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-642/13 P,

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

Villeroy & Boch Belgium SA, established in Brussels (Belgium), represented by O.W. Brouwer and N. Lorjé, advocaten,

appellant,

the other party to the proceedings being:

European Commission, represented by 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: Dutch.

Judgment

1 By its appeal, Villeroy & Boch Belgium SA ('Villeroy & Boch Belgium' 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 Villeroy & Boch Belgium'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 Belgium and the other applicants at first instance, Villeroy & Boch Austria GmbH ('Villeroy & Boch Austria'), Villeroy & Boch AG and Villeroy & Boch SAS ('Villeroy & Boch France') 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 ('Villeroy & Boch Luxembourg').

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. 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 at first instance, 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, in Belgium, the Vitreous China-group ('VCG'), 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 Belgium, Villeroy & Boch France and Villeroy & Boch Austria 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 9 September 2010, Villeroy & Boch Belgium brought an action in Case T-402/10 for annulment of the decision at issue in so far as the decision concerned it or, in the alternative, for reduction of the fines imposed on it.

21 In support of its claim for annulment, Villeroy & Boch Belgium argued, before the General Court, that the Commission had erred in characterising the infringement found as a single, complex and continuous infringement and, in the alternative, that in so doing it had breached its duty to state reasons in that it had failed to define the relevant markets with sufficient precision. It also maintained that the Commission had failed to prove its participation in an infringement in Belgium. 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 Belgium 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 the applicant;

— 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 infringement allegedly committed in Belgium. 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 in failing to reduce 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 Belgium

Arguments of the parties

27 By its first ground of appeal, which is divided into four parts, the appellant maintains, in the first place, that the General Court distorted the clear sense of the evidence as regards the infringement allegedly committed in Belgium and that it failed in its obligation to state reasons. It submits that the grounds set out by the General Court, in paragraph 243 et seq. of the judgment under appeal, are based on the incorrect premiss that Mr Z. continued to be a member of its staff after 1 January 2003. The appellant argues that, in actual fact, as it explained at the hearing before the General Court and as the General Court itself noted at the hearing, Mr Z. ceased to have, with effect from that date, any organisational tie, or relationship under an employment contract, with Villeroy & Boch Belgium, which thus precludes any imputation of acts to the appellant.

28 In the second place, the appellant submits, in the alternative, that the General Court infringed Article 101 TFEU in holding that the appellant had participated in a ceramics infringement in Belgium when it had not been active on that market since the end of 2002 and when it had not been established that it intended to help bring about the objectives of the cartel members. In particular, the General Court failed to indicate which 'offending acts' the appellant could, after its withdrawal from the market, have coordinated with the other cartel participants in order to restrict competition on that market. The appellant submits that, in the light of the reasoning of the General Court in the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449, paragraph 79 et seq.), and of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraph 222 et seq.), liability for the acts of third parties, which it maintains were committed after the date of that withdrawal from the market, cannot be imputed to it and that it cannot be fined in respect of those acts. In any event, the conflicting assessments of the facts in the judgment under appeal and the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449), constitutes an infringement of the principle of equal treatment to the appellant's detriment.

29 In the third place, as regards proof of the existence of concerted practices at the meeting on 28 and 29 April 2003 in Belgium, the appellant submits that the General Court's appraisal of the evidence, in paragraph 271 of the judgment under appeal, amounted merely to the observation that the fact that no single rate was agreed upon for wholesaler bonuses 'does not preclude the possibility that competition was distorted by the exchange of information in question'. However, even if that proposition of the General Court were considered to be correct, that would not suffice, as a matter of logic, to prove the infringement. There is, in the appellant's submission, either an infringement of the obligation to state reasons, laid down in the second paragraph of Article 296 TFEU, or an infringement of the principle of *in dubio pro reo* inherent in Article 48(1) of the Charter of Fundamental Rights of the European Union.

30 In the fourth place, appellant submits that the judgment under appeal contains an error of law in paragraphs 272 and 274 inasmuch as it is based on the premiss of a single, complex and continuous infringement in the case of all the infringements on the Belgian market for ceramic bathroom ware.

31 It maintains that the findings of fact made by the Commission on the basis of the VCG meetings do not support the conclusion that all the period of the infringement found must be regarded as forming a single infringement. On the contrary, after the VCG meeting on 28 and 29 April 2003, there was a clear break, which prevents the meetings that took place before and after it from being combined, in legal terms, so as to form a single and continuous infringement.

32 In the Commission's submission, the first ground of appeal must be dismissed.

Findings of the Court

33 As regards, in the first place, the first part of the first ground of appeal, which alleges infringement of the obligation to state reasons and distortion of the evidence inasmuch as the General Court failed to take account of the appellant's argument that Mr Z. no longer had any connection with it as of 1 January 2003, it should be noted that, in the written procedure before the General Court, the appellant had merely indicated, in order to deny that it had participated in the cartel in Belgium on or after that date, that Villeroy & Boch Luxembourg 'had taken over the Belgian company's ceramics business at the end of 2002'. Thus, it was only during the oral procedure before the General Court that Villeroy & Boch Belgium, for the first time, expressly put forward its contention that it could not be held liable for anticompetitive conduct on the Belgian ceramics market as of 1 January 2003, because the person who attended the cartel meetings, namely Mr Z., had, since that date, been employed by Villeroy & Boch Luxembourg rather than by Villeroy & Boch Belgium.

34 Article 48(2) of the Rules of Procedure of the General Court provides that no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure. Accordingly, the argument which the appellant put forward at the hearing before the General Court was manifestly inadmissible since it concerned a new plea in law based on a matter of fact which the appellant was the first to know about and which did not come to light in the course of the procedure.

35 It is true that the General Court did not expressly rule on whether that argument was admissible or well founded. However, in accordance with the case-law of the Court of Justice, the General Court cannot be required, every time that a party raises, in the course of the procedure, a new plea in law which clearly does not satisfy the requirements of Article 48(2) of its Rules of Procedure, either to explain in its judgment the reasons for which that plea is inadmissible, or to examine it in detail (see, inter alia, judgment of 20 March 2014, *Rousse Industry* v *Commission*, C-271/13 P, not published, EU:C:2014:175, paragraph 22 and the case-law cited).

36 It follows that the General Court did not infringe the obligation to state reasons when, in paragraph 248 of the judgment under appeal, it stated — without taking account of the appellant's late argument that Mr Z. had ceased to be employed by it as of 1 January 2003 and without explaining why that argument was manifestly inadmissible — that Mr Z.'s participation in the cartel meetings 'established that Villeroy & Boch Belgium continued actively to participate in the infringement on its own behalf and on behalf of the undertaking, within the meaning of competition law, of which it formed part'.

37 The first part of the first ground of appeal is therefore unfounded.

38 As regards, in the second place, the second part of this ground of appeal, alleging infringement of Article 101 TFEU, it should be noted that the appellant does not challenge the General Court's finding that the VCG meetings that took place before and after 1 January 2003 were unlawful but submits that the General Court was incorrect in considering that it had participated in the infringement although it had not been active on the Belgian ceramics market since the end of 2002.

39 In accordance with settled case-law of the Court of Justice, Article 101(1) TFEU cannot be considered to concern only (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 follows from well-established case-law of the Court 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).

40 It thus follows that the General Court was correct in holding, in paragraph 242 of the judgment under appeal, that an undertaking may infringe the prohibition laid down in Article 101(1) TFEU where the purpose of its conduct, as coordinated with that of other undertakings, is to restrict competition on a particular relevant market, which does not necessarily require that the undertaking itself be active on that market.

41 Contrary to what is maintained by the appellant, the General Court established that the appellant had actively participated in the alleged infringement. Thus, in paragraphs 244 and 248 of the judgment under appeal, it pointed out that Mr Z.'s uninterrupted participation on behalf of the appellant at the VCG meetings — the unlawful nature of which is not disputed by it — before and after 1 January 2003, that is to say, including after the appellant had ceased to be active on the ceramics market, established the latter's active participation in the infringement. Moreover, contrary to the appellant's contention, the various instances of conduct alleged against the participants in that infringement, including the appellant itself, were set out in detail in paragraphs 255 to 277 of the judgment under appeal.

42 It follows that the appellant's argument based on the fact that it had, with effect from the end of 2002, ceased to be active in the ceramics sector must be rejected.

43 That conclusion is not called into question in the light of the approach taken in the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449, paragraph 84), and of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraph 220 et seq.). In accordance with settled case-law of the Court of Justice, the General Court's obligation to state the reasons for its judgments does not in principle extend to requiring it to justify the approach taken in one case as against that taken in another case, even if the latter concerns the same decision (see judgment of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 66 and the case-law cited).

44 Accordingly, the second part of the first ground of appeal is unfounded.

45 Finally, concerning, in the third place, the arguments put forward by the appellant in the third and fourth parts of this ground of appeal, it must be stated that, by those arguments, the appellant, whilst purporting to claim that the General Court made errors of law, is essentially seeking to challenge the assessment of the evidence made by the General Court. The latter's assessment of the evidential value of an element of fact may not, as a rule, be subject to review by the Court of Justice in appeal proceedings. As is apparent 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, inter alia, judgment of 2 October 2003, *Salzgitter* v *Commission*, C-182/99 P, EU:C:2003:526, paragraph 43 and the case-law cited).

46 Those arguments must therefore be rejected as inadmissible.

47 Having regard to the foregoing considerations, the first 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

48 By its second ground of appeal, the appellant maintains that the judgment under appeal infringes Article 101 TFEU and Article 53 of the EEA Agreement because the General Court erred in holding there to be a single, complex and continuous infringement in the present case.

49 In that regard, the appellant submits, in the first place, that the legal concept of a single, complex and continuous infringement is, in itself, incompatible with 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. Moreover, in employing the concept of a single, complex and continuous infringement, the Commission artificially grouped together various independent markets in order to make a single, overall infringement, thereby avoiding potentially separate infringements being time-barred. 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.

50 In the second place, the appellant maintains that, in finding there to be in the present case a single infringement covering, amongst other places, Italy, the judgment under appeal disregarded the principles of due process. Since the General Court held that unlawful conduct in which the appellant did not participate, but which forms part of a single infringement in which it did take part, may be imputed to it, the appellant is unable, for the purpose of disputing its participation in that single infringement, to construct a successful argument on the basis of the fact that it did not take part in the first-mentioned unlawful conduct and is therefore denied an effective ground of defence. Thus, the only point it may dispute is that it was aware of the infringement in question.

51 In the third 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.

52 In the fourth place, the appellant considers that, in any event, because the decision at issue was annulled in part with regard to certain Member States in the judgments of 16 September, *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.

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

Findings of the Court

54 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).

55 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).

56 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).

57 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).

58 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 follows from the Court's well-established case-law, cited in paragraph 39 of the present judgment, 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).

59 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 and disregards the principles of due process, irrespective of the admissibility of the latter argument.

60 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.

61 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.

62 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.

63 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.

64 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 annulled the decision at issue in part 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.

65 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

66 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 actually to exercise their unlimited jurisdiction in accordance with Article 31 of Regulation No 1/2003, and to do so in every case before them in which a fine or periodic penalty payment imposed by the Commission is challenged, 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.

67 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 Belgium in its claim.

68 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. The penalty imposed by the Commission was disproportionate and more severe than the penalties imposed for infringements of the same kind covering the whole of the European Economic Area.

69 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.

70 By its fourth ground of appeal, the appellant submits that the judgment under appeal breaches the principle of proportionality, by virtue of which 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.

71 The General Court should also have satisfied itself that the amount of the fine imposed by the decision at issue was strictly proportionate; that is not the case where a fine of EUR 2.94 million is imposed while turnover pertaining to the cartel is around EUR 5.2 million.

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

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

Findings of the Court

74 According to settled case-law, the review of legality provided for in Article 263 TFEU involves review by the EU judicature, 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).

75 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 (judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 63 and the case-law cited).

76 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).

77 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).

78 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).

79 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).

80 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).

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

82 It is clear from the case-law cited above 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.

83 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 Belgium'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.

84 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.

85 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.

86 Concerning the assessment of the excessive duration of the administrative procedure, it should be recalled that, although an infringement by the Commission of the principle that the procedure must be concluded within a reasonable time 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 69 of the present judgment, it is clear that, with 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.

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

88 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 2.94 million is disproportionate in relation to the turnover concerned by the cartel (EUR 5.2 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 P, EU:C:2005:408, paragraphs 280 to 282).

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

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

Costs

91 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 Belgium SA to pay the costs.

[Signatures]