Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber, Extended Composition)

1 February 2017 *

(Non-contractual liability — Article 47 of the Charter of Fundamental Rights — Obligation to adjudicate within a reasonable time — Circumstances of the case — Importance of the case — Complexity of the dispute — Conduct of the parties and supervening procedural matters — Absence of period of unjustified inactivity)

In Case T-725/14,

Aalberts Industries NV, established in Utrecht (Netherlands), represented by R. Wesseling and M. Tuurenhout, lawyers,

applicant,

v

European Union, represented by the Court of Justice of the European Union, represented initially by A. Placco, and subsequently by J. Inghelram and E. Beysen, acting as Agents,

defendant,

supported by

European Commission, represented by S. Noë, P. van Nuffel and V. Bottka, acting as Agents,

intervener,

APPLICATION pursuant to Article 268 TFEU for compensation for the damage allegedly suffered by the applicant as a result of the length of the proceedings before the General Court in the case which gave rise to the judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114),

THE GENERAL COURT (Third Chamber, Extended Composition),

composed of S. Papasavvas, President, I. Labucka, E. Bieliūnas (Rapporteur), V. Kreuschitz and I.S. Forrester, Judges,

Registrar: A. Lamote, Administrator,

having regard to the written stage of the procedure and further to the hearing on 19 July 2016,

gives the following

* Language of the case: Dutch.

Judgment

Background to the dispute

1 By application lodged at the Court Registry on 14 December 2006, the applicant, Aalberts Industries NV, brought, with Simplex Armaturen + Fittings GmbH & Co. KG ('Simplex') and Acquatis France SAS, now Comap SA ('Acquatis'), an action against Commission Decision C(2006) 4180 of 20 September 2006 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 – Fittings) ('Decision C(2006) 4180'). In the application, those companies claimed, in essence, that the Court should annul that decision or, in the alternative, reduce the amount of the fine which had been imposed on them by that decision.

2 By judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114), the Court annulled Article 1 of Decision C(2006) 4180 in so far as the European Commission had found that the companies referred to in paragraph 1 above had participated in an infringement of Article 101 TFEU during the period from 25 June 2003 to 1 April 2004. The Court also annulled Article 2(a) of that decision. In that provision, the Commission had imposed a fine of EUR 100.80 million on the applicant, to be paid jointly and severally with its subsidiaries, Simplex and Acquatis. Finally, the Court annulled Article 2(b)(2) of Decision C(2006) 4180, which had held Simplex and Acquatis to be jointly and severally liable for payment of the sum of EUR 2.04 million.

3 By application lodged on 6 June 2011, the Commission brought an appeal against the judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114).

4 By judgment of 4 July 2013, *Commission* v *Aalberts Industries and Others* (C-287/11 P, EU:C:2013:445), the Court of Justice dismissed that appeal.

Procedure and forms of order sought

5 By application lodged at the Court Registry on 14 October 2014, the applicant brought the present action against the European Union, represented by the Court of Justice of the European Union or by the Commission.

6 By separate documents, lodged at the Court Registry, respectively, on 17 November 2014 and 17 December 2014, the Commission and the Court of Justice of the European Union each raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991.

7 By order of 13 February 2015, *Aalberts Industries* v *European Union* (T-725/14, not published, EU:T:2015:107), the Court, first, rejected the objection of inadmissibility raised by the Court of Justice of the European Union and, secondly, dismissed the action in so far as it was brought against the European Union represented by the Commission.

8 By application lodged at the Registry of the Court of Justice on 19 March 2015, the Court of Justice of the European Union brought an appeal, registered as Case C-132/15 P, against the order of 13 February 2015, *Aalberts Industries* v *European Union* (T-725/14, not published, EU:T:2015:107).

9 By order of 14 April 2015, the President of the Third Chamber of the General Court, at the request of the Court of Justice of the European Union, stayed the proceedings in the present case pending the final decision of the Court of Justice in Case C-132/15 P, *Court of Justice* v *Aalberts Industries*.

10 By order of 18 December 2015, *Court of Justice* v *Aalberts Industries* (C-132/15 P, not published, EU:C:2015:858), the case was removed from the register of the Court of Justice.

11 Following the resumption of the proceedings in the present case, the Commission, by document lodged at the Court Registry on 15 January 2016, applied for leave to intervene in support of the form of order sought by the Court of Justice of the European Union.

12 On 16 February 2016, the Court of Justice of the European Union lodged its defence.

13 On 17 February 2016, the Court assigned the present case to the Third Chamber (Extended Composition).

14 On 2 March 2016, the Court decided that a second exchange of pleadings was unnecessary. Furthermore, by way of measures of organisation of procedure as provided for in Article 89 of the Rules of Procedure of the General Court, the Court asked the Court of Justice of the European Union to indicate whether it had requested and obtained permission from the applicants in the case which gave rise to the judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114) ('Case T-385/06'), and from the Commission in order to be able to produce certain documents relating to Case T-385/06 which were contained in the annexes to the defence.

15 By order of 15 March 2016, *Aalberts Industries* v *European Union* (T-725/14, not published, EU:T:2016:208), the President of the Third Chamber (Extended Composition) of the General Court granted the Commission's application for leave to intervene in support of the form of order sought by the Court of Justice of the European Union and stated that the rights enjoyed by the Commission would be those provided for in Article 116(6) of the Rules of Procedure of 2 May 1991.

16 On 18 March 2016, the Court of Justice of the European Union answered the question referred to in paragraph 14 above. It argued that the Court should take the view, principally, that the Court of Justice was under no duty to seek and obtain permission from the applicant and the Commission in order to be able to produce the documents relating to Case T-385/06 and, in the alternative, that the applicant and the Commission had given that permission implicitly. In the further alternative, the Court of Justice of the European Union requested that its response be treated as an application for a measure of organisation of procedure aimed at seeking from the Court, in the present action, an order requiring the production of the documents constituting the case file in Case T-385/06 and, in particular, the documents annexed to the defence.

17 On 4 April 2016, the President of the Third Chamber (Extended Composition) of the General Court decided, first, to remove from the file the documents relating to Case T-385/06 which were contained in the annexes to the defence lodged in the present case. That decision was justified by the fact, on the one hand, that the Court of Justice of the European Union had neither sought nor obtained permission from the parties in Case T-385/06 in order to be able to produce the documents in question and, on the other hand, that it had not requested access to the file in that case pursuant to Article 38(2) of the Rules of Procedure. Secondly, the President of the Third Chamber (Extended Composition) decided, pursuant to Article 88(3) of the Rules of Procedure, to invite the applicant to comment on the application for a measure of organisation of procedure which had been made in the further alternative by the Court of Justice of the European Union in its reply of 18 March 2016, referred to in paragraph 16 above.

18 On 20 April 2016, the applicant claimed that the Court should dismiss the application for a measure of organisation of procedure made by the Court of Justice of the European Union.

19 On 11 May 2016, the Court held that the preparation and settlement of the present case made it necessary, in the light of its subject matter, for the file in Case T-385/06 to be made available to it. Thus, by way of a measure of organisation of procedure as provided for in Article 89 of the Rules of Procedure, the Court decided to enter in the file in the present case the file in Case T-385/06.

20 On 17 June 2016, the Court of Justice of the European Union requested service of the files in Case T-385/06.

21 On 29 June 2016, the Court requested that the applicant produce a document.

22 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 19 July 2016.

23 The applicant claims that the Court should:

— order the European Union, represented by the Court of Justice of the European Union, to compensate the damage suffered by the applicant on account of the unreasonable duration of the proceedings before the General Court and, in particular, to pay it:

  — a sum of EUR 1 014 863 by way of compensation for the material damage and EUR 5 040 000 by way of compensation for the non-material damage or an amount to be fixed by the General Court on an equitable basis;

  — the compensatory interest due on those sums from 13 January 2010 until delivery of the present judgment, at the rate fixed by the European Central Bank (ECB) for main refinancing operations, applicable during that period, increased by two percentage points or at a rate fixed by the General Court on an equitable basis;

— order the European Union, represented by the Court of Justice of the European Union, to pay the costs.

24 The Court of Justice of the European Union, supported by the Commission, contends that the Court should:

— principally, dismiss as unfounded the claim for compensation;

— in the alternative, dismiss as unfounded the claim for compensation of the material damage alleged and award the applicant compensation for the non-material damage alleged of an amount not exceeding EUR 5 000, and

— order the applicant to pay the costs.

Law

25 Under the second paragraph of Article 340 TFEU, in the case of non-contractual liability, the Union must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

26 It is settled case-law that the second paragraph of Article 340 TFEU is to be interpreted as meaning that the non-contractual liability of the European Union and the exercise of the right to compensation for damage suffered depend on the satisfaction of a number of conditions, namely the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link

between that conduct and the damage complained of (judgments of 29 September 1982, *Oleifici Mediterranei* v *EEC*, 26/81, EU:C:1982:318, paragraph 16, and of 9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 106).

27 The applicant seeks compensation for the material damage and non-material damage which it claims to have suffered on account of an infringement of the requirements linked to compliance with the obligation to adjudicate within a reasonable time ('the obligation to adjudicate within a reasonable time') in Case T-385/06.

28 In the first place, it submits that the proceedings in Case T-385/06 lasted four years and three months and that examination of the case had 'been stalled' for more than two years and two months. It takes the view that the General Court must not assess what would have been a reasonable time within which to adjudicate in that case. It states that it is appropriate only to assess whether the duration of the proceedings was unreasonable in so far as they lasted more than three years. In that regard, it states that, in the light of the circumstances of the case, the adjudication period in Case T-385/06 could not exceed three years.

29 In the second place, the applicant argues that, in the case of a dispute relating to the existence of an infringement of the competition rules, the fundamental requirement of legal certainty on which economic operators must be able to rely and the aim of ensuring that competition is not distorted in the internal market were justification for its action being examined diligently and as soon as reasonably possible. The applicant also argues that the fine imposed on it by Decision C(2006) 4180, of an amount of more than EUR 100 million, created negative publicity which adversely affected the price of its shares on the stock exchange and the forecasts of financial analysts. It adds that its reputation with its customers was altered by Decision C(2006) 4180, which erroneously imposed a fine on the applicant and was ultimately annulled by the Court.

30 In the third place, the applicant claims that the duration of the proceedings in Case T-385/06 cannot be justified by any circumstances specific to that case. It argues that the duration of the proceedings is not justified by the complexity of Case T-385/06. Moreover, that duration cannot be accounted for by the conduct of the parties, in so far as the written stage of the proceedings in Case T-385/06 was completed 10 months after the application was lodged.

31 The Court of Justice of the European Union disputes those claims.

32 In that regard, it should be noted that the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union provides in particular that 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law'.

33 Such a right, the existence of which had been affirmed before the entry into force of the Charter of Fundamental Rights as a general principle of EU law, was held to be applicable in the context of proceedings brought against a Commission decision (see judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 178 and the case-law cited).

34 In the present case, it must be pointed out that, in Case T-385/06, the application was sent by fax to the Court Registry on 14 December 2006 and that the original of that request was received at that Registry on 21 December 2006. Moreover, Case T-385/06 culminated on 24 March 2011, the date of delivery of the judgment in *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114). Accordingly, the proceedings in that case, which lasted more than four years and three months, were, at first sight, of a very long duration.

35 However, it must be pointed out that the reasonableness of the period for delivering judgment is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (see, to that effect, judgments of 17 December 1998, *Baustahlgewebe* v *Commission*, C-185/95 P, EU:C:1998:608, paragraph 29, and of 9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 212).

36 It has also been stated that the conduct of the 'parties' and supervening procedural matters are among the circumstances which should be taken into account for the purpose of appraising the reasonableness of a period for delivering judgment (see, to that effect, judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraphs 181 and 184).

37 The list of relevant criteria is not exhaustive and the assessment of the reasonableness of a period does not require a systematic examination of the circumstances of the case in the light of each of them, where the duration of the proceedings appears justified in the light of one of them. Thus, the complexity of the case or the dilatory conduct of the applicant may be deemed to justify a duration which is prima facie too long (see judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 182 and case-law cited).

38 It follows that the reasonableness of a period cannot be assessed by reference to a precise maximum limit determined in an abstract manner but, rather, must be appraised in the light of the specific circumstances of each case (judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 192, and of 28 February 2013, *Review of Arango Jaramillo and Others* v *EIB*, C-334/12 RXII, EU:C:2013:134, paragraph 29).

39 In the present case, it is therefore necessary to assess whether the circumstances of Case T-385/06 serve to explain the duration of the proceedings in that case. To that end, it is necessary to examine, first, the importance of the case for the applicant, secondly, the complexity of Case T-385/06, thirdly, the effect of the conduct of the parties and supervening procedural matters, fourthly, the existence of any period of unjustified inactivity in dealing with Case T-385/06.

The importance of Case T-385/06 for the applicant

40 It should be recalled that, in the case of a dispute relating to the existence of an infringement of the competition rules, the fundamental requirement of legal certainty on which economic operators must be able to rely and the aim of ensuring that competition is not distorted in the internal market are of considerable importance not only for an applicant himself and his competitors but also for third parties, in view of the large number of persons concerned and the financial interests involved (judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 186).

41 In the present case, it must be pointed out that, in Decision C(2006) 4180, the Commission found that the applicant had participated in a single, complex and continuous infringement of Article 101 TFEU from 25 June 2003 to 1 April 2004. In that decision, the Commission next imposed a fine of EUR 100.80 million on the applicant, to be paid jointly and severally with Acquatis and Simplex in the amount of EUR 55.15 million, since it had formed an economic unit with those two companies.

42 It follows that Case T-385/06 was of real importance for the applicant.

The complexity of Case T-385/06

43 In the first place, it is important to point out that the action brought by the applicant in Case T-385/06 required a detailed examination of numerous facts and legal issues.

44 In that regard, first, it should be stated that, in Decision C(2006) 4180, the Commission had found that some thirty companies belonging to eleven groups had participated in a single, complex and continuous infringement of Article 101 TFEU and, from 1 January 1994, of Article 53 of the Agreement on the European Economic Area (EEA), by entering into a complex of agreements and concerted practices in the market for copper and copper alloy fittings, consisting in fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information. Moreover, the Commission had imposed a fine on the applicant for having committed that infringement from 25 June 2003 to 1 April 2004.

45 Next, when lodging the application, the applicant, in its covering letter, justified the length of that application, inter alia, by the fact that the Commission had needed 220 pages in its decision imposing the fine to describe and analyse a complex set of facts. Again in that letter, the applicant explained that, in contrast to most competition cases which had been initiated during the same period, it disputed all aspects of Decision C(2006) 4180.

46 Furthermore, the annexes to the application comprised more than 750 pages, 220 pages of which reproduced Decision C(2006) 4180. For its part, the Commission submitted with its defence more than 120 pages of annexes. As regards the reply, it was accompanied by more than 160 pages of annexes.

47 Lastly, in Case T-385/06 the applicant relied on five pleas in law. The first plea alleged the unlawfulness of the imputation of liability for the infringement to the applicant as the parent company. The second plea alleged that there was no infringement of Article 101 TFEU. The third plea alleged that the applicant did not participate in the single, complex and continuous infringement. The fourth plea alleged breach of Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) and of 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 fifth plea alleged breach of the principle of good administration and of Article 2 of Regulation No 1/2003, on the ground that the Commission had infringed the principle of equality of arms.

48 Accordingly, the application in Case T-385/06 required a detailed examination of complex and numerous facts, some of which preceded the infringement period relied on against the applicant in Decision C(2006) 4180. Moreover, some of the pleas relied on in that case raised delicate legal questions relating, in particular, to the concept of single, complex and continuous infringement.

49 In the second place, it should be emphasised that, in the light of the claims made and pleas relied on in Case T-385/06, the latter had links with the nine other actions brought in December 2006, in several different languages, against Decision C(2006) 4180.

50 Indeed, in Case T-385/06 and in the case giving rise to the judgment of 24 March 2011, *IMI and Others* v *Commission* (T-378/06, not published, EU:T:2011:109), Acquatis and Simplex brought actions for the annulment of Decision C(2006) 4180, which had imposed on them, jointly and severally, a fine of EUR 2.04 million. That fact led the Commission to raise an objection of *lis pendens* in each of those cases. The objection was upheld by the Court and the application for annulment of Article 2(b)(2) of Decision C(2006) 4180 was declared inadmissible in the judgment of 24 March

2011, *IMI and Others* v *Commission* (T-378/06, not published, EU:T:2011:109). However, the Court annulled Article 2(b)(2) of Decision C(2006) 4180 in the judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114).

51 Moreover, in the context of its fourth plea in Case T-385/06, concerning the amount of the fine, the applicant criticised a calculation error linked with the action brought in the case which gave rise to the judgment of 24 March 2011, *IMI and Others* v *Commission* (T-378/06, not published, EU:T:2011:109). The applicant complained that the Commission had twice attributed the very serious nature of the infringement to Acquatis and to Simplex, as was apparent from Article 2(a) and (b) of Decision C(2006) 4180.

52 Furthermore, again in the context of its fourth plea, relating to the amount of the fine, the applicant relied on a breach of the principle of equal treatment in so far as concerned the determination of the size of the relevant geographic market, a breach of the principle of equal treatment and of the obligation to state reasons when classifying the parties to the cartel into three categories based on their respective market shares and a breach of the principle of proportionality when assessing the market shares held by the applicant. Those issues were therefore very closely linked with the market situation of the other addressees of Decision C(2006) 4180 and, consequently, with the nine other actions brought against that decision. In addition, in the context of a measure of organisation of the procedure adopted in Case T-385/06 and linked to the line of argument put forward by the applicant in the context of its fourth plea, the Commission was invited, in November 2009, to produce a non-confidential version of a table annexed to Decision C(2006) 4180 as well as the data which it had used as the basis for drawing up that table.

53 Finally, in the context of its fifth plea, the applicant relied on the Commission's lack of objectivity and impartiality and a reversal of the burden of proof as regards the leniency applicants' statements.

54 Thus, the handling of Case T-385/06 was of some complexity, because it required a parallel examination of the nine other actions brought, in several languages, against Decision C(2006) 4180.

55 It follows that Case T-385/06 exhibited a high degree of complexity in the light of the factual and legal aspects of the action brought in that case and in the light of the number of parallel actions which had been brought against Decision C(2006) 4180.

The conduct of the parties and the occurrence of procedural incidents in Case T-385/06

56 First, it should be pointed out that the application lodged on 14 December 2006 by the applicant in Case T-385/06 had 75 pages.

57 However, the Court invited the applicant to submit an abbreviated version of the original version of the application on the ground that the latter exceeded the number of pages laid down by the General Court's Practice Directions to Parties of 14 March 2002 (OJ 2002 L 87, p. 48, 'the Practice Directions'), that is to say 50 pages.

58 Accordingly, it was only on 13 February 2007 that the applicant lodged an abbreviated version of the original application and it was that abbreviated version which was notified to the Commission. Moreover, that abbreviated version was accompanied by a letter in which the applicant stated that the number of pages of the abbreviated version, that is to say 65 pages, again exceeded the limit of 50 pages set out in the Practice Directions.

59 Secondly, in so far as the Commission's conduct is concerned, it should be noted that, its request for an extension of the time limit having been rejected, the Commission, on 3 May 2007, lodged its defence, which comprised 66 pages. In the covering letter sent with its defence, the Commission stated that the length of that pleading was the consequence of the length of the application.

60 It should also be noted that, by letter of 3 July 2007, the Commission requested that the Court extend until 28 September 2007 the time limit for lodging the rejoinder, which was initially set as 10 August 2007. The following reasons were given for that request. First, the Commission recalled that Case T-385/06 formed part of a group of 10 actions brought against Decision C(2006) 4180 in three different languages, which required coordination work. Secondly, in five of the 10 cases in question, the applicants had requested and obtained an extension of the time limit for lodging their reply, which had had two consequences: by 3 July 2007 only five replies had been sent to the Commission and the time limit for lodging the rejoinder in the cases in which an extension had been granted expired in August or September 2007. Thirdly, the Commission relied on the need to ensure that its rejoinders were consistent. Fourthly, the Commission stated that the Court had already granted it an extension of the time limit in four related cases.

61 Accordingly, by letters of 10 July 2007, the Registrar of the Court informed the parties that, by decision of the President of the Chamber, the time limit for lodging the rejoinder had been extended until 28 September 2007. The Commission then lodged a rejoinder on 27 September 2007 in the language of the case. In its covering letter, the Commission stated that the number of pages of the rejoinder slightly exceeded the length laid down by the Practice Directions, which was primarily due to the length of the reply and to the inaccuracies contained therein.

62 It follows from the foregoing that, in Case T-385/06, the conduct of the parties contributed to the total duration of the proceedings.

The alleged existence of a period of unjustified inactivity in T-385/06

63 In the first place, it must be noted that, in Case T-385/06, a period of two years and one month, that is to say 25 months, elapsed between the end of the written part of the procedure as marked by the lodgement of the Commission's rejoinder on 27 September 2007, on the one hand, and the opening of the oral part of the procedure on 28 October 2009, on the other.

64 The steps taken during that period included summarising the arguments of the parties, preparing the cases, analysing the facts and law of the disputes and preparing the oral part of the procedure.

65 Moreover, it is important to recall that Case T-385/06 concerned an action brought against a Commission decision relating to a proceeding under Article 101 TFEU.

66 Actions concerning the application of competition law by the Commission, such as the action brought in Case T-385/06, exhibit a greater degree of complexity than other types of cases, given, in particular, the length of the contested decision, the size of the case file and the need to carry out a detailed assessment of many complex facts, which often arise over extended periods and in various places.

67 Thus, a period of 15 months between the end of the written part of the procedure and the opening of the oral part of the procedure is, in principle, an appropriate length of time for dealing with cases concerning the application of competition law such as Case T-385/06.

68 Moreover, account must be taken of the fact that several actions had been brought against Decision C(2006) 4180.

69 Actions brought against a single decision adopted by the Commission pursuant to EU competition law need, in principle, to be dealt with in parallel, including where those actions are not joined. The parallel processing of such actions is justified in particular by the connection between them and the need to ensure consistency in their analysis and in the response to be given to them.

70 Therefore, the parallel processing of connected cases may be a justification for extending by a period of one month for each additional connected case the interval between the end of the written part of the procedure and the opening of the oral part of that procedure.

71 In the present case, 10 actions had been brought against Decision C(2006) 4180 in three different languages.

72 In those circumstances, the need to deal with the other nine cases relating to actions brought against Decision C(2006) 4180 justified an extension of the proceedings by nine months in Case T-385/06.

73 Consequently, it must be held that a period of 24 months (15 months plus 9 months) between the end of the written part of the procedure and the opening of the oral part of the procedure was an appropriate length of time for dealing with Case T-385/06.

74 Finally, it is important to point out that, as is clear from paragraphs 43 to 48 above, the action brought in Case T-385/06 challenged all aspects of Decision C(2006) 4180 concerning the applicant and raised complex issues of fact and law which had to be analysed as a whole prior to the opening of the oral part of the procedure. Moreover, the pleadings lodged by the parties were particularly long and accompanied by voluminous annexes, which had to be examined in detail and verified before the opening of the oral part of the procedure in order, in particular, to assess their probative value and to establish fully the facts at issue. Furthermore, as is clear from paragraphs 49 to 54 above, there was a close connection between Case T-385/06 and the nine other actions brought against that decision in several different languages. In addition, a relatively long period was necessary for the Commission to lodge a version of the rejoinder in the working language of the Court of Justice of the European Union.

75 Accordingly, those objective circumstances serve to justify the extension, by at least a month, of the period between the end of the written part of the procedure and the opening of the oral part of the procedure in Case T-385/06.

76 Consequently, it must be held that the period of 25 months which elapsed between the end of the written part of the procedure and the opening of the oral part of the procedure in Case T-385/06 fails to show that there was any period of unjustified inactivity in the handling of that case.

77 In the second place, the applicant does not allege that there was an unjustified adjudication period, first, between the date of lodging the application and the date of lodging the rejoinder and, secondly, between the opening of the oral part of the procedure and the delivery of the judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114).

78 In any event, it should be pointed out that, first, the period between the lodging of the application and the lodging of the rejoinder is justified by the conduct of the parties and by the complexity of Case T-385/06. Secondly, the period between the opening of the oral part of the procedure and the delivery of the judgment of 24 March 2011, *Aalberts Industries and Others* v *Commission* (T-385/06, EU:T:2011:114), is accounted for by the factual and legal complexity of that case.

79 It follows that the total length of the proceedings in Case T-385/06 is justified having regard to the circumstances specific to that case and, in particular, its factual and legal complexity, the conduct of the parties and the absence of any unexplained period of inactivity at any stage of the proceedings in that case.

80 Having regard to all the foregoing considerations, it is necessary to rule out the existence of an infringement of the second paragraph of Article 47 of the Charter of Fundamental Rights in Case T-385/06 and, more specifically, of an infringement of the obligation to adjudicate within a reasonable time in that case.

81 According to the settled case-law, if any one of the conditions governing non-contractual liability on the part of the European Union is not satisfied, the entire action must be dismissed and it is unnecessary to consider the other conditions for such liability (judgment of 14 October 1999, *Atlanta* v *European Community*, C-104/97 P, EU:C:1999:498, paragraph 65; see also, to that effect, judgment of 15 September 1994, *KYDEP* v *Council and Commission*, C-146/91, EU:C:1994:329, paragraph 81).

82 The action must therefore be dismissed in its entirety.

Costs

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

84 In the order of 13 February 2015, *Aalberts Industries* v *European Union* (T-725/14, not published, EU:T:2015:107), the objection of inadmissibility raised by the Court of Justice of the European Union was rejected and the costs were reserved in that connection. The European Union, represented by the Court of Justice of the European Union, must therefore be ordered to pay, in addition to its own costs, the costs incurred by the applicant relating to the objection of inadmissibility which was raised by the Court of Justice of the European Union and which gave rise to the order of 13 February 2015, *Aalberts Industries* v *European Union* (T-725/14, not published, EU:T:2015:107).

85 However, since the applicant has been unsuccessful in all its heads of claim on the substance of the case, it must be ordered to bear its own costs and to pay those incurred by the European Union, represented by the Court of Justice of the European Union, in accordance with the form of order sought by the European Union.

86 In accordance with Article 138(1) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs. It is therefore appropriate to decide that the Commission must bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders the European Union, represented by the Court of Justice of the European Union, to pay, in addition to its own costs, the costs incurred by Aalberts Industries NV relating to the objection of inadmissibility which was raised by the Court of Justice of the European Union and which gave rise to the order of 13 February 2015, *Aalberts Industries* v *European Union* (T-725/14, not published, EU:T:2015:107);**

3. **Orders Aalberts Industries NV to pay, in addition its own costs, the costs incurred by the European Union, represented by the Court of Justice of the European Union, relating to the action which gave rise to the present judgment;**

4. Orders the European Commission to bear its own costs.

Papasavvas Labucka Bieliūnas

Kreuschitz Forrester

Delivered in open court in Luxembourg on 1 February 2017.

[Signatures]