Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

9 June 2016*

(Appeal — Agreements, decisions and concerted practices — Article 81 EC — Spanish market for penetration bitumen — Market sharing and price coordination — Excessive duration of the proceedings before the General Court of the European Union — Excessive duration of the procedure before the European Commission — Appeal on the costs)

In Case C-616/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 November 2013,

Productos Asfálticos (PROAS) SA, established in Madrid (Spain), represented by C. Fernández Vicién, abogada,

appellant,

the other party to the proceedings being:

European Commission, represented by C. Urraca Caviedes and F. Castillo de la Torre, acting as Agents, and by A.J. Rivas, avocat,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting as President of the Fifth Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, D. Šváby (Rapporteur), A. Rosas and C. Vajda, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Spanish.

Judgment

1 By its appeal, Productos Asfálticos (PROAS) SA, asks the Court to set aside the judgment of the General Court of the European Union of 16 September 2013 in *PROAS* v *Commission* (T-495/07, 'the judgment under appeal', EU:T:2013:452), which dismissed PROAS' action for annulment of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article [81 EC] (Case COMP/38.710 — Bitumen (Spain)) ('the decision at issue'), in so far as that decision concerns PROAS, and, in the alternative, the reduction of the amount of the fine imposed on it.

Legal context

Regulation (EC) No 1/2003

2 Article 31 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [81 and 82 EC] (OJ 2003 L 1, p. 1) provides that 'the Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment [and that it] may cancel, reduce or increase the fine or periodic penalty payment imposed'.

The 1998 Guidelines

3 The Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article [65(5) CS] (OJ 1998 C 9, p. 3; 'the 1998 Guidelines') provide in Section 1 thereof, relating to the assessment of the gravity of the infringement:

'A. Gravity

In assessing the gravity of the infringement, account must be taken of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market.

Infringements will thus be put into one of three categories: minor infringements, serious infringements and very serious infringements.

…

— very serious infringements:

These will generally be horizontal restrictions such as price cartels and market-sharing quotas …

Likely fines: above [EUR] 20 million

…'

Background to the dispute and the decision at issue

4 The background to the dispute was set out in paragraphs 1 to 89 of the judgment under appeal and may be summarised as follows.

5 The product concerned by the infringement is penetration bitumen, namely a type of bitumen which has not been processed and is used for the construction and maintenance of roads.

6 The Spanish bitumen market comprises, first, three producers, namely the Repsol, CEPSA-PROAS and BP groups, and, second, importers, including the Nynäs and Petrogal groups.

7 The CEPSA-PROAS group is an international group of companies in the energy sector listed on the stock exchange and is present in several countries. PROAS, since 1 March 1991 a wholly-owned subsidiary of Compañía Española de Petróleos (CEPSA) SA, markets bitumen produced by CEPSA and produces and markets other bitumen products.

8 Following an application for immunity submitted on 20 June 2002 by the one of the companies in the BP group pursuant to the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3, 'the 2002 Leniency Notice'), investigations were carried out on 1 and 2 October 2002 at the premises of the Repsol, CEPSA-PROAS, BP, Nynäs and Petrogal groups.

9 On 6 February 2004, the Commission sent the undertakings concerned a first round of requests for information pursuant to Article 11(3) 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).

10 By faxes of, respectively, 31 March and 5 April 2004, the Repsol group companies and PROAS submitted an application to the Commission pursuant to its 2002 Leniency Notice, together with a corporate statement.

11 After having sent four other requests for information to the undertakings concerned, the Commission formally initiated proceedings and, between 24 and 28 August 2006, notified a statement of objections to the companies concerned in the BP, Repsol, CEPSA-PROAS, Nynäs and Petrogal groups.

12 On 3 October 2007, the Commission adopted the decision at issue by which it found that the 13 companies to which it was addressed had participated in a complex of market-sharing agreements and price coordination of penetration bitumen in Spain (excluding the Canary Islands).

13 The Commission considered that each of the two restrictions of competition established, namely the horizontal market-sharing agreements and the price coordination, was by its nature among the most serious types of infringements of Article 81 EC, which, according to the case-law, are capable of warranting the classification of 'very serious' infringements.

14 The Commission set the 'starting amount' of the fines to be imposed at EUR 40 000 000 by taking into account the gravity of the infringement, the estimated value of the relevant market, namely EUR 286 400 000 for 2001, the last full year of the infringement, and the fact that the infringement was limited to sales of bitumen in one Member State.

15 The Commission then placed the companies to which the decision at issue was addressed in different categories, defined by reference to their relative importance on the relevant market, for the purposes of applying differential treatment, in order to take account of their effective economic capacity to cause significant damage to competition.

16 The Repsol group and PROAS, whose shares of the relevant market amounted, respectively, to 34.04% and 31.67% in 2001, were placed in the first category, the BP group, with a market share of 15.19%, in the second category, and the Nynäs and Petrogal groups, whose market shares varied between 4.54% and 5.24%, in the third category. On that basis, the basic amounts of the fines to be imposed were adjusted as follows:

— category one, for the Repsol group and PROAS: EUR 40 000 000;

— category two, for the BP group: EUR 18 000 000; and

— category three, for the Nynäs and Petrogal groups: EUR 5 500 000.

17 After increasing the 'basic amount' of the fines according to the length of the infringement, namely a period of 11 years and 7 months as regards PROAS (from 1 March 1991 to 1 October 2002), the Commission found that the amount of the fine to be imposed on it had to be increased by 30% on the basis of aggravating circumstances, since that undertaking had been amongst the significant 'driving forces' of the cartel at issue.

18 The Commission also decided that, pursuant to the 2002 Leniency Notice, PROAS was entitled to a reduction of 25% of the amount of the fine which should have normally been imposed on it.

19 On the basis of those factors, CEPSA and PROAS were fined jointly and severally EUR 83 850 000.

Procedure before the General Court and the judgment under appeal

20 By application lodged at the General Court Registry on 20 December 2007, PROAS applied for annulment of the decision at issue, in so far as that decision concerns it, and, in the alternative, for a reduction of the amount of the fine imposed on it. PROAS also requested that the Commission be ordered to pay the costs.

21 In support of its action, PROAS raised eight pleas in law.

22 The General Court rejected each of PROAS' pleas and therefore dismissed the action in its entirety.

23 By way of counterclaim, the Commission requested the General Court, in the exercise of its unlimited jurisdiction, to increase the amount of the fine imposed on PROAS, a request which the General Court refused to grant.

Forms of order sought

24 By its appeal, PROAS claims that the Court of Justice should:

— set aside the judgment under appeal;

— rule definitively on the dispute, without referring the case back to the General Court, and annul the decision at issue or, alternatively, reduce the amount of the fine imposed on PROAS;

— in the alternative, refer the case back to the General Court; and

— order the Commission to pay the costs of the two proceedings.

25 The Commission contends that the Court of Justice should:

— dismiss the appeal; and

— order the appellant to pay the costs.

The appeal

26 The appellant puts forward four grounds in support of its appeal.

27 The first ground of appeal, which includes four parts, alleges infringement of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of Article 261 TFEU and of Article 31 of Regulation No 1/2003. By its second ground of appeal, which ought to be examined first, the appellant claims that the General Court incorrectly interpreted Section 1.A of the 1998 Guidelines. The third plea alleges infringement of the principle of observance of a reasonable time limit. The fourth ground concerns infringement of Article 87(2) of the Rules of Procedure of the General Court, in the version applicable to the dispute.

The second ground of appeal, alleging a misinterpretation of Section 1.A of the 1998 Guidelines

Arguments of the parties

28 By its second ground of appeal, directed against paragraphs 129 to 135, 140 to 143, 149 and 439 to 442 of the judgment under appeal, the appellant complains that the General Court infringed the principles of legal certainty and equal treatment and its rights of defence, by misinterpreting Section 1.A of the 1998 Guidelines.

29 In the first place, PROAS takes the view that, in accordance with the wording of that paragraph and the objectives of competition policy, the General Court had to determine whether the Commission had taken into account, in order to determine the basic amount of the fine, the impact on the relevant market of the infringement at issue, since that impact was, in the present case, 'measurable'.

30 The General Court accepted that the Commission categorises the infringement at issue as a 'very serious infringement' for the purposes of that paragraph and sets the basic amount of the fine at twice the minimum amount laid down for such infringements, without assessing the impact of the infringement.

31 In so doing, the General Court also undermined the binding nature on the Commission of its own guidelines, allowed it to depart from its previous decision-making practice and infringed Article 47 of the Charter by transforming, according to the applicant, the presumption that the arrangements are very serious infringements 'solely on account of their nature' into an irrefutable presumption.

Findings of the Court

32 By the present ground of appeal, the appellant complains that the General Court committed an error of law by holding that the Commission could categorise the disputed infringement as 'very serious' for the purposes of Section 1.A of the 1998 Guidelines due to the very nature of that infringement.

33 In that regard, suffice it to note that, in accordance with settled case-law, it follows from the 1998 Guidelines that horizontal price or market sharing agreements may be classified as very serious infringements solely on account of their nature, without the Commission being required to demonstrate an actual impact of the infringement on the market (see, to that effect, judgment of 3 September 2009 in *Prym and Prym Consumer* v *Commission*, C-534/07 P, EU:C:2009:505, paragraph 75; of 24 September 2009 in *Erste Group Bank and Others* v *Commission*, C-125/07 P, C-133/07 P and C-137/07 P, EU:C:2009:576, paragraph 103; and of 8 May 2013 in *Eni* v *Commission*, C-508/11 P, EU:C:2013:289, paragraph 97).

34 Therefore, the General Court was entitled, without infringing the principles of legal certainty and equal treatment, the appellant's rights of defence or Article 47 of the Charter, after having noted, in paragraph 130 of the judgment under appeal, that the infringement in dispute took the form of horizontal market sharing agreements and price coordination, then, in paragraph 133 of that judgment, the case-law referred to, in essence, in the previous paragraph of the present judgment, to

reject PROAS' argument that the Commission could not categorise the infringement at issue as a 'very serious infringement' for the purposes of Section 1.A of the 1998 Guidelines, without assessing its impact on the market.

35 Accordingly, the second ground of appeal must be rejected as being unfounded.

The first plea, alleging infringement of Article 47 of the Charter, Article 261 TFEU and Article 31 of Regulation No 1/2003

The first and second parts of the first ground of appeal, alleging, respectively, distortion of the pleas in law relied on by PROAS and the infringement of the right to effective judicial protection

– Arguments of the parties

36 By the first part of its first ground of appeal, the appellant criticises the General Court for having, in paragraphs 125, 127 and 140 to 142 of the judgment under appeal, distorted the pleas in law on which it relied. The General Court thus considered, first, that PROAS merely disputed the categorisation as a 'very serious infringement' of the infringement at issue, without disputing separately the basic amount of the fine imposed on it. Second, the General Court found that PROAS had relied on the characteristic elements of the Spanish market by way of mitigating circumstances, and not as factors illustrating the lesser gravity of the infringement in dispute.

37 In so doing, the General Court did not permit PROAS at any time to dispute the basic amount of EUR 40 000 000 used by the Commission in the decision at issue and accordingly made it impossible for PROAS to defend itself.

38 In that regard, PROAS also claims, in the context of the second part of its first ground of appeal, directed against paragraphs 129 to 143, 149 to 160 and 439 to 446 of the judgment under appeal, that, by not having carried out an independent analysis of the arguments which it had relied on concerning the gravity of the infringement and by merely endorsing the Commission's assessment, contained in the decision at issue, and the interpretation which the Commission made of its own guidelines, the General Court failed to fulfil 'its obligation to exercise its unlimited jurisdiction in the review of the decision at issue in accordance with Article 261 TFEU and Article 31 of Regulation No 1/2003'.

39 The appellant submits that the General Court merely repeated the statements in the decision at issue as regards the gravity and geographical extent of the infringement, whereas PROAS criticised the Commission for not sufficiently providing reasons for its decision in that regard. PROAS also takes the view that the General Court insufficiently comprehended the existence of pressure applied by the Spanish Government in the present case, inter alia by holding, in paragraph 138 of the judgment under appeal, that that pressure constituted mere approval or tolerance of an infringement on the part of the national authorities. PROAS further is of the view that the General Court merely referred to the 1998 Guidelines as regards the actual impact of the cartel at issue on the market and adopted ineffective reasoning as to adapting the basic amount of the fine.

40 In addition, the General Court abstained from 'amending the decision [at issue] in the exercise of its unlimited jurisdiction'.

41 The Commission contends that the first and second parts of the first ground of appeal are clearly unfounded.

– Findings of the Court

42 As regards the second part of the first ground of appeal, which should be examined in the first place, it should be noted, as a preliminary point, that the system of judicial review of Commission decisions relating to proceedings under Articles 101 and 102 TFEU consists in a review of the legality of the acts of the institutions for which provision is made in Article 263 TFEU, which may be supplemented, pursuant to Article 261 TFEU and at the request of applicants, by the General Court's exercise of unlimited jurisdiction with regard to the penalties imposed in that regard by the Commission (judgment of 21 January 2016 in *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 71).

43 In that regard, as the Court has stated on many occasions, the scope of judicial review provided for in Article 263 TFEU extends to all the elements of Commission decisions relating to proceedings applying Articles 101 and 102 TFEU which are subject to in-depth review by the General Court, in law and in fact, in the light of the pleas raised by the applicants and taking into account all the elements submitted by them, whether those elements pre-date or post-date the decision at issue, whether they were submitted previously in the context of the administrative procedure or, for the first time, in the context of the proceedings before the General Court, in so far as those elements are relevant to the review of the legality of the Commission decision (judgment of 21 January 2016 in *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 72).

44 By contrast, the scope of the General Court's unlimited jurisdiction is strictly limited, unlike the review of legality provided for in Article 263 TFEU, to determining the amount of the fine (judgment of 21 January 2016 in *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 76).

45 Therefore, the second part of PROAS' first ground of appeal, which alleges infringement of Article 261 TFEU and Article 31 of Regulation No 1/2003, must be understood as being directed against the fact that the General Court did not exercise its unlimited jurisdiction in the review of the amount of the fine imposed by the decision at issue.

46 However, it should be noted that the General Court provided, in paragraphs 129 to 164 of the judgment under appeal, a detailed statement of the factors which it took into account in assessing the gravity of the infringement in dispute found by the Commission in the decision at issue.

47 In that regard, the General Court, in the first place, considered that the Commission had been right to categorise the infringement in dispute as a 'very serious infringement' for the purposes of Section 1.A of the 1998 Guidelines.

48 In the second place, the General Court considered that, in any event, the Commission was able to reasonably set the basic amount of the fine imposed on PROAS at the sum of EUR 40 000 000, without having to take into account the actual impact of the cartel on the relevant market. To that end, it considered that PROAS had not established that that market was not national in scope. In addition, it took into account the total value of the Spanish market for penetration bitumen during 2001 and the market share held by PROAS on it, which amounted to 31.67%.

49 Finally, taking account of those factors, the General Court found, in paragraph 158 of the judgment under appeal, that 'even if no actual impact of the cartel on the relevant market is established, that cannot lead the Court to alter the amount of the fine'.

50 The reasoning set out in paragraphs 439 to 446 of the judgment under appeal is also not to be criticised because of failure by the General Court to exercise its unlimited jurisdiction. In fact, the General Court provides a detailed response to PROAS' claims, with separate reasoning for each claim. The same is true of the claims relating, first, to the failure to state reasons in the decision at issue as

regards the lack of actual impact on the market of the cartel in dispute, second, to the confusion of members of the cartel as to the legality of the agreements, created by the Spanish Government's alleged interventionism, and, third, to the evaluation of the respective weight of the participants in the infringement on the basis of their turnover relating to penetration bitumen.

51 Moreover, the mere fact that, in paragraphs 157, 158 and 449 of the judgment under appeal, the General Court also endorsed, in the exercise of its unlimited jurisdiction as regards the fine imposed on PROAS, several assessment criteria used by the Commission in the decision at issue and whose legality has been previously established, cannot establish a failure by the General Court to exercise its unlimited jurisdiction (see, to that effect, judgment of 8 May 2013 in *Eni* v *Commission*, C-508/11 P, EU:C:2013:289, paragraph 99).

52 Moreover, inasmuch as PROAS disputes the General Court's assessment of the evidence as to the pressure exerted by the Spanish Government and, in particular, the fact that that pressure is considered by the General Court to be mere approval or tolerance of an infringement on the part of the national authorities, it must be recalled that, according to settled case-law, the General Court has exclusive jurisdiction to find and assess the facts and, in principle, to examine the evidence it accepts in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced before it. Save where the clear sense of the evidence has been distorted, that assessment does not therefore constitute a point of law which is subject as such to review by the Court of Justice (judgment of 20 January 2016 in *Toshiba Corporation* v *Commission*, C-373/14 P, EU:C:2016:26, paragraph 40).

53 Therefore, the second part of the first ground of appeal must be rejected as being, in part, inadmissible and, in part, unfounded.

54 As regards the first part of the first ground of appeal, relating to the alleged distortion of the pleas raised before the General Court, the argument that the General Court was wrong to consider that PROAS restricted itself to disputing the categorisation as a 'very serious infringement' of the infringement at issue, without separately disputing the basic amount of the fine imposed on it, is ineffective. In fact, as is apparent from paragraph 48 of the present judgment, the General Court did not, in any event, merely examine the categorisation of the infringement as a 'very serious infringement', but also reviewed how the basic amount was set.

55 The same is true of the argument that the General Court found that PROAS had relied on the characteristic elements of the Spanish market by way of mitigating circumstances and not as factors illustrating the lesser seriousness of the infringement at issue. In fact, since the General Court carried out a review of PROAS' claims relating to the characteristics of the Spanish market in the context of the assessment of mitigating circumstances, the General Court cannot, in any event, be criticised for not having examined them in the assessment of the seriousness of the infringement (see judgment of 5 December 2013 in *Solvay Solexis* v *Commission*, C-449/11 P, not published, EU:C:2013:802, paragraphs 78 and 79).

56 It follows that the first part of the first ground of appeal must be rejected as being ineffective.

The third part of the first ground of appeal, alleging infringement of the principle of equal treatment

57 By the third part of its first ground of appeal, the appellant states that the General Court infringed the principle of equal treatment by holding, in paragraphs 161 to 164 of the judgment under appeal, that the Commission could depart from its previous decision-making practice in competition matters, as follows, inter alia, from Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article [81 EC] (Case No COMP/F/38.456 — Bitumen (NL)).

58 In that regard, suffice it to state, as the General Court did in paragraph 161 of the judgment under appeal, that, according to settled case-law, the Commission's practice in previous decisions does not serve as a legal framework for the fines imposed in competition matters (judgment of 23 April 2015 in *LG Display and LG Display Taiwan* v *Commission*, C-227/14 P, EU:C:2015:258, paragraph 67 and the case-law cited).

59 Consequently, the third part of the first ground of the appeal must be rejected as being unfounded.

The fourth part of the first ground of appeal, alleging failure by the General Court to effectively analyse PROAS' specific weight in the infringement at issue and the refusal of the General Court to order the measures of organisation of procedure requested

– Arguments of the parties

60 By the fourth part of its first ground of appeal, directed against paragraphs 209 and 215 of the judgment under appeal, the appellant states, first, that the General Court committed an error by failing to analyse, on the ground that it involved a new claim, PROAS' argument that the method of calculating sales used by the Commission could have led to an artificial increase of its weight in the cartel, inasmuch as the Commission excluded intragroup sales of other cartel participants and products other than penetration bitumen.

61 Second, PROAS claims that the General Court erred in law in dismissing its application for adoption of measures of organisation of the procedure to require the Commission to produce documents intended to enable it to establish that the Commission had erred in determining PROAS' specific weight in the cartel at issue. Therefore, the General Court made it impossible for PROAS to effectively put forward its claims.

62 The Commission submits that that part of the first ground of appeal must be rejected.

– Findings of the Court

63 As regards the appellant's claim alleging failure by the General Court to effectively analyse PROAS' specific weight in the infringement in dispute, it should be stated that it is based on a misreading of the judgment under appeal.

64 It is apparent, in fact, from the judgment under appeal that the General Court rejected that claim in a substantiated manner. To that end, the General Court stated, primarily, in paragraphs 204 to 208 of the judgment under appeal, why it was not possible for the Commission to take into account, for the year used as a reference for setting the basic amount of the fine, the sales of the Repsol group to Composán Distribución SA and, in addition, in paragraphs 211 to 215 of that judgment, that PROAS did not develop any argument relating to other companies which were part of that group.

65 Therefore, assuming that the General Court erroneously found, in paragraph 209 of that judgment, that the argument developed in that regard by PROAS was new, it has, as part of its assessment of the facts, stated to the requisite legal standard the reasons why it considered that the Commission had not failed, when setting the basic amount of the fine imposed on PROAS, to disregard the principles of proportionality and equal treatment.

66 As regards the refusal by the General Court of the request for measures of organisation of procedure or of inquiry submitted by PROAS, it should be borne in mind that, according to settled case-law, the General Court is the sole judge, in principle, of any need to supplement the information available to it in respect of the cases before it (see, to that effect, judgment of 14 March 2013 in *Viega* v *Commission*, C-276/11 P, EU:C:2013:163, paragraph 39 and the case-law cited).

67 In view of the sufficient reasoning of the General Court, in paragraphs 204 to 208 of the judgment under appeal, to establish the irrelevant nature of the documents relating to sales of the Repsol group to Composán Distribución SA, PROAS' simple assertions as to the possibly useful nature for its defence of those documents are not sufficient to demonstrate that the General Court was not able to give its ruling in full knowledge of the facts. Therefore, an obligation on the General Court to make use of measures of organisation of procedure or of inquiry cannot be inferred from those claims (see, by analogy, judgment of 19 March 2015 in *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 59).

68 It follows that that claim must be dismissed as being unfounded, as must the fourth part of the first ground of appeal in its entirety.

69 In the light of the foregoing, the first ground of appeal must be rejected.

The third plea, alleging infringement of the principle of observance of a reasonable period

Arguments of the parties

70 By its third ground of appeal, directed against paragraphs 372 to 400 of the judgment under appeal, PROAS states that the General Court, first, committed an error of law in finding that the administrative procedure led by the Commission, which lasted approximately 5 years and 4 months, had been handled in a reasonable time and that, therefore, the principle of sound administration had not been infringed. In that regard, it claims that the reasonableness of the length of that procedure cannot be established by reference to compliance by the Commission with the limitation period set by Regulation No 1/2003. It also maintains that the excessively long duration of that procedure led to the imposition of a fine higher than that which would have been imposed on it if the procedure had been closed within a reasonable time, taking account of the progressive tightening of the Commission's policy on fines for infringements of the competition rules.

71 Second, PROAS criticises the General Court for the excessive length of judicial proceedings — namely 5 years and 9 months — which is not justified by any exceptional circumstances.

72 In view of the fact that the combined length of proceedings, both administrative and judicial, exceeds 11 years, to which the period for handing the present appeal must be added, PROAS requests the Court to directly draw the inferences of that infringement of principles of observance of a reasonable period and of sound administration by annulling the judgment under appeal and by disposing of the case in order to annul the decision at issue or, alternatively, to reduce the amount of the fine on that basis, without requiring PROAS to bring an action for damages before the General Court.

73 The Commission contends that, as regards the claims of infringement of a reasonable period in the context of the administrative procedure and judicial proceedings, it is for PROAS to bring a claim for damages before the General Court. The Commission adds that, in any event, PROAS has adduced no evidence such as to show that the duration of proceedings before the Commission and the General Court, taken separately or together, were excessive having regard to the circumstances of the case.

Findings of the Court

74 As regards the first part of the present ground of appeal, by which the appellant criticises the General Court for having committed an error of law by finding that the administrative procedure had been conducted within a reasonable period, it should be noted that, although the infringement of the principle of observance of a reasonable period is capable of justifying the annulment of a decision taken following an administrative procedure based on Article 101 or 102 TFEU inasmuch as it also constitutes an infringement of the rights of defence of the undertaking concerned (see, to that effect, judgment of 21 September 2006 in *Nederlandse Vereniging voor de Groothandel Federatieve op Elektrotechnisch Gebied* v *Commission*, C-105/04 P, EU:C:2006:592, paragraphs 42 and 43), the Commission's infringement of a reasonable period for such an administrative procedure, if established, is not capable of leading to a reduction of the amount of the fine imposed (see, to that effect, judgment of 8 May 2014 in *Bolloré* v *Commission*, C-414/12 P, EU:C:2014:301, paragraph 109).

75 In the present case, it should be noted that, in paragraphs 375 to 377 of the judgment under appeal, the General Court definitively found, which is not moreover disputed by PROAS in the context of the present appeal, that PROAS had not demonstrated that the exercise of its rights of defence may have been affected for reasons related to the allegedly excessive duration of the administrative procedure.

76 Therefore, the General Court did not commit an error of law in rejecting PROAS' plea seeking annulment of the decision at issue on the basis of the allegedly excessive duration of the administrative procedure.

77 In that regard, the fact that the excessively long duration of that procedure, according to PROAS, led to the imposition of a fine higher than that which would have been imposed if the same procedure had been closed within a reasonable period is, due to its purely speculative nature, irrelevant.

78 PROAS' line of argument on that issue must, therefore, be rejected as being unfounded.

79 In so far as PROAS claims, in the alternative, the reduction of the amount of the fine imposed on it, account being taken of the allegedly excessive duration of the administrative procedure, it should be stated, as has been set out in paragraph 74 of the present judgment, that such a line of argument is ineffective.

80 Accordingly, the first part of the third ground of appeal cannot succeed.

81 As regards the second part of that ground of appeal, by which PROAS criticises the General Court for having infringed its right to a judgment within a reasonable period, it should be borne in mind that the sanction for a breach by a Court of the European Union of its obligation under the second paragraph of Article 47 of the Charter to adjudicate on the cases before it within a reasonable time must be an action for damages brought before the General Court, since such an action constitutes, contrary to what PROAS argues, an effective remedy. It follows that a claim for compensation in respect of the damage caused by the General Court's failure 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 (see, inter alia, judgments of 10 July 2014 in *Telefónica and Telefónica de España* v

Commission, C 295/12 P, EU:C:2014:2062, paragraph 66; of 9 October 2014 in *ICF* v *Commission*, C 467/13 P, EU:C:2014:2274, paragraph 57; and of 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C 580/12 P, EU:C:2014:2363, paragraphs 17 and 18).

82 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 (see, inter alia, judgments of 10 July 2014 *in Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 67; of 9 October 2014 in *ICF* v *Commission*, C-467/13 P, EU:C:2014:2274, paragraph 58; and of 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 19).

83 That said, where it is clear, without any need for the parties to adduce additional evidence in that regard, that the General Court infringed, in a sufficiently serious manner, its obligation to adjudicate on the case within a reasonable time, the Court of Justice may note that fact (see, inter alia, judgments of 9 October 2014 in *ICF* v *Commission*, C 467/13 P, EU:C:2014:2274, paragraph 59, and of 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C 580/12 P, EU:C:2014:2363, paragraph 20).

84 That is the situation here. The duration of the proceedings before the General Court, namely almost 5 years and 9 months, which includes, in particular, a period of almost 4 years and 2 months which elapsed, as claimed by the appellant and as is apparent from paragraphs 90 to 92 of the judgment under appeal, without any step in the proceedings, between the end of the written procedure and the hearing, cannot be explained by either the nature or the complexity of the case or by its context.

85 However, it follows from the considerations set out in paragraph 81 of the present judgment that the second part of the present ground of appeal must be rejected.

86 Consequently, the third ground of appeal must be rejected in its entirety.

The fourth ground of appeal, alleging infringement of Article 87(2) of the Rules of Procedure of the General Court in the version applicable to the proceedings before the General Court

87 By its fourth ground of appeal, the appellant submits that the General Court infringed Article 87(2) of the Rules of Procedure of the General Court, in the version applicable to the dispute, by ordering PROAS to pay the costs whereas it should have divided the costs between the parties, account being taken of the fact that both parties were unsuccessful.

88 According to settled case-law, where all the other grounds put forward in an appeal have been rejected, any ground challenging the decision of the General Court on costs must be rejected as inadmissible by virtue of the second paragraph of Article 58 of the Statue of the Court of Justice of the European Union, under which no appeal lies regarding only the amount of the costs or the party ordered to pay them (see, to that effect, order of 13 January 1995 in *Roujansky* v *Council*, C-253/94 P, EU:C:1995:4, paragraphs 13 and 14, and judgment of 2 October 2014 in *Strack* v *Commission*, C-127/13 P, EU:C:2014:2250, paragraph 151).

89 Since the first three grounds of appeal put forward by the appellant have been rejected, the last ground of appeal, relating to the allocation of costs, must, accordingly, be declared inadmissible.

90 The appeal must therefore be dismissed in its entirety.

Costs

91 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court shall make a decision as to costs.

92 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

93 Since the Commission has applied for costs to be awarded against PROAS and the latter has been unsuccessful, PROAS must be ordered to pay the costs relating to the present appeal proceedings.

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

1. Dismisses the appeal;

2. Orders Productos Asfálticos (PROAS) SA to pay the costs.

[Signatures]