Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

21 September 2017 *

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision — Time taken in the proceedings before the General Court)

In Joined Cases C-86/15 P and C-87/15 P,

APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 February 2015,

Ferriera Valsabbia SpA, established in Odolo (Italy) (C-86/15 P),

Valsabbia Investimenti SpA, established in Odolo (C-86/15 P),

Alfa Acciai SpA, established in Brescia (Italy) (C-87/15 P),

represented by D.M. Fosselard, avocat, D. Slater, Solicitor, and A. Duron, avocate,

appellants,

the other party to the proceedings being:

European Commission, represented by L. Malferrari and P. Rossi, acting as Agents, assisted by P. Manzini, avvocato, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda (Rapporteur) and C. Lycourgos, Judges,

Advocate General: N. Wahl,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 20 October 2016,

after hearing the Opinion of the Advocate General at the sitting on 8 December 2016,

* Language of the case: Italian.

gives the following

Judgment

1 By their appeals, Ferriera Valsabbia SpA and Valsabbia Investimenti SpA (together 'Valsabbia'), in Case C-86/15 P, and Alfa Acciai SpA ('Alfa'), in Case C-87/15 P (the parties together referred to as 'the appellants'), ask the Court to set aside the judgments of the General Court of the European Union of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti* v *Commission* (T-92/10, not published, EU:T:2014:1032), and of 9 December 2014, *Alfa Acciai* v *Commission* (T-85/10, not published, EU:T:2014:1037) (together 'the judgments under appeal'), by which the General Court dismissed their actions for annulment of Commission Decision C(2009) 7492 final of 30 September 2009 relating to a breach of Article 65 CS (COMP/37.956 — Reinforcing bars, re-adoption, 'the decision of 30 September 2009'), as amended by Commission Decision C(2009) 9912 final of 8 December 2009 ('the amending decision') (the decision of 30 September 2009, as amended by the amending decision, 'the decision at issue').

Background to the disputes and the decision at issue

2 The background to the disputes is set out in paragraphs 20 to 25 of the judgments under appeal:

'20 From October to December 2000, the Commission carried out a number of verifications pursuant to Article 47 CS at the premises of certain Italian undertakings engaged in the manufacture of reinforcing bars and at the premises of an association of certain Italian steel undertakings. It also sent to them a request to supply information pursuant to Article 47 CS …

21 On 26 March 2002, the Commission commenced the administrative procedure and adopted its objections under Article 36 CS ("the statement of objections") … [The appellants] submitted written comments on the statement of objections. A hearing took place on 13 June 2002 …

22 On 12 August 2002, the Commission adopted additional objections ("the supplementary statement of objections") addressed to the same addressees as the statement of objections. In the supplementary statement of objections, based on Article 19(1) of Council Regulation No 17 of 6 February 1962, first regulation implementing Articles [81 and 82 EC] (OJ, English Special Edition 1959-1962, p. 87), the Commission explained its position concerning the further proceedings following the expiry of the ECSC Treaty. The undertakings concerned were granted a period within which they could make comments and a second hearing in the presence of representatives of the Member States took place on 30 September 2002 …

23 At the end of the procedure, the Commission adopted Decision C(2002) 5087 final relating to a proceeding under Article 65 CS (COMP/37.956 — Reinforcing bars) ("the 2002 decision"), by which it found that, contrary to Article 65(1) CS, the undertakings to which it was addressed had implemented a single, complex and continuous restrictive practice on the Italian market for concrete reinforcing bars and coils which had as object or effect the fixing of prices, with a view to which the restriction or control of production and/or sales was also concerted … In that decision, the Commission imposed [on Valsabbia, jointly and severally, and Alfa fines of EUR 10.25 million and EUR 7.175 million respectively].

24 On 5 March 2003, [the appellants] brought … action[s] before the General Court challenging the 2002 decision. By judgment of 25 October 2007 in *SP and Others* v *Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, [EU:T:2007:317]), the General Court annulled the 2002 decision. The General Court held that, having regard, in particular, to the fact that the 2002 decision contained no reference to Article 3 or Article 15(2) of Regulation No 17,

the decision was based on Article 65(4) and (5) CS alone … Since those provisions had expired on 23 July 2002, the Commission could no longer derive competence from those provisions, which were no longer in force when it adopted the 2002 decision, in order to establish an infringement of Article 65(1) CS and to impose fines on the undertakings which had allegedly participated in the infringement …

25 By letter of 30 June 2008, the Commission informed [the appellants] and the other undertakings concerned of its intention to re-adopt the decision, changing the legal basis from that which it had chosen for the 2002 decision. It also explained that, given the limited scope of the judgment [of 25 October 2007,] *SP and Others* v *Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317), the re-adopted decision would be based on the evidence presented in the statement of objections and in the supplementary statement of objections. The undertakings concerned were given a deadline to submit their observations … [The appellants] submitted their observations.'

3 In the decision of 30 September 2009, the Commission considered, inter alia, that 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), was to be interpreted as empowering it to establish and sanction, after 23 July 2002, cartels in the sectors which fell within the scope of the ECSC Treaty *ratione materiae* and *ratione temporis*. It stated that the decision had been adopted in conformity with the procedural rules of the EC Treaty as well as the aforementioned regulation, and that the material provisions that were no longer in force at the date of adoption of an act could be applied under the principles governing the temporal succession of rules, subject to application of the principle *lex mitior*.

4 Article 1 of that decision provides, inter alia, that the appellants had infringed Article 65(1) CS by taking part, from 6 December 1989 to 27 June 2000, in the case of Valsabbia, and from 6 December 1989 to 4 July 2000, in the case of Alfa, in a continuous agreement and/or concerted practices in respect of concrete reinforcing bars and coils having as object and/or effect the fixing of prices and the restriction and/or control of production and sales in the common market. In Article 2 of the same decision, the Commission imposed on Valsabbia and Alfa fines of EUR 10.25 million and EUR 7.175 million respectively.

5 By letters sent between 20 and 23 November 2009, eight of the eleven companies to which the decision of 30 September 2009 was addressed, including the appellants, informed the Commission that the annex to that decision, as notified to its addressees, did not contain the tables illustrating the price variations.

6 On 8 December 2009, the Commission adopted the amending decision, which included in its annex the missing tables and corrected the numbered references to those tables in eight footnotes. The amended decision was notified to the appellants on 9 December 2009.

The procedure before the General Court and the judgments under appeal

7 By applications lodged at the General Court Registry on 17 and 18 February 2010 respectively, the appellants brought actions seeking, principally, the annulment of the decision at issue in respect of the parts which concern them.

8 In support of their actions, the appellants formally raised four pleas in law alleging: first, a misuse of powers by the Commission; second, infringements of Articles 14 and 33 of Regulation No 1/2003, Articles 10 and 14 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18) as well as of rights of defence; third, breach of Article 65(1) CS and misinterpretation of the concept of a

single and continuous infringement; and, fourth, illegalities committed in setting the level of the fine (fixing of the starting amount and lack of acknowledgement of mitigating circumstances) and excessive length of the administrative procedure. In an introductory section relating to the 'particularities of the content of the decision' at issue, the appellants also alleged a potential breach of the principle of collegiality.

9 By the judgments under appeal, the General Court dismissed the appellants' actions.

Forms of order sought by the parties before the Court

10 By their appeals, the appellants claim that the Court should:

– set aside the judgments under appeal;

– annul the decision at issue in so far as it concerns them;

– in the alternative, reduce the fine imposed on the appellants by the decision at issue;

– reserve the costs and refer the cases back to the General Court for it to give a ruling on the substance of the cases in the light of the guidance that it receives from the Court; and

– order the Commission to pay the costs at first instance and on appeal.

11 The Commission contends that the Court should:

– dismiss the appeals; and

– order the appellants to pay the costs.

12 By decision of the President of the Court of 7 June 2016, Cases C-86/15 P and C-87/15 P were joined for the purposes of the oral part of the procedure and the judgment.

The request to have the oral procedure reopened

13 The oral procedure was closed on 8 December 2016 following delivery of the Advocate General's Opinion. By letter dated 27 January 2017, lodged at the Court Registry the same day, the Commission asked the Court to order the reopening of the oral part of the procedure and to include in the case file the facts presented in its request as well as the documents annexed to it.

14 In support of that request, the Commission stated, in essence, that the Court does not have sufficient information on the factual circumstances relating to the hearings of 13 June and 30 September 2002, on which the Advocate General based his Opinion, since those circumstances were not specifically debated between the parties.

15 Article 83 of the Rules of Procedure of the Court of Justice allows the Court to order the reopening of the oral part of the procedure at any time after hearing the Advocate General, in particular where the case is to be decided on the basis of an argument which has not been debated between the parties.

16 It should be noted, however, that the subject matter of the appeal is, in principle, defined in the grounds of appeal and the arguments raised by the parties. In the present case, the parties had the opportunity to sufficiently debate those grounds of appeal and arguments in their written pleadings and during the joint hearing of 20 October 2016 in cases C-85/15 P to C-89/15 P.

17 As a result, the Court, after hearing the Advocate General, considers that there is no need to order the reopening of the oral part of the procedure.

The appeals

18 In support of their appeals, the appellants raise seven grounds of appeal, alleging: first, breach of Article 10 of Regulation No 773/2004 and their rights of defence on account of failure to send a new statement of objections; second, breach of Article 14 of Regulation No 773/2004 and their rights of defence on account of the absence of the representatives of the Member States during the hearings; third, infringement of the principle of collegiality on account of the adoption of an incomplete decision; fourth, breach of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), interpreted in the light of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, as regards the right to a judgment within a reasonable time; fifth, breach of Article 65 CS, misinterpretation of the concept of continuous agreement as well as an inadequate statement of reasons and contradictory reasoning; sixth, breach of Article 47 of the Charter to the extent that the General Court refused to reduce the fine on account of the excessive duration of the administrative procedure, as well as an inadequate statement of reasons and contradictory reasoning; and, seventh, breach of Articles 23 and 31 of Regulation No 1/2003, the guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3), the principles of equality of treatment and proportionality as well as an inadequate statement of reasons.

The first and second grounds of appeal

Arguments of the parties

19 By their first and second grounds of appeal, which must be considered together, the appellants allege breach of Articles 10 and 14 of Regulation No 773/2004 as well as the rights of defence in so far as the General Court found, in the judgments under appeal, that the Commission was not required to send them a new statement of objections and arrange a hearing in the presence of the competition authorities of the Member States before adopting the decision at issue. They claim that, by announcing, in its letter of 30 June 2008, its intention to adopt that decision in accordance with the procedural rules provided for by Regulations No 1/2003 and 773/2004, the Commission was required to respect those rules.

20 Regarding the failure to send a new statement of objections, the Commission contends that the decision at issue, including the penalty imposed on the appellants, fully complied with the legal assessments set out in the statement of objections and the supplementary statement of objections, on which the appellants had the opportunity to express their views. The General Court was therefore correct to note, in paragraph 128 of the judgments under appeal, that the Commission had already informed the undertakings concerned, in the supplementary statement of objections, of its view of the consequences of the expiry of the ECSC Treaty, particularly as regards the choice of legal basis, and the appellants had the opportunity to comment on the matter. According to the Commission, those considerations in themselves are sufficient to reject the argument that the General Court should have criticised the Commission for having adopted the decision at issue without having sent a new statement of objections to the undertakings.

21 In this respect, the Commission submits that the reference, in the decision at issue, to Article 23(2) of Regulation No 1/2003 — the successor provision to, and equivalent to, Article 15(2) of Regulation No 17, which is mentioned in the supplementary statement of objections — is the result of the annulment of the 2002 decision. The General Court was therefore correct to take the view, in paragraphs 133 and 134 of the judgments under appeal, that where, following the annulment of a

decision, the Commission chooses to rectify the illegalities found in the latter and to adopt an identical decision which is not vitiated by those illegalities, that decision relates to the same objections as those in respect of which the undertakings had already submitted observations, such that the Commission was not obligated to give the undertakings in question the opportunity to be heard in respect of the legal basis used to impose on them the fines adopted by the decision at issue.

22 As regards the letter of 30 June 2008, the General Court accepted that the Commission had protected the appellants' rights of defence beyond the requirements laid down by Regulation No 773/2004. It was therefore for the sake of completeness that the General Court added, in paragraph 129 of the judgments under appeal, that that letter had, in any case, given the appellants the opportunity to comment.

23 According to the Commission, to the extent that the second ground of appeal concerns whether or not the representatives of the Member States were invited to the hearings that were held, in accordance with Article 14 of Regulation No 773/2004, that ground of appeal is inadmissible in that it concerns a finding of fact.

24 As regards substance, the Commission contends that the General Court was correct to confirm, in paragraphs 147 and 148 of the judgments under appeal, that the Commission had fully respected the procedural rules in force, since the steps it took complied with the rules governing the procedural standards at the time. Indeed, the absence of the representatives of the Member States during the hearing of 13 June 2002, relating to the statement of objections, can be explained by the fact that their participation was not provided for by the rules of the ECSC Treaty. Similarly, the presence of those representatives during the hearing of 30 September 2002, following the notification of the supplementary statement of objections, was consistent with the procedural rules of the EC Treaty, which had become applicable.

25 The Commission further argues that, contrary to the appellants' allegations, it did not affirm, in the letter of 30 June 2008, that it also wanted to apply Regulations No 1/2003 and 773/2004 to the procedure followed before expiry of the ECSC Treaty, which would have been impossible. It also did not follow a *sui generis* procedure but followed the procedure applicable at the time of the act, in accordance with the principle of succession of procedural rules.

Findings of the Court

26 Regarding the plea of inadmissibility raised by the Commission in respect of the second ground of appeal, it is sufficient to note that that ground does not concern the factual question of whether the competition authorities of the Member States were invited to the hearings of 13 June and 30 September 2002, but rather the legal question of whether the Commission infringed Article 14 of Regulation No 773/2004 by not having organised the hearing pursuant to that provision before adopting the decision at issue. Consequently, this plea of inadmissibility must be rejected.

27 As regards the substance of the first and second grounds of appeal, it must be noted that, in the context of the procedure leading to the adoption of the 2002 decision, the Commission did, on 26 March 2002, send the statement of objections to the undertakings concerned, including the appellants, in accordance with Article 36 CS. The oral hearing relating to that statement of objections took place on 13 June 2002. It is common ground that the representatives of the Member States were not invited to participate in that hearing, since such participation was not provided for by the rules of the ECSC Treaty, which was in force at the time.

28 After expiry of that Treaty, on 12 August 2002 the Commission sent the undertakings the supplementary statement of objections based on Article 19(1) of Regulation No 17, in which it explained its position regarding the change in the legal framework and invited them to make known

their own points of view on the supplementary statement of objections. A hearing took place on 30 September 2002 in the presence of representatives of the Member States, in application of Article 11(2) of Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18).

29 Following the annulment of the 2002 decision, by letter dated 30 June 2008 the Commission informed the appellants and the other undertakings concerned of its intention to re-adopt that decision on the legal basis of Regulation No 1/2003, in accordance with the procedural rules laid down in that regulation.

30 Having regard to the conduct of that procedure, it is necessary to consider whether, contrary to the General Court's conclusion in paragraphs 142 and 152 of the judgments under appeal, the Commission breached Articles 10 and 14 of Regulation No 773/2004 by not sending the appellants a new statement of objections and by not organising a hearing in the presence of the competition authorities of the Member States before adopting the decision at issue.

31 It is established case-law that procedural rules are generally held to apply from the date on which they enter into force (judgments of 29 March 2011, *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 75 and the case-law cited; of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 88; and of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 45), even in a procedure that was initiated before that date, but is still pending after that date (see, to that effect, judgment of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 47).

32 In this case, as the decision at issue was adopted on the basis of Article 7(1) and Article 23(2) of Regulation No 1/2003, the procedure leading to that decision had to be conducted in accordance with that regulation and Regulation No 773/2004, the legal basis of which is Regulation No 1/2003 (see, to that effect, judgment of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 90), despite the fact that the procedure had been initiated before Regulation No 1/2003 came into force.

33 Article 10(1) and (2) of Regulation No 773/2004, read in the light of Article 27(1) of Regulation No 1/2003, which it implements, provides that, before adopting a decision under, inter alia, Article 7 of the latter regulation, the Commission is to notify a statement of objections to the parties concerned, giving them the opportunity to make their opinions on it known within a period determined by the Commission.

34 The General Court was correct to note, in paragraphs 125 and 126 of the judgments under appeal, that, in this case, the Commission had already sent the appellants the statement of objections and the supplementary statement of objections and it was not contested that the decision at issue concerned only the conduct in respect of which the appellants had already submitted observations in response to those statements. Moreover, as the Advocate General observed in point 53 of his Opinion, there is no major difference, in respect of content, between a statement of objections adopted under the ECSC rules and one adopted in accordance with Regulations No 17 and 1/2003. It was therefore not necessary to send a new statement.

35 In this connection, the General Court was entitled to refer to paragraph 73 of the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), in which it is noted that the annulment of an EU measure does not necessarily affect the preparatory acts, and the procedure for replacing such a measure may, in principle, be resumed at the very point at which the illegality occurred.

36 As the General Court noted in paragraph 141 of the judgments under appeal, the 2002 decision was annulled on the ground that the Commission did not have power to adopt it on the basis of the ECSC Treaty, which was no longer in force at the date of adoption of the decision, such that it was on that exact date that the illegality occurred. As a result, that annulment did not affect the statement of objections or the supplementary statement of objections.

37 Contrary to the appellants' claim, the case-law cited in paragraph 35 of the present judgment is not rendered inapplicable in the present case on account of the change of legal basis on which the fines were adopted, in so far as the impact of that change of legal basis had already been anticipated in the preparatory acts. Indeed, as is apparent from paragraphs 22 and 128 of the judgments under appeal, the Commission informed the appellants in the supplementary statement of objections, based on Article 19(1) of Regulation No 17, of its view of the consequences of the expiry of the ECSC Treaty and the appellants had the opportunity to comment on the matter.

38 In addition, it is common ground that those consequences in no way changed on account of the repeal of Regulation No 17 and the entry into force of Regulation No 1/2003, certain provisions of which form the legal basis of the decision at issue. In any case, as the Advocate General noted in point 50 of his Opinion, Article 34(2) of Regulation No 1/2003 and Article 19 of Regulation No 773/2004 provide, in the way of transitional provisions, that procedural steps and measures taken, respectively, under Regulations No 17 and 2842/98, are to continue to have effect for the purposes of applying the first regulations.

39 It is also necessary to reject the appellants' argument that annulment of the 2002 decision on account of the legal basis on which it was founded implies that the supplementary statement of objections adopted the wrong approach in that respect. It is sufficient to point out that that decision was based solely on Article 65(4) and (5) CS, while the statement was based on Regulation No 17.

40 As a result, the General Court did not make an error of law in concluding, in paragraphs 141 and 142 of the judgments under appeal, that the Commission was not obligated to adopt a new statement of objections.

41 However, as the Advocate General noted in point 55 of his Opinion, according to Article 12 of Regulation No 773/2004, the Commission must give the parties to whom it addressed a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written comments. Therefore, given that, as is clear from paragraph 36 of the present judgment, the statement of objections and the supplementary statement of objections were not affected by the annulment of the 2002 decision, it is necessary to assess whether the Commission gave the parties the opportunity to develop their arguments at an oral hearing conducted in accordance with the procedural requirements of Regulations No 1/2003 and 773/2004, in particular those referred to in Article 14 of the latter regulation, as it was required to do.

42 In this respect, regarding the oral hearings that took place during 2002, it is common ground that that of 13 June 2002 — in which the representatives of the Member States did not participate since such participation was not provided for by the ECSC Treaty, which was in force at the time — concerned the substance of the case, namely the conduct of which the Commission accused the addressees of the statement of objections. That is apparent, in particular, from paragraphs 379 to 382 of the decision at issue, as well as paragraph 148 of the judgments under appeal.

43 However, the hearing of 30 September 2002 — to which the representatives of the Member States were invited in accordance with the rules of the EC Treaty, which by that point were applicable, in particular in accordance with Article 11(2) of Regulation No 2842/98 — concerned the subject matter of the supplementary statement of objections, namely the legal consequences of the expiry of the ECSC Treaty for the continuation of the proceedings. This is clear, first, from that statement, which expressly invited its addressees to make known their point of view on those supplementary objections.

Second, the Commission stated, in paragraph 382 of the decision at issue, that it did not consider it necessary to repeat the oral hearing of 13 June 2002, in application of the provisions of Regulations No 17 and 1/2003, since that hearing, in which the Member State representatives did not participate, had been conducted in conformity with the rules of the ECSC Treaty, which was applicable at the time. Furthermore, at the joint hearing in Cases C-85/15 P to C-89/15 P, the Commission confirmed, in its reply to a question from the Court, that the supplementary statement of objections re-examined neither the facts nor the evidence forming the subject matter of the proceedings.

44 It follows from this that, in the present cases, the representatives of the Member States did not participate in a hearing concerning the substance of the cases, but only in the one relating to the legal consequences resulting from the expiry of the ECSC Treaty.

45 Yet, according to the case-law noted in paragraphs 31 and 32 of the present judgment, when a decision is adopted on the basis of Regulation No 1/2003, the procedure resulting in that decision must conform to the procedural rules laid down by that regulation, even if the procedure began before that regulation came into force.

46 It follows that, before adopting the decision at issue, the Commission was required, in application of Articles 12 and 14 of Regulation No 773/2004, to give the parties the opportunity to develop their arguments during a hearing to which the competition authorities of the Member States were invited. Therefore, it cannot be held that the hearing of 13 June 2002, concerning the substance of the case, fulfilled the procedural requirements in relation to the adoption of a decision on the basis of Regulation No 1/2003.

47 As a result, the General Court made an error in law in holding, in paragraphs 147 and 148 of the judgments under appeal, that the Commission was not obligated to organise a new hearing in accordance with Article 14 of Regulation No 773/2004 before adopting the decision at issue, on the ground that the substantive hearing of 13 June 2002, in which the Member States did not participate, had been conducted in conformity with the rules of the ECSC Treaty, which was in force at the time, in compliance with the principles governing the temporal application of the law.

48 As the Advocate General pointed out in points 56 and 57 of his Opinion, having regard to the importance, in the context of a procedure provided for by Regulations No 1/2003 and 773/2004, of holding an oral hearing to which the competition authorities of the Member States are invited, in accordance with Article 14(3) of the latter regulation, failure to hold such a hearing constitutes infringement of an essential procedural requirement.

49 In so far as the right to such a hearing, provided for by Regulation No 773/2004, was not respected, it is not necessary for the undertaking, the rights of which have been infringed in this way, to demonstrate that such infringement might have influenced the course of the proceedings and the content of the decision at issue to its detriment.

50 Accordingly, the procedure is necessarily vitiated, regardless of any possible detrimental consequences for the appellants that could result from that infringement (see, to that effect, judgments of 6 November 2012, *Commission* v *Éditions Odile Jacob*, C-553/10 P and C-554/10 P, EU:C:2012:682, paragraphs 46 to 52, and of 9 June 2016, *CEPSA* v *Commission*, C-608/13 P, EU:C:2016:414, paragraph 36).

51 It follows from the above that the first and second grounds of appeal put forward by the appellants must be upheld and, accordingly, the judgments under appeal must be set aside, without the Court needing to examine the third and fifth to seventh grounds of appeal.

The fourth ground of appeal

Arguments of the parties

52 By their fourth ground of appeal, the appellants claim that the General Court breached Article 47(2) of the Charter since the proceedings lasted for four years and 10 months, including three years between the end of the written procedure and the announcement of the opening of the oral part of the procedure.

53 As regards the complexity of the cases, the appellants claim that the General Court was already aware, from the actions brought against the 2002 decision; that the four pleas raised at the time did not present any particular difficulties, since two of them were of a procedural nature; that the plea concerning misuse of powers for having used Regulation No 1/2003 as the legal basis had already been assessed by the General Court and confirmed by the Court; and, that nine actions were brought against the decision at issue, all in the same language.

54 Regarding the conduct of the parties, no extension was requested by them during the procedure. Furthermore, no organisational measure was adopted by the General Court. Even though two of the judges were replaced during the course of proceedings, the Judge-Rapporteur remained the same.

55 As a result, the appellants ask the Court to set aside the judgments under appeal in so far as they order them to pay a fine, or, in the alternative, to reduce the amount of that fine. Although a similar request was rejected by the Court in the judgment of 26 November 2013, *Gascogne Sack Deutschland* v *Commission* (C-40/12 P, EU:C:2013:768), the appellants claim that the position would be different if the Court upheld other grounds of appeal than the present ground. The appellants also ask the Court to declare a breach of the second paragraph of Article 47 of the Charter, and that it constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals.

56 The Commission contends that this ground of appeal is inadmissible as it contradicts what the appellants claimed before the General Court — namely that they considered only the length of the procedure before the Commission to be excessive, not the length of procedure before the General Court, as is clear from paragraph 362 of the judgment of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti* v *Commission* (T-92/10, not published, EU:T:2014:1032), and from paragraph 345 of the judgment of 9 December 2014, *Alfa Acciai* v *Commission* (T-85/10, not published, EU:T:2014:1037).

57 On that basis, the Commission contends that this ground of appeal should be rejected.

Findings of the Court

58 The Commission's plea of inadmissibility must be rejected. As the Court has already had occasion to note, as regards a failure by the General Court to adjudicate within a reasonable time, an appellant which considers that such a failure before the General Court prejudices its interests is not required to assert that prejudice immediately. Where appropriate, it may wait until the end of proceedings in order to ascertain the total duration of the prejudice and therefore to have all the information necessary to identify that which it has, in its view, sustained (judgment of 26 November 2013, *Gascogne Sack Deutschland* v *Commission*, C-40/12 P, EU:C:2013:768, paragraph 78). It follows that the claims made by the appellants during the proceedings before the General Court concerning the duration of those proceedings cannot prevent them from raising the unreasonableness of that duration at the end of those proceedings.

59 In respect of the appellants' request to the Court to set aside the judgments under appeal, to reduce the fine on account of the allegedly excessive duration of that procedure, or to declare a breach of the second paragraph of Article 47 of the Charter, it should be recalled that a breach, by a Court of the European Union, of its obligation under that provision to adjudicate on the cases before it within a reasonable time must be sanctioned in an action for damages brought before the General Court, since such an action constitutes an effective remedy. Accordingly, a claim for compensation for the damage caused by the failure on the part of the General Court to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself. The General Court, which has jurisdiction under Article 256(1) TFEU, hearing a claim for damages, is required to rule on such a claim sitting in a different composition from that which heard the dispute which gave rise to the procedure whose duration is criticised (judgment of 9 June 2016, *Repsol Lubricantes y Especialidades and Others* v *Commission*, C-617/13 P, EU:C:2016:416, paragraphs 98 and 99 and the case-law cited).

60 Consequently, the appellants' fourth ground of appeal must be rejected.

The actions before the General Court

61 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then itself give final judgment in the matter, where the state of the proceedings so permits.

62 In the present case, the Court has the necessary information to give final judgment on the actions for annulment of the decision at issue brought by the appellants before the General Court.

63 In this respect, it is sufficient to note that, for the reasons set out in paragraphs 27 to 50 of the present judgment, the decision at issue must be annulled to the extent that it concerns the appellants, for infringement of essential procedural requirements.

Costs

64 Under Article 184(2) of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

65 Article 138(1) of those rules, which is applicable to appeal proceedings by virtue of Article 184(1) of the same rules, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellants have been successful on appeal, and the actions before the General Court were upheld, the Commission must be ordered to bear its own costs and to pay those incurred by the appellants both at first instance and on appeal, in accordance with the forms of order sought by the appellants.

On those grounds, the Court (Ninth Chamber) hereby:

1. **Sets aside the judgments of the General Court of the European Union of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti* v *Commission* (T-92/10, not published, EU:T:2014:1032), and of 9 December 2014, *Alfa Acciai* v *Commission* (T-85/10, not published, EU:T:2014:1037);**

2. **Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Ferriera Valsabbia SpA, Valsabbia Investimenti SpA and Alfa Acciai SpA;**

3. **Orders the European Commission to bear its own costs and to pay those incurred by Ferriera Valsabbia SpA, Valsabbia Investimenti SpA and Alfa Acciai SpA both at first instance and in the present appeals.**

[Signatures]