Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 January 2017*

(Appeal — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Coordination of selling prices and exchange of sensitive business information — 2006 Guidelines on the method of setting fines — Principle of equal treatment — Exercise of unlimited jurisdiction)

In Case C-638/13 P,

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

Roca SARL, established in Saint-Ouen-l'Aumône (France), represented by P. Vidal Martínez, abogada,

appellant,

the other party to the proceedings being:

European Commission, represented by F. Castilla Contreras, F. Castillo de la Torre and F. Jimeno Fernández, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, M. Berger, E. Levits, S. Rodin (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2015,

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

gives the following

* * Language of the case: Spanish.

Judgment

1 By its appeal Roca SARL ('Roca' or 'the appellant') asks the Court of Justice to set aside the judgment of the General Court of the European Union of 16 September 2013, *Roca* v *Commission* (T-412/10, 'the judgment under appeal', EU:T:2013:444), by which the General Court (i) annulled in part Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom Fittings and Fixtures) ('the decision at issue'), in so far as the European Commission set the amount of the fine to be imposed on Roca without taking account of its cooperation, (ii) reduced the fine imposed on Roca to EUR 6 298 000 and (iii) dismissed the action as to the remainder.

Legal context

Regulation (EC) No 1/2003

2 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) provides, in Article 23(2) and (3):

'2. The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

(a) they infringe Article [101] or [102 TFEU] …

…

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

…

3. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.'

3 Article 31 of that regulation provides:

'The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.'

The 2006 Guidelines

4 The Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines') state, in point 2, that, so far as concerns the setting of fines, 'the Commission must have regard both to the gravity and to the duration of the infringement' and that 'the fine imposed may not exceed the limits specified in Article 23(2), second and third subparagraphs, of Regulation No 1/2003'.

5 Point 13 of the 2006 Guidelines states:

‘In determining the basic amount of the fine to be imposed, the Commission will take the value of the undertaking’s sales of goods or services to which the infringement directly or indirectly … relates in the relevant geographic area within the [European Economic Area (EEA)]. It will normally take the sales made by the undertaking during the last full business year of its participation in the infringement. …’

6 Point 20 of the 2006 Guidelines provides:

‘The assessment of gravity will be made on a case-by-case basis for all types of infringement, taking account of all the relevant circumstances of the case.’

7 Point 21 of the 2006 Guidelines is worded as follows:

‘As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30% of the value of sales.’

8 In accordance with point 22 of the 2006 Guidelines:

‘In order to decide whether the proportion of the value of sales to be considered in a given case should be at the lower end or at the higher end of that scale, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.’

9 Point 23 of the 2006 Guidelines states:

‘Horizontal price-fixing, market-sharing and output-limitation agreements …, which are usually secret, are, by their very nature, among the most harmful restrictions of competition. As a matter of policy, they will be heavily fined. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale.’

10 Point 25 of the 2006 Guidelines is worded as follows:

‘In addition, irrespective of the duration of the undertaking’s participation in the infringement, the Commission will include in the basic amount a sum of between 15% and 25% of the value of sales as defined in Section A above in order to deter undertakings from even entering into horizontal price-fixing, market-sharing and output-limitation agreements. The Commission may also apply such an additional amount in the case of other infringements. For the purpose of deciding the proportion of the value of sales to be considered in a given case, the Commission will have regard to a number of factors, in particular those referred [to] in point 22.’

11 Point 29 of the 2006 Guidelines states:

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

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

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

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

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

— where the anticompetitive conduct of the undertaking has been authorised or encouraged by public authorities or by legislation. …'

Background to the dispute and the decision at issue

12 The background to the dispute was set out in paragraphs 1 to 29 of the judgment under appeal and may be summarised as follows.

13 Roca was a company governed by French law whose principal activity was the distribution of ceramic ware and taps and fittings on the French market. It belonged, at the time of the events constituting the infringement, to a group of companies active in the bathroom fittings and fixtures sector ('the Roca group') whose parent company was Roca Sanitario SA, which held all the share capital of Roca.

14 On 15 July 2004, Masco Corp. and its subsidiaries, including Hansgrohe AG, which manufactures taps and fittings, and Hüppe GmbH, which manufactures shower enclosures, informed the Commission of the existence of a cartel in the bathroom fittings and fixtures sector and submitted an application for immunity from fines under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3; 'the 2002 Leniency Notice'), or, in the alternative, for a reduction of any fines that might be imposed on them.

15 On 9 and 10 November 2004, the Commission conducted unannounced inspections at the premises of various companies and national industry associations operating in the bathroom fittings and fixtures sector. Between 15 November 2005 and 16 May 2006, the Commission sent requests for information to those companies and associations, including Roca and Laufen Austria AG.

16 On 17 January 2006, Roca applied, on its own behalf and on behalf of the group to which Laufen Austria belongs, in so far as Roca had taken over the activities of that group in France, for immunity from fines under the 2002 Leniency Notice or, in the alternative, for a reduction of any fine that might be imposed on it.

17 By letter dated 8 December 2006, the Commission informed the appellant that it had decided to grant it a conditional reduction of the fine.

18 On 26 March 2007, the Commission adopted a statement of objections, which was notified to Roca. The latter made representations at a hearing which took place from 12 to 14 November 2007.

19 On 23 June 2010 the Commission adopted the decision at issue, in which it found that there had been a single and continuous infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3, 'the EEA Agreement') in the bathroom fittings and fixtures sector. According to the Commission, that infringement, in which 17 undertakings had participated, took place over various periods between 16 October 1992 and 9 November 2004. The infringement was said to have taken the form of anticompetitive agreements and concerted practices covering the territory of Belgium, Germany, France, Italy, the Netherlands and Austria.

20 It was stated that the products covered by the cartel were bathroom fittings and fixtures belonging to the following three product sub-groups: taps and fittings, shower enclosures and accessories, and ceramic sanitary ware (ceramics) ('the three product sub-groups').

21 The Commission pointed to, amongst other things, the existence of national industry associations whose members' activities covered all three product sub-groups, which it termed 'umbrella associations', national industry associations with members active in at least two of those three product sub-groups, which it termed 'cross-product associations', as well as product-specific associations with members active in only one of the three product sub-groups. Lastly, it identified a central group of undertakings which participated in the cartel in various Member States and in umbrella associations and cross-product associations.

22 As regards the Roca group's participation in the infringement found, the Commission considered that the group had been aware that the infringement covered the three product sub-groups. However, so far as the geographic scope of the cartel was concerned, the Commission concluded that the Roca group could not be considered to have been aware of the cartel's overall scope but was to be regarded as having been aware only of the collusive conduct in France and Austria. So far as Roca itself was concerned, its participation was said to be limited to France and to taps and fittings and ceramics.

23 The Commission thus found, in Article 1(3) of the decision at issue, that Laufen Austria, Roca Sanitario and Roca, had infringed Article 101(1) TFEU and Article 53 of the EEA Agreement by participating in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in France and Austria.

24 For the purpose of setting the fines imposed on each undertaking, the Commission took as a basis the 2006 Guidelines.

25 The Commission first determined the basic amount of the fine. To this end it explained that this amount was based, for each undertaking, on its sales by Member State, multiplied by the number of years of participation in the infringement found in the Member State in question for the relevant product group, so that account was taken of the fact that certain undertakings were active only in certain Member States or that their activities concerned only one of the three product sub-groups.

26 After giving that explanation, the Commission set at 15% of the value of sales the multiplier linked to the gravity of the infringement found, as provided for in points 20 to 23 of the 2006 Guidelines ('the multiplier for the "gravity of the infringement"'). In that regard, it took account of four criteria for assessing the infringement: namely combined market shares and the nature, geographic scope and implementation of the infringement.

27 In addition, the Commission, under point 24 of the 2006 Guidelines, set the multiplier to be applied — to take account of the duration of the infringement found — to the basic amount determined for Roca, at 1.83, which reflected participation in the infringement, in France, in respect of taps and fittings for the period from 10 December 2002 to 9 November 2004, and at 0.66, which reflected participation in the infringement, in France, with regard to ceramics, for the period from 25 February to 9 November 2004.

28 Finally, in order to ensure that the decision at issue had a deterrent effect, the Commission, on the basis of point 25 of the 2006 Guidelines and taking account of the four criteria referred to in paragraph 26 of the present judgment, increased the basic amount of the fine by applying to the value of sales an additional multiplier ('the multiplier for the "additional amount"') at a rate of 15%.

29 This resulted, in the case of the Roca group, in basic amounts of the fine of EUR 3 000 000 for the collusive conduct relating to taps and fittings on the French market and EUR 35 700 000 for the collusive conduct relating to ceramics, of which EUR 3 700 000 concerned the French market and EUR 32 000 000 concerned the Austrian market.

30 Secondly, the Commission considered whether there were any aggravating or mitigating circumstances capable of justifying an adjustment to the basic amount of the fine. It did not find that any aggravating or mitigating circumstances applied in the appellant's case.

31 Thirdly, the Commission applied the ceiling of 10% of turnover ('the 10% ceiling') in accordance with Article 23(2) of Regulation No 1/2003. Once the 10% ceiling had been applied, the Roca group's fine amounted to EUR 38 700 000.

32 Fourthly, the Commission took the view that the Roca group, to which the appellant belonged, was not entitled to any reduction of fines under the 2002 Leniency Notice. In its view, the evidence put forward by the group could not be considered to represent significant added value for the purposes of point 21 of that notice. Nor did the Commission consider the group to have shown a genuine spirit of cooperation during the administrative procedure.

33 In view of the foregoing, the Commission found, in Article 1(3) of the decision at issue, that the appellant had infringed Article 101 TFEU and Article 53 of the EEA Agreement by participating, from 10 December 2002 to 9 November 2004, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in France and Austria.

34 Under Article 2(4)(b) of the decision at issue, as a penalty for that infringement, the Commission imposed a fine of EUR 6 700 000 on Roca and Roca Sanitario jointly and severally.

Proceedings before the General Court and the judgment under appeal

35 By application lodged at the Registry of the General Court on 9 September 2010, Roca brought an action for annulment of the decision at issue in so far as the decision concerned it or, in the alternative, for reduction of the fine imposed on it.

36 In support of its claim for the partial annulment of the decision at issue, Roca put forward five pleas in law. The first plea concerned the application of the ceiling of 10% of turnover laid down in Article 23(2) of Regulation No 1/2003. The second plea related to the Commission's assessment of the gravity of the infringement committed by Roca. The third plea alleged infringement of the principle of proportionality in so far as concerned the choice of a reference year for the purpose of setting the basic amount of the fine. The fourth plea alleged infringement of the principles of proportionality and equal treatment in so far as the prevailing context of the financial crisis had not been taken into account as a mitigating circumstance. The fifth plea concerned the fact that Roca's cooperation had not been taken into account either (i) under the 2002 Leniency Notice or (ii) as a mitigating circumstance.

37 Roca also requested, as an alternative claim, that the General Court reduce the fine imposed on it. In support of that claim, Roca argued that the Commission had made an error of assessment in its examination of the evidence that Roca had provided it with. It also drew attention to its cooperation with the Commission and maintained that its participation in the infringement was of lesser gravity than that of other participants.

38 First, the General Court rejected Roca's pleas put forward in support of its claim for annulment of the decision at issue. Second, it upheld in part the claim for variation of the fine imposed, reducing the fine by 6% on the ground that the Commission's assessment of the value of the evidence provided by Roca under the 2002 Leniency Notice was incorrect.

Forms of order sought by the parties

39 Roca claims that the Court should:

— set aside in part the judgment under appeal;

— reduce the fine imposed on it; and

— order the Commission to pay the costs.

40 The Commission contends that the Court should:

— dismiss the appeal; and

— order Roca to pay the costs.

The appeal

41 The appellant puts forward two grounds in support of its appeal. The first ground of appeal alleges that the General Court infringed the principles of equal treatment and proportionality, failed in its obligation to state reasons and distorted the facts in finding that Roca was aware that the infringement concerned the three product sub-groups and in failing to take into account the fact that Roca's infringement covered only two product sub-groups. The second ground of appeal alleges that the General Court infringed the principle that penalties must be specific to the offender, the principles of personal responsibility, proportionality, equal treatment and the protection of legitimate expectations and the obligation to state reasons, when it dismissed the claim –– made on the basis of the lesser gravity of the participation attributed to Roca in the infringement –– for reduction of the basic amount of the fine.

The first ground of appeal

Arguments of the parties

42 By its first ground of appeal, Roca maintains that the General Court infringed the principles of equal treatment and proportionality, failed in its obligation to state reasons and distorted the facts placed before it (i) in finding, incorrectly, in paragraph 131 of the judgment under appeal, that Roca, because it belonged to the Roca group, was aware that the infringement in which it was participating concerned the three product sub-groups, (ii) in refraining — wrongly and without explaining the reasons for doing so — from taking into account the lesser gravity of Roca's participation in the infringement, which covered only two product sub-groups, as compared with that of under undertakings which covered the three product sub-groups and (iii) in failing to reduce the fine imposed on it accordingly.

43 The Commission disputes the appellant's arguments.

Findings of the Court

44 As regards the complaint that the General Court distorted the facts in finding, in paragraph 131 of the judgment under appeal, that Roca, because of its membership of the Roca group, was aware of the material scope of the infringement, which concerned the three product sub-groups, it should be recalled that, given the exceptional nature of a complaint that there has been a distortion of the facts and the evidence, Article 256 TFEU, Article 58, first paragraph, of the Statute of the Court of Justice

of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court require, in particular, that an appellant indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to that distortion. Such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and evidence (order of 7 May 2015, *Adler Modemärkte* v *OHIM*, C-343/14 P, not published, EU:C:2015:310, paragraph 43 and the case-law cited).

45 First, it should be stated that the General Court, in making the finding in paragraph 131 of the judgment under appeal, in no way distorted the decision at issue, but took as its basis recital 870 of the decision.

46 Second, the appellant has not shown that the General Court had distorted the facts and evidence in the file. In that regard, it fell to Roca to establish that it was not aware of the material scope of the infringement concerned. However, Roca, at the stage of the appeal, merely makes an assertion to that effect but has put forward no evidence in support thereof.

47 Roca is therefore wrong when it maintains that the General Court distorted the facts and evidence in holding that it had been aware of the material scope of the infringement in question because of its membership of the Roca group.

48 It also follows that the submissions alleging infringement of the obligation to state reasons and of the principles of proportionality and equal treatment, which are founded on the mistaken premiss that the General Court was wrong in finding that Roca had been aware of the material scope of the infringement in question, must be rejected as unfounded.

49 The first ground of appeal must therefore be rejected.

The second ground of appeal

Arguments of the parties

50 Roca complains that the General Court infringed, in, inter alia, paragraphs 116 to 145 and 247 to 249 of the judgment under appeal, the principle that penalties must be specific to the offender, the principles of personal responsibility, proportionality, equal treatment and protection of legitimate expectations and the obligation to state reasons.

51 Roca maintains, in essence, first, that paragraphs 116 to 145 of the judgment under appeal are vitiated by an error of law. It submits that the General Court did not act upon its finding that the participation in the infringement that was imputed to Roca was of lesser gravity than that of other members of the cartel and should, in particular, have (i) adjusted the multipliers for the 'gravity of the infringement' and the 'additional amount' and (ii) reduced the basic amount of the fine. Roca argues in this respect that the judgment under appeal drew no distinction — other than with regard to the geographic extent of the involvement of the participants in the infringement — between the gravity of its conduct and the gravity of the conduct of the undertakings making up the 'hard core' of participating undertakings, in order to reflect the nature of their respective actions. In accordance with the principle of non-discrimination, the General Court should — by applying to Roca lower multipliers for the 'gravity of the infringement' and for the 'additional amount' than those applied to those core undertakings — have reduced the basic amount of the fine imposed, particularly since the General Court itself, in paragraphs 139, 247 and 248 of the judgment under appeal, had recognised that the lesser gravity of Roca's conduct should have been reflected through the application of such multipliers. However, the General Court did not take account of the lesser gravity of Roca's participation in the infringement as compared with that of other participants, either by adjusting the multipliers or by taking account of mitigating circumstances.

52 Second, Roca submits that, failing any adjustment of the multipliers, the lesser gravity of its participation in the infringement should have been taken into account as a mitigating circumstance as referred to in point 29 of the 2006 Guidelines. However, in paragraphs 141 to 143 of the judgment under appeal, the General Court, on the basis of an over-restrictive and incorrect interpretation of that provision, did not allow any reduction of the fine on this account.

53 Third, Roca argues that the General Court infringed the principle of the protection of legitimate expectations and failed in its obligation to state reasons in stating, in paragraph 135 of the judgment under appeal, that the Commission had not departed from the method of setting the fine provided for by the 2006 Guidelines.

54 The Commission disputes the appellant's arguments. Furthermore, whilst it considers that the General Court was correct in rejecting Roca's arguments concerning infringement of the principles of equal treatment and proportionality, it submits, in essence, that the premiss accepted by the General Court — that the multipliers for the 'gravity of the infringement' and for the 'additional amount' applied to Roca, which participated only in the French aspect of the infringement, should have been different from those used for other cartel members which had participated in the infringement in six Member States and in relation to three product sub-groups — was incorrect. The Commission therefore requests the Court of Justice to replace the relevant grounds of the judgment under appeal.

Findings of the Court

55 It must first of all be recalled that the General Court alone has jurisdiction to examine how in each particular case the Commission assessed the gravity of unlawful conduct. In an appeal, the purpose of review by the Court of Justice is, first, to examine to what extent the General Court took into consideration, in a legally correct manner, all the essential factors to assess the gravity of particular conduct in the light of Article 101 TFEU and Article 23 of Regulation No 1/2003 and, second, to consider whether the General Court responded to a sufficient legal standard to all the arguments raised in support of the claim for cancellation or reduction of the fine (see, inter alia, judgments of 17 December 1998, *Baustahlgewebe* v *Commission*, C-185/95 P, EU:C:1998:608, paragraph 128; of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 244; and of 5 December 2013, *Solvay Solexis* v *Commission*, C-449/11 P, not published, EU:C:2013:802, paragraph 74).

56 In so far as Roca, by its second ground of appeal, complains that the General Court failed — both in carrying out its review of the legality of the decision at issue (in paragraphs 116 to 145 of the judgment under appeal) and in exercising its unlimited jurisdiction as regards the setting of the fine (in paragraphs 247 to 249 of that judgment) — to take account of the fact that its participation in the infringement was of lesser gravity than that of the undertakings making up the 'hard core' of the cartel, it should be noted that it is not for the Court of Justice, when ruling on questions of law in the context of an appeal, to substitute, on grounds of fairness, its own assessment for that of the General Court exercising its unlimited jurisdiction to rule on the amount of fines imposed on undertakings for infringements of EU law (judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 245, and of 11 July 2013, *Gosselin Group* v *Commission*, C-429/11 P, not published, EU:C:2013:463, paragraph 87).

57 It should also be recalled that, in setting the amount of fines, regard must be had to the duration of the infringement and to all the factors capable of affecting the assessment of the gravity of that infringement (judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 240, and of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 98).

58 The factors capable of affecting the assessment of the gravity of the infringements include the conduct of each of the undertakings, the role played by each of them in the establishment of the cartel, the profit which they were able to derive from the cartel, their size, the value of the goods concerned and the threat that infringements of that type pose to the objectives of the European Union (judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 242, and of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 100).

59 In the first place, the General Court confirmed, in paragraph 131 of the judgment under appeal, that the constituent elements of the infringement, on which the Commission relied, were factually correct. It thereby found that Roca participated in an infringement consisting in coordinating future price increases and that, because of its participation in the Roca group, it was aware of the material scope of the infringement as well as its geographic scope. The General Court thus concluded that the Commission was, in accordance with points 21 to 23 and 25 of the 2006 Guidelines, fully entitled to consider that multipliers of 15% for the 'gravity of the infringement' and for the 'additional amount' were appropriate.

60 In that regard, Roca complains that the General Court failed to take into account the fact that it did not belong to the 'hard core' of the cartel because, among other things, it had not played a part in creating or maintaining the cartel.

61 Even if that fact were established, it would not, in any event, show that the General Court should have held that multipliers for the 'gravity of the infringement' and for the 'additional amount' at a rate of 15% are not appropriate or are too high, since such a rate was warranted by reason of the very nature of the infringement at issue, namely the implementation of coordinated price increases. Such an infringement is among the most harmful restrictions of competition for the purposes of points 23 and 25 of the 2006 Guidelines and 15% is the lowest rate on the scale of penalties prescribed for such infringements under those guidelines (see, to that effect, judgments of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraphs 124 and 125, and of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 125).

62 Accordingly, the General Court was fully entitled to hold, in paragraphs 131 and 246 of the judgment under appeal, that the Commission had not infringed the principle of proportionality in having set the multipliers for the 'gravity of the infringement' and for the 'additional amount' at 15%, despite the limited geographic scope of the appellant's participation in the infringement at issue.

63 In so far as Roca, in the second place, complains that the General Court — although it found that Roca's participation in the infringement was of lesser gravity than that of other cartel participants — used those multipliers with regard to Roca and thereby infringed the principle of equal treatment, it must be found that, as the Commission has in essence submitted, there is an error of law in the grounds set out in paragraphs 138 and 139 and 247 and 248 of the judgment under appeal which state (i) that an infringement covering the territories of six Member States and three product sub-groups must be regarded as more serious than an infringement such as that at issue, which was committed only on the territory of a single Member State, and (ii) that the undertakings that participated in the first-mentioned infringement should, for that reason alone, be subject to a fine calculated on the basis of higher multipliers for the 'gravity of the infringement' and for the 'additional amount' than those applied to Roca.

64 As regards the determination of the multipliers for the 'gravity of the infringement' and for the 'additional amount', it is apparent from points 22 and 25 of the 2006 Guidelines that account must be taken of a number of factors, in particular those set out in point 22 of those guidelines. Although, in order to assess the gravity of an infringement and subsequently set the fine to be imposed, account may be taken, inter alia, of the geographic extent of an infringement, the mere fact that the geographic scope of one infringement is more extensive than that of another does not necessarily

mean that the first infringement, considered as a whole, and in particular in the light of its nature, must be classified as more serious than the second and as therefore justifying the setting of higher multipliers for the 'gravity of the infringement' and for the 'additional amount' than those used in the calculation of the fine for the second infringement (see, to that effect, judgment of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 178).

65 Nonetheless, it must be recalled that the principle of equal treatment is a general principle of EU law enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. According to settled case-law, that principle requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see, inter alia, judgment of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 51).

66 Observance of that principle is binding on the General Court not only in the exercise of its review of the legality of the Commission's decision imposing fines but also in the exercise of its unlimited jurisdiction. When the amount of the fines imposed is determined, the exercise of such jurisdiction cannot result in discrimination between undertakings which have participated in an agreement or concerted practice contrary to Article 101(1) TFEU (see, to that effect, judgment of 18 December 2014, *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 77).

67 It follows from the case-law of the Court of Justice, however, that the taking into account, by virtue of the principle of equal treatment, of differences between the undertakings that have participated in a single cartel (in particular with regard to the geographic scope of their respective involvement) for the purpose of assessing the gravity of an infringement need not necessarily occur when the multipliers for the 'gravity of the infringement' and for the 'additional amount' are set but may occur at another stage in the setting of the fine, such as when the basic amount of the fine is adjusted in the light of mitigating and aggravating circumstances under points 28 and 29 of the 2006 Guidelines (see, to that effect, judgments of 11 July 2013, *Gosselin Group* v *Commission*, C-429/11 P, not published, EU:C:2013:463, paragraphs 96 to 100, and of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraphs 104 and 105).

68 As the Commission has observed, such differences may also be reflected by means of the value of sales that is used in calculating the basic amount of the fine inasmuch as that value reflects, for each participating undertaking, the scale of its involvement in the infringement in question, in accordance with point 13 of the 2006 Guidelines, under which it is possible to take as a starting point for the calculation of the fines an amount which reflects the economic significance of the infringement and the size of the undertaking's contribution to it (see, to that effect, judgment of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 76).

69 Consequently, since it is not disputed that the basic amount of the fines imposed on Roca was determined by reference to the value of the sales which Roca made in France of products belonging to the two sub-groups made up of (i) ceramics and (ii) taps and fittings, the General Court could, in paragraphs 138 and 139 and 247 and 248 of the judgment under appeal, set the multipliers for the 'gravity of the infringement' and for the 'additional amount' at 15% of that value without infringing the principle of equal treatment.

70 Although it follows from the previous paragraphs that the reasoning of the General Court in paragraphs 138 and 139 and 247 and 248 of the judgment under appeal is vitiated by errors of law, it must be recalled that, if the grounds of a decision of the General Court contain an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement is not one that should cause that decision to be set aside, and a substitution of grounds must be made

(see, to that effect, judgments of 9 June 1992, *Lestelle* v *Commission*, C-30/91 P, EU:C:1992:252, paragraph 28, 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 187 and the case-law cited).

71 As is apparent from the grounds set out in paragraphs 64 to 69 of the present judgment, which must be substituted for those relied on by the General Court, that is the case here.

72 The second ground of appeal must therefore be rejected in so far as it complains that the General Court made errors of law and, in particular, infringed the principles of proportionality and equal treatment in that, since the General Court failed to apply to Roca multipliers for the 'gravity of the infringement' and for the 'additional amount' that were lower than those applied to undertakings whose conduct in the infringement was more serious, account was not taken in the judgment under appeal of the lesser gravity of Roca's participation in the infringement.

73 As regards the claim that the General Court failed in its obligation to state reasons and infringed the principle of the protection of legitimate expectations in holding, in paragraph 183 of the judgment under appeal, that the Commission had not departed from the method laid down by the 2006 Guidelines for calculating the amount of the fine, it must be noted that the General Court described that method in general terms, in paragraphs 121 and 122 of the judgment under appeal, and, in paragraphs 124 to 126 of the judgment, described how the Commission had applied the method in the present case.

74 Such a claim therefore cannot succeed.

75 As regards, finally, the complaint that the General Court failed to take into account, as mitigating circumstances within the meaning of the third indent of point 29 of the 2006 Guidelines, the lesser gravity of Roca's participation in the infringement as compared with that of other participants, it is not disputed that Roca merely put forward, before the General Court, an assertion about the limited nature of its participation in the infringement found.

76 Under point 29 of the 2006 Guidelines, the appellant should, in order to be granted a reduction in the amount of the fine on account of mitigating circumstances, have established that it had actually avoided applying the offending agreements in question by adopting competitive conduct on the market, a matter which the appellant failed to prove, as the General Court found in paragraph 143 of the judgment under appeal.

77 In any event, such an assessment of the evidence cannot — unless the clear sense of the evidence has been distorted, which has not been claimed in this case — be challenged in an appeal (see, to that effect, judgments of 13 January 2011, *Media-Saturn-Holding* v *OHIM*, C-92/10 P, not published, EU:C:2011:15, paragraph 27; of 10 July 2014, *Greece* v *Commission*, C-391/13 P, not published, EU:C:2014:2061, paragraphs 28 and 29; and of 20 January 2016, *Toshiba Corporation* v *Commission*, C-373/14 P, EU:C:2016:26, paragraph 40).

78 Accordingly, the complaint concerning the examination by the General Court of mitigating circumstances within the meaning of the third indent of point 29 of the 2006 Guidelines must be rejected.

79 It follows from all the foregoing considerations that the second ground of appeal must be rejected and that the appeal must therefore be dismissed in its entirety.

Costs

80 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

81 Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant has been unsuccessful and the Commission has applied for costs against it, the appellant must be ordered to pay the costs relating to the present appeal proceedings.

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

1. Dismisses the appeal;

2. Orders Roca SARL to pay the costs.

[Signatures]