Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 January 2017*

(Appeal — 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 Agreement on the European Economic Area — Price coordination and exchange of sensitive business information — Single infringement — Proof — Fines — Unlimited jurisdiction — Reasonable time — Proportionality)

In Case C-626/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 29 November 2013,

Villeroy & Boch Austria GmbH, established in Mondsee (Austria), represented by A. Reidlinger and J. Weichbrodt, Rechtsanwälte,

appellant,

the other party to the proceedings being:

European Commission, represented by M. Kellerbauer, L. Malferrari and F. Ronkes Agerbeek, 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: German.

Judgment

1 By its appeal, Villeroy & Boch Austria GmbH ('Villeroy & Boch Austria' 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, *Villeroy & Boch Austria and Others* v *Commission* (T-373/10, T-374/10, T-382/10 and T-402/10, not published, 'the judgment under appeal', EU:T:2013:455), in so far as, by that judgment, the General Court dismissed in part Villeroy & Boch Austria's action for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (COMP/39092 — Bathroom Fittings and Fixtures) ('the decision at issue') in so far as the decision concerned it.

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.'

The 2006 Guidelines

3 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'.

4 Point 37 of the 2006 Guidelines states:

'Although these Guidelines present the general methodology for the setting of fines, the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in point 21. …'

Background to the dispute and the decision at issue

5 The products covered by the cartel are 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').

6 The background to the dispute was set out by the General Court in paragraphs 1 to 19 of the judgment under appeal and may be summarised as follows.

7 By the decision at issue, the Commission found that there had been an 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. That infringement, in which 17 undertakings had allegedly participated, was said to have taken place over various periods between 16 October 1992 and 9 November 2004 and to have taken the form of anticompetitive agreements or concerted practices covering the territory of Belgium, Germany, France, Italy, the Netherlands and Austria.

8 More specifically, the Commission stated, in the decision at issue, 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 fixed their price lists, which generally remained in force for a year and formed the basis for commercial relations with wholesalers.

9 Villeroy & Boch Austria and the other applicants at first instance, Villeroy & Boch AG ('Villeroy & Boch'), Villeroy & Boch SAS ('Villeroy & Boch France') and Villeroy & Boch Belgium SA ('Villeroy & Boch Belgium'), are active in the bathroom fittings and fixtures sector. Villeroy & Boch holds the entirety of the share capital in Villeroy & Boch Austria, Villeroy & Boch France, Villeroy & Boch Belgium, Ucosan BV and its subsidiaries and Villeroy & Boch SARL.

10 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. On 2 March 2005, the Commission adopted a decision granting Masco conditional immunity from fines pursuant to points 8(a) and 15 of the 2002 Leniency Notice.

11 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.

12 On 15 and 19 November 2004 respectively, Grohe Beteiligungs GmbH and its subsidiaries and American Standard Inc. ('Ideal Standard') and its subsidiaries each applied for immunity from fines under the 2002 Leniency Notice or, in the alternative, for a reduction in fines.

13 Between 15 November 2005 and 16 May 2006, the Commission sent requests for information to a number of companies and associations active in the bathroom fittings and fixtures sector, including the applicants before the General Court. The Commission then, on 26 March 2007, adopted a statement of objections which was notified, inter alia, to those applicants.

14 On 17 and 19 January 2006 respectively, Roca SARL and Hansa Metallwerke AG and its subsidiaries each applied for immunity from fines under the 2002 Leniency Notice or, in the alternative, for a reduction in fines. On 20 January 2006, Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik submitted a similar application.

15 Following a hearing, which took place from 12 to 14 November 2007, in which the applicants at first instance took part, the sending, on 9 July 2009, of a letter of facts, drawing their attention to certain evidence on which the Commission was minded to rely when adopting a final decision, and further requests for information that were subsequently addressed to the applicants, the Commission, on 23 June 2010, adopted the decision at issue. By that decision the Commission held that the practices described in paragraph 8 of the present judgment formed part of an overall plan to restrict competition among the addressees of that decision and had the characteristics of a single and continuous infringement, which covered the three product sub-groups and extended to Belgium, Germany, France, Italy, the Netherlands and Austria. In that regard, the Commission 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. The Commission also pointed to the existence of national industry associations concerning all three product sub-groups, which it termed 'umbrella associations', national industry associations with members active in at least two of those three product sub-groups, which it termed 'cross-product associations', as well as product-specific associations with members active in only one of those three product sub-groups. Lastly, it found that a central group of undertakings participated in the cartel in several Member States and in cross-product associations and umbrella associations.

16 According to the Commission, the applicants at first instance took part in the infringement at issue in their capacity as members of the following associations: in Germany, the IndustrieForum Sanitär, which, as of 2001, replaced the Freundeskreis der deutschen Sanitärindustrie, the Arbeitskreis Baden und Duschen, which, as of 2003, replaced the Arbeitskreis Duschabtrennungen, and the Fachverband Sanitär-Keramische Industrie, in Austria, the Arbeitskreis Sanitärindustrie ('ASI'), in Belgium, the Vitreous China-group, in the Netherlands, the Sanitair Fabrikanten Platform and, in France, the Association française des industries de céramique sanitaire. As regards the infringement in the Netherlands, the Commission found, in essence, in recital 1179 of the decision at issue, that the undertakings that had taken part in it could no longer be fined for the infringement because the limitation period had expired.

17 In Article 1 of the decision at issue, the Commission listed the undertakings which it found to have committed an infringement of Article 101 TFEU and, from 1 January 1994, Article 53 of the EEA Agreement on account of their participation, for various periods between 16 October 1992 and 9 November 2004, in a cartel in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria. As regards the applicants at first instance, the Commission, in Article 1(1) of the decision at issue, made findings of infringement against Villeroy & Boch for its participation in the single infringement from 28 September 1994 to 9 November 2004 and against its subsidiaries Villeroy & Boch Austria, Villeroy & Boch Belgium and Villeroy & Boch France for periods from 12 October 1994, at the earliest, to 9 November 2004.

18 In Article 2(8) of the decision at issue, the Commission imposed fines of (i) EUR 54 436 347 on Villeroy & Boch, (ii) EUR 6 083 604 on Villeroy & Boch and Villeroy & Boch Austria jointly and severally, (iii) EUR 2 942 608 on Villeroy & Boch and Villeroy & Boch Belgium jointly and severally and (iv) EUR 8 068 441 on Villeroy & Boch and Villeroy & Boch France jointly and severally. The total amount of the fines imposed on the applicants at first instance was therefore EUR 71 531 000.

19 For the purpose of setting those fines, the Commission took as a basis the 2006 Guidelines.

Proceedings before the General Court and the judgment under appeal

20 By application lodged at the Registry of the General Court on 8 September 2010, Villeroy & Boch Austria brought an action in Case T-373/10 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.

21 In support of its claim for annulment, Villeroy & Boch Austria argued, before the General Court, that the Commission had erred in characterising the infringement found as a single, complex and continuous infringement and that, in the alternative, in so doing it had breached its duty to state reasons in that it had failed to define the relevant markets with sufficient precision. According to Villeroy & Boch Austria, the Commission had erred in concluding that it had participated in a cartel on the Austrian market. It maintained in that regard that there was no evidence of an infringement in Austria. Lastly, it took issue with the joint and several imposition of its fine and maintained that there was an error of assessment in the calculation thereof, that the fine should be reduced in view of the excessive duration of the administrative procedure and that the fine was disproportionate.

22 In the alternative, Villeroy & Boch Austria put forward a claim for reduction of the fines imposed.

23 By the judgment under appeal, the General Court dismissed the action in its entirety.

The forms of order sought by the parties

24 The appellant claims that the Court should:

— set aside in its entirety the judgment under appeal in so far as the General Court thereby dismissed its action;

— in the alternative, set aside in part the judgment under appeal;

— in the further alternative, reduce the amount of the fine imposed on it;

— in the yet further alternative, set aside the judgment under appeal and refer the case back to the General Court for a determination; and

— order the Commission to pay the costs.

25 The Commission contends that the Court should:

— dismiss the appeal in its entirety as in part inadmissible and in part manifestly unfounded; and

— order the appellant to pay the costs.

Consideration of the appeal

26 The appellant raises four grounds in support of its appeal. The first ground of appeal alleges that the General Court made an error of law in the assessment of the infringements allegedly committed in Austria. The second ground of appeal argues that the General Court erred in law in finding there to be a complex and continuous infringement. The third ground of appeal concerns the General Court's alleged failure to exercise its unlimited jurisdiction to review the fine imposed. The fourth plea alleges breach of the principle of proportionality.

The first ground of appeal, alleging an error of assessment as regards the infringements allegedly committed in Austria

Arguments of the parties

27 By its first ground of appeal, the appellant maintains that the findings of the General Court are legally flawed so far as concerns the alleged substantive infringements in Austria during the period from 12 October 1994 to 9 November 2004 and must therefore be set aside.

28 Concerning more particularly the year 1994, the appellant claims that, in paragraphs 175 and 176 of the judgment under appeal, the General Court gave an overly broad interpretation of the Commission's findings and thus altered the reasoning of the decision at issue in breach of the second paragraph of Article 296 TFEU. Contrary to what was held by the General Court, the Commission had not found, in recitals 299 to 301 of that decision, that the ASI meetings in 1994 concerned not only shower enclosures and taps and fittings but also ceramic bathroom ware.

29 Concerning the years 1995 to 1997, the General Court, in paragraphs 185, 190 and 196 of the judgment under appeal, observed that the appellant took part in unlawful discussions at the meetings on 16 November 1995, 23 April 1996 and 15 October 1997.

30 However, as regards the meeting on 16 November 1995, the appellant essentially submits that that conclusion is vitiated by errors of law, if for no other reason than because the General Court did not respond to all its arguments. The General Court's observations, in paragraph 189 et seq. of the judgment under appeal, concerning the meeting of 23 April 1996, according to which it is immaterial that the discussion at issue was organised at the wholesalers' request, are also vitiated by errors of law, since there is another, wholly legitimate, explanation of the practices complained of. That explanation is that the wholesalers in the bathroom fittings and fixtures sector expressly required annual price lists to be introduced on certain dates in order to be able to publish their catalogues. As regards the meeting on 15 October 1997, the General Court, in paragraph 194 of the judgment under appeal, also went beyond the limits of the review of legality for which Article 263 TFEU provides by relying on reasons which were not included in the Commission's statement of objections.

31 So far as 1998 is concerned, the appellant submits that the General Court's observations, in paragraph 197 et seq. of the judgment under appeal, concerning the appellant's alleged involvement in a cartel infringement also err in law, since they are contradictory. The General Court observed, in paragraphs 197 to 202 of that judgment, that the Commission had failed to prove that the appellant had participated, in 1998, in discussions that were contrary to competition law. In particular, Masco's statement was said not to prove such participation. It is illogical that the General Court should then rely, in paragraph 203 of the judgment under appeal, on the same statement of Masco to prove that the appellant did not distance itself from the unlawful practices in 1998. Moreover, neither that statement nor the other indicia mentioned in paragraph 203 prove that the appellant failed to distance itself from those practices. The General Court thus also failed to apply the legal principles developed in the case-law, whereby a set of indicia is sufficient to establish that a meeting is contrary to competition law only when it shows the systematic character of the meetings and their anticompetitive content and only when that is supported by a statement of an undertaking that has significant probative value. In the appellant's submission, neither of those conditions is fulfilled in the present case.

32 Concerning the year 1999, the appellant submits that there are errors of law in the General Court's conclusions in paragraph 208 of the judgment under appeal, according to which the evidence produced by the Commission, namely the handwritten notes of the ASI meeting on 6 September 1999 drawn up by Ideal Standard, establishes to the requisite legal standard the appellant's participation in

unlawful discussions. The statement of an undertaking which has applied for a reduction in its fine under the 2002 Leniency Notice cannot constitute sufficient evidence of an infringement where the accuracy of the statement is challenged by a number of other undertakings under investigation.

33 Concerning the year 2000, the General Court, in paragraph 214 of the judgment under appeal, held, relying on the minutes of the ASI meeting on 12 and 13 October 2000, that, despite the lack of direct evidence that the appellant took part in the anticompetitive actions in that year, 'it must be found that the unlawful discussions which took place in 1999 produced effects in the course of the year 2000'. The appellant maintains, however, that those minutes, which, moreover, were misinterpreted by the General Court, do not constitute sufficient evidence in that regard.

34 As regards the year 2001, it is submitted that the General Court, in paragraphs 214 to 218 of the judgment under appeal, accepted –– solely on the ground that the unlawful discussions alleged to have taken place in 2000 continued to produce effects –– that the appellant had participated in unlawful discussions in 2001. In stating reasons for its observations, the General Court merely referred to recitals 652 to 658 of the decision at issue, without explaining in what respect the explanations therein were persuasive.

35 So far as the years 2002 and 2003 are concerned, the General Court did not take the appellant's submissions into account.

36 As regards, lastly, the year 2004, the appellant submits that the observations made by the General Court in paragraph 228 of the judgment under appeal are contradictory and vitiated by an error of law. The General Court held, in that paragraph, that the appellant, which did not attend the ASI meeting on 22 January 2004, was informed, by means of the minutes of the meeting, of the decisions taken by its competitors at the meeting, whilst, in paragraph 212 of the judgment under appeal, the General Court held that the fact that minutes of ASI meetings were as a rule to be sent to all the members of that association did not serve to establish, on its own, that the appellant had actually acquainted itself with them.

37 The Commission contends that the first ground of appeal should be rejected.

Findings of the Court

38 By its first ground of appeal, the appellant claims that there are various errors in the General Court's findings concerning infringements allegedly committed in Austria between 12 October 1994 and 9 November 2004.

39 As regards, first, the appellant's arguments relating to 1994, the Court finds that, in the present proceedings, the appellant merely reproduces the arguments which it advanced before the General Court. The same is true of the arguments concerning the meeting of 23 April 1996.

40 It should be recalled that, according to settled case-law, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. Where an appeal merely reproduces the pleas in law and arguments previously submitted to the General Court, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, it fails to satisfy that requirement. Such an appeal amounts in reality to no more than a request for a re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, inter alia, judgments of 30 June 2005, *Eurocermex* v *OHIM*, C-286/04 P, EU:C:2005:422, paragraphs 49 and 50, and of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraphs 49 and 50).

41 The appellant's arguments relating to the year 1994 and to the meeting of 23 April 1996 must therefore be rejected as inadmissible.

42 As regards, second, the appellant's arguments relating to the meetings that took place on 16 November 1995 and 15 October 1997, which in essence allege that the judgment under appeal is insufficiently reasoned, it must be recalled that, according to well-established case-law, the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know the reasons why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its powers of review (see, inter alia, judgments of 2 April 2009, *Bouygues and Bouygues Télécom* v *Commission*, C-431/07 P, EU:C:2009:223, paragraph 42, and of 22 May 2014, *Armando Álvarez* v *Commission*, C-36/12 P, EU:C:2014:349, paragraph 31).

43 In the present case, however, the General Court, in paragraphs 180 to 185 and 192 to 196 of the judgment under appeal, examined and rejected the appellant's arguments relating to the infringements in Austria so far as those various meetings are concerned. For each of them, the General Court referred to the relevant evidence and to the decision at issue before rejecting the appellant's arguments as unfounded. In doing so, the General Court stated reasons for the judgment under appeal.

44 Accordingly, the Court must reject the appellant's arguments outlined in paragraph 42 of the present judgment.

45 So far as the meeting on 15 October 1997 is concerned, the Court also rejects the appellant's argument that the General Court relied on reasons which were not included in the Commission's statement of objections. The General Court in fact relied, in paragraph 194 of the judgment under appeal, on the reasons set out in recitals 295 and 307 of the decision at issue. The appellant, however, did not allege, before the General Court, that there was any inconsistency between that decision and the statement of objections on this point. Consequently, in accordance with settled case-law (see, inter alia, judgment of 22 October 2015, *AC-Treuhand* v *Commission*, C-194/14 P, EU:C:2015:717, paragraph 54), it cannot put forward such an argument at the stage of the appeal before the Court of Justice.

46 Concerning, thirdly, the meetings of 30 April and 18 June 1998, it should be noted that the General Court found, in paragraph 199 of the judgment under appeal, that none of the evidence produced by the Commission established that the appellant had taken part in the infringement. However, in paragraph 203 of the judgment, the General Court clearly held that, in the absence of any 'public distancing' on the appellant's part and owing to the fact that the agreement of 15 October 1997 continued to produce anticompetitive effects throughout the following year, the Commission could consider that the appellant had not ceased to participate in the infringement in 1998. In proceeding in that way, not only did the General Court fulfil its obligation to state reasons, thereby enabling the parties to challenge its reasoning and the Court of Justice to exercise its power of review in an appeal, but it also did not make any error of law in its taking and appraisal of the evidence.

47 Concerning the last point, it is settled case-law of the Court that in most cases the existence of anticompetitive practices or agreements must be inferred from a number of coincidences or indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules. Thus, as regards, in particular, an infringement extending over a number of years, the fact that direct evidence of a company's participation in that infringement during a specified period has not been produced does not preclude that participation from being regarded as established also during that period, provided that that finding is based on objective and consistent indicia; the lack of any public distancing on the part of that company may be taken into account in that regard (see, to that effect, judgment of 17 September 2015, *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614, paragraphs 26 to 28 and the case-law cited).

48 Nor did the General Court contradict itself or fail in its obligation to state reasons in holding that, although Masco's statement did not, on its own, establish that the appellant had taken part in exchanges of information in 1998, it could properly be taken into account, amongst other matters, as part of the set of consistent indicia described in paragraph 203 of the judgment under appeal in order to show that there was no break in the appellant's participation in the unlawful practices so far as 1998 was concerned.

49 Finally, the appellant's arguments must be rejected as inadmissible in so far as they call into question the General Court's assessment of the facts and the evidence. According to settled case-law of the Court of Justice, the General Court's assessment of the facts may not, as a rule, be subject to review by the Court of Justice in appeal proceedings. Thus, as is clear from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court therefore has sole jurisdiction to find and appraise the relevant facts and to assess the evidence, except where those facts and that evidence have been distorted (see, to that effect, judgment of 2 October 2003, *Salzgitter* v *Commission*, C-182/99 P, EU:C:2003:526, paragraph 43 and the case-law cited).

50 As regards, fourthly, the meetings that took place in 1999, it should be noted that, as is made clear by paragraph 206 of the judgment under appeal, the Commission relied, not simply on Ideal Standard's leniency application, but on a handwritten account of the meeting on 6 September 1999, drawn up by a representative of Ideal Standard on the actual day of the unlawful meeting. Contrary to the appellant's claim, such evidence, which does not date from the time when that company made an application under the 2002 Leniency Notice but which is contemporaneous with the facts, does not, as the General Court stated in paragraph 207 of the judgment under appeal, require there to be other corroborating evidence. That argument must therefore be rejected as unfounded.

51 Concerning, fifthly, the ASI meeting on 12 and 13 October 2000, it must be noted that the appellant's arguments are based on a misreading of paragraph 214 of the judgment under appeal. Contrary to the appellant's claim, the General Court did not rely on the minutes of that meeting in finding that the unlawful discussions that took place in 1999 produced effects in the course of the year 2000. Furthermore, those arguments essentially seek to call into question the General Court's assessment of the evidence, without, however, proving that the clear sense of the evidence has been distorted. Accordingly, in view of the case-law set out in paragraph 49 of the present judgment, those arguments are inadmissible.

52 Concerning, sixthly, the year 2001, the appellant's argument is also based on a misreading of the judgment under appeal and must therefore be rejected. Indeed, paragraphs 215 to 218 of that judgment make quite clear that the General Court did not base its finding that Villeroy & Boch Austria had participated in the unlawful discussions which took place in 2001 on the ground that the discussions which took place in 2000 continued to produce effects the following year. In fact, in paragraphs 215 to 217 of that judgment, the General Court took as its basis the fact that that company had attended several meetings in 2001 at which the participants agreed on the date on which price lists would be sent to the wholesalers and on the date of the price increase, as well as on the fact that those meetings were consistent with others that took place in 2000 and 2001, which Villeroy & Boch Austria did not attend but at which ASI members mentioned figures for price increases from 1 January 2002.

53 Concerning, seventhly, the appellant's arguments that the judgment under appeal is insufficiently reasoned in that the General Court did not take account of its submissions relating to the years 2002 and 2003, it is sufficient to note that, for each of the relevant meetings, the General Court, in paragraphs 219 to 226 of the judgment under appeal, referred to the relevant evidence and to the decision at issue before rejecting the appellant's arguments as unfounded. In view of the case-law set

out in paragraph 42 of the present judgment, the General Court was not required to respond to each and every one of the appellant's submissions. Accordingly, the appellant's present arguments must be rejected.

54 As regards, finally, the appellant's arguments concerning the meeting on 22 January 2004, it is clear that the appellant is seeking to call into question the General Court's assessment of the evidence, without, however, raising a claim that the clear sense of that evidence has been distorted. Accordingly, in view of the case-law set out in paragraph 49 of the present judgment, those arguments are inadmissible.

55 It follows from the foregoing that the sixth ground of appeal must be rejected as partly inadmissible and partly unfounded.

The second ground of appeal, concerning the existence of a single and continuous infringement

Arguments of the parties

56 By its second ground of appeal, the appellant submits, in the first place, that the legal concept of a single, complex and continuous infringement is, in itself, incompatible with the structure of Article 101 TFEU and Article 53 of the EEA Agreement and therefore cannot be applied. In its submission, that concept has no legal basis under EU law. It further submits that the judgment under appeal is insufficiently reasoned inasmuch as the General Court failed to respond to its arguments on this point.

57 In the second place, the appellant argues, in the alternative, that the conditions for the recognition of a single infringement were not met in the present case since the Commission did not define the relevant market and since it has not been established that there was a relationship of complementarity between the various acts complained of.

58 In the third place, the appellant submits that, in any event, because the decision at issue was annulled in part with regard to certain Member States by the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449); of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457); and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477), and because certain undertakings may not have been aware of the entirety of the infringement, there cannot have been an overall infringement as defined in that decision.

59 The Commission contends that the second ground of appeal should be rejected.

Findings of the Court

60 According to settled case-law, an infringement of Article 101(1) TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an 'overall plan' because their identical object distorts competition in the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole (see, to that effect, judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 156 and the case-law cited).

61 An undertaking which has participated in a single and complex infringement of that kind by its own conduct, which fell within the definition of an agreement or concerted practice having an anticompetitive object within the meaning of Article 101(1) TFEU and was intended to help bring about the infringement as a whole, may thus be responsible also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk (see, to that effect, judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 157 and the case-law cited).

62 An undertaking may thus have participated directly in all the forms of anticompetitive conduct comprising the single and continuous 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 forms of anticompetitive conduct comprising the single and continuous 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 cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anticompetitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole (see judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 158 and the case-law cited).

63 Moreover, for the purpose of characterising various instances of conduct as a single and continuous infringement, it is not necessary to ascertain whether they present a link of complementarity, in the sense that each of them is intended to deal with one or more consequences of the normal pattern of competition, and, through interaction, contribute to the attainment of the set of anticompetitive effects desired by those responsible, within the framework of a global plan having a single objective. By contrast, the condition relating to a single objective requires that it be ascertained whether there are any elements characterising the various instances of conduct forming part of the infringement which are capable of indicating that the instances of conduct in fact implemented by other participating undertakings do not have an identical object or identical anticompetitive effect and, consequently, do not form part of an 'overall plan' as a result of their identical object distorting the normal pattern of competition within the internal market (see, to that effect, judgment of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraphs 247 and 248).

64 Furthermore, it cannot be inferred from the Court's case-law that Article 101(1) TFEU concerns only either (i) the undertakings operating on the market affected by the restrictions of competition or indeed on the markets upstream or downstream of that market or neighbouring markets or (ii) undertakings which restrict their freedom of action on a particular market under an agreement or as a result of a concerted practice. Indeed, it is apparent from the Court's well established case-law that the text of Article 101(1) TFEU refers generally to all agreements and concerted practices which, in either horizontal or vertical relationships, distort competition on the internal market, irrespective of the market on which the parties operate, and that only the commercial conduct of one of the parties need be affected by the terms of the arrangements in question (see, to that effect, judgment of 22 October 2015, *AC-Treuhand* v *Commission*, C-194/14 P, EU:C:2015:717, paragraphs 34 and 35 and the case-law cited).

65 Having regard to that case-law, the Court must, first, reject the appellant's arguments that the legal concept of a single, complex and continuous infringement is incompatible with Article 101 TFEU and Article 53 of the EEA Agreement.

66 Secondly, the Court finds that, contrary to the appellant's contention, the General Court, in setting out that case-law in paragraphs 32 to 34, 41, 42 and 46 to 48 of the judgment under appeal, gave sufficient reasons for the judgment.

67 Thirdly, as regards the appellant's argument that the conditions for the recognition of a single infringement were not met in the present case since the Commission did not define the relevant market, it must be noted, as the General Court correctly stated in paragraph 54 of the judgment under appeal and as the appellant accepts, that the fact that the infringement extended over distinct product and geographic markets does not in any event preclude the finding of a single infringement. Thus, this argument is in any event ineffective.

68 Fourthly, the General Court, in paragraphs 63 to 71 of the judgment under appeal, did not err in law in holding that the Commission could in the present case find there to be a single objective tending to establish a single infringement. Indeed, the General Court, on the basis of the findings of fact made in paragraphs 66, 69 and 71 of the judgment under appeal, established to the requisite legal standard that the various instances of conduct complained of pursued the same goal, namely, as regards all the bathroom fittings and fixtures manufacturers, coordinating their conduct in relation to the wholesalers. In that regard, attention should be drawn to the fact that, contrary to what is maintained by the appellant, the concept of a common objective was defined — as is clear from paragraphs 66, 69 and 71 of the judgment under appeal — not by a general reference to a distortion of competition on the markets concerned by the infringement, but rather by reference to various objective factors, such as the central role played by the wholesalers in the distribution chain, the features of that chain, the existence of umbrella associations and cross-product associations, the similarities in the way the collusive arrangements were implemented and the material, geographic and temporal overlap between the practices concerned.

69 There is in those circumstances no need to establish a link of complementarity between the practices complained of, given that a single and continuous infringement may be imputed to undertakings that are not in competition and does not require the relevant markets to be systematically defined. Moreover, in view of the fact that the appellant is (i) liable for its direct participation in the infringement complained of and (ii) liable for its indirect participation in that infringement since it was aware of all the offending conduct planned or implemented by the other cartel members in pursuit of the same objectives or could reasonably have foreseen that conduct and was prepared to take the risk, the General Court cannot be criticised for holding that the Commission did not make an error in concluding that there was a single and continuous infringement in the present case.

70 Finally, as regards the arguments relating to the fact that the decision at issue was annulled in part by judgments of the General Court concerning the same infringement as the infringement with which this case is concerned, it should be recalled that the assessment of the evidence concerning the various national markets falls within the exclusive jurisdiction of the General Court. In so far as these arguments seek to call into question the existence of a single, complex and continuous infringement, it should be made clear that the fact that the General Court partially annulled the decision at issue in so far as it concerns proof of the participation in the alleged infringement of certain of the undertakings concerned on certain geographic markets for given periods of time is not sufficient to cast doubt on the General Court's finding as to the existence of an overall plan covering the three product sub-groups and the six Member States concerned and an identical object distorting competition in the internal market. Such partial annulments can result, if appropriate, only in a reduction of the fine imposed on each of the undertakings concerned, provided that the geographic markets in question have been taken into account in the calculation of the fine imposed on those undertakings.

71 Consequently, the second ground of appeal must be rejected as in part ineffective and in part unfounded.

The third and fourth grounds of appeal, concerning the exercise of unlimited jurisdiction and the proportionality of the fine

Arguments of the parties

72 By its third ground of appeal, the appellant submits that, for reasons of legal certainty and in order to safeguard the right to due process, the General Court and the Court of Justice are required, in every case before them which concerns the setting by the Commission of a fine or periodic penalty payment, actually to exercise the unlimited jurisdiction conferred on them by Article 31 of Regulation No 1/2003, in particular in a context in which there is no legal rule providing for any harmonisation in respect of penalties and in which three different methods of setting fines were applied by the Commission for the years 1998 to 2006.

73 In the judgment under appeal, the General Court carried out solely a review of legality in respect of the setting of the amount of the fine, contrary to what was requested by Villeroy & Boch Austria in the form of order sought.

74 The appellant further submits that, in the present case, the General Court should have reduced the fine in view of the gravity of the infringement, which concerned only a limited number of, mostly small, Member States. In that regard, it is impossible to understand the reasons why the Commission penalised the misconduct complained of in the present case more severely than similar cartels covering the whole of the European Economic Area.

75 In addition, the appellant complains that it was not granted a reduction in its fine on account of the excessive duration of the administrative procedure, which went on for almost six years in total.

76 By its fourth ground of appeal, the appellant submits that the judgment under appeal breaches the principle of proportionality, enshrined in Article 49(3) of the Charter of Fundamental Rights of the European Union, from which it follows that the penalty must reflect the gravity of the infringement. In that regard, it submits that, in determining the gravity of the infringement, the General Court is obliged to take into account the effects of the infringement in question on the market, as well as the turnover achieved on the markets concerned: it failed to do so here.

77 The General Court should also have satisfied itself that the amount of the fines imposed by the decision at issue was strictly proportionate; that is not the case where a fine of EUR 6.08 million is imposed while turnover pertaining to the cartel is around EUR 3.88 million.

78 The appellant therefore asks the Court of Justice to remedy these unlawful omissions on the part of the General Court and itself reduce the fine imposed.

79 The Commission contends that the third and fourth grounds of appeal should be rejected.

Findings of the Court

80 According to settled case-law, the review of legality provided for in Article 263 TFEU entails the EU judicature conducting a review, in respect of both the law and the facts, of the contested decision in the light of the arguments relied on by an applicant, which means that it has the power to assess the

evidence, annul the decision and to alter the amount of the fines (see judgment of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 53 and the case-law cited).

81 The review of legality is supplemented by the unlimited jurisdiction conferred on the EU judicature by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU. That jurisdiction empowers the competent Court, in addition to carrying out a mere review of legality with regard to the penalty, to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the fine or penalty payment imposed (see judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 63 and the case-law cited).

82 In order to satisfy the requirements of Article 47 of the Charter of Fundamental Rights of the European Union when conducting a review in the exercise of its unlimited jurisdiction with regard to the fine, the EU judicature is bound, in the exercise of the powers conferred by Articles 261 and 263 TFEU, to examine all complaints based on issues of fact and law which seek to show that the amount of the fine is not commensurate with the gravity or the duration of the infringement (see judgment of 18 December 2014, *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 75 and the case-law cited).

83 However, the exercise of unlimited jurisdiction is not equivalent to an own-motion review, and proceedings are inter partes. It is, in principle, for the applicant to raise pleas in law against the contested decision and to adduce evidence in support of those pleas (see judgment of 18 December 2014, *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 76 and the case-law cited).

84 It should be noted in that regard that the absence of an own-motion review of the whole of the contested decision does not contravene the principle of effective judicial protection. Compliance with that principle does not require that the General Court — which is indeed obliged to respond to the pleas in law raised and to carry out a review of both the law and the facts — should be obliged to undertake of its own motion a new and comprehensive investigation of the file (see judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 66).

85 Moreover, according to settled case-law of the Court of Justice, 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 reduction of the fine. The gravity of infringements of EU competition law must be determined by reference to numerous factors such as, in particular, the deterrent effect of fines, the specific circumstances and context of the case, including 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 it, their size, the value of the goods concerned and the threat that infringements of that type pose to the objectives of the European Union (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, paragraphs 95, 99 and 100).

86 Moreover, 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 their infringement of EU law. Accordingly, only where the Court of Justice considers that the level of the penalty is not merely inappropriate, but also excessive to the point of being disproportionate, does it

have to find that the General Court erred in law, on account of the inappropriateness of the amount of a fine (see, inter alia, judgment of 30 May 2013, *Quinn Barlo and Others* v *Commission*, C-70/12 P, not published, EU:C:2013:351, paragraph 57 and the case-law cited).

87 It is necessary to examine the third and fourth grounds of appeal in the light of the abovementioned case-law.

88 It is clear from that case-law that, first, a review in the exercise of unlimited jurisdiction concerns solely the penalty imposed and not the entirety of the contested decision and, second, neither the exercise of unlimited jurisdiction nor the review of legality are equivalent to an own-motion review and they therefore do not require the General Court to undertake of its own motion a new and comprehensive investigation of the file, independently of the claims put forward by the applicant.

89 In the present case, it must be found that the General Court did in fact carry out, in paragraph 335 et seq. of the judgment under appeal, a review of the amount of the fine, that it responded to Villeroy & Boch Austria's various arguments and that, in paragraphs 397 to 402 of the judgment, it ruled on the claims seeking reduction of the fine; it therefore did not confine itself to merely reviewing the legality of that amount, contrary to what is maintained by the appellant. In that connection, the General Court stated in particular, in paragraph 384 of the judgment under appeal, that the multiplier of 15% in respect of the multipliers for 'gravity of the infringement' and for the 'additional amount' was the lowest possible in view of the particularly serious nature of the infringement at issue, then held, in paragraphs 397 to 401 of the judgment, that none of the matters put forward by the applicants at first instance justified a reduction of the fine.

90 Concerning more particularly the examination of the gravity of the alleged infringement, it should be noted that the General Court referred, in paragraph 381 of the judgment under appeal, in particular to point 23 of the 2006 Guidelines, which states that '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'. The General Court set out, in paragraph 383 of the judgment under appeal, the reasoning adopted by the Commission in recital 1211 of the decision at issue, which stated that horizontal price coordination was, owing to its very nature, one of the most harmful restrictions of competition and that the infringement was a single, continuous and complex infringement covering six Member States and concerning the three product sub-groups. The General Court went on to make findings, (i) in paragraph 384 of that judgment, as to the particularly serious nature of the infringement in question, which justified the application of a multiplier for gravity of 15%, and (ii) in paragraph 385 of the judgment, as to the appellant's participation in 'the central group of undertakings' that implemented the infringement found.

91 In thus taking account of all the relevant criteria for assessing the gravity of the infringement in question (horizontal price coordination and the appellant's involvement in it also being proven) and in responding to the appellant's arguments on that point, the General Court did not make an error of law and fulfilled its obligation to carry out an effective judicial review of the decision at issue.

92 Concerning the assessment of the excessive duration of the administrative procedure, it should be recalled that, although an infringement by the Commission of the 'reasonable time principle' can justify the annulment of a decision taken by it following an administrative procedure based on Article 101 or 102 TFEU inasmuch as it also entails an infringement of the rights of defence of the undertaking concerned, such an infringement of the reasonable time principle, if established, cannot lead to a reduction of the fine imposed (see, inter alia, judgments of 9 June 2016, *CEPSA* v *Commission*, C-608/13 P, EU:C:2016:414, paragraph 61, and of 9 June 2016, *PROAS* v *Commission*, C-616/13 P, EU:C:2016:415, paragraph 74 and the case-law cited). In the present case, as follows from

paragraph 75 of the present judgment, it is clear that, by its argument that the General Court's assessment of the excessive duration of the administrative procedure was incorrect, the appellant is seeking solely a reduction of the fine imposed on it.

93 Accordingly, regardless of its merits, that argument must be rejected as ineffective.

94 Finally, as regards the proportionality of the fine imposed, the appellant has put forward no argument capable of demonstrating that the level of the fine imposed is inappropriate or excessive. In that regard, the Court rejects the argument that a fine of EUR 6.08 million is disproportionate in relation to the turnover concerned by the cartel (EUR 3.88 million). It is not disputed that, in the present case, the amount of the fine imposed on Villeroy & Boch and its subsidiaries was reduced so as not to exceed 10% of their total turnover in the preceding business year, in accordance with Article 23(2) of Regulation No 1/2003. That limit is already a guarantee that the fine is not disproportionate to the size of the undertaking, determined by reference to its worldwide turnover (see, to that effect, judgment 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, EU:C:2005:408, paragraphs 280 to 282).

95 Consequently, the third and fourth grounds of appeal must be rejected as partly ineffective and partly unfounded.

96 Since none of the grounds of appeal relied upon by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

97 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. Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) of those rules, 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.

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

1. Dismisses the appeal;

2. Orders Villeroy & Boch Austria GmbH to pay the costs.

[Signatures]