other parties cannot be pursuing a common objective with them — and (ii) a personal contribution to the anticompetitive plan — since it was unaware of all the contacts with the other parties.

251 In that regard, it is sufficient to observe that, as is apparent from the case-law cited in paragraph 220 above, it is necessary to distinguish the finding of the existence of a single infringement from the participation of an undertaking in that infringement.

252 Contrary to the applicant's submission, its lack of knowledge of all the contacts does not preclude the finding of the existence of the infringement at issue if the existence of a common plan is established. In the present case, it must be stated that the applicant does not put forward any new argument in order to contest that the undertakings punished had the common objective of maintaining prices or preventing prices from dropping too low, following in particular Samsung's arrival on the market. Moreover, as is apparent from the case-law cited in paragraph 223 above, the fact that the applicant was not aware of all the unlawful contacts between all the competitors does not preclude the finding that it participated in a single infringement.

253 In those circumstances, the sixth complaint of the fourth plea and, therefore, the fourth plea in its entirety must be rejected.

The fifth plea, alleging miscalculation of the fine

254 The applicant submits, in substance, that it did not participate in contacts concerning non-SIM chips. However, if the Commission had taken account only of SIM chips, the fine imposed on it would have been EUR 38.91 million, rather than EUR 82.784 million.

255 In the first place, it must be stated that, contrary to the applicant's assertion, it is apparent from the applicant's first anticompetitive contact with the Samsung employee, Mr K., on 24 September 2003, as established by his internal report, that they raised the matter of the prices of non-SIM chips. It is apparent from that report that, '[i]n terms of the SIM card market, [the] price of products excluding the 16 K product are continuously falling [, but that] [o]ther areas such as banking [or] ID are stable but pursuant to the expansion of products in 2004, pressure for falling prices is expected'. It is apparent also from the discussions in question that the applicant and the Samsung employee, Mr K., talked about the non-SIM chip market, since, in particular, they stated that '[r]evenue from SIM cards and non-SIM cards amount to 50% each' or because they discussed results on the SIM chip and non-SIM chip markets in 2005 and the forecasts for 2006.

256 The applicant's arguments in that regard cannot succeed. First of all, in so far as the applicant criticises the credibility of that report, it must be stated that it merely submits that the Samsung employee, Mr K., is not reliable, but does not put forward any specific argument or evidence aimed at establishing that that document is not credible. Next, even if there is no written evidence of other contacts establishing that the applicant had exchanged with its competitors on non-SIM chips, the fact remains that the internal report of the Samsung employee, Mr K., is sufficient to find that the anticompetitive discussions did not concern only SIM chips. Lastly, it is necessary to reject the applicant's argument aimed at contesting that that report can be interpreted as meaning that the Samsung employee, Mr K., is merely making his own assessment and those assessments concern only SIM chips. Indeed, it is clearly apparent from the abovementioned passages of that report that the applicant and Samsung had found it necessary to raise both SIM chips and non-SIM chips during their discussion.

257 In the second place, and in any event, it should be pointed out that the applicant does not put forward any argument in its pleadings aimed at challenging the Commission's finding, in recital 221 of the contested decision and in its observations, that there is a correlation between SIM chips and non-SIM chips, since some customers of those products indicate that they use SIM chips instead of non-SIM chips.

258 In that regard, the applicant's argument that SIM chips and non-SIM chips were not part of the same market of products must be rejected as ineffective. Even if that were the case, that has no bearing on the finding that the Commission was entitled to take account, for the purposes of calculating the fine, of non-SIM chips, since the anticompetitive practices concerning the prices of SIM chips necessarily had an effect on the price of non-SIM chips.

259 In those circumstances, the fifth plea must be rejected as being in part unfounded and in part ineffective.

The sixth plea, alleging infringement of the 2006 Guidelines and of the principle of proportionality

260 The applicant puts forward two principal complaints aimed at contesting the amount of the fine imposed on it.

261 The Commission contests those two complaints.

262 As regards the first complaint, that the Commission was not entitled, in essence, to impose a single gravity multiplier on all the addressees of the contested decision, when the applicant participated only partially in the infringement at issue, it must be stated that that complaint is identical to the second complaint of the fourth plea (see paragraph 234 above). That complaint must therefore be rejected for the same reasons as those set out in paragraphs 236 to 240 above.

263 Moreover, in so far as the applicant claims also, in that regard, that a reduction of 20% is insufficient, it must be stated that, in support of that argument, the applicant merely (i) claims that it played a minor role in the infringement at issue and (ii) relies on the judgment of 15 July 2015, *voestalpine and voestalpine Wire Rod Austria v Commission* (T-418/10, EU:T:2015:516).

264 In that regard, it should first of all be stated that, although the applicant is not held liable for the entirety of the infringement at issue, the fact remains that it participated in price exchange practices, which constitute a serious infringement in itself, with two of the three main competitors involved in an infringement which covered the EEA.

265 Furthermore, as the Commission submits, it is not apparent from the judgment of 15 July 2015, *voestalpine and voestalpine Wire Rod Austria v Commission* (T-418/10, EU:T:2015:516, paragraph 424), that a reduction of 20% is insufficient, but that the Court censured the Commission in that case to the extent that it had failed to take into consideration, in calculating the amount of the fine in question, the fact that one undertaking had not participated in the whole of the infringement.

266 In those circumstances, the first complaint must be rejected as unfounded.

- 267 As regards the second complaint, the applicant claims that the Commission infringed the principle of proportionality. In that regard, it submits that it participated in only seven out of the 41 contacts which constitute the infringement at issue, and that it was the most heavily fined even though it was the least involved in the infringement.
- 268 It should be pointed out that the applicant does not put forward any argument aimed at contesting the manner in which the Commission implemented the 2006 Guidelines in this case.
- 269 Next, the Court shares the Commission's view, that, although it is true that the applicant did not participate in all aspects of the infringement at issue, unlike the other undertakings which were also punished, the reason that the applicant received the largest fine is that it had a much higher turnover than the other undertakings punished. In so far as the proportion of the overall turnover deriving from the sale of products in respect of which the infringement was committed is best able to reflect the economic importance of that infringement (see, to that effect, judgment of 23 April 2015, *LG Display and LG Display Taiwan v Commission*, C-227/14 P, EU:C:2015:258, paragraph 55), the fact that the applicant received a larger fine than the other members of the cartel, even if it did not participate in all the aspects of the infringement at issue, merely reflects the economic significance of its own participation in the infringement at issue.
- 270 In those circumstances, it must be held that the fine imposed on the applicant does not infringe the principle of proportionality.
- 271 The second complaint of the sixth plea and the sixth plea in its entirety must therefore be rejected as unfounded.
- 272 In the light of all the foregoing, this action must be dismissed.

Costs

- 273 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 274 Since the applicant has been unsuccessful in all its pleas and the Commission has applied for costs, the applicant must be ordered to pay all the costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Infineon Technologies AG to bear its own costs and to pay those of the European Commission.**

Dittrich

Szwarcz

Tomljenović

Delivered in open court in Luxembourg on 15 December 2016.

E. Coulon

A. Dittrich

Registrar

President

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* Language of the case: English.