Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

16 September 2013*

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Concept of infringement — Single infringement — Relevant market — 2006 Guidelines on the method of setting fines — Gravity — Application of a multiplier)

In Case T-396/10,

Zucchetti Rubinetteria SpA, established in Gozzano (Italy), represented by M. Condinanzi, P. Ziotti and N. Vasile, lawyers,

applicant,

v

European Commission, represented by F. Castillo de la Torre, A. Antoniadis and L. Malferrari, acting as Agents, assisted initially by F. Ruggeri Laderchi and A. De Matteis, and subsequently by F. Ruggeri Laderchi, lawyers,

defendant,

APPLICATION for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom Fittings and Fixtures), in so far as it concerns the applicant, and, in the alternative, for cancellation or reduction of the fine imposed on the applicant,

THE GENERAL COURT (Fourth Chamber),

composed of I. Pelikánová, President, K. Jürimäe (Rapporteur) and M. van der Woude, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 June 2012,

gives the following

* Language of the case: Italian.

Judgment

Background to the dispute

1 By Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom Fittings and Fixtures) ('the contested decision'), the European Commission found there to be an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area (EEA) in the bathroom fittings and fixtures sector. It found that 17 undertakings had participated, over various periods between 16 October 1992 and 9 November 2004, in that infringement, which took the form of anti-competitive agreements or concerted practices spanning Belgium, Germany, France, Italy, the Netherlands and Austria (recitals 2 and 3 to the contested decision and Article 1 thereof).

2 More specifically, the Commission stated in the contested decision that the infringement consisted in (i) the coordination, by those bathroom fittings and fixtures manufacturers, of annual price increases and other pricing elements within the framework of regular meetings of national industry associations; (ii) the setting or coordination of prices on the occasion of specific events such as increases in raw material costs, the introduction of the euro and the introduction of road tolls; and (iii) the disclosure and exchange of sensitive business information. The Commission also found that price setting in the bathroom fittings and fixtures industry followed an annual cycle. In that context, the manufacturers set price lists which generally remained in force for a year and formed the basis for commercial relations with wholesalers (recitals 152 to 163 to the contested decision).

3 The products covered by the contested decision are bathroom fittings and fixtures belonging to the following three product sub-groups: taps and fittings, shower enclosures and accessories, and ceramics (the 'three product sub-groups') (recitals 5 and 6 to the contested decision).

4 The applicant, Zucchetti Rubinetteria SpA, is an Italian undertaking which, so far as concerns the three product sub-groups, exclusively manufactures and distributes taps and fittings.

5 In the contested decision, the Commission found that the practices described in paragraph 2 above formed part of an overall plan to restrict competition between the addressees of that decision and had the characteristics of a single and continuous infringement, which covered the three product sub-groups referred to in paragraph 3 above and extended to Belgium, Germany, France, Italy, the Netherlands and Austria (recitals 778 and 793 to the contested decision) ('the infringement found'). In that regard, it highlighted, in particular, the fact that those practices had followed a recurring pattern which was consistent in each of the six Member States covered by the Commission's investigation (recitals 778 and 793 to the contested decision). The Commission also pointed to the existence of national industry associations concerning all three product sub-groups, which it termed 'umbrella associations', national industry associations with members active in at least two of those three product sub-groups, which it termed 'cross-product associations', as well as product-specific associations with members active in only one product sub-group (recitals 796 and 798 to the contested decision). Lastly, it found that a central group of undertakings participated in the cartel in various Member States and in cross-product associations and umbrella associations (recitals 796 and 797 to the contested decision).

6 In the light of the information which may be gleaned from the anti-competitive practices which occurred, in particular, in Italy, the contested decision stated that those practices were implemented within the framework of two informal groups. First, some undertakings — including the applicant — met within the framework of Euroitalia two to three times a year between July 1992 and October 2004. Within that group, which had been formed when German manufacturers entered the Italian market, the exchange of information related not only to taps and fittings but also to ceramics. Second, meetings took place within the Michelangelo group (which took its name from the hotel where the

meetings were held) — in which the applicant also participated — between the end of 1995 or the beginning of 1996 and 25 July 2003. During those meetings, the discussions covered a wide range of sanitary products including, in particular, taps and fittings and ceramics (recitals 97 to 100 of the contested decision).

7 So far as concerns the applicant's participation in the Euroitalia and Michelangelo meetings, the Commission states that, while the applicant disputes the legal qualification of the infringement, it nevertheless acknowledges that it had inappropriate discussions with other competitors. Moreover, regardless of whether it may or may not have applied the price increases at issue, the applicant played an active role in organising the meetings and participated in the discussions during those meetings, which is established by the written evidence which the Commission has at its disposal (recitals 470 to 474 to the contested decision).

8 With regard to determining whether the undertakings in question participated in the infringement found, the Commission states that there is insufficient evidence to conclude that the applicant, and other Italian undertakings which attended the Euroitalia and Michelangelo meetings, were aware of an overall plan (recitals 851 to 879 to the contested decision).

9 In addition, for the purposes of setting the fines imposed on the undertakings covered by the contested decision, the Commission took as its basis 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') (recital 1174 to 1399 to the contested decision).

10 In point (18) of Article 1(5) of the contested decision, the Commission states that the applicant participated in an infringement between 16 October 1992 and 9 November 2004 in the bathroom fittings and fixtures sector in Italy.

11 In Article 2(17) of the contested decision, the Commission imposed a fine of EUR 3 996 000 on the applicant.

Procedure and forms of order sought

12 By application lodged at the Court Registry on 8 September 2010, the applicant brought the present action.

13 On hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

14 The parties presented oral argument and replied to the Court's oral questions at the hearing on 12 June 2012.

15 The applicant claims that the Court should:

— annul the contested decision in so far as it relates to it;

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

— order the Commission to pay the costs.

16 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

17 As a preliminary point, it should be recalled that the judicial review carried out by the Courts of the European Union ('Courts of the Union') of decisions adopted by the Commission to punish infringements of competition law is based on the review of legality, provided for in Article 263 TFEU, which is supplemented, where an application for such review is made to them, by the unlimited jurisdiction conferred upon those Courts by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU (see, to that effect, Case C-386/10 P *Chalkor* v *Commission* [2011] ECR I-13085, paragraphs 53, 63 and 64). That jurisdiction enables the Courts, in addition to carrying out a mere review of the lawfulness of the penalty, to substitute their own appraisal for the Commission's and, consequently, depending on the circumstances, to cancel, reduce or increase the fine or penalty payment imposed (see Case C-272/09 P *KME Germany and Others* v *Commission* [2011] ECR I-12789, paragraph 103 and the case-law cited; see, to that effect, Case T-11/06 *Romana Tabacchi* v *Commission* [2011] ECR II-6681, paragraph 265).

18 In the light of the case-law referred to in the preceding paragraph, it is necessary to consider, first of all, the applicant's principal head of claim, which is for annulment of the contested decision in so far as it concerns the applicant, and, second, in the alternative, its claim that the General Court should exercise its unlimited jurisdiction to vary — by cancelling or reducing it — the fine which the Commission has imposed on it.

Principal head of claim, application for partial annulment of the contested decision

19 In support of its action, the applicant raises three pleas in law. The first plea in law alleges that there were errors in the Commission's assessment of the relevant market. The second plea in law alleges that the Commission was wrong to find that the practices at issue constitute an infringement of Article 101 TFEU. The third plea in law alleges errors and infringements committed by the Commission in the calculation of the fine.

The first plea in law, alleging errors made by the Commission in assessing the relevant market

20 The applicant maintains that the Commission infringed Article 101 TFEU, made manifest errors of assessment and failed to comply with its obligation to investigate and to state reasons, with regard to the definition of the relevant market used in the contested decision, in particular in recital 791 thereto. As it confirmed at the hearing in response to questions from the Court, the applicant puts forward two complaints in that regard.

21 First, so far as concerns the three product sub-groups, the applicant claims that the Commission did not define precisely the relevant markets, despite the fact that such an assessment was an essential pre-condition in order to classify the practices at issue as a single infringement. Next, the applicant submits that the Commission wrongly took the view that the three product sub-groups belong to a single relevant product market, even though they are not substitutable from either a demand or supply side perspective and, moreover, they are different products from a technological, business and aesthetic point of view. In that regard, the applicant observes that, even if it were to be considered that taps and fittings and ceramics complement each other and are economically linked, that would be insufficient to establish the existence of a single product market.

22 Second, the Commission failed to define, in the contested decision, the scope of the relevant geographic market, as it should have been defined in accordance with point 8 of the Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ 1997 C 372, p. 5). In that regard, the applicant notes that the Commission merely specified that the infringement found concerned the six Member Sates referred to in paragraph 1 above.

23 The Commission contests the applicant's arguments.

24 In the first place, so far as concerns the applicant's first complaint that the Commission was not entitled to conclude that there was a single infringement when the three product sub-groups do not belong to a single product market, the Court notes that, in the contested decision, the Commission in no way considered those three product sub-groups, which it clearly distinguished in recitals 5 to 12 to the contested decision, to belong to a single product market. In recital 791 to the contested decision, the Commission stated that 'the mere fact that the products to which the infringement relates belong to different markets does not call into question the qualification of a certain conduct as a single infringement'.

25 Moreover, the fact that the Commission found there to be a single infringement in the bathroom fittings and fixtures sector, in view of the interdependence of the anti-competitive practices relating to all three product sub-groups and the existence of an overall plan, as is apparent in particular from recital 796 to the contested decision, does not mean that the Commission concluded that the three product sub-groups belong to a single product market. It should be borne in mind, in that regard, that an infringement of Article 101(1) TFEU may result not only from isolated agreements or concerted practices which fall to be penalised as separate infringements, but also from a series of agreements or from related concerted practices with the result that they must be considered to be constituent elements of a single infringement (see, to that effect, Joined Cases 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 *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraph 258 and the case-law cited). In order to establish the existence of a single infringement, it is for the Commission to establish that the agreements or concerted practices, 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 anti-competitive objective (see, to that effect, *Aalborg Portland and Others* v *Commission*, paragraphs 258 and 260, and the judgment of 8 July 2008 in Case T-54/03 *Lafarge* v *Commission*, not published in the ECR, paragraph 482).

26 The Commission did not therefore make any error by finding that the three product sub-groups were the object of a single infringement, even though they belonged to distinct product markets.

27 Second, it must be observed that the Commission was not under any obligation to precisely define, in the contested decision, the product markets to which the three product sub-groups belong.

28 As the Commission stated, in essence, in recital 891 to the contested decision, without it being disputed by the applicant, it is clear from the case-law that, for the purposes of applying Article 101(1) TFEU, the reason for the Commission defining the relevant market is to determine whether an agreement is liable to affect trade between Member States and has as its object or effect the prevention, restriction or distortion of competition within the European Union. Consequently, there is an obligation on the Commission to define the market in a decision applying Article 101(1) TFEU only where it is impossible, without such a definition, to determine whether the agreement, decision by an association of undertakings or concerted practice at issue is liable to affect trade between Member States and has as its object or effect the prevention, restriction or distortion of competition within the internal market (see Case T-38/02 *Groupe Danone* v *Commission* [2005] ECR II-4407, paragraph 99 and the case-law cited).

29 In the present case, it need merely be observed that the applicant puts forward neither argument nor evidence to establish that, contrary to the view taken by the Commission in the contested decision, the concerted practices which occurred within Euroitalia and Michelangelo relating to taps and fittings marketed in Italy were not liable to affect trade between Member States and did not have as their object or effect the prevention, restriction or distortion of competition within the internal market.

30 Moreover, as the Commission pointed out in recital 892 to the contested decision, the finding that the three product sub-groups belong to distinct product markets does not, in any event, undermine the evidence which led the Commission to conclude, in essence, in recital 796 to the contested decision, that those practices must be considered to form part of a single infringement, in view of their interdependence and the existence of an overall plan.

31 In those circumstances, the Court must reject as ineffective the arguments which the applicant has advanced to demonstrate that the three product sub-groups do not belong to a single product market since they are not substitutable from either a demand or supply side perspective and are different products from a technological, business and aesthetic point of view.

32 The applicant's other two arguments make no difference to the finding in paragraph 31 above.

33 With regard to the applicant's first argument that it participated only in the Italian aspect of the infringement found, it is sufficient to state, in that regard, that such a conclusion does not mean that the Commission was not entitled to find that there was a single infringement in which the other undertakings covered by the contested decision participated.

34 So far as concerns the applicant's second argument that the Commission wrongly referred, in recital 791 to the contested decision, to the judgment of 15 June 2005 in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others* v *Commission*, not published in the ECR, paragraph 90, it must be observed first of all that, in recital 791 to the contested decision, the Commission stated the following:

'Finally, the Commission is entitled to base its description of the relevant market in cartel cases on the conduct of the participating undertakings. At paragraph 90 of its Judgment in *Tokai Carbon and Others* v *Commission*, the [General Court] stated that: "It is not the Commission which arbitrarily chose the relevant market but the members of the cartel in which [the undertaking in question in that case] participated [which] deliberately concentrated their anti-competitive conduct on … products [at issue in that case]". The mere fact that the products to which the infringement relates belong to different markets does not call into question the qualification of a certain conduct as a single infringement.'

35 Next, it must be noted that, in recital 889 to the contested decision, the Commission stated, referring to *Tokai Carbon and Others* v *Commission*, paragraph 34 above (see footnote 1248 to the contested decision) the following:

'it is essentially the cartel participants that delineate the scope and key parameters of the cartel by deliberately focusing their anti-competitive conduct on the products and territories concerned'.

36 It is therefore apparent from recitals 791 and 889 to the contested decision that, when examining whether the unlawful practices at issue constituted several infringements or a single infringement (see Section 5.2.3 of the contested decision), the Commission correctly found that it was appropriate to examine not whether the practices at issue concerned products belonging to the same market, but whether the undertakings themselves considered those practices to be part of an overall plan knowingly implemented by the undertakings in question with a view to achieving a single anti-competitive objective.

37 The applicant's argument that the Commission referred incorrectly to *Tokai Carbon and Others* v *Commission*, paragraph 34 above, in support of its finding of a single infringement must therefore be rejected as unfounded.

38 In the second place, with regard to the applicant's complaint that the Commission failed to determine the scope of the relevant geographic market, it should be borne in mind that, as is apparent from the case-law set out in paragraph 28 above, for the purposes of applying Article 101(1) TFEU, there is an obligation on the Commission to define the relevant market only to determine whether the practices at issue affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the internal market.

39 In the present case, it must first of all be noted that, in recital 122 to the contested decision, the Commission stated that the unlawful practices at issue related to the sales of the three product sub-groups in six Member States, namely, Belgium, Germany, France, Italy, the Netherlands and Austria.

40 Next, in recital 123 to the contested decision, the Commission stated that '[t]he sales volumes of producers of bathroom fittings and fixtures show that there is a considerable amount of trade between the Member States of the European Union and the Contracting Parties to the EEA Agreement'.

41 In addition, in recital 124 to the contested decision, the Commission stated, inter alia, that '[t]he cross-border features of these arrangements [to coordinate price increases] are also apparent in the form of links between the implicated national associations, notably in view of the presence of a core group of companies in all those Member States'.

42 Moreover, in recitals 814 to 823 to the contested decision, the Commission examined the cross-border links between the collusive arrangements in question. In that regard, it found, inter alia, in recital 814 to the contested decision, that the discussions and exchanges of information which took place within national associations attest to those cross-border links.

43 Lastly, in recitals 824 to 833 to the contested decision, the Commission observed that there were significant trade flows between those six Member States.

44 It is therefore apparent from the findings set out in paragraphs 39 to 43 above that, while the Commission found that the unlawful practices at issue had been implemented in six Member States in particular, it also set out the reasons why it considered that trade and competition within the European Union had been affected by those practices. There was therefore no obligation on the Commission to define in more detail the relevant product market to which taps and fittings belong.

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

46 In the light of the foregoing considerations, the Court finds that the Commission did not, contrary to what is maintained by the applicant, infringe Article 101 TFEU, make manifest errors of assessment or fail to comply with its obligation to investigate and to state reasons, with regard to the definition of the relevant market on which the unlawful practices at issue were implemented.

47 The first plea in law must therefore be rejected in its entirety.

The second plea in law, alleging infringements related to the characterisation of the discussions within Euroitalia and Michelangelo as an unlawful arrangement

48 The applicant submits that, although the Commission was entitled to criticise it for having 'inappropriate discussions relating to prices', those discussions did not however result in an agreement to set or coordinate price increases. In that context, the applicant submits that the Commission (i) infringed Article 101 TFEU by characterising the facts at issue as an infringement, (ii) made errors of assessment of the facts, (iii) failed to comply with its obligation to state reasons as set out in Article 296 TFEU and (iv) misused its powers.

49 As a preliminary point, it must be observed that it is not clear from the applicant's written submissions which arguments it is putting forward in support of the allegations of infringements set out in paragraph 48 above. On the other hand, it is absolutely clear that the applicant is advancing, in essence, three principal complaints in support of its second plea in law. The second plea in law must be examined in the light of those complaints.

50 In the first place, the applicant submits that, while the Commission was correct in finding, in the contested decision, that the applicant had not participated in a single, complex and continuous infringement, the Commission was, by contrast, incorrect in finding that the applicant had participated in a much more serious infringement than one consisting merely in participation in an exchange of sensitive business information on the taps and fittings market. In that regard, the applicant submits that, unlike the anti-competitive practices which covered the two product sub-groups other than taps and fittings and, moreover, took place in Member States other than Italy, the discussions on prices in which the applicant did take part did not give rise to the coordination or setting of those prices. Thus, in its submission, there is neither consistent nor sufficient evidence establishing parallel conduct on the part of the participants at those meetings, since each undertaking acted independently, which was, moreover, acknowledged by the undertakings that were granted a reduction of the fine under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3) ('the 2002 Leniency Notice').

51 The Commission contests those arguments.

52 First, the Court notes, concurring with the Commission, that, although the applicant denies that it 'coordinated' or 'set' price increases with its competitors, it none the less expressly acknowledges in its written submissions that it participated in 'inappropriate discussions relating to prices'.

53 Next, it should be borne in mind that, according to the case-law, in order for there to be an agreement within the meaning of Article 101(1) TFEU, it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way (Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 256, and Case T-9/99 *HFB Holding and Others* v *Commission* [2002] ECR II-1487, paragraph 199).

54 An agreement within the meaning of Article 101(1) TFEU can be regarded as having been concluded where there is a concurrence of wills on the very principle of a restriction of competition, even if the specific features of the restriction envisaged are still under negotiation (see, to that effect, *HFB Holding and Others* v *Commission*, paragraph 53 above, paragraphs 151 to 157 and 206).

55 The concept of a concerted practice refers to a form of coordination between undertakings which, without being taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition practical cooperation between them (Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 115, and Case C-199/92 P *Hüls* v *Commission* [1999] ECR I-4287, paragraph 158).

56 In this respect, Article 101(1) TFEU precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates adopting, on the market, where the object or effect of those contacts is to restrict competition (see, to that effect, *Commission* v *Anic Partecipazioni*, paragraph 55 above, paragraphs 116 and 117).

57 An exchange of information between competitors is incompatible with the European Union ('EU') rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted (see, to that effect, Case C-194/99 P *Thyssen Stahl* v *Commission* [2003] ECR I-10821, paragraph 81 and the case-law cited).

58 The disclosure of sensitive information removes uncertainty as to the future conduct of a competitor and thus directly or indirectly influences the strategy of the recipient of the information (see, to that effect, Case C-238/05 *Asnef-Equifax and Administración del Estado* [2006] ECR I-11125, paragraph 51 and the case-law cited). Each economic operator must therefore determine independently the policy which he intends to adopt on the internal market and the conditions which he intends to offer to his customers (see *Thyssen Stahl* v *Commission*, paragraph 57 above, paragraph 82 and the case-law cited).

59 While it is true that this requirement of independence does not deprive operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, however, strictly preclude any direct or indirect contact between them, the object or effect of which is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market (*Thyssen Stahl* v *Commission*, paragraph 57 above, paragraph 83).

60 It is therefore clear from the case-law set out in paragraphs 53 to 59 above that the Commission was fully entitled to find that the undertakings in question, including the applicant, had coordinated future price increases and that such price-coordination practices constituted an infringement of Article 101(1) TFEU, inasmuch as they are liable to remove any uncertainty that the applicant may have had as to the future conduct of its competitors and thus directly or indirectly to influence their business strategy.

61 Second, and in any event, it must be noted that the Commission found, in recital 472 to the contested decision, that '[it was immaterial whether the applicant had] fully applied all the price increases that it discussed at the meetings, [since] it [had] undoubtedly taken an active role in organising the meetings and it has actively participated in all relevant price discussions in the context of those meetings, in a systematic and sustained way over a very long period of time (exceeding 10 years)'. The Commission also observed, in recital 467 to the contested decision, that 'the participants took concrete steps to monitor the development of price increases, as evidenced from the continuous price reporting during meetings' and that 'the participants had developed close relationships characterised by a sufficient degree of cooperation and interdependency, such that they had reduced [freedom of action]'.

62 In that regard, the Court notes that the applicant puts forward neither argument nor evidence to challenge the Commission's two findings set out in recital 467 to the contested decision and recalled in paragraph 61 above. On the basis of those findings, the Commission was fully entitled to consider that the discussions on price increases at issue were prohibited by Article 101(1) TFEU, since they were liable to influence the conduct on the market of each competitor.

63 Moreover, contrary to the applicant's contention, the words 'price coordination' are appropriate for characterising the infringement in which the applicant participated. Even if it was established that the discussions on future price increases did not result in the cartel members agreeing on the prices they would charge, those discussions nevertheless facilitated the coordination of those price increases, in view of the systematic nature of the unlawful exchanges at issue.

64 The Commission did not therefore make any error in the characterisation of the infringement in which the applicant participated.

65 In the light of the foregoing conclusions, the Court must reject as ineffective the other arguments which the applicant puts forward to show that the Commission was incorrect in finding that the unlawful practices relating to taps and fittings on the Italian market were as serious as those committed in respect of the other two product sub-groups in the other Member States or that the discussions at issue covered only taps and fittings, excluding the other two product sub-groups. Those arguments do not call into question the Commission's finding of an infringement of Article 101(1) TFEU, since the applicant participated in the coordination of future price increases.

66 Consequently, the applicant's first complaint must be rejected.

67 In the second place, the applicant submits, in essence, that, during the Euroitalia meetings which took place from 16 October 1992 and, subsequently, during the Michelangelo meetings, its competitors merely communicated, in the context of discussions on market developments, information relating to pricing policies which they had previously determined. According to the applicant, the pricing policies adopted often differed from one undertaking to the next and were often very vague. Discussions on price increases concerned the increases adopted in previous years and the significance of those increases was discussed only in a general manner, without it being quantified. In that context, the applicant submits that it acted autonomously and independently on the market at all times with regard to both the timing of the price increases and the setting of the amount thereof. At the hearing, the applicant also stated, in response to questions from the Court, that it considered that the practices at issue had neither removed nor reduced the uncertainty regarding the conduct of its competitors, since they had not actually acted upon the exchanges of information at issue.

68 The Commission contests those arguments.

69 As a preliminary point, it must be noted that, in the contested decision, the Commission sets out first of all, in recitals 398 to 408, the main operating mechanisms of the cartel in Italy, within Euroitalia and Michelangelo, in respect of taps and fittings. Next, in recitals 409 and 410 to the contested decision, the Commission recalls that unlawful discussions within the association Federceramica started between 1990 and 1992, but that it did not take those discussions into account when penalising, inter alia, the applicant. Lastly, in recitals 411 to 462 to the contested decision, the Commission describes the various Euroitalia and Michelangelo meetings during which it considers that the undertakings in question, including the applicant, participated in unlawful discussions over a period from 16 October 1992 to 9 November 2004. Since the applicant disputes the Commission's findings only with regard to certain Euroitalia meetings during which unlawful discussions took place, it is only in the light of those meetings that it must be determined whether the Commission made errors of assessment in finding that the applicant had participated in anti-competitive discussions.

70 First, so far as concerns the Euroitalia meeting of 16 October 1992, the applicant asserts that the Commission misinterpreted the facts arguing that it was apparent from the notes taken at that meeting that the undertakings present had agreed to bring only their 'balance sheets' and not their 'results' to the next meeting. However, those balance sheets contained information available in the public domain. It submits that those notes do not therefore establish that the applicant participated in anti-competitive discussions.

71 In that regard, it must be observed that, the Commission's conclusion, in recital 411 to the contested decision, that anti-competitive discussions took place during the meeting on 16 October 1992, is based, as is apparent from footnote 506 of that decision, on the notes taken at that meeting which state, inter alia, the following:

'problems with price increase from 5 to 7% in January? ... At the next meeting, bring balance sheets [*bilanci*]. Communicate the price increases in December or January'.

72 If the notes referred to in paragraph 71 above are read in the light of the oral statement made by Grohe Beteilingungs GmbH ('Grohe') in support of its application for a reduction of the fine, the evidential value of which is not disputed by the applicant, it is absolutely clear that the participants at that meeting, including the applicant and Grohe, planned to increase their prices from the following January or February. According to Grohe's application for a reduction of the fine, during the Euroitalia meetings held in September or October each year, the participants discussed their prospective individual price increases for the following year (see recital 402 to the contested decision).

73 In addition, the applicant's argument that it is not possible to determine expressly from the notes taken at the meeting of 16 October 1992 which undertakings had decided to increase their prices and what the exact amounts of those increases were does not affect the finding that those notes, read in the light of Grohe's oral statement, establish to the requisite legal standard that the participants at that meeting, including the applicant, had, at the least, agreed on the actual principle of a future restriction of competition, even if the specific features of the restriction envisaged were still under negotiation. Such conduct constitutes an infringement of Article 101(1) TFEU in accordance with the case case-law cited in paragraphs 54 and 55 above.

74 The Commission did not therefore make an error of assessment in finding that the applicant had participated in anti-competitive discussions during the Euroitalia meeting of 16 October 1992.

75 Second, so far as concerns the Euroitalia meeting of 15 March 1993, the applicant maintains that the discussions held on that occasion demonstrate the independent nature of the business strategy of the undertakings which attended that meeting, in that the price increases had been planned before that meeting took place and there were considerable differences in those increases, as there were in the discounts provided for.

76 In that regard, it must be noted that the applicant does not challenge the Commission's finding, in recital 412 to the contested decision, that the handwritten notes of the managing director of Hansgrohe AG attest to the fact that the undertakings exchanged percentage price increases for 1993. While it is true that those increases — such as the increases envisaged by Hansa Metallwerke AG ('Hansa') (see recital 412 to the contested decision) — had been implemented one week before the meeting of 15 March 1993, such an exchange of information could only influence the conduct of the undertakings in question with regard to the actual application of their future price increases. That exchange of information helped create a climate of mutual trust and group discipline within Euroitalia with regard to the willingness of the participants to increase prices.

77 In those circumstances, the Commission has not made any error in the assessment of the facts in that regard.

78 Third, with regard to the Euroitalia meetings of 21 October 1994, 16 October 1995 and 14 May 1996, the applicant submits, in essence, that each of those meetings confirms that the undertakings concerned did not coordinate their pricing policies, which thus remained 'independent and distinct'. However, as is apparent from the notes taken at those meetings, which are referred to in recitals 416, 418 and 420 to the contested decision respectively and the content of which the applicant does not dispute, the discussions at issue also concerned future price increases.

79 With regard to the meeting of 21 October 1994, it suffices to note that the applicant does not deny that, as the Commission stated in recital 416 to the contested decision, and as is apparent from the notes of that meeting drawn up by the applicant itself, during that meeting RAF Rubinetteria SpA communicated its intention to increase its prices by 7% from 1 January the following year.

80 Next, so far as concerns the meeting of 16 October 1995, as the Commission noted in recital 418 to the contested decision, the notes taken at the meeting referred to in paragraph 79 above show inter alia that Rubinetteria Cisal SpA stated its intention to increase its prices by 5 or 6%.

81 Lastly, as regards the meeting of 14 May 1996, it must be stated that, although the parties have not provided the notes of that meeting, the fact remains that the applicant does not dispute that, as the Commission observed in recital 420 to the contested decision, Hansa stated at that meeting that it would increase its prices from September. In any event, it is apparent from the meeting which was held two months earlier — on 12 March 1996 — and which is referred to in recital 419 to the contested decision, that American Standard Inc. had provided for a price increase of 5% from 1 May 1996. The foregoing thus confirms the fact that the discussions held within Euroitalia during the first semester of 1996 also concerned future price increases.

82 It must therefore be found that the Commission did not make any error of assessment in finding that unlawful discussions on future price increases had taken place during the Euroitalia meetings of 21 October 1994, 16 October 1995 and 14 May 1996.

83 Fourth, so far as concerns the Euroitalia meetings of 31 January and 22 September 1997, 26 January and 16 October 1998, 7 May 1999, and 31 January and 28 October 2002, the applicant observes that, during those meetings, it and other participants 'stated their intention not to make increases to their [price] lists, although other participants at those meetings confirmed that they had already implemented … price increases — even significant ones'.

84 In that regard, the Court observes, first of all, that, as the Commission correctly points out in its written submissions, the fact that the applicant informed other participants, at the meetings referred to in paragraph 83 above, of its intention not to implement future price increases has no bearing on the finding that unlawful discussions on future price increases were held during those meetings in which the applicant participated (see recitals 412, 422, 425, 427, 431, 434, 448 and 451 to the contested decision). Moreover, and in any event, the fact that the applicant decided not to increase its prices is not the same as deliberately distancing itself from the unlawful activities of the cartel in question, since, by participating in those meetings, the applicant was privy to the information that its competitors exchanged.

85 Next, with regard more particularly to the meeting of 31 January 1997, in respect of which the applicant claims that the planned price increases were extremely varied and to which the Commission refers in recital 422 to the contested decision, it must be noted that the variety of those increases does not affect the finding that the discussions at issue were of such a kind as to influence the conduct on the market of the undertakings participating in those meetings.

86 Lastly, as regards the applicant's argument concerning the meeting of 26 January 1998, according to which the Commission failed to establish, in recital 427 to the contested decision, that the participants monitored the implementation of price increases which had previously been decided upon, it must be stated, first, that, even if that argument were well founded, it would not affect the finding that the discussions held at that meeting were unlawful, inasmuch as they concerned price increases to be implemented in 1998, which the applicant does not dispute. Second, and in any event, the content of the Euroitalia meetings of, in particular, 20 April 1993 (see recital 413 to the contested decision), 22 March 1994 (see recital 415 to the contested decision) and 14 May 1996 (see recital 420 to the contested decision), which is not disputed by the applicant, shows that the participants in those

meetings exchanged information on their previous price increases, with the result that each competitor was in a position to monitor directly the implementation of the price increases which had previously been announced.

87 In the light of the findings set out in paragraphs 71 to 86 above, the applicant's second complaint that, in essence, the discussions held within the framework of Euroitalia and Michelangelo, in which it participated, were not anti-competitive must be rejected as unfounded.

88 In the third place, the applicant submits that the Commission failed to assess, contrary to what is required by the case-law, the extent to which the exchange of information between competitors in the present case reduced or removed the degree of uncertainty as to the operation of the market in question. In the present case, the applicant submits that the characteristics of the relevant market show that the practices at issue were not liable to distort competition on that market. First, it maintains that it is only where the market is characterised by a limited number of operators that an exchange of information can, in essence, distort competition on that market. The aggregate market shares of the undertakings which took part in the Michelangelo and Euroitalia meetings is less than 40%. Next, it observes that there was no barrier to entry into that market. Moreover, competitivity and contractual strength at the level of demand side were considerable. Lastly, the supply side of, in particular, the taps and fittings sector, was especially fragmented.

89 It should be borne in mind that, in accordance with the case-law set out in paragraph 57 above, an exchange of information is incompatible with the rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted.

90 In that regard, the Court of Justice has also held that the compatibility of an information exchange system with the EU competition rules cannot be assessed in the abstract. It depends on the economic conditions on the relevant markets and on the specific characteristics of the system concerned, such as, in particular, its purpose and the conditions of access to it and participation in it, as well as the type of information exchanged — be that, for example, public or confidential, aggregated or detailed, historical or current — the periodicity of such information and its importance for the fixing of prices, volumes or conditions of service (*Asnef-Equifax and Administración del Estado*, paragraph 58 above, paragraph 54).

91 In the present case, that the contested decision shows unequivocally the unlawfulness, from the point of view of the competition rules, of the discussions in question. The mutual exchange of information on future individual price increases between the members of Euroitalia and Michelangelo — whose aggregate share of the taps and fittings market in Italy was stated by the applicant at the hearing to be 38% — could not fail to have the object, and the effect, of reducing the uncertainty of the competitors as to the future operation of the market. Furthermore, the applicant has not provided an explanation of what alternative objective the exchange of information might have had.

92 Since the competing undertakings which participated in the unlawful discussions held a significant share of the taps and fittings market in Italy, their aggregate share of that market being between 38 and 40%, the exchange of information on the implementation of future price increases necessarily reduced the degree of uncertainty which should have existed between them and encouraged them to increase their prices while minimising their risk of losing market share.

93 In those circumstances, the coordination of price increases in the present case was, in the light of the structure of the taps and fittings market in Italy, anti-competitive.

94 The other arguments put forward by the applicant do not invalidate the conclusion in paragraph 93 above.

95 The applicant's argument that, according to the case-law, if supply is fragmented, the dissemination and exchange of information between competitors may be neutral, or even positive, for the competitive nature of the market (see, inter alia, *Asnef-Equifax and Administración del Estado*, paragraph 58 above, paragraph 58) does not affect the findings, in paragraphs 90 and 91 above, that an exchange of information concerning future price increases between competing undertakings which hold between 38 and 40% of the taps and fittings market share had as its object, and necessarily as its effect, a negative influence on competition. That argument must therefore be rejected as ineffective.

96 Next, the applicant maintains that the absence of a barrier to entry into the taps and fittings market in Italy, in addition to the high degree of competitivity and contractual strength at the level of wholesalers demand, are liable to have reduced the impact which the exchange of information on price increases planned by the competing undertakings would have on the market. In that regard, it must be noted that, even if the specific features of the taps and fittings market in Italy were established, the applicant nevertheless failed to put forward any evidence to demonstrate that, in the present case, those specific features would have neutralised the impact of the anti-competitive practices in question. That argument must therefore be rejected as unfounded.

97 In those circumstances, the applicant's third complaint and, therefore, all three complaints put forward in support of the second plea in law must be rejected.

98 In the light of all the foregoing considerations and having regard to the various infringements alleged by the applicant and set out in paragraph 48 above, the Court finds that the applicant has failed to establish (i) that the Commission made errors in the assessment of the facts in finding, on the one hand, that the discussions which were held during the meetings it described were anti-competitive (see paragraphs 67 to 87 above) and, on the other, that those discussions were liable to distort competition (see paragraphs 88 to 97 above) and (ii) that the Commission infringed Article 101 TFEU by characterising the conduct at issue as anti-competitive (see paragraphs 50 to 66 above). It is also apparent from those findings that the applicant has failed to establish that the Commission misused its powers by concluding that the applicant had participated in an infringement of Article 101 TFEU. Nor did the Commission fail to comply with its obligation to state reasons since, as is apparent from the recitals to the contested decision referred to in paragraphs 61, 69, 71, 76, 79, 84 to 86 above, the Commission gave a sufficient statement of its reasons for taking the view that the applicant had participated in anti-competitive discussions in breach of Article 101(1) TFEU.

99 The second plea in law must therefore be rejected in its entirety.

The third plea in law, alleging errors and infringements committed by the Commission in the calculation of the fine

100 The applicant submits that the Commission committed various errors and infringements in the calculation of the fine that it imposed on the applicant. In that regard, the applicant puts forward two principal complaints.

101 By its first complaint, the applicant submits that the Commission committed various infringements relating to the application of multipliers of 15% adopted in recitals 1220 and 1225 to the contested decision. First, it maintains that the Commission failed to comply with its obligation to state reasons with regard to the setting of those multipliers. Next, it made an error of assessment when setting those multipliers and infringed the principle of personal liability and the principle that penalties must be specific to the offender and the offence, and the principle of proportionality, by applying those multipliers to the applicant even though it participated in the infringement to a lesser extent than the other undertakings. In that context, the applicant also observes that the contested decision is contradictory because the Commission found, without drawing a distinction between the undertakings, that the infringement covered six Member States. However, the infringement of which

the applicant is accused only concerns Italy. Lastly, it maintains that the Commission infringed the principle of equal treatment, since it should have drawn a distinction between the undertakings which participated in the single infringement and the undertakings which participated in only one aspect of that infringement, such as the applicant. The Commission should not therefore have applied the same multipliers to punish all the undertakings penalised in the contested decision.

102 The Court notes that the infringements alleged by the applicant, set out in paragraph 101 above, all seek to challenge, although from different perspectives, the multipliers of 15% of turnover relating to the applicant's sale of taps and fittings in Italy, which the Commission applied for the purposes of calculating the basic amount of the fine, in accordance with points 21 to 23 and point 25 of the 2006 Guidelines. In those circumstances, it is necessary, in the first place, to recall the rules for calculating the basic amount of the fine provided for in the 2006 Guidelines, in the second place, to establish the grounds relied on by the Commission in support of its decision to apply a multiplier of 15% and, in the third place, to examine whether, in doing so, it committed the errors and infringements alleged by the applicant.

103 In the first place, so far as concerns the rules for calculating fines, the Court notes that, under points 9 to 11 of the 2006 Guidelines, the Commission's methodology when calculating fines entails two stages. First, the Commission determines a basic amount for each undertaking or association of undertakings. Second, it may adjust that basic amount upwards or downwards, taking account in that regard of aggravating or mitigating circumstances which characterise the participation of each of the undertakings concerned.

104 As regards, more specifically, the first stage of the methodology for calculating fines, in accordance with points 21 to 23 of the 2006 Guidelines, the proportion of the value of sales taken into account ('multiplier for "gravity of the infringement"') is set at a level of up to 30%, regard being had to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented, since price-fixing, market-sharing and output-limitation agreements are, by their very nature, among the most harmful restrictions of competition. Under point 25 of the 2006 Guidelines, it is stated that, for the purpose of deterrence, the Commission will include in the basic amount a proportion, used to calculate an additional amount ('multiplier for the "additional amount"'), of between 15 and 25% of the value of sales, taking account of the aforementioned factors.

105 In the second place, with regard to the multiplier for the value of the sales of each undertaking applied by the Commission in the contested decision, recitals 1211 to 1214 to the contested decision are worded as follows:

> '1211 Horizontal price coordination is, by its very nature, among the most harmful restrictions of competition. The addressees of [the contested decision] participated in a single, complex and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement, with the common objective to distort competition on the market for bathroom fittings and fixtures (see Section 5). The cartel arrangements covered at least six Member States, permeated all product groups under investigation and operated entirely to the benefit of the participating producers and to the detriment of their customers and, ultimately, consumers.
>
> 1212 The combined market share of the undertakings for which the infringement could be established fluctuates from Member State to Member State, but is estimated to be around approximately 54.3% for all product groups and in all Member States covered by the Commission's investigation. This figure does not take into account the market shares of other minor participants to which [the contested decision] is not addressed.

1213 The cartel arrangements covered at least six Member States, namely Germany, Austria, Italy, Belgium, France and the Netherlands.

1214 It has been established that the infringement was generally implemented … albeit there is no sufficient evidence to consider that it was rigorously implemented.'

106 So far as concerns the multiplier for 'gravity of the infringement', the Commission stated, in recital 1220 to the contested decision, on the basis of the above considerations, the following:

'1220 In conclusion, and taking into account the factors in this Section, and in particular the nature of the infringement, the proportion of the value of sales of each undertaking involved to be used to establish the basic amount of the fines to be imposed should be 15%.'

107 As regards the multiplier for the 'additional amount', the Commission stated, in recital 1225 to the contested decision, the following:

'1225 Given the specific circumstances of the case, taking into account the criteria discussed [in recitals 1210 to 1220 to the contested decision], the percentage to be applied for the [multiplier for the 'additional amount'] is set at 15%.'

108 It is therefore apparent from the reasons put forward in recitals 1211 to 1214, 1220 and 1225 to the contested decision that the Commission justified the application of the multipliers for 'gravity of the infringement' and the 'additional amount' of 15% on the basis of the finding that the undertakings penalised in the contested decision had participated in a single infringement in the bathroom fittings and fixtures market in respect of three product sub-groups in six Member States and that the 'horizontal price-fixing agreement' implemented in the present case, is, by its very nature, among the most harmful restrictions of competition.

109 However, as the applicant correctly maintains, the Commission held, in recital 879 to the contested decision, and confirmed in its pleadings, that the applicant, like the other Italian independent manufacturers penalised in the contested decision, had participated only in the Italian aspect of the single infringement in respect of taps and fittings and ceramics, but not shower enclosures, given 'there [was] insufficient evidence to safely conclude that [they] were aware of the general scope of the cartel'. That also led the Commission to state in Article 1(5)(18) of the contested decision, inter alia, that the applicant had participated in an infringement relating to bathroom fittings and fixtures in Italy.

110 In the third place, the five errors and infringements alleged by the applicant and set out in paragraph 101 above must be examined in the light of the considerations set out in paragraphs 105 to 109 above.

111 First, so far as concerns the applicant's argument that the Commission failed to comply with its obligation to state reasons, it is appropriate to recall the case-law according to which, when calculating the basic amount of the fine, the Commission fulfils its obligation to state reasons when it indicates in its decision the factors which enabled it to measure the gravity of the offence, without being required to set out a more detailed account or the figures relating to the method of calculating the fine (see Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others* v *Commission* [2004] ECR II-1181, paragraph 252 and the case-law cited).

112 In the present case, contrary to the applicant's contention, the Commission stated, in recitals 1211 to 1214, 1220 and 1225 to the contested decision, set out in paragraphs 105 to 107 above, the reasons for applying, in recitals 1220 and 1225 to the contested decision, the multipliers for the 'gravity of the infringement' and the 'additional amount' of 15%.

113 In those circumstances, the applicant's argument that the Commission failed to comply with its obligation to state reasons must be rejected as unfounded.

114 Second, as regards the error which the applicant alleges the Commission made in the assessment of the facts, the Commission must be found to have erred in holding that the application of multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% was justified by the fact that the undertakings covered by the contested decision had participated in a single infringement in respect of three product sub-groups and covering six Member States. In fact, as the Commission itself observed in recital 879 to the contested decision, the applicant was involved in an infringement relating to the coordination of price increases in Italy alone, and not in the five other Member States referred to in paragraph 1 above, owing to the fact that the unlawful discussions that had taken place concerned taps and fittings and ceramics but not shower enclosures. In that regard, the Court observes that the applicant does not dispute, in that context, the Commission's finding that it had participated in an infringement relating to both taps and fittings and ceramics.

115 It thus follows from the Commission's finding in recital 879 to the contested decision that the Commission could not properly justify the application applying multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% to the applicant on the ground that it had participated in a single infringement relating to three product sub-groups and covering six Member States. It must therefore be found that the Commission made an error in the assessment of the facts in that regard.

116 First of all, the Court finds ineffective the Commission's arguments that the fine imposed on the applicant reflects its participation only in the Italian aspect of the infringement found, that the value of sales of each undertaking taken into account reflects their individual, actual and specific involvement in the infringement, and that the multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% are modest in the light of the gravity of the infringement in which the applicant participated. None of those arguments invalidates the finding that the Commission could not rely on the ground set out in paragraph 115 above to justify the application of multipliers for the 'gravity of the infringement' and the 'additional amount' of 15%.

117 Next, the Court also finds ineffective the Commission's arguments that it followed the various stages of the methodology for calculating fines as provided for by the 2006 Guidelines, that it used the turnover figures provided by the undertakings covered by the contested decision, that it had a margin of discretion in calculating the fines, and that the gravity of the infringement in which the applicant participated is reflected in the proportion of the value of the sales that was taken into account. Those arguments do not affect the finding that the Commission was not entitled to rely on the ground set out in paragraph 115 above.

118 Lastly, the Court rejects the argument put forward by the Commission in response to questions from the Court at the hearing that the difference in geographic scope resulting from the participation of undertakings in the single infringement in its entirety, on the one hand, and only in Italy, on the other, does not justify the application of different multipliers for the 'gravity of the infringement' and the 'additional amount'. An infringement covering six Member States and relating to three product sub-groups cannot properly be regarded as being of the same gravity as an infringement committed in one Member State alone and relating to two product sub-groups. Having regard to the scope of the effects of the infringement on competition within the European Union, that former infringement must be considered to be more serious than the latter.

119 In the light of the considerations set out in paragraphs 114 to 118 above, the Commission must be found to have made two errors of assessment in basing the application of multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% on the fact that the applicant had participated in a single infringement covering six Member States and relating to three product sub-groups. The applicant's argument in that regard must therefore be upheld.

120 Third, as regards the alleged infringement of the principle of proportionality, it should be borne in mind that, in proceedings initiated by the Commission to penalise infringements of the competition rules, the application of that principle means that fines must not be disproportionate to the objectives pursued, that is to say, to compliance with those rules, and that the amount of the fine imposed on an undertaking in respect of an infringement of competition law must be proportionate to the infringement, seen as a whole, having regard, in particular, to the gravity thereof (see, to that effect, Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501, paragraph 532). In particular, the principle of proportionality requires the Commission to set the fine proportionately to the factors taken into account for the purposes of assessing the gravity of the infringement and also to apply those factors in a way which is consistent and objectively justified (Case T-43/02 *Jungbunzlauer* v *Commission* [2006] ECR II-3435, paragraphs 226 to 228, and Case T-446/05 *Amann & Söhne and Cousin Filterie* v *Commission* [2010] ECR II-1255, paragraph 171).

121 In the present case, it must be found that the applicant participated in an infringement consisting in the coordination of future price increases, that that coordination related not only to taps and fittings, as stated in the context of the second plea in law, but also to ceramics — which is not disputed by the applicant in its action — and that that infringement covered the whole of Italy. In those circumstances, the Commission was entitled, pursuant to points 21 to 23 and point 25 of the 2006 Guidelines, to consider that multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% were consistent with the principle of proportionality.

122 The applicant's argument that the Commission infringed the principle of proportionality must therefore be rejected as unfounded.

123 Fourth, in so far as the applicant claims that the Commission infringed the principle of personal liability and that penalties must be specific to the offender and to the offence, it should be borne in mind that, according to the case-law, the Commission is, by virtue of that principle, required to take into account, when assessing the relative seriousness of the participation of each offender in a cartel, the fact that certain offenders are not being held liable for every aspect of that cartel, if that be the case (see Case T-21/05 *Chalkor* v *Commission* [2010] ECR II-1895, paragraph 100 and the case-law cited).

124 In the present case, as stated in paragraph 115 above, the Commission incorrectly justified the application of multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% to the applicant in considering that the applicant had participated in a single infringement covering six Member States and relating to three product sub-groups, even though the Commission had expressly acknowledged, in recital 879 to the contested decision, that the applicant could be held liable only for its participation in a cartel on the Italian market in respect of two product sub-groups. However, it must also be found that, as stated in paragraph 121 above, the application of multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% to the applicant was fully justified in the light of the gravity of the infringement which the applicant itself had committed.

125 In those circumstances, the Commission has not infringed the principle of personal liability and that penalties must be specific to the offender and to the offence in applying multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% to the applicant.

126 The applicant's argument must therefore be rejected as unfounded.

127 Fifth, so far as concerns the infringement of the principle of equal treatment alleged by the applicant, it should be borne in mind that, according to settled case-law, the principle of equal treatment is infringed where comparable situations are treated differently or different situations are treated in the same way, unless such treatment is objectively justified (Case 106/83 *Sermide* [1984] ECR 4209, paragraph 28, and Case T-161/05 *Hoechst* v *Commission* [2009] ECR II-3555, paragraph 79).

128 In the present case, it is to be noted that all addressees of the contested decision were subject to multipliers for the 'gravity of the infringement' and the 'additional amount' of 15%, even though, unlike the undertakings which participated in the single infringement covering the three product sub-groups in six Member States, the applicant, like four other Italian undertakings penalised in Article 1(5) of the contested decision, could be held liable only for the Italian aspect of the infringement found. The gravity of the infringement in which the applicant participated was therefore less significant — in terms of both its geographic scope and the products covered by it — than that of the infringement committed by the other addressees of the contested decision which participated in a single infringement covering six Member States and relating to three product sub-groups. However, even if the Commission, when establishing those multipliers, should have treated the undertakings which participated in the single infringement covering six Member States and relating to three product sub-groups differently from those which participated in a single infringement covering only one territory and relating to two product sub-groups, the fact remains that such different treatment would have been of no benefit to the applicant. As stated in paragraph 121 above, the multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% applied to the applicant are proportionate to the gravity of the infringement it committed. The lack of differential treatment between the undertakings to which the contested decision was addressed has therefore not been to the detriment of the applicant.

129 In those circumstances, the applicant's argument that the Commission infringed the principle of equal treatment to its detriment must be rejected as unfounded.

130 In the light of all the foregoing considerations, the applicant's argument that the Commission made two errors of assessment (see paragraph 119 above) must be upheld and the first complaint must be rejected as to the remainder.

131 By its second complaint, the applicant challenges the Commission's refusal to grant it, under point 29 of the 2006 Guidelines, a reduction of the fine on the ground of its limited participation in the infringement. The applicant puts forward two principal arguments in support of its application for a reduction of the fine. First, it asserts that it has always pursued an independent business strategy, as is apparent from numerous meetings held between 15 March 1993 and 28 October 2002, during which it communicated its intention not to implement price increases. It maintains that it therefore clearly and significantly distanced itself from the agreements to which other members of the cartel had given their approval. Second, the applicant submits that the Commission incorrectly rejected, in the contested decision, the argument that it should have been granted a reduction of the fine, inasmuch as its role in the infringement was less serious than that of other members of the cartel. The value of the undertaking's sales — which is certainly a factor for assessing the influence which an undertaking may exert on account of its economic significance — does not however reflect the gravity of its participation in the infringement. Moreover, it was the multinational undertakings which were responsible for the anti-competitive practices within Euroitalia and Michelangelo and which participated in unlawful practices in several Member States.

132 Point 29 of the 2006 Guidelines is worded as follows:

'The basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as:

— where the undertaking concerned provides evidence that it terminated the infringement as soon as the Commission intervened: this will not apply to secret agreements or practices (in particular, cartels);

— where the undertaking provides evidence that the infringement has been committed as a result of negligence;

— where the undertaking provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market: the mere fact that an undertaking participated in an infringement for a shorter duration than others will not be regarded as a mitigating circumstance since this will already be reflected in the basic amount;

— where the undertaking concerned has effectively cooperated with the Commission outside the scope of the Leniency Notice and beyond its legal obligation to do so;

— where the anti-competitive conduct of the undertaking has been authorised or encouraged by public authorities or by legislation.'

133 With regard to the mitigating circumstance provided for in the third indent of point 29 of the 2006 Guidelines, which alone is relevant in the light of the arguments put forward by the applicant, it should be observed, as the Commission did in recital 1252 to the contested decision, that, according to the case-law, in order for an undertaking to benefit from a reduction of the fine for not implementing a cartel, the circumstances must show that, during the period in which the undertaking was party to the offending agreements, it actually avoided implementing them by adopting competitive conduct on the market or, at the very least, that it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation (Case T-26/02 *Daiichi Pharmaceutical* v *Commission* [2006] ECR II-713, paragraph 113).

134 In the present case, it must be noted that the applicant's argument that it always pursued an independent business strategy has no factual basis. As stated in the context of the examination of the second plea in law above (see in particular paragraphs 52 to 87 above), the undertakings which were members of Euroitalia exchanged information on their past price increases and monitored the implementation by their competitors of future price increases which had previously been discussed.

135 Moreover, and in any event, the applicant puts forward neither argument nor evidence to establish that it actually avoided implementing the price increases discussed during the Euroitalia and Michelangelo meetings. On the contrary, as the Commission correctly pointed out in the tables set out in Annexes 6 and 7 to the contested decision, the applicant participated at nearly all the Euroitalia meetings and at a significant number of Michelangelo meetings during which unlawful discussions were held.

136 In those circumstances, it must be found that the Commission did not make any error in refusing to grant the applicant a reduction of the fine in that regard.

137 In the light of all the foregoing considerations, the third plea in law must be upheld in part and rejected as to the remainder, and the first and second pleas in law must also be rejected.

138 So far as concerns the conclusions to be drawn in respect of the claim for the partial annulment of the contested decision, first, the claim must be rejected, in so far as it relates to Article 1(5)(18) of the contested decision.

139 Second, the Commission, since it correctly concluded that the applicant had committed an infringement of Article 101 TFEU, was fully entitled, on the basis of Article 23(2) of Regulation No 1/2003 referred to in recital 1182 to the contested decision, to decide, in Article 2(17) of that decision, to impose a fine on the applicant. The claim for partial annulment of the contested decision must therefore be rejected, in so far as it relates to Article 2(17) of that decision.

140 Given that Article 2(17) of the contested decision sets the amount of the fine to be imposed on the applicant and that the applicant, under the second head of claim, requests, in the alternative, a reduction in the amount of that fine, the Court will determine the consequences that should follow from the errors, found in paragraph 119 above, relating to the setting of that fine, when it examines that head of claim.

141 It follows from the considerations in paragraphs 138 to 140 above that the claim for partial annulment of the contested decision must be rejected in its entirety.

Alternative head of claim: cancellation or reduction of the fine imposed on the applicant

142 Having regard to the second head of claim, by which the applicant requests that the Court cancel or reduce the fine imposed on it (see paragraph 15 above), it falls to the Court, in the exercise of its unlimited jurisdiction, to examine (i) the consequences that the errors made by the Commission, which are set out in paragraph 125 above, have on the calculation of the fine imposed on the applicant and (ii) the other arguments whereby the applicant seeks to persuade the Court to grant it a reduction in its fine.

143 In that regard, it should be borne in mind that, according to the case-law, in the exercise of its unlimited jurisdiction, the Court must carry out its own assessment, taking account of all the circumstances of the case and respecting the general principles of EU law, such as the principle of proportionality (see, to that effect, *Romana Tabacchi* v *Commission*, paragraph 17 above, paragraphs 179 and 280) or the principle of equal treatment (Joined Cases C-125/07 P, C-133/07 P and C-135/07 P *Erste Group Bank and Others* v *Commission* [2009] ECR I-8681, paragraph 187).

144 Furthermore, the exercise of unlimited jurisdiction does not amount to a review of the Court's own motion. With the exception of grounds involving matters of public policy which the Courts are required to raise of their own motion, such as the failure to state reasons for a contested decision, it is for the applicant to raise pleas in law against that decision and to adduce evidence in support of those pleas (see, to that effect, *Chalkor* v *Commission*, paragraph 17 above, paragraph 64).

145 Although the guidelines do not prejudge the assessment of the fine by the Courts of the Union when they adjudicate in the exercise of their unlimited jurisdiction (Joined Cases T-49/02 to T-51/02 *Brasserie nationale and Others* v *Commission* [2005] ECR II-3033, paragraph 169), the Court deems it appropriate in the present case to draw on them in recalculating the fine, in particular because they allow all the relevant elements of an individual case to be taken into account and proportionate fines to be imposed on all the undertakings that have participated in the infringement found.

146 First, it should be borne in mind that the Court has found, in paragraph 115 above, that the Commission, for the purpose of setting multipliers for the 'gravity of the infringement' and the 'additional amount' of 15%, incorrectly relied on the ground based, in essence, on the fact that all the undertakings covered by the contested decision had participated in a single infringement. The Court also found that, as stated in paragraph 121 above, those multipliers, on a scale of 0 to 30% in the case of the multiplier for the 'gravity of the infringement' and 15 to 25% in the case of the multiplier for the 'additional amount', were consistent with the principle of proportionality.

147 It is also true that the multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% were applied by the Commission, as stated in paragraph 128 above, for the purpose of calculating the fines to be imposed on the undertakings which had participated in the single infringement covering three product sub-groups in six Member States. However, that infringement was more serious, on account of its geographic scope and the number of product sub-groups concerned, than that in which the applicant participated.

148 The fact that the undertakings which participated in the single infringement covering six Member States and relating to three product sub-groups should have been subject to a fine calculated on the basis of multipliers for the 'gravity of the infringement' and the 'additional amount' higher than the multipliers of 15% adopted to penalise the applicant cannot however justify the Court imposing, in the exercise of its unlimited jurisdiction, a fine on the applicant which is not a sufficient deterrent in the light of the gravity of the infringement in which it participated.

149 In those circumstances, the Court takes the view, in the light of the 2006 Guidelines and the findings set out in paragraph 148 above, that the multipliers for the 'gravity of the infringement' and the 'additional amount' of 15% are appropriate.

150 Second, so far as concerns the applicant's claim for a reduction of the fine on the ground that its role in the meetings at which it participated was minor compared to that of the other multinational undertakings, the Court recalls that, as stated in paragraph 62 above, the applicant puts forward neither argument nor evidence to cast doubt on the Commission's findings, in recitals 467 and 492 to the contested decision, which show that the applicant participated actively in the implementation of the unlawful practices at issue, with the result that its role cannot be considered to be minor. In those circumstances, the Court finds that the applicant's argument does not give grounds for reducing the fine of EUR 3 996 000 imposed on the applicant by the Commission.

151 In those circumstances, the Court concludes, in the exercise of its unlimited jurisdiction, that none of the elements relied on in any respect by the applicant in the present case, nor any ground of public policy, justifies it making use of that jurisdiction to reduce the fine imposed on the applicant. Moreover, The Court also considers, having regard to all the evidence before it, that a fine of EUR 3 996 000 is, in the light of the duration and gravity of the infringement in which the applicant participated, an appropriate punishment intended to penalise, in a way which is proportionate and dissuasive, its anti-competitive conduct.

152 It follows from all the foregoing considerations, so far as concerns the alternative head of claim seeking cancellation or reduction of the fine imposed on the applicant in Article 2(17) of the contested decision, that, since the amount set by the Commission is identical to the amount set by the Court in the exercise of its unlimited jurisdiction, in paragraph 151 above, that head of claim must be rejected.

153 In the light of the conclusions reached in paragraphs 141 and 152 above, the Court dismisses the action in its entirety.

Costs

154 Under Article 87(2) 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. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Zucchetti Rubinetteria SpA to bear its own costs and to pay those incurred by the European Commission.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 16 September 2013.

[Signatures]

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