Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

15 July 2015*

(Competition — Agreements, decisions and concerted practices — European markets in heat stabilisers — Decision finding two infringements of Article 81 EC and Article 53 of the EEA Agreement — Price fixing, market allocation and exchange of commercially sensitive information — Duration of the infringements — Limitation period — Duration of the administrative procedure — Reasonable time — Rights of the defence — Attribution of the infringements — Infringements committed by the subsidiaries, by a partnership without legal personality of its own and by a subsidiary — Calculation of the amount of the fines)

In Case T-47/10,

Akzo Nobel NV, established in Amsterdam (Netherlands),

Akzo Nobel Chemicals GmbH, established in Düren (Germany),

Akzo Nobel Chemicals BV, established in Amersfoort (Netherlands),

Akcros Chemicals Ltd, established in Stratford upon Avon (United Kingdom),

represented initially by C. Swaak and M. van der Woude, and subsequently by Mr Swaak and R. Wesseling, lawyers,

applicants,

v

European Commission, represented initially by F. Ronkes Agerbeek and J. Bourke, and subsequently by Mr Ronkes Agerbeek and P. Van Nuffel, acting as Agents, and by J. Holmes, Barrister,

defendant,

APPLICATION for annulment of Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38.589 — Heat Stabilisers) or, in the alternative, a reduction of the amount of the fines imposed,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka (Rapporteur) and V. Kreuschitz, Judges,

Registrar: S. Spyropoulos, Administrator,

* Language of the case: English.

having regard to the written procedure and further to the hearing on 23 September 2014,

gives the following

Judgment [1]

Background to the dispute

1 The present case concerns Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38.589 — Heat Stabilisers; 'the contested decision').

2 The dispute involves various entities.

I –*Entities involved*

A –*Akzo Group*

3 Following its acquisition of Nobel Industrier in 1993, Akzo NV became Akzo Nobel NV ('Akzo Nobel'), the ultimate parent company of a group of companies established and operating throughout the world (together 'the Akzo group').

4 Until 19 March 1993 the production and sale of heat stabilisers of the Akzo group were carried out by subsidiaries indirectly wholly-owned, on the one hand, by Akzo, which became Akzo Nobel, through Akzo Chemicals International BV, which became Akzo Nobel Chemicals International BV, and, on the other hand, by Akzo Chemie GmbH and Akzo Chemicals GmbH, which together became Akzo Nobel Chemicals GmbH ('Akzo GmbH'), with respect to tin stabilisers, and by Akzo Chemie Nederland BV and Akzo Chemicals Nederland BV, which became Akzo Nobel Chemicals BV ('Akzo BV'), with respect to the ESBO/esters sector.

B –*Akcros partnership*

5 On 19 March 1993 Akzo Chemicals International, a wholly-owned subsidiary first of Akzo, and then of Akzo Nobel, entered into a framework agreement with Harrisons Chemicals (UK) Ltd, a wholly-owned subsidiary of Harrisons & Crosfield plc, which became Elementis plc, to combine the activities of their respective groups for the development, production and marketing of certain chemical products, including heat stabilisers ('the 1993 framework agreement').

6 The 1993 framework agreement provided for the transfer of the assets and personnel in the sector concerned to four partnerships in the United Kingdom, Germany, the Netherlands and the United States of America, and provided that the capital of each partnership and of the existing companies in France (Tinstab SA), Italy (Harcros Chemicals Italia SpA), Spain (Harcros Chemicals Iberia SA) and Denmark (Lankro Sandia ApS) was to be held, in equal shares, by the Akzo Chemicals International group, namely the Akzo group, and the Harrisons Chemicals (UK) group.

1 — Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

7 On 24 March 1993, Akzo Chemicals International and Harrisons Chemicals (UK) notified the 1993 framework agreement to the European Commission, pursuant to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1), as rectified.

8 By decision of 29 April 1993, the Commission declared the 1993 framework agreement compatible with the common market ('the 1993 merger decision').

9 Pursuant to the 1993 framework agreement, the Akcros Chemicals partnership ('the Akcros partnership') was formed in the United Kingdom on 28 June 1993 (see recital 536 of the contested decision).

10 When it was formed, the Akcros partnership was held, in equal shares by Pure Chemicals Ltd, a company initially wholly-owned by Akzo, which became Akzo Nobel, and by various companies, including, ultimately, Elementis UK Ltd and Elementis Services Ltd, which were part of a group whose ultimate parent company was Elementis plc (together 'Elementis').

C –*Akcros joint venture*

11 On 15 July 1998, Akzo Nobel entered into an agreement with Elementis to acquire, through its wholly-owned subsidiary Pure Chemicals, Elementis's shareholding in the Akcros partnership, which became Akcros Chemical Ltd ('Akcros'), and which was thus wholly-owned, indirectly, by Akzo Nobel NV as from 2 October 1998.

12 On 15 March 2007, Akzo Nobel sold Akcros to GIL Investments.

II –*Administrative procedure which led to the adoption of the contested decision*

A –*Initiation of the Commission's investigation*

13 The investigation leading to the adoption of the contested decision was initiated following the submission by Chemtura, on 26 November 2002, of an application for immunity under the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3) (see recitals 79 and 80 of the contested decision).

14 On 30 January 2003, the Commission adopted Decision C(2003) 85/4 on the basis of Article 14(3) of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81 EC] and [82 EC] (OJ, English Special Edition 1959-1962, p. 87), ordering Akzo Nobel Chemicals Ltd, Akcros Chemicals Ltd and their respective subsidiaries to submit to an investigation aimed at seeking evidence of possible anticompetitive practices ('the decision of 30 January 2003').

15 On 10 February 2003, the Commission adopted Decision C(2003) 559/4, also on the basis of Article 14(3) of Regulation No 17, amending the decision of 30 January 2003 (together 'the inspection decisions').

16 On 12 and 13 February 2003, on-the-spot investigations were carried out, on the basis of the inspection decisions, at the premises of Akzo Nobel Chemicals and Akcros in Eccles, Manchester (United Kingdom). In the course of that investigation, the Commission officials took copies of a large number of documents. During those operations, the representatives from Akzo Nobel Chemicals and Akcros indicated to the Commission officials that a number of documents were likely to be covered by legal professional privilege ('the documents at issue').

17 While the documents at issue were being examined a disagreement arose as regards five documents, which were the subject of two kinds of treatment. The Commission officials did not reach a definitive on-the-spot conclusion as to the protection that might have to be afforded to two documents. Therefore, they took copies of those documents and placed them in a sealed envelope, which they took away with them at the end of their investigation. As regards the three other documents at issue, the Commission official responsible for the investigation took the view that they were not covered by legal professional privilege and therefore took copies of them and added them to the file without placing them in a separate sealed envelope.

18 That disagreement led to significant judicial proceedings ('the Akzo judicial proceedings').

B – *The Akzo judicial proceedings*

19 By application lodged at the Court Registry on 11 April 2003, Akzo Nobel Chemicals and Akcros brought an action seeking, in essence, annulment of Decision C(2003) 559/4 of 10 February 2003 and, in so far as necessary, the decision of 30 January 2003 requiring those companies and their respective subsidiaries to submit to the investigation in question (*Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, T-125/03).

20 On 17 April 2003, Akzo Nobel Chemicals and Akcros lodged an application for interim measures, inter alia, seeking suspension of the operation of the inspection decisions (*Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, T-125/03 R).

21 On 8 May 2003, the Commission adopted Decision C(2003) 1533 final on the basis of Article 14(3) of Regulation No 17 ('the decision of 8 May 2003'), rejecting the applicants' request to preserve the confidentiality of the documents at issue.

22 In the decision of 8 May 2003, the Commission rejected the request of Akzo Nobel Chemicals and Akcros that the documents at issue be returned to them and gave notice of its intention to open the sealed envelope, while stating that it would not do so before the period for bringing an action against that decision had expired.

23 By application lodged at the Court Registry on 4 July 2003, Akzo Nobel Chemicals and Akcros brought an action for annulment of the decision of 8 May 2003 (*Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, T-253/03).

24 In addition, they lodged an application for interim measures seeking, inter alia, suspension of the operation of the decision of 8 May 2003 (*Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, T-253/03 R).

25 By order of the President of the Court of 30 October 2003, the Court dismissed the application in T-125/03 R relating to the investigation decisions but granted in part the application in T-253/03 R relating to the protection of confidentiality of the documents at issue (order of 30 October 2003 in *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, T-125/03 R and T-253/03 R, ECR, EU:C:2003:287).

26 That order was set aside by order of 27 September 2004 in *Commission* v *Akzo and Akcros* (C-7/04 P(R), ECR, EU:C:2004:566).

27 By letter of 15 October 2004, the Court Registry returned the sealed envelope containing the two documents at issue to the Commission (recitals 84 to 90 of the contested decision).

28 By judgment of the Court of 17 September 2007, the action brought in Case T-125/03 against the investigation decisions was rejected as inadmissible. The action brought in Case T-253/03, concerning the documents at issue, was itself rejected as unfounded, on the basis that, in essence, the Commission had not erred in deciding that none of the documents at issue fell within the scope of legal professional privilege (judgment of 17 September 2007 in *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, T-125/03 and T-253/03, ECR, EU:T:2007:287, paragraphs 57 and 184).

29 By judgment of 14 September 2010 in *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* (C-550/07 P, ECR, EU:C:2012:512), the Court of Justice dismissed the appeal brought against the judgment in *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, cited in paragraph 28 above (EU:T:2007:287).

C –*The closure of the Commission's investigation*

30 On 8 October 2007 and on several occasions in 2008, the Commission sent the undertakings concerned requests for information pursuant to Article 18 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1) (recitals 91 and 92 of the contested decision).

31 On 17 March 2009, the Commission adopted a statement of objections which was sent to several companies, including Akzo Nobel, Akzo GmbH, Akzo BV and Akcros, namely the applicants, on 18 March 2009 (recital 95 of the contested decision).

32 On 11 November 2009, the Commission adopted the contested decision.

III –*Contested decision*

33 By the contested decision, the Commission found that a number of undertakings had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area (EEA) by participating in two sets of anti-competitive agreements and concerted practices covering the EEA and relating to, first, the tin stabilisers sector and, second, the epoxidised soybean oil and esters sector ('the ESBO/esters sector').

34 In the contested decision, it was found that there were two infringements relating to two categories of heat stabilisers, which are products added to polyvinyl chloride (PVC) products in order to improve their thermal resistance (recital 3 of the contested decision).

35 According to Article 1 of the contested decision, each of those infringements consisted of price fixing, allocation of markets through sales quotas, allocation of customers and exchange of commercially sensitive information, in particular on customers, production and sales.

36 The contested decision states that the undertakings concerned participated in those infringements during various periods between 24 February 1987 and 21 March 2000, with respect to tin stabilisers, and between 11 September 1991 and 26 September 2000, with respect to the ESBO/esters sector.

37 The contested decision was addressed, with respect to each infringement, to 20 companies, which either participated directly in the infringements involved or were liable as parent companies (recital 510 of the contested decision).

A –*Attribution of the infringements in the contested decision*

38 Article 1 of the contested decision holds the applicants liable for their participation in the infringement relating to tin stabilisers from 24 February 1987 until 21 March 2000 in the case of Akzo Nobel, 24 February 1987 until 28 June 1993 in the case of Akzo GmbH and 28 June 1993 until 21 March 2000 in the case of Akcros. Similarly, Article 1 of the contested decision holds the applicants liable for their participation in the infringement relating to the ESBO/esters sector from 11 September 1991 until 22 March 2000 in the case of Akzo Nobel, 11 September 1991 until 28 June 1993 in the case of Akzo BV and 28 June 1993 until 22 March 2000 in the case of Akcros.

39 Accordingly, in the contested decision, Akzo Nobel, as the ultimate parent company of a group of companies some of which participated directly in the infringements, was held liable for the entire infringement period, that is to say from 24 February 1987 until 22 March 2000.

40 For the period before 28 June 1993 ('the first infringement period'), the Commission considered that some companies held indirectly by Akzo, which became Akzo Nobel, had participated directly in the infringement, namely Akzo GmbH, for the infringement relating to tin stabilisers, and Akzo BV, for the infringement relating to ESBO/esters (recitals 512 to 519 of the contested decision).

41 For the period from 28 June 1993 until 2 October 1998 ('the second infringement period'), the Commission considered that the infringements had been committed by the Akcros partnership (recitals 563 and 564 of the contested decision).

42 For the period from 2 October 1998 until 21 March 2000, for tin stabilisers, and from 2 October 1998 until 22 March 2000, for the ESBO/esters sector ('the third infringement period'), the Commission considered that the infringements had been committed by Akcros (recitals 582 to 587 of the contested decision).

43 As regards its power to impose fines on the applicants for those infringements, the Commission rejected, in the contested decision, the applicants' arguments that it could and should have continued its investigation while the proceedings initiated before the Court in the Akzo judicial proceedings were ongoing. The Commission considered that the 10-year limitation period on its right to impose fines was suspended, erga omnes, by the Akzo judicial proceedings (see recitals 672 to 682 of the contested decision).

B –*The attribution of the fines in the contested decision*

44 Article 2 of the contested decision reads as follows:

'For the infringement(s) in the tin stabiliser sector ... the following fines are imposed:

(1) Elementis plc, Elementis Holdings Limited, Elementis Services Limited, [Akzo Nobel] and [Akcros] are jointly and severally liable for: EUR 875 200;

(2) Elementis Holdings Limited, Elementis Services Limited, [Akzo Nobel] and [Akcros] are jointly and severally liable for: EUR 2 601 500;

(3) Elementis Holdings Limited, Elementis Services Limited and [Akzo Nobel] are jointly and severally liable for: EUR 4 546 300;

(4) [Akzo Nobel], [Akzo GmbH] and [Akcros] are jointly and severally liable for: EUR 1 580 000;

(5) [Akzo Nobel] and [Akcros] are jointly and severally liable for: EUR 944 300;

(6) [Akzo Nobel] and [Akzo GmbH] are jointly and severally liable for: EUR 9 820 000;

(7) [Akzo Nobel] is liable for: EUR 1 432 700;

…

For the infringement(s) in the [ESBO/esters sector], the following fines are imposed:

(18) Elementis plc, Elementis Holdings Limited, Elementis Services Limited, [Akzo Nobel] and [Akcros] are jointly and severally liable for: EUR 1 115 200;

(19) Elementis Holdings Limited, Elementis Services Limited, [Akzo Nobel] and [Akcros] are jointly and severally liable for: EUR 2 011 103;

(20) Elementis Holdings Limited, Elementis Services Limited and [Akzo Nobel] are jointly and severally liable for: EUR 7 116 697;

(21) [Akzo Nobel], [Akzo BV] and [Akcros] are jointly and severally liable for: EUR 2 033 000;

(22) [Akzo Nobel] and [Akcros] are jointly and severally liable for: EUR 841 697;

(23) [Akzo Nobel] and [Akzo BV] are jointly and severally [liable] for: EUR 3 467 000;

(24) [Akzo Nobel] is liable for: EUR 2 215 303 …'

45 In setting the amount of the fines, the Commission applied the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines').

[omissis]

Procedure and forms of order sought by the parties

51 By application lodged at the Court Registry on 27 January 2010, the applicants brought an action against the contested decision.

52 In a letter of 29 July 2011 to the Court Registry, the Commission expressed its wish to draw the Court's attention to the implications for the present case of the judgment in *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others*, cited in paragraph 48 above, (EU:C:2011:190), which the Court duly noted.

53 In that letter, the Commission, first, withdrew the arguments which it had put forward in the alternative, relating to the suspension of the proceedings with respect to Akzo Nobel, Akzo GmbH and Akzo BV, set out in paragraphs 55 to 65 of its defence and paragraphs 27 to 33 of its rejoinder.

54 Second, the Commission stated, for the avoidance of doubt, that it maintained its argument based on the suspension of the proceedings in relation to Akcros and its response in its entirety to the plea alleging breach of the rules on limitation in respect of all the other applicants.

[omissis]

97 The parties presented their oral arguments and answered the oral questions put to them by the Court at the hearing on 23 September 2014.

98 The applicants claim that the Court should:

— principally, annul the contested decision;

— in the alternative, reduce the amount of the fines imposed upon them;

— order the Commission to pay the costs.

99 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

[omissis]

Law

102 In support of their action, the applicants put forward five pleas in law.

103 By their first plea the applicants allege breaches of the rules on limitation. By their second plea the applicants allege breach of the principle of administrative diligence and the principle that an action must be brought within a reasonable period. By their third plea the applicants allege breach of the rights of the defence. By their fourth plea the applicants allege errors in the attribution of the infringements and the fines. By their fifth plea the applicants allege errors in the calculation of the amount of the fines.

I – *The first plea, alleging breach of the rules on limitation*

104 In their first plea, alleging breach of the rules on limitation, principally, the applicants claim, first, that the Commission was time-barred from taking action in respect of the first infringement period and, second, that the infringements ceased 'in 1996/1997' or 'at the latest', in 1997, with the result that, by the contested decision, the Commission breached Article 25(1)(b) of Regulation No 1/2003.

105 In the alternative, the applicants claim that, in any event, the Commission breached Article 25(5) of Regulation No 1/2003, since it failed, in the contested decision, to prove the existence of the infringements in 1999 and 2000.

106 It is therefore necessary to assess the arguments which the applicants put forward in their first plea, alleging breach of the rules on limitation, as regards, first, the first infringement period and, second, the second and third infringement periods.

A – *The first infringement period*

1. Arguments of the parties

107 The applicants submit that it follows from recital 512 and Article 1(1)(b) and (2)(b) of the contested decision that the Akzo group companies, namely Akzo GmbH and Akzo BV, held by the Commission to have directly participated in the infringement during the first infringement period (that is to say, for tin stabilisers from 24 February 1987 until 28 June 1993, and for the ESBO/esters sector, from 11 September 1991 until 28 June 1993), ceased participating in the infringements on 28 June 1993.

108 Accordingly, pursuant to Article 25(1)(b) of Regulation No 1/2003, the Commission was time-barred from taking action against Akzo GmbH and Akzo BV from 28 June 1998.

109 According to the applicants, the first formal action taken by the Commission against them occurred on 12 and 13 February 2003.

110 Consequently, Akzo GmbH and Akzo BV could not be held liable.

111 Therefore, Article 1(1)(b) and (2)(b) of the contested decision must be annulled.

112 For the same reasons, neither can Akzo Nobel, as parent company of those two companies, be held liable for the first infringement period.

113 Accordingly, the fines imposed in Article 2, points 4, 6, 21 and 23, of the contested decision must be annulled, at least in part, having regard to the present arguments.

114 The Commission contends that it established in the contested decision that the entities in the Akzo group participated in the infringement relating to the tin stabilisers sector from 1987 until March 2000 and in the infringement relating to the ESBO/esters sector from 1991 until March 2000.

115 As stated in recital 527 of the contested decision, the Commission proceeded on the basis that, where an undertaking has participated in an infringement over a certain period during which that undertaking has been successively composed of different legal entities, that undertaking cannot rely on the rules on limitation which would arise from those corporate restructurings. Otherwise, undertakings could easily evade the application of the rules on limitation by corporate restructuring. Article 81 EC and the rules on limitation laid down in Article 25 of Regulation No 1/2003 apply to undertakings and not to the legal entities of which they are composed. It follows that if legal persons which form part of the Akzo undertaking participate in an infringement, the limitation period begins to run only on the day on which the infringements committed by the Akzo undertaking cease.

116 The Commission observes that the first investigative actions were taken in January and February 2003, thereby restarting the five-year limitation period, and that further investigative actions were taken subsequently, so that the first contested decision was adopted well within five years of the most recent investigative action.

2. Findings of the Court

117 In the first part of the first plea, alleging a breach of Article 25(1)(b) of Regulation No 1/2003, the applicants claim that the Commission was time-barred from taking action against Akzo GmbH and Akzo BV from 28 June 1998 and, therefore, could not impose on those companies a fine jointly and severally with Akzo Nobel, as parent company of those companies.

118 In that regard, it should be recalled at the outset that, under Article 25(1)(b) of Regulation No 1/2003, the Commission's powers to impose penalties for infringements of Article 81 EC are time-barred after five years.

119 Article 25(2) of Regulation No 1/2003 provides that time runs from the day on which the infringement is committed, but in the case of continuing or repeated infringements, time begins to run on the day on which the infringement ceases.

120 Article 25(3) of Regulation No 1/2003 provides that any action taken by the Commission for the purpose of the investigation or proceedings in respect of an infringement interrupts the limitation period for the imposition of fines.

121 In the present case, it is undisputed that the Commission, in the contested decision, held Akzo GmbH liable for the infringement relating to tin stabilisers and Akzo BV liable for the infringement relating to the ESBO/esters sector only until 28 June 1993 (see recitals 512 and 513 of the contested decision and Article 1(1)(b) and (2)(b) thereof).

122 It is also undisputed that, in the contested decision, Akzo Nobel was held liable for the infringements committed during the first infringement period, only by virtue of the unlawful conduct of Akzo GmbH, for tin stabilisers, and Akzo BV, for the ESBO/esters sector (see recital 514 of the contested decision).

123 It is equally undisputed that the Commission's first actions for the purpose of the investigation or proceedings in respect of the infringements, covering both tin stabilisers and the ESBO/esters sector, were taken only at the beginning of 2003.

124 Therefore, it cannot be disputed that the Commission's first actions for the purpose of the investigation or proceedings in respect of the infringements, within the meaning of Article 25(3) of Regulation No 1/2003, relating to both tin stabilisers and the ESBO/esters sector, were taken after the expiry, for Akzo GmbH and Akzo BV, of the period provided for in Article 25(1) of that regulation.

125 In that regard, it must be recalled that the expiry of the limitation period provided for in Article 25 of Regulation No 1/2003 is neither to cause an infringement to cease to exist nor to prevent the Commission from establishing, in a decision, liability for such an infringement (see, to that effect, judgment of 6 October 2005 in *Sumitomo Chemical and Sumika Fine Chemicals* v *Commission*, T-22/02 and T-23/02, ECR, EU:T:2005:349, paragraphs 60 to 63), but only to enable those that benefit from the limitation period's expiry to avoid proceedings aimed at imposing penalties (see, to that effect, judgment of 27 June 2012 in *Bolloré* v *Commission*, T-372/10, ECR, EU:T:2012:325, paragraph 194).

126 Furthermore, it is clear from a textual, contextual and purposive interpretation of Article 25 of Regulation No 1/2003 that, like the individual procedural safeguards, such as the rights of the defence, and the requirement for the Commission to notify both a statement of objections and a decision imposing such penalties to the legal person concerned (see, to that effect, judgment of 10 September 2009 in *Akzo Nobel and Others* v *Commission*, C-97/08 P, ECR, EU:C:2009:536, paragraphs 57 and 59), the expiry of the limitation period under Article 25(1) of Regulation No 1/2003 benefits, and may be invoked by, each of the legal persons separately when they are the subject of proceedings brought by the Commission. Accordingly, as has already been recognised in the case-law, the mere fact that a subsidiary of a group of companies, in the sense of an economic unit, benefits from the expiry of the limitation period does not result in the parent company's liability being called into question and prevent proceedings being brought against that parent company (see, to that effect, judgment in *Bolloré* v *Commission*, cited in paragraph 125 above, EU:T:2012:325, paragraphs 193 to 196, not affected on that point by judgment of 8 May 2014 in *Bolloré* v *Commission*, C-414/12 P, EU:C:2014:301, paragraph 109).

127 That assessment is not contradicted by the use, in Article 25(3) and (4) of Regulation No 1/2003, of the concept of undertaking within the meaning of Article 81(1) EC, which is only intended to define the actions which interrupt the limitation period and the scope of their effects in respect of all undertakings and associations of undertakings which participated in the infringement, that is to say, including the legal persons constituting them (see, to that effect, judgment in *Bolloré* v *Commission*, cited in paragraph 125 above, EU:T:2012:325, paragraph 198 et seq.).

128 It follows that, in the present case, Akzo GmbH and Akzo BV, although they remained full members of the Akzo group, could legitimately claim, unlike Akzo Nobel, that the limitation period had expired in respect of them.

129 Accordingly, the applicants' complaints, grounded on Article 25(1)(b) of Regulation No 1/2003, must be upheld and Article 2, points 4, 6, 21 and 23, of the contested decision must be annulled in respect of the fines imposed on Akzo GmbH and Akzo BV for the first infringement period, but those complaints must be rejected as to the remainder.

[omissis]

II – *The second plea, alleging breach of the principle of administrative diligence and the principle that an action must be brought within a reasonable period [omissis]*

B – *The second plea, in so far as it is raised to have the contested decision varied*

319 In their second plea, alleging breach of the principle of administrative diligence and the principle that an action must be brought within a reasonable period, the applicants claim, in the alternative, that the contested decision should be varied, that is to say that the amount of the fines imposed on them should be reduced.

1. Arguments of the parties

320 The applicants maintain that, even if the Court were to hold that the Commission's breaches of the principle of administrative diligence and the principle that an action must be brought within a reasonable period did not result in a breach of their rights of defence, such that that plea cannot justify the annulment of the contested decision in full, the Court should take those breaches into account and significantly reduce, in the exercise of its unlimited jurisdiction, the amount of the fines imposed, or at least reduce them by 1%, as the Commission did in the contested decision for all the other undertakings.

321 In that regard, they maintain that, by not having granted them a reduction of 1%, in breach of the principle of equal treatment, the Commission appears to have penalised them, in a discriminatory manner, for having asserted their rights in the Akzo judicial proceedings, which is contrary to the principle of effective judicial protection and deters undertakings involved in other cases from also asserting their rights.

322 The Commission contends that the reductions applied were a means of compensating the other undertakings, which had had to await the outcome of the Akzo judicial proceedings and which were in a different position from the applicants, in that the applicants had instigated the Akzo judicial proceedings. From a practical point of view, moreover, it is clearly implausible to suggest that the failure to grant an exceptional reduction of 1% of the amount of the penalty to the applicants in the present case would in any way be a deterrent on the willingness of other applicants in the same position to exercise their rights in other cases.

2. Findings of the Court

323 In their second plea, alleging breach of the principle of administrative diligence and the principle that an action must be brought within a reasonable period, the applicants claim, in the alternative, that the contested decision should be varied, that is to say that the amount of the fines imposed on them should be reduced.

324 In that regard, it should be recalled that, if there is no infringement of the rights of the defence resulting from the duration of the administrative procedure, a breach of the principle that an action must be brought within a reasonable period may lead the Court to reduce the amount of the fines imposed in the exercise of its unlimited jurisdiction (judgment of 6 February 2014 in *AC-Treuhand* v *Commission*, T-27/10, ECR, under appeal, EU:T:2014:59, paragraph 278).

325 In the present case, it is clear that the Commission does not contest the excessive duration of the administrative procedure, having itself reduced, in the contested decision, the amount of the fines imposed on all the undertakings involved, with the exception of the applicants.

326 To justify that difference in treatment, the Commission submits that there was a difference in objectively comparable situations, in that, unlike the other undertakings, the applicants were responsible for instigating the Akzo judicial proceedings.

327 That justification cannot be accepted.

328 Irrespective of whether other undertakings would be deterred from exercising their rights to bring judicial proceedings while they are involved in a Commission investigation for infringement of competition rules, the Commission's argument is incompatible with the principle of effective judicial protection.

329 Therefore, by having granted to all other undertakings involved a reduction in the amount of the fines imposed due to the length of the administrative procedure, but not to the applicants solely on account of the Akzo judicial proceedings, as is apparent from recitals 771 and 772 of the contested decision, the Commission marred that decision with unjustified unequal treatment.

330 Accordingly, in the exercise of its unlimited jurisdiction, the Court considers that the amount of the fines imposed on the applicants must be reduced by 1%.

331 Therefore, the total amount of fines imposed in Article 2, points 1 to 7 and 18 to 24, namely EUR 40.6 million for Akzo Nobel and EUR 12 002 000 for Akcros is reduced to EUR 40.194 million for Akzo Nobel and EUR 11 881 980 for Akcros.

[omissis]

Costs

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

450 In the present case, the Court has granted in part the form of order sought by the applicants.

451 Therefore and in the light of the circumstances of the present case, it is appropriate to order the Commission to bear two fifths of the applicants' costs and three fifths of its own costs. The applicants are to bear three fifths of their own costs and two fifths of the Commission's costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls Article 2, points 4, 6, 21 and 23, of Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/38.589 — Heat Stabilisers) in respect of the fines imposed on Akzo Nobel Chemicals GmbH and on Akzo Nobel Chemicals BV;**

2. **Reduces the total amount of fines imposed in Article 2, points 1 to 7, and 18 to 24, of Decision C(2009) 8682 final to EUR 40.194 million for Akzo Nobel NV and EUR 11 881 980 for Akcros Chemicals Ltd;**

3. **Dismisses the action as to the remainder;**

4. **Orders the European Commission to bear two fifths of the costs of Akzo Nobel, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV and Akcros Chemicals and to pay three fifths of its own costs. Akzo Nobel, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV and Akcros Chemicals, shall bear three fifths of their own costs and two fifths of the Commission's costs.**

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 15 July 2015.

[Signatures]