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 — Single infringement)

In Case T-378/10,

Masco Corp., established in Taylor, Michigan (United States of America),

Hansgrohe AG, established in Schiltach (Germany),

Hansgrohe Deutschland Vertriebs GmbH, established in Schiltach,

Hansgrohe Handelsgesellschaft mbH, established in Wiener Neudorf (Austria),

Hansgrohe SA/NV, established in Brussels (Belgium),

Hansgrohe BV, established in Westknollendam (Netherlands),

Hansgrohe SARL, established in Antony (France),

Hansgrohe SRL, established in Villanova d'Asti (Italy),

Hüppe GmbH, established in Bad Zwischenahn (Germany),

Hüppe Ges.mbH, established in Laxenburg (Austria),

Hüppe Belgium SA, established in Woluwé Saint-Étienne (Belgium),

Hüppe BV, established in Alblasserdam (Netherlands),

represented by D. Schroeder, S. Heinz, lawyers, and J. Temple Lang, Solicitor,

applicants,

v

European Commission, represented by F. Castillo de la Torre and F. Ronkes Agerbeek, acting as Agents, assisted by B. Kennelly, Barrister,

defendant,

* Language of the case: English.

APPLICATION for annulment in part of Article 1 of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 EEA (Case COMP/39092 – Bathroom Fittings and Fixtures), in so far as the Commission finds that the applicants participated in a single complex infringement in the bathroom fittings and fixtures sector,

THE GENERAL COURT (Fourth Chamber),

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

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 28 February 2012,

gives the following

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 EEA (Case COMP/39092 – Bathroom Fittings and Fixtures) ('the contested decision'), the European Commission found that there was 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 and 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 found consisted in (i) the coordination by those bathroom fittings and fixtures manufacturers of annual price increases and additional pricing elements within the framework of regular meetings of national industry associations; (ii) the fixing or coordination of prices on the occasion of specific events such as the increase of 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 concerned by the contested decision are defined as 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 Masco Corp., an American company, and its subsidiaries active in Europe, including Hansgrohe AG which manufactures taps and fittings and Hüppe GmbH which manufactures shower enclosures, taken together, will hereinafter be referred to as the 'applicants'. They are active in only two of the three product sub-groups: taps and fittings and shower enclosures and accessories (recital 14 to the contested decision).

5 On 15 July 2004, the applicants informed the Commission of the existence of a cartel in the bathroom fixtures and fittings sector and submitted an application for immunity from fines, or, in the alternative, a reduction in the amounts of the fines, under the Commission notice on immunity from fines and

reductions of fines in cartel cases (OJ 2002 C 45, p. 3) ('the 2002 Leniency Notice'). On 2 March 2005, the Commission granted the applicants conditional immunity from fines pursuant to points 8(a) and 15 of the 2002 Leniency Notice (recitals 126 to 128 to the contested decision).

6 On 23 June 2010, the Commission adopted the contested decision.

7 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 the 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).

8 The Commission found in Article 1 of the contested decision that 17 undertakings had infringed Article 101 TFEU and Article 53 of the EEA Agreement over periods running from, so far as concerns the applicants, 16 October 1992 until 9 November 2004.

9 The Commission stated in Article 2(1) of the contested decision that it was not imposing a fine on the applicants.

Procedure and forms of order sought

10 By application lodged at the Court Registry on 7 September 2010, the applicants brought the present action.

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

12 At the hearing held on 28 February 2012, the parties presented oral argument and replied to the oral questions put by the Court.

13 The applicants claim that the Court should:

— annul in part Article 1 of the contested decision, in so far as the Commission finds that the applicants participated in a single infringement in the bathroom fittings and fixtures sector;

— order the Commission to pay the costs.

14 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

15 In support of their action, the applicants raise a single plea in law, alleging that the Commission was wrong in finding that they had participated in a single infringement in the bathroom fittings and fixtures sector.

16 The Commission contests the applicants' arguments.

17 It should be noted that, in support of their single plea in law, the applicants have put forward, in essence, two principal complaints, alleging, first, that the Commission made errors of assessment with regard to the conditions for finding a single infringement and the participation of undertakings in such an infringement. Second, the facts that have to be taken into consideration do not support the conclusion that there was, in the present case, a single infringement, in which the applicants participated. In those circumstances, the Court deems it appropriate to examine those complaints separately.

The first complaint, alleging errors of assessment with regard to the conditions for finding a single infringement and the participation of undertakings in such an infringement

18 The applicants maintain that the Commission erred in law. The tests which were used by the Commission in the contested decision to establish the existence of a single infringement and the participation of undertakings in such an infringement depart significantly from those resulting from its practice in previous decisions and laid down in the case-law. The Commission has therefore infringed the principles of transparency, legal certainty and equal treatment.

19 The Commission contests those arguments.

20 It should be borne in mind that Article 101(1) TFEU prohibits agreements and concerted practices between undertakings which have an anti-competitive object or effect and which may affect trade between Member States.

21 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 acts or from continuous conduct, the components of which may therefore justifiably 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).

22 So far as concerns, in the first place, the finding of a single infringement, it is for the Commission to establish that the agreements or concerted practices in issue, 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*, paragraph 21 above, 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).

23 Links of complementarity between agreements or concerted practices constitute objective indicia of an overall plan. Such links exist if those agreements or concerted practices are intended to deal with one or more consequences of the normal pattern of competition and, through their interaction, contribute to the attainment of a single anti-competitive objective. The Commission is required to examine in that regard all the facts capable of establishing or of casting doubt on that overall plan (see, to that effect, *Lafarge* v *Commission*, paragraph 482, and Case T-446/05 *Amann & Söhne and Cousin Filterie* v *Commission* [2010] ECR II-1255, paragraph 92 and the case-law cited).

24 As regards, in the second place, the finding that an undertaking participated in a single infringement, it should be borne in mind that it is for the Commission to establish that that undertaking intended to contribute by its own conduct to the single objective pursued by all the participants and that it was aware of the unlawful conduct planned or put into effect by other undertakings in pursuit of that same objective or that it could reasonably have foreseen it and that it was prepared to take the risk (see, to that effect, *Aalborg Portland and Others* v *Commission*, paragraph 21 above, paragraph 83).

25 An undertaking may have participated directly in all the aspects of anti-competitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anti-competitive conduct comprising a single infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole.

26 On the other hand, if an undertaking has directly taken part in one or more of the aspects of anti-competitive conduct comprising a single infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for (i) the conduct in which it participated directly and (ii) the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk.

27 In the present case, so far as concerns the conditions for the existence of a single infringement, the Commission held, in recital 786 to the contested decision, relying on the case-law, that 'the notion of a single infringement [covered] precisely a situation in which a number of undertakings [had] participated in an infringement in which continuous conduct in pursuit of a single economic aim was intended to distort competition' and that 'the existence of synergies and the complementarity between the different lines of conduct [were] objective indicia of the existence of such an overall plan'.

28 Moreover, as regards the finding of participation in a single infringement, the Commission, in recital 789 to the contested decision, concluded, referring to the case-law, as follows:

'The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.'

29 In the light of the Commission's considerations set out in paragraphs 27 and 28 above, it must be stated that the Commission neither erred in law nor infringed the principles of transparency, legal certainty and equal treatment. The conditions that it set out in recitals 786 and 789 to the contested

decision as those which must be satisfied in order to establish the existence of a single infringement and the participation of undertakings in such an infringement are in keeping with those established by the case-law referred to in paragraphs 21 to 26 above.

30 The applicants' other arguments in that regard cannot invalidate the finding set out in paragraph 29 above.

31 First, the applicants' argument that the Commission erred in claiming that characterisation as a single infringement depends on whether the undertakings had a 'common intention' must be rejected as unfounded. First of all, it is clear from recital 786 to the contested decision, cited in paragraph 27 above, that the Commission expressly referred to the requirement for an 'overall plan' for the purpose of determining whether the anti-competitive conduct formed part of a single infringement. Next, while it is true that the Commission referred, in the defence, to the need for the undertakings concerned to have a 'common intention' for a single infringement to be established, it is, however, absolutely clear both from the rejoinder and from the Commission's submissions at the hearing that it considers that a single infringement exists only where the participants pursue an overall plan as evidenced by a 'common intention'. The Court therefore finds that neither the appraisals made by the Commission in the contested decision concerning the existence of an overall plan, nor the interpretation it puts on those appraisals in its pleadings, are incorrect.

32 Second, as regards the applicants' argument that for there to be a single infringement four conditions must be met – that is to say, (i) the existence of a global plan, (ii) a link of complementarity between the agreements and concerted practices in question, (iii) the same undertakings participating in those practices and, (iv) an awareness on the part of those undertakings that they are participating in a common object – it must be rejected as being partly unfounded. As is apparent from the case-law set out in paragraph 22 above and as the applicants acknowledged in response to questions from the Court at the hearing, it is true that for a finding of a single infringement, the first, second and fourth conditions put forward by the applicants must be met. By contrast, the fact that the undertakings participating in the unlawful practices in question are the same is only one indication among others to be taken into account by the Commission when determining whether there exists an overall plan or separate infringements (see, to that effect, *Amann & Söhne and Cousin Filterie* v *Commission*, paragraph 23 above, paragraph 99).

33 In the light of all the foregoing considerations, the applicants' first complaint must be rejected as unfounded.

The second complaint, alleging errors in the assessment of the facts which led to the finding of a single infringement and the participation of the applicants in that infringement

34 The applicants maintain, in essence, that the circumstances of the present case, considered as a whole, did not permit the Commission to establish the existence a single infringement or the applicants' participation in that infringement. They submit that, in the present case, the Commission failed to take account of a set of objective indicia, of the kind identified in its own practice in taking decisions and by the case-law, which should have led it to find that the unlawful practices did not form part of a single infringement. Those indicia stem in particular from the fact that the three product sub-groups belong to separate product markets, that they are neither linked nor similar, that none of the participants carries on business in all of the three product sub-groups, that the large majority of those participants engaged in unlawful practices affecting only one of the three product sub-groups, that the periods covered by those practices differ and that there was no centralised body or dense network linking the industry associations in question.

35 The Commission contests that line of argument.

36 As is apparent from the case-law referred to in paragraph 23 above, the question whether the conditions for the existence of a single infringement have been met must be examined in the light of all the facts of each case. It is thus important, at the outset, to summarise the Commission's analysis in the contested decision which led it to conclude that there was a single infringement in which the applicants participated (see paragraphs 37 to 51 below), before considering whether the applicants have proved that the Commission made errors of assessment in that regard (see paragraphs 52 to 124 below).

37 As a preliminary point, the Court notes that the analysis which led to the Commission's finding of a single infringement in the bathroom fittings and fixtures sector and the participation of the applicants in that infringement is divided into two parts in the contested decision.

38 In the first place, the Commission states, in recitals 792 and 793 to the contested decision, that the unlawful arrangements implemented by the undertakings concerned establish the existence of a single infringement.

39 So far as concerns the scope of the single infringement identified in the present case, the Commission, in recitals 793 to 795 to the contested decision, makes the following four findings. First, the infringement covered the three product sub-groups in at least six Member States, namely Belgium, Germany, France, Italy, the Netherlands and Austria. Second, that infringement lasted from at least 16 October 1992 until 9 November 2004. Third, the infringement found consisted in various instances of anti-competitive conduct 'which demonstrated a continuous course of action with the common objective of restricting competition on prices within the bathroom fittings and fixtures sector'. Fourth, a central group of eight undertakings – the applicants, Grohe Beteiligungs GmbH ('Grohe'), American Standard Inc. ('Ideal Standard'), Hansa Metallwerke AG ('Hansa'), Sanitec Europe Oy ('Sanitec'), Duscholux GmbH & Co, Duravit AG and Villeroy & Boch AG – were directly, decisively and continuously involved in the infringement found.

40 As regards the specific evidence which led it to conclude that there was a single infringement in the present case, the Commission put forward, in recital 796 to the contested decision, ten factors which are described in paragraphs 41 to 51 below.

41 First, concerning the undertakings responsible for the single infringement, it is stated in the contested decision that the central group of eight undertakings participated in the cartel arrangements in all or some of the six Member States in question and formed part of at least one umbrella association covering the three product sub-groups. The applicants, Grohe, Duscholux, Villeroy & Boch, Sanitec and Hansa participated, in particular, in meetings of the following umbrella associations: IndustrieForum Sanitär ('IFS') in Germany, Arbeitskreis Sanitär Industrie ('ASI') in Austria and Sanitair Fabrikanten Platform ('SFP') in the Netherlands (recitals 796, first indent, and 797 to the contested decision and footnote 1077 to that decision).

42 Second, with regard to the coordination between the undertakings, it is stated in the contested decision that eight associations in total included manufacturers from at least two of the three product sub-groups. There were three umbrella associations. In addition, there were cross-product associations in Italy (Euroitalia and Michelangelo) and in Belgium (Amicale du Sanitaire and Home Comfort Team ('HCT')). HCT tried to extend its activities so as to cover all three product sub-groups, the point being made that its activities at that time covered two of the product sub-groups. Lastly, within the context of product-specific associations, discussions often covered more than one of the three product sub-groups, for example at two meetings of the German ceramics associations Fachverband Sanitär-Keramische Industrie ('FSKI') and Arbeitsgemeinschaft Sanitärarmaturenindustrie ('AGSI'), in 2002 and 2003, the participants also discussed price increases relating to taps and fittings. In addition, bilateral contacts between undertakings confirm the close links between the three product sub-groups. For example, a director of Hansgrohe admitted to having always tried to obtain price information from competitors, but also information on the industry as whole, in order to 'get more security' for his own

decisions. In the light of those meetings and contacts, the Commission considers that the manufacturers in question deemed it necessary – for the purpose of ensuring the effectiveness of the scheme or noting that it was not effective – and in their commercial interests, to coordinate their respective price increases within a common framework (recital 796, first indent, recitals 798 to 802 and 813 to the contested decision and footnote 1104 thereto).

43 Third, as regards the structure of distribution and distribution arrangements for the three product sub-groups, the way the industry functioned and, in particular, the role played by wholesalers in the three-tier distribution system attest to the existence of objective links between the product sub-groups. The wholesalers, which sell products from all three product sub-groups in question, constitute the common customer base of the manufacturers of those product sub-groups. Consequently, the manufacturers had a strong incentive to coordinate their overall conduct and pricing policies in relation to the wholesalers. The undertakings participating in the cartel arrangements at issue were aware that they were engaging in annual cycles of price coordination directed towards the same customers and generally following a recurrent pattern in order to 'respond more effectively to negotiations with wholesalers' which took place each year. The coordination was implemented at national level, since the wholesalers with which the manufacturers had to negotiate were predominantly established at national level (recital 796, third indent, and recitals 803 to 805 to the contested decision).

44 Fourth, with regard to the mechanisms governing the coordination of price increases, the Commission concluded that the arrangements were generally made in the same way and at the same time in all the Member States in respect of the three product sub-groups. The manufacturers of those products established a common practice in all the Member States of systematically exchanging their respective intended price increases (in percentages) with their competitors for the forthcoming price cycle, generally before communicating those prices to their customers and before they took effect. Those practices were generally carried out within the framework of regular association meetings, throughout the duration of the cartel, during which the participants communicated their respective price increases (recitals 806 to 809 to the contested decision).

45 Fifth, concerning the anti-competitive conduct which supplemented the coordination of price increases, it consisted in either the conclusion of agreements connected with specific events or the disclosure of sensitive business information and took place at the same time and in a similar way within the framework of several associations located in various Member States. That conduct confirmed the intensity and stability of the cartel. For example, in 2004, prompted by the increase in raw material prices, the participants coordinated their price increases in Belgium, Germany, France, Italy and Austria. In 2002, in response to the introduction of the euro, the manufacturers coordinated the timing of when to introduce the new price lists. The exchange of sensitive business information mainly consisted in the exchange of recent sales data, usually in percentage increases and decreases in relation to a preceding reference period and, often, sales forecasts for the coming months. Those practices involved the same participants as the price coordination scheme and were organised within the same framework of associations (recitals 810 to 813 to the contested decision).

46 Sixth, as to cross-border links, the Commission states, first of all, that price discussions in one Member State sometimes also triggered discussions on price increases in other Member States. For example, the agreement on price increases relating to shower enclosures concluded by the specialist German association Arbeitskreis Duschabtrennungen ('ADA') triggered a coordination of prices within the Austrian association Arbeitskreis Sanitärindustrie ('ASI') in 2000. Next, the market conditions in the different Member States were interlinked. In Austria for example, attempts to align the prices to the German price level were made in 2001. Lastly, the subsidiaries of large undertakings which participated in the cartel and were based in Germany not only communicated the prices relating to the Member State of the national association in which the meeting took place, but also those relating to other Member States (recitals 818 to 823 to the contested decision).

47 In addition, the existence of cross-border links and central pricing within the undertakings active in several Member States may be explained in particular by the existence of significant trade flows between the Member States, as is the case so far as taps and fittings are concerned. These significant trade flows attest to the fact that the implementation of anti-competitive arrangements created synergies between the undertakings in question (recitals 824 to 833 to the contested decision).

48 Seventh, as regards central pricing within the undertakings, the majority of multi-national undertakings involved in the infringement found applied centralised pricing policies which were controlled by the headquarters of each group. In particular, the headquarters of those multi-national undertakings were responsible for setting the initial prices, with price ranges within which the national subsidiaries could adapt their prices to reflect their knowledge of their competitors at national level. Within Hansgrohe for example, the Strategic Pricing Office in Germany was responsible for setting prices based on market knowledge and information gleaned from its subsidiaries across the European Union. Smaller independent manufacturers which participated in association meetings were influenced by the exchanges on prices at those meetings (recitals 834 to 844 to the contested decision).

49 Eighth, as regards the existence of objective links between the three product sub-groups, for each sub-group the relevant products are bathroom fittings and fixtures defined by Hansgrohe as 'products before the wall' ('Produckte vor der Wand') in a bathroom. The objective links between those three product sub-groups are also implied, inasmuch as the association meetings covered two or three product sub-groups and the manufacturers had a common customer base. Moreover, the undertakings in question acknowledged that the three product sub-groups were complementary, thereby confirming the existence of objective links between them (recitals 845 and 846 to the contested decision).

50 Ninth, as to the stability of the price coordination scheme over time, the Commission observes that the cartel arrangements in question continued, following the same recurring pattern, even after the departure of some members. In that regard, the Commission states, by way of example, that Hansa stopped participating in the Italian association Michelangelo, which covered taps and fittings and ceramics, in 1999, although it continued to participate in Euroitalia, which covered taps and fittings and, to a lesser extent, ceramics (recitals 801 and 847 to the contested decision and footnote 1176 to that decision).

51 Tenth, concerning the participation, mobility and scope of responsibilities of executive staff, there are various examples of representatives moving from one undertaking involved in the infringement found to another, assuming responsibility for more than one Member State or participating in cartel meetings of different associations which took place in different Member States. The Commission states that those factors corroborate its findings as to the cross-product nature and broad geographic scope of that infringement. For example, Mr [V] of Sanitec attended cartel meetings of SFP in the Netherlands and cartel meetings of the Vitreous China Group ('VCG') in Belgium. That enabled him to inform other competitors of the discussions held within each association. Mr [D] represented Ideal Standard within ASI and participated in discussions covering both ceramics and taps and fittings (recitals 848 and 849 to the contested decision and footnotes 1177 to 1180 to that decision).

52 In the second place, the Commission examines the participation of the addressees of the contested decision, including the applicants, in the infringement in question (recital 850 to the contested decision).

53 First, according to the Commission, the facts establish that the applicants, Grohe, Ideal Standard, Sanitec, Hansa, Villeroy & Boch, Duscholux and Duravit were aware of the overall cartel, inasmuch as they knew, or could reasonably have foreseen, that the infringement found covered at least the three product sub-groups, given that they were members of at least one umbrella association, were also

members of several other cross-product associations and were represented in at least three Member States and product-specific associations through which they had contact with other undertakings which were also active in the cartel in several Member States (recital 852 to the contested decision).

54 Second, so far as concerns, in particular, the applicants, Grohe, Ideal Standard and Sanitec, the Commission states that they participated – through their national subsidiaries – in cartel meetings of associations in the six Members States in question. Moreover, they participated in cartel meetings of at least one umbrella association and, often, in cartel meetings of several cross-product associations. They were all directly involved in the infringement found in relation to the three product sub-groups to which their business activities related. The Commission states that the applicants were members of IFS, ASI, SFP and Stichting Verwarming en Sanitair ('SVS'), which is established in the Netherlands. Those four umbrella associations thus covered the three product sub-groups. The applicants were also members of the cross-product associations Euroitalia, HCT and Amicale du Sanitaire, which covered at least two of the product sub-groups (recital 853 to the contested decision).

55 It is necessary to go on to consider, in the light of the Commission's appraisals set out in paragraphs 39 to 54 above, whether the Commission was correct in its conclusion – which is challenged by the applicants – that the practices at issue constituted a single infringement.

56 It must be noted, as a preliminary point, that, while the applicants contend, in the context of the single plea in law advanced in support of the present action, that they did not participate in a single infringement, they state that they do not contest any of the facts previously admitted by them during the administrative proceedings and also admit to having infringed Article 101 TFEU and Article 53 of the EEA Agreement. In those circumstances, it is on the basis of the facts set out in the contested decision – which the applicants do not call in question in the present action – that it is appropriate to examine whether the Commission was correct in concluding that the applicants had participated in a single infringement covering the three product sub-groups and not merely in two separate infringements relating to the two product sub-groups that they manufacture and market, that is to say, taps and fittings and shower enclosures.

57 The point should also be made that, as the Commission essentially acknowledged in response to questions put by the Court at the hearing, it has no particular margin of discretion when determining whether or not unlawful practices form part of a single infringement. Moreover, it is for the Court to carry out a comprehensive review not only with regard to compliance with the rules applicable to the infringement in question, but also of the facts on the basis of which the Commission adopted or rejected the classification of that infringement as, in the case in point, a single infringement.

58 In the present case, the ten factors relied on by the Commission, which are set out in paragraphs 41 to 51 above, must, when assessed as a whole, be held to support the conclusion (i) that there was a single infringement and (ii) that the applicants participated in that infringement.

59 First, with regard to the finding of a single infringement, it must be stated that, in essence, the Commission identified the overall plan pursued by the undertakings concerned as having the single objective of enabling the manufacturers of the three product sub-groups in question, which complement one another when a bathroom is installed, to coordinate, within the same three-tier distribution system, the price increases that they imposed on the wholesalers which formed their common customer base. Such an assessment follows from the findings made by the Commission in recital 793, fourth indent, to the contested decision (set out in part in paragraph 39 above), recital 793, third indent, and recitals 803 to 805 to that decision (set out in part in paragraph 43 above). That assessment is also supported by the Commission's analysis, according to which the unlawful practices in question were intended, as the applicants acknowledged not only during the administrative proceedings (see recital 931 and footnote 934 to the contested decision) but also at the

hearing in response to questions from the Court, to present a united front to the wholesalers, who possessed strong bargaining power, in view of the need to provide the wholesalers, at the same time each year, with the prices they would be charged in respect of the three product sub-groups.

60 Moreover, the Commission noted many links of complementarity between the unlawful practices in question thereby establishing the existence of the overall plan described in paragraph 59 above. There is objective evidence that that overall plan was implemented, consisting, in essence, in the fact that, first, the practices in question were put into effect by a sizeable and uniform group of undertakings (see recitals 796 and 797 to the contested decision, summarised in paragraph 41 above) active in two of the three product sub-groups (see recital 801 to the contested decision, summarised in paragraph 42 above) which were in the same business sector and were complementary (see recital 845 to the contested decision, summarised in paragraph 49 above). Second, the anti-competitive practices implemented by that central group of undertakings, within the framework of several umbrella associations and cross-product associations, had the common object of increasing prices in relation to one or more of the three product sub-groups both annually and on the occasion of specific events (see recitals 810 to 813 to the contested decision, summarised in paragraph 45 above) and were perceived by the participants as requiring coordination so as to ensure that the price increases were accepted by their common customer base (see recital 813 to the contested decision, summarised in paragraph 42 above). Lastly, those unlawful practices were implemented using the same methods and at the same time (recitals 806 to 809 to the contested decision, summarised in paragraph 44 above) by, in some cases, the same employees who were responsible for their implementation with regard to several product sub-groups in several countries (see recitals 848 and 849 to the contested decision, summarised in paragraph 51 above).

61 Second, as regards the applicants' participation in the single infringement in question, the Commission rightly stated that, since the applicants were, together with other undertakings sanctioned in the contested decision, members of umbrella associations and cross-product associations (see recital 853 to the contested decision, summarised in paragraph 54 above), they had to be regarded, at the least, as being aware of all the unlawful practices concerning the three product sub-groups and therefore had to be sanctioned for that single infringement.

62 In those circumstances, the Court finds that the Commission was correct to conclude that there was a single infringement and that the applicants participated in that infringement.

63 It is in the light of the considerations set out in paragraphs 59 to 62 above that it is appropriate to examine in turn the arguments by which the applicants claim, first, that certain facts which the Commission failed to take into account call in question the existence of a single infringement in the present case and, second, that the ten factors that the Commission did take into account do not establish a single infringement.

The applicants' arguments relating to the facts which the Commission failed to take into account in the contested decision

64 The applicants put forward four main arguments, alleging that certain facts which the Commission failed to take into account call in question the finding of a single infringement.

65 The Commission contests those arguments.

66 First, the applicants submit that the three product sub-groups differ from one another and belong to separate product markets since they are not substitutable.

67 In that regard, it must be noted that the fact, upon which the parties agree, that the three product sub-groups belong to separate markets does not preclude the existence of a single infringement. As is clear from the case-law set out in paragraph 22 above, the finding of a single infringement by definition presupposes that the anti-competitive conduct in question relates to distinct goods, services or territories. Moreover, in the present case, as the Commission rightly pointed out during the hearing in response to questions from the Court, the fact that the unlawful practices in question all relate to 'before the wall' products, which complement one another when bathrooms are installed, is an objective indication that the undertakings in question had an interest in coordinating their anti-competitive conduct vis-à-vis their common customer base. In that regard, the applicants have not put forward any arguments challenging the Commission's finding, inter alia in recital 805 to the contested decision, that the taps and fittings manufacturers coordinated their anti-competitive conduct with a view to jointly defending their interests and to 'form[ing] a united front' in relation to the wholesalers. It follows from those findings that the applicants' arguments on this point must be rejected as unfounded.

68 Second, the applicants maintain that none of the 17 addressees of the contested decision manufactured or marketed the products in all three product sub-groups and that only five of them were active in two of the product sub-groups.

69 The Court points out in that regard that the Commission did not hold, in the contested decision, that all 17 undertakings which it sanctioned participated in the single infringement. Indeed, so far as some of the addressees of the contested decision are concerned, such as the Italian undertakings Cisal Rubinetteria SpA, Mamoli Robinetteria SpA, Rubineterrie Teoerema SpA, RAF Rubinetteria SpA and Zucchetti Rubinetteria SpA, the Commission concluded, in recital 879 to the contested decision, that they could not be regarded as having participated in a single infringement because it did not have evidence that they had participated in discussions about the three product sub-groups outside Italy. By contrast, in the contested decision, the Commission established that a central group of undertakings, comprising at least five undertakings, including the applicants, manufactured products in two of the three product sub-groups and that those undertakings had participated, within the framework of umbrella associations and cross-product associations, in unlawful practices concerning three and two product sub-groups respectively in most or all of the six Member States concerned (see recitals 792, 853 and 854 to the contested decision). The involvement of that central group of undertakings in the various unlawful practices thus tends to show that there was an overall plan, even though not all the undertakings in question manufactured products in all three product sub-groups.

70 In so far as the applicants argue that the Commission cannot, save in exceptional circumstances that do not exist in the present case, find that they participated in a single infringement in relation to product sub-groups when they do not manufacture those products, such an argument must also be rejected. First, that argument, which concerns the question whether an undertaking which does not manufacture ceramics can participate in an infringement covering such products, is unrelated to the question whether the conditions for finding a single infringement covering the three product sub-groups have been met. Next, and in any event, as may be seen from the case-law set out in paragraph 25 above, liability may be attributed to an undertaking for an infringement covering, in part, products that it does not manufacture if it is aware of all the unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives.

71 Third, the applicants maintain that the focus of the infringement was specific to each of the three product sub-groups. They submit that, although some conduct described in the contested decision concerned more than one of the three product sub-groups, the fact that the infringement in question covered several of those product sub-groups was insufficient for it to be characterised as a single infringement. In that regard, the applicants put forward two sets of arguments.

72 In the first set of arguments, the applicants claim that both the annual coordination of price increases and the exchange of sensitive business information predominantly concerned just one of the three product sub-groups and covered only some of the six Member States in question.

73 First of all, it must be observed in that regard, that even if, as the applicants claim, a majority of industry association meetings concerned only one product sub-group in a single Member State, that would not call in question the finding that the undertakings concerned coordinated their anti-competitive conduct for each of the product sub-groups.

74 Next, it must be noted that, as the applicants acknowledge in their written pleadings, the coordination of price increases relating to the three product sub-groups took place within ASI and SFP as well as within IFS, at least on occasion. In those circumstances, the fact that there was very little, if any, cross-product coordination with regard to some of the three product sub-groups in other Member States concerned, namely Belgium, France and Italy, does not alter the finding that there was such cross-product coordination in Germany, the Netherlands or Austria.

75 Moreover, contrary to what is maintained by the applicants, the fact that they acknowledged that the anti-competitive practices connected to specific events, such as the introduction of the euro, the increase in raw material costs and the introduction of road tolls, had consisted in coordinated price increases establishes the existence of links of complementarity between the anti-competitive practices relating to each of the three product sub-groups, even though those practices were only secondary to the regular coordination of price increases. The same is true of the practice of exchanging sensitive business information which, as the applicants expressly acknowledge, concerned more than one of the three product sub-groups. The fact that those practices were secondary to the annual coordination of price increases has no bearing on the characterisation of the practices in question as a 'single infringement'.

76 Lastly, as has rightly been pointed out by the Commission in its pleadings, the fact that the applicants, as stated in paragraph 5 above, submitted an application for immunity from fines under the 2002 Leniency Notice in respect of all products in the 'bathroom fittings and fixtures' sector is a relevant factor for the purposes of finding there to be a single infringement. Contrary to what was maintained by the applicants in response to questions from the Court at the hearing, such a factor tends to show, at the least, that the applicants considered that the practices in question, in which they were directly involved, relating to taps and fittings and shower enclosures, were interlinked and formed part of one and the same infringement.

77 The first set of arguments put forward by the applicants, summarised in paragraph 72 above, must therefore be rejected as unfounded.

78 In the second set of arguments, the applicants claim that the periods covered by the infringements differed for each of the three product sub-groups, both in Belgium and in Germany, France and Italy. They observe that there cannot be a single infringement covering all three product sub-groups which started in 1994 since, in Germany, the infringement concerning taps and fittings started only in 1998 and the infringement concerning ceramics started only in 2000.

79 In that regard, it must be noted that the Commission did not take the view that the single infringement had covered all three product sub-groups, in all the Member States, from 12 October 1994, at the earliest, until 9 November 2000, but rather considered that the single infringement had developed and evolved over that period in relation to the Member States concerned. Such a finding emerges from Article 1 of the contested decision, in which the Commission indicated, precisely, the periods when, and the territories in which, the undertakings sanctioned participated in the various unlawful practices concerning each of the three product sub-groups and forming part of the single infringement. Furthermore, the fact that the unlawful practices in question started on different dates, depending on the Member States and the product sub-groups concerned, does not affect the finding there were many

material, geographic and temporal overlaps between the unlawful practices concerning the products in issue – which, moreover, is not disputed by the applicants. With regard to the applicants in particular, it may thus be observed that, as the Commission stated in Table D of the contested decision, they participated in unlawful practices in Belgium, Germany, France and Austria in respect of two product sub-groups corresponding to their manufacturing activities, for periods of differing length but with part of the infringement period, from 16 October 1992 to 15 July 2004, in common.

80 The second set of arguments put forward by the applicants, summarised in paragraph 78 above, must therefore be rejected as unfounded.

81 Fourth, the applicants submit that the mere awareness that anti-competitive conduct may be occurring – in the present case in one of the three product sub-groups covering products that the undertakings concerned did not manufacture – should not have the effect that two separate infringements are reclassified as a single infringement. In particular, the applicants observe that, even if, on occasion, they could 'glean that there might be annual price coordination in ceramics as well', they were not aware of the anti-competitive conduct within the product-specific ceramics associations.

82 In that regard, it must nevertheless be stated that, as the Commission observes, the applicants expressly acknowledge in their pleadings that coordination of price increases had taken place within two umbrella associations of which they were members, namely ASI and SFP. In those circumstances, the Commission was entitled to consider that the applicants were, at the least, aware of the anti-competitive conduct implemented in relation to ceramics, products which they did not manufacture. In those circumstances, the Commission acted in accordance with the case-law set out in paragraphs 24 to 26 above in attributing liability to the applicants for the single infringement in question.

83 The applicants' argument must therefore be rejected as unfounded.

84 In the light of all the findings made in paragraphs 66 to 83 above, the Court finds that none of the four arguments put forward by the applicants, relating to what they consider to be objective indicia of separate infringements, irrespective of whether those indicia are assessed separately or together, is such as to invalidate the Commission's finding of a single infringement in which the applicants participated. All the applicants' arguments in that regard must therefore be rejected as unfounded.

The applicants' arguments relating to the facts which the Commission wrongly took into account in the contested decision

85 The applicants assert that none of the ten factors taken into consideration by the Commission in the contested decision and set out in paragraphs 41 to 51 above supported the conclusion that there was a single infringement.

86 The Commission contests that line of argument.

87 First, the applicants maintain that the Commission's assessment, set out in recital 797 to the contested decision and referred to in paragraph 41 above, that there was a central group of undertakings did not support the finding of a single infringement, since none of those undertakings manufactured products belonging to all three product sub-groups or participated in the cartel in the six Member States in question.

88 In that regard, it suffices to observe that, as stated in paragraph 70 above, the fact that none of the undertakings sanctioned in the contested decision manufactured products belonging to all three product sub-groups, that being the case in all the Member States concerned, does not invalidate the finding that there was a limited but uniform group of at least five undertakings, which were involved

in the same practices for coordinating price increases vis-à-vis their common customer base, covering two of the three product sub-groups and Member States, within the framework of common associations established in those Member States. That factor shows that, for at least some of the undertakings sanctioned in the contested decision, the unlawful practices formed part of an overall plan constituting a single infringement.

89 The applicants' first argument must therefore be rejected as unfounded.

90 Second, the applicants submit that the Commission's finding, set out in recital 798 to the contested decision and referred to in paragraph 42 above, that the central group of undertakings participated in cartel arrangements in all or some of the Member States and belonged to umbrella associations, is incorrect. According to the applicants, of the 13 associations referred to in the contested decision, only three umbrella associations covered all three product sub-groups and only three other cross-product associations could be regarded as covering two of the three product sub-groups. Moreover, those associations covered a large number of product sub-groups in addition to the three product sub-groups in question.

91 It should be noted at the outset that, even if it were to be established, as the applicants maintain, that there were only three umbrella associations and three cross-product associations, rather than eight associations covering at least two of the three product sub-groups, as the Commission stated in recital 796, second indent, to the contested decision, that would not invalidate the finding that the unlawful practices in question were implemented and coordinated, at least in part, within the framework of those industry associations.

92 Next, the fact that, as the applicants observe, some of those umbrella associations and cross-product associations also covered product sub-groups which are not the subject of the contested decision does not call in question the finding that those associations coordinated anti-competitive practices in respect of several of the three product sub-groups covered by that decision.

93 Lastly, the facts gainsay the applicants' argument that the documents in the Commission's case-file do not establish that the undertakings belonging to product-specific associations had an interest in product sub-groups other than those with which the meetings were principally concerned. In that regard, the Court notes that the applicants do not put forward any specific argument to invalidate, for example, the Commission's finding, in recital 801 to the contested decision, that, in Germany, the members of ADA, which dealt with shower enclosures, had informed the members of AGSI, which dealt with taps and fittings, of their intention to increase prices in response to the introduction of the euro. The applicants' argument that such communication is irrelevant in the present case, since it concerns the communication of information on the occasion of a specific event, must be rejected as unfounded. Such an argument does not invalidate the finding that information relating to different product sub-groups was communicated between associations. Moreover, it should be noted that the applicants do not contest the findings made elsewhere by the Commission – for example, in recital 800 to the contested decision – from which it is apparent that the members of Euroitalia principally discussed taps and fittings but, in addition, also retained an interest in ceramics.

94 The applicants' second argument must therefore be rejected as unfounded.

95 Third, so far as concerns the Commission's assessment, set out in recital 803 to the contested decision and referred to in paragraph 43 above, relating to the existence of a common structure and arrangements for distribution, the applicants state that they do not deny that there was a common customer base and a three-tier distribution system. However, they consider such facts to be irrelevant for the purpose of establishing the existence of a single infringement, since the three product sub-groups are separate and the wholesalers are buyers of numerous products other than those which are the subject of the contested decision.

96 In that regard, the Court observes that, contrary to the applicants' contention and as stated in paragraph 60 above, the fact that the manufacturers from the three product sub-groups, to which the contested decision was addressed, have a common customer base, namely bathroom wholesalers, explains why it was in the interests of all the undertakings to coordinate their price increases in respect of bathroom fittings and fixtures.

97 Moreover, the arguments put forward by the applicants in response to questions from the Court at the hearing – that there was an objective reason for the timing of price increases, namely that the wholesalers had to compile their price catalogue for the forthcoming year; that the wholesalers never opposed price increases that were, in any event, passed on to their own customers; or that the wholesalers bought products from a wider range of product sub-groups than the three sub-groups concerned by the contested decision – do not invalidate the assessment, referred to in paragraph 96 above, that the manufacturers from the three product sub-groups considered that it was in their interests to coordinate their conduct in the annual determination of the increases in prices charged to their common customer base.

98 The applicants' third argument must therefore be rejected as unfounded.

99 Fourth, as regards the pattern and mechanisms common to the anti-competitive conduct, which are described in recital 806 to the contested decision and the substance of which is recalled in paragraph 44 above, the applicants submit that the Commission's view that they were similar is inconsistent with the fact that the dates of the anti-competitive conduct differ depending on the three product sub-groups and the Member States concerned. Moreover, according to the applicants, the similarity results from the three-tier distribution system which led the bathroom fittings and fixtures manufacturers to announce their price increases at the same time of the year and expressed as percentages.

100 In that regard, it must be noted that, as the Commission points out in its pleadings, whilst it is true that the periods in which the anti-competitive conduct occurred differed depending on the product sub-groups and the Member States concerned, it is none the less undisputed that strikingly similar anti-competitive practices were adopted for each of the three product sub-groups in each Member State in terms of annual price increases; that was the case continuously between 16 October 1992 and 9 November 2004.

101 Moreover, the applicants' assertion that the anti-competitive practices were similar on account of the three-tier distribution system tends not to disprove but rather to confirm the finding that the manufacturers of products belonging to the three product sub-groups had a common interest in coordinating their price increases.

102 The applicants' fourth argument must therefore be rejected as unfounded.

103 Fifth, as regards the Commission's finding in recital 810 to the contested decision, referred to in paragraph 45 above, the applicants claim that the fact that there are similarities between the unlawful practices connected to specific events is irrelevant, since those practices were merely supplementary, never concerned all six Member States referred to in the contested decision and did not always concern all three product sub-groups.

104 In that regard, it should be observed that the applicants do not challenge the Commission's findings, set out, inter alia, in recital 811 to the contested decision, that the manufacturers coordinated their prices in 2004 in five Member States, following an increase in raw material prices. Nor do the applicants call into question the finding, put forward by the Commission by way of example in footnote 1104 to the contested decision, that sales data for shower enclosures and taps and fittings was exchanged at a meeting of ceramics manufacturers on 17 January 2003. The Commission's

findings in that regard therefore tend to confirm, rather than rule out, that there was, in 2003 and 2004 at least, coordination between the undertakings in question in the different Member States concerning the three product sub-groups in issue, including on the occasion of specific events.

105 The applicants' fifth argument must therefore be rejected as unfounded.

106 Sixth, the applicants submit that the Commission's findings relating to cross-border links between the unlawful practices at issue, set out in recital 818 to the contested decision and referred to in paragraph 46 above, are irrelevant for the purpose of establishing the cross-product scope of the infringement.

107 In that regard, the Court finds that, as the applicants rightly maintain, the existence of cross-border links between the unlawful practices in question is not sufficient in itself to establish that the infringement found covered all three product sub-groups. However, the existence of those links tends to confirm that it was necessary for the unlawful practices in question to be implemented in a coordinated manner in the various Member States in which the manufacturers of products belonging to the three product sub-groups were active.

108 Therefore, although the existence of cross-border links does not in itself amount to objective evidence of an overall plan, it tends, however, to establish, in the present case, in the light of the other objective elements put forward by the Commission, that the implementation of the unlawful practices in question had to be coordinated geographically. Moreover, and in any event, such a factor does not invalidate the findings made by the Commission for the purpose of establishing the existence of an overall plan.

109 Accordingly, the applicants' sixth argument must thus be rejected as unfounded.

110 Seventh, so far as concerns the Commission's assessment, set out in recitals 818 and 824 to the contested decision and referred to in paragraph 48 above, relating to the existence, on the one hand, of trade flows between the Member States and, on the other, of central pricing within multi-national undertakings, the applicants submit that that assessment is irrelevant for the analysis of the product scope of the infringement.

111 As the applicants rightly claim, neither of the two factors referred to in paragraph 110 above is sufficient in itself to establish the existence of a single infringement rather than separate infringements.

112 However, it is true that central pricing enabled large multi-national undertakings, active in one or more of the three product sub-groups which were represented within cross-product associations (including ASI, IFS, Michelangelo or SFP), to take account of information received at cross-product association meetings for the purpose of fixing their prices at a central level in respect of all geographic areas and all product sub-groups to which their manufacturing activity related. It is also true that the existence of trade flows between Member States shows that the geographic scope of the unlawful practices in question was multi-State.

113 The two factors examined in paragraph 112 above thus tend to confirm, in the light of the evidence put forward by the Commission and described in paragraphs 41 to 45 above, that the undertakings in question had an interest in coordinating their price increases. The fact remains, in any event, that those two factors do not invalidate the Commission's other assessments on which it based its finding of a single infringement.

114 The applicants' seventh argument must therefore be rejected as unfounded.

115 Eighth, as regards the Commission's assessment concerning the existence of objective links between the three product sub-groups, set out in recital 845 to the contested decision and referred to in paragraph 49 above, the applicants claim that the fact that all three sub-groups are regarded as 'products before the wall' ('Produkte vor der Wand') has no bearing on the characterisation as a single infringement. Many sub-groups of bathroom 'products before the wall' besides those dealt with in the contested decision have not been the subject of cartel arrangements. Moreover, the phrase 'products before the wall' has no identifiable economic significance.

116 In that regard, it should be borne in mind that, as stated in paragraph 96 above, the finding that the three product sub-groups are sold to a common customer base within the same distribution system is relevant for the purpose of determining whether there are links of complementarity between the anti-competitive practices in question. As stated in paragraph 97 above, the fact that the contested decision concerns only some bathroom 'products before the wall' – taps and fittings, shower enclosures and ceramics – does not affect the finding that, between those three product sub-groups at least, there were objective links of complementarity indicating that the undertakings in question coordinated their price increases.

117 The applicants' eighth argument must therefore be rejected as unfounded.

118 Ninth, the applicants submit that the ninth and tenth factors, set out in recitals 847 and 848 to the contested decision and referred to in paragraphs 50 and 51 above, did not support the finding of a single infringement.

119 In that connection, first, as regards the assessment relating to the stability of the price coordination scheme over time, set out in recital 847 to the contested decision and referred to in paragraph 50 above, it must be stated that, as the applicants rightly maintain, the fact that the cartel arrangements continued over time, even after some of the undertakings withdrew from those arrangements, does not, in itself, establish that the unlawful practices in question constituted a single infringement rather than separate infringements.

120 However, that fact confirms, in the present case, in the light of the other findings made by the Commission, the existence, in the bathroom fixtures and fittings sector, of an overall plan to distort competition which lasted even though certain undertakings ceased to be involved in the single infringement.

121 Second, with regard to the fact, set out in recital 848 to the contested decision and referred to in paragraph 52 above, that various employees moved from one undertaking to another while remaining within the bathroom fittings and fixtures sector, that their professional activities covered several product sub-groups and that they represented their respective undertakings within several associations in which the unlawful practices occurred, the Court notes that the fact that employees moved undertakings within the same sector does not, in itself, establish that the practices in question constituted a single infringement rather than separate infringements.

122 Nevertheless, that factor together with the fact that those employees implemented unlawful practices concerning several product sub-groups, within the framework of several associations in which unlawful activities occurred, tends to show, in the light of the other evidence put forward by the Commission and examined above, that the conditions for implementing an overall plan to distort competition in the bathroom fittings and fixtures sector were thereby facilitated.

123 In any event, the two factors referred to in paragraph 118 above are not such as to invalidate the Commission's finding of a single infringement.

124 Accordingly, the applicants' ninth argument must be rejected as unfounded.

125 It thus follows from the analysis set out in paragraphs 87 to 124 above that the Commission did not make an error of assessment in concluding, in the light of the facts assessed as a whole, that the unlawful practices in question formed part of a single infringement.

126 In those circumstances, the single plea in law relied on by the applicants and, therefore, the present action must be dismissed as unfounded.

Costs

127 Under Article 87(2) of the Court's 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. As the applicants have been unsuccessful, they 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 Masco Corp., Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hansgrohe Handelsgesellschaft mbH, Hansgrohe SA/NV, Hansgrohe BV, Hansgrohe SARL, Hansgrohe SRL, Hüppe GmbH, Hüppe Ges.mbH, Hüppe Belgium SA and Hüppe BV to bear their 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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