Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

14 July 2016*

(Competition — Agreements, decisions and concerted practices — European market for marine hoses — Price-fixing agreements, market-sharing and the exchange of commercially sensitive information — Attributability of unlawful conduct — Principle of economic continuity — Principle of personal liability — Fines — Aggravating circumstances — Role of leader — Ceiling of 10% — Unlimited jurisdiction)

In Case T-146/09 RENV,

Parker Hannifin Manufacturing Srl, formerly Parker ITR Srl, established in Corsico (Italy),

Parker-Hannifin Corp., established in Mayfield Heights (Ohio, United States),

represented by B. Amory, F. Marchini Camia and É. Barbier de La Serre, lawyers,

applicants

v

European Commission, represented by V. Bottka, S. Noë and R. Sauer, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses), in so far as that decision concerns the applicants, and, in the alternative, application under Article 263 TFEU for annulment or a substantial reduction in the amount of the fine imposed on them in that decision,

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen (Rapporteur), President, J. Schwarcz and A.M. Collins, Judges,

Registrar: M. Junius, Administrator,

having regard to the written part of the procedure and further to the hearing on 24 February 2016,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The present case is part of a dispute relating to the marine hose cartel which was penalised by the European Commission in Decision C(2009) 428 final, of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses) ('the contested decision').

2 11 companies were the addressees of the contested decision, including Bridgestone Corporation and Bridgestone Industrial Limited (together referred to as 'Bridgestone'); The Yokohama Rubber Company Limited ('Yokohama'); Dunlop Oil & Marine Limited ('DOM'); the first applicant, Parker ITR Srl (now Parker Hannifin Manufacturing Srl) ('Parker ITR'); the second applicant, Parker-Hannifin Corp ('Parker-Hannifin'); and Manuli Rubber Industries SpA ('Manuli').

3 In the contested decision, the Commission found that from 1986 to 2007 a group of undertakings active in the marine hose sector had participated in a cartel on a worldwide scale and imposed fines on them for a total amount of EUR 131 000 000.

4 ITR Rubber (which subsequently became Parker ITR), which was formed on 27 June 2001 by its parent company, ITR SpA, part of the Saiag group, has been active in the marine hose business since 1 January 2002. On that date ITR transferred to ITR Rubber its assets in that business, with a view to their resale to Parker-Hannifin, part of the Parker group. The sale of ITR Rubber to Parker-Hannifin took effect on 31 January 2002.

5 In the contested decision, the Commission took the view that, in the present case, the principle of personal liability was to be discounted and the principle of economic continuity was to be applied since Parker ITR was the economic successor to the marine hose business carried on by ITR and by Saiag SpA and therefore had to be held liable for the infringement committed by ITR and Saiag prior to 1 January 2002, the date on which the assets in the marine hose business were transferred to it. Parker-Hannifin was held jointly and severally liable for Parker ITR's conduct as from the date of Parker ITR's acquisition on 31 January 2002. Consequently, the Commission considered that Parker ITR was liable for the infringement from 1 April 1986 to 2 May 2007 and imposed on it a fine of EUR 25 610 000, for EUR 8 320 000 of which Parker-Hannifin was held jointly and severally liable.

6 On 9 April 2009, Parker ITR and Parker-Hannifin brought an action before the General Court seeking annulment of the contested decision in so far as it concerned them and, in the alternative, a reduction in amount of the fine imposed.

7 In the judgment of 17 May 2013 in *Parker ITR and Parker-Hannifin* v *Commission* (T-146/09, EU:T:2013:258) ('the judgment of the General Court'), the General Court held that the principle of economic continuity did not apply in situations such as that in the case before it and that the principle of personal liability should be applied. Consequently, the General Court held that the case concerned a transfer by the undertaking involved in the cartel, namely Saiag and its subsidiary ITR, of part of the activities of the latter to an independent third party, namely Parker-Hannifin: as such, the creation of ITR Rubber and the transfer of assets to that company by ITR essentially consisted of the incorporation of the rubber hoses business into a subsidiary and was part of an objective of transferring those assets to Parker-Hannifin (paragraph 115 of the judgment of the General Court). That Court took the view that there was no link between the transferor, Saiag or ITR, and the transferee, Parker-Hannifin (paragraph 116 of the judgment of the General Court). On the contrary, in accordance with the principle of personal liability, it was for the Commission to find that ITR and Saiag were liable for the infringement until 1 January 2002 and, therefore, it could not hold ITR Rubber (now Parker ITR) liable for the period prior to that date (paragraphs 118 and 119 of the

judgment of the General Court). Accordingly, the General Court annulled the contested decision in so far as it found that Parker ITR had participated in the infringement during the period prior to 1 January 2002 and set the amount of the fine imposed on Parker ITR at EUR 6 400 000, for EUR 6 300 000 of which Parker-Hannifin was jointly and severally liable.

8 By application lodged at the Registry of the Court of Justice on 1 August 2013, the Commission brought an appeal against the judgment of the General Court.

9 The Court, in the judgment of 18 December 2014 in *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin* (C-434/13 P, EU:C:2014:2456) ('the judgment on appeal'), took the view, in essence, that the General Court had erroneously treated two distinct transactions as one, inasmuch as it had only taken into account the transfer of ITR Rubber to Parker-Hannifin, whereas there had previously been an intra-group transfer of assets from ITR to ITR Rubber, which was relevant for the purposes of the application of the principle of economic continuity (paragraphs 46, 49 and 54 of the judgment on appeal). The Court held that that principle applies by reason of the structural links between ITR and its wholly-owned subsidiary, ITR Rubber, at the time of the transfer of assets to the latter (paragraph 55 of the judgment on appeal). However, the Court stated that a situation of economic continuity could be excluded in the absence of real links, in the form of actual exercise by ITR of decisive influence over ITR Rubber, which had not been examined at first instance (paragraphs 56 and 65 of the judgment on appeal). Consequently, the Court set aside paragraphs 1 to 3 of the operative part of the judgment of the General Court and referred the case back to the General Court for a ruling on the action.

10 A detailed description of the background to the dispute, in particular as regards the marine hose sector, the history of the applicants, the administrative procedure and the contested decision is set out in paragraphs 1 to 34 of the judgment of the General Court and paragraphs 6 to 17 of the judgment on appeal.

Procedure and forms of order sought

11 Following the judgment on appeal, and in accordance with Article 118(1) of the Rules of Procedure of the General Court of 2 May 1991, the present case was assigned to the Sixth Chamber of the General Court.

12 As a Member of the Sixth Chamber was unable to sit in the present case, the President of the General Court designated another judge to complete the Chamber.

13 On hearing the report of the Judge-Rapporteur, the Court (Sixth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure pursuant to Article 89 of its Rules of Procedure, requested that the Commission lodge certain documents. The Commission complied with that request within the prescribed period.

14 The parties presented oral argument and replied to the oral questions put by the Court at the hearing on 24 February 2016.

15 The applicants claim that the Court should:

— annul the contested decision in so far as it holds Parker ITR liable for the infringement from 1 April 1986 to 31 January 2002;

— substantially reduce the amount of the fine imposed on them;

— order the Commission to pay the costs.

16 The Commission contends that the Court should:

— dismiss the application in its entirety;

— order the applicants to pay the costs relating to the proceedings in Cases T-146/09, C-434/13 P and T-146/09 RENV.

Law

The scope of the case after its referral back to the General Court

Arguments of the parties

17 The applicants submit that, following referral, the General Court must rule on all the pleas for annulment that they have raised, provided that those pleas are reflected in an element of the operative part of the judgment set aside by the Court of Justice, including those which, at first instance, were rejected as inoperative or were upheld as a mere consequence of the upholding of a plea that is to be re-examined following the referral.

18 Furthermore, in their observations, the applicants state that they withdraw their second, third, fourth, seventh and ninth pleas.

19 The Commission submits that, in the present case after referral back, the General Court cannot carry out a *de novo* assessment of claims which were not raised in the original application or which, having been rejected on the merits by the General Court, were not the subject of an appeal, in particular those relating to the 10% cap on turnover in the eighth plea. Furthermore, it maintains that, in proceedings after referral back, a *de novo* assessment is precluded in so far as it relates to matters on which the Court of Justice gave a definitive ruling in its judgment on appeal.

Findings of the Court

20 First of all, it must be pointed out, as has been stated in paragraph 18 above, that the applicants have withdrawn their second, third, fourth, seventh and ninth pleas.

21 Secondly, it must be borne in mind that, under Article 61 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that statute, if the appeal is well founded and the case is referred back to the General Court for judgment in the matter, that Court is bound by the decision of the Court of Justice on points of law.

22 Consequently, once the Court of Justice has set aside a judgment or an order and referred the case back to the General Court, that Court is seised, pursuant to Article 215 of the Rules of Procedure, of the case by the judgment of the Court of Justice and must rule again on all the pleas in law in support of annulment raised by the applicant, apart from those elements of the operative part not set aside by the Court of Justice and the considerations on which those elements are essentially founded, as those elements have acquired the authority of *res judicata* (judgment of 14 September 2011 in *Marcuccio* v *Commission*, T-236/02, EU:T:2011:465, paragraph 83).

23 In the present case, by the judgment on appeal, the Court of Justice set aside paragraphs 1 to 3 of the operative part of the judgment of the General Court, referred the case back to that Court for a ruling on the merits of the action and reserved the costs. Accordingly, following the referral of the case back

by the Court of Justice, it is for the General Court to rule, although bound by the judgment on appeal on points of law, on all the pleas in law put forward by the applicants in support of their action to the extent that they constitute the basis for paragraphs 1 to 3 of the operative part of the judgment of the General Court which were set aside by the Court of Justice.

24 In that regard, it is apparent from the judgment of the General Court that paragraphs 1 to 3 of the operative part of that judgment are based on the General Court's upholding of the first part of the first plea and the fifth and sixth pleas put forward by the applicants and on the unlawful acts which it held to have been committed when it examined those pleas.

25 Lastly, as regards the eighth plea, it must be pointed out that, in the judgment on appeal, the Court of Justice rejected as inadmissible the applicants' argument disputing the General Court's assessment of the eighth plea in law put forward in their action on the ground that they had not submitted a cross-appeal by a separate document, distinct from their response, against such an assessment.

26 In paragraphs 94 to 97 of the judgment on appeal, the following was held:

'94. In paragraph 228 of the judgment under appeal, the General Court … held that the eighth plea in law put forward in the application was unfounded in so far as it related to the infringement period subsequent to 1 January 2002, including the period from 1 to 31 January 2002 during which ITR Rubber was not yet owned by the Parker-Hannifin group.

95. The assessment carried out by the General Court is reflected in the calculation method that it used to recalculate the amount of the fine imposed on Parker ITR and in paragraph 3 of the operative part of the judgment under appeal, where it did not distinguish between the period from 1 to 31 January 2002 and the period subsequent to that date.

96. Accordingly, it must be held that the General Court indeed examined and dealt with, in the context of the eighth plea in law, the point of law raised by Parker ITR and by Parker-Hannifin, by rejecting their argument.

97. In those circumstances, since the respondents have not, as required under Article 176(2) of the Rules of Procedure, submitted a cross-appeal by a separate document, distinct from their response, directed against the General Court's assessment of the eighth plea in law put forward in their action, their argument relating to the application of Article 23(1) of Regulation No 1/2003 must be rejected as inadmissible.'

27 In the light of the assessments of the Court of Justice, in particular in paragraph 97 of the judgment on appeal, since the eighth plea was rejected in the judgment of the General Court with regard to the period subsequent to 1 January 2002, that element of that judgment, against which a cross-appeal was not brought and which was not therefore set aside by the Court of Justice, must be held to have acquired the authority of *res judicata*.

28 However, in paragraph 228 of the judgment of the General Court, that Court rejected the eighth plea as inoperative in so far as it related to the period prior to 1 January 2002 on the ground that it had upheld the first plea and it did not examine the claims alleging infringement of the principles of personal liability and of proportionality and of the obligation to state reasons, inasmuch as they related to that period.

29 Furthermore, it must be stated that, in the judgment of the General Court, that Court's assessment of the eighth plea was based, as regards the period of the infringement prior to 1 January 2002, on the upholding of the first plea and that the upholding of that plea constitutes, as is apparent in particular from paragraphs 253 and 255 of that judgment, the necessary basis for paragraphs 1 to 3 of the operative part of that judgment which were set aside by the Court of Justice.

30 The General Court cannot therefore be regarded as having made a ruling on the merits of the eighth plea in so far as it related to the period prior to 1 January 2002.

31 Consequently, the eighth plea put forward by the applicants must be examined as regards the period prior to 1 January 2002.

32 In view of the foregoing considerations, the General Court is required to give a ruling on the merits of the action after its referral back by ruling on the first, fifth, sixth and, subject to the conditions described in paragraph 31 above, eighth pleas.

The first plea, relating to the incorrect attribution of liability to Parker ITR in respect of the period of the infringement before 1 January 2002

33 The first plea put forward by the applicants is divided into three parts relating (i) to infringement of the principle of personal liability, (ii) to a misuse of powers and the circumvention of Article 25 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1) and (iii) to infringement of the principle of equal treatment and of the obligation to state reasons.

34 The Commission disputes the arguments put forward by the applicants in support of their first plea.

Whether the arguments relating to the statement of reasons regarding the links between ITR and ITR Rubber are admissible

35 In the context of the first part of the first plea, relating to infringement of the principle of personal liability, the applicants claim, inter alia, that there was a failure to state adequate reasons in the contested decision as regards the application of the principle of economic continuity based on the links between ITR and ITR Rubber that were raised for the first time in the contested decision, particularly because the application of that principle is a departure from the Commission's previous decision-making practice, which applied the principle of personal liability.

36 The Commission observes that such a line of argument put forward by the applicants in their observations on the action after its referral back, constitutes a new plea inserted into the plea initially put forward which alters the content of that plea and is not therefore admissible.

37 It is true that the first plea as set out in the application did not contain any reference to a failure to state reasons as regards, specifically, the Commission's application of the principle of economic continuity as a result of the links existing between ITR and ITR Rubber.

38 However, first, it must be borne in mind that infringement of the obligation to state reasons is a ground involving a matter of public policy which must be raised by the Court of its own motion and consideration of which may take place at any stage in the proceedings (see, to that effect, judgment of 1 July 2008 in *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraphs 48 to 50).

39 Secondly, it must be pointed out that, in the context of the third part of the first plea, the applicants alleged infringement of the obligation to state reasons as regards the attribution to ITR Rubber of liability for the period of the infringement prior to 1 January 2002 in accordance with the principle of economic continuity, the Commission having departed from its previous practice which was based on the principle of personal liability. Consequently, the arguments put forward by the applicants in their observations following the judgment on appeal, relating to the lack of reasoning for the application of the principle of economic continuity based on the links between ITR and ITR Rubber, may be regarded as closely connected with those put forward in the context of the third part of the first plea, alleging

infringement of the obligation to state reasons, and as developing those arguments (see, to that effect, judgment of 28 April 2010 in *Gütermann and Zwicky* v *Commission*, T-456/05 and T-457/05, EU:T:2010:168, paragraph 199).

40 Accordingly, those arguments must be held to be admissible inasmuch as they relate to the third part of the first plea, in the context of which it is appropriate to examine them.

The attribution to Parker ITR of liability for the infringement committed by ITR during the period prior to 1 January 2002

41 In the context of the first part of their first plea, the applicants submit, in essence, that the Commission erred in law in attributing to Parker ITR liability for the infringement committed by ITR during the period prior to 1 January 2002, the date on which Parker ITR became active in the marine hose sector, in accordance with the principle of economic continuity and contrary to the principle of personal liability.

– The application of the principle of economic continuity

42 It must be borne in mind that, in paragraph 46 of the judgment on appeal, the Court of Justice held the following:

> ‘46. … [I]t must be pointed out that, by ruling out, in paragraph 116 of the judgment under appeal, the application of the principle of economic continuity where, as in the present case, there is no structural link between the transferor, namely Saiag … or its subsidiary ITR …, and the transferee, identified as Parker-Hannifin, the General Court, in its assessment, treated two distinct transactions as one. The General Court failed to take account of the fact that ITR … had first transferred its activities in the marine hoses sector to one of its subsidiaries and then transferred that subsidiary to Parker-Hannifin.’

43 In paragraphs 50 to 53 of the judgment on appeal, the Court held the following as regards the application of the principle of economic continuity:

> ‘50. … [F]or the purpose of establishing the existence of economic continuity, the relevant date for assessing whether the transfer of activities is within a group or between independent undertakings must be that of the transfer itself.
>
> 51. Whilst there must, on that date, be structural links between the transferor and the transferee on the basis of which it may be considered, in accordance with the principle of personal responsibility, that the two entities form a single undertaking, those links need not, in view of the purpose of the principle of economic continuity, subsist throughout the rest of the infringement period or until the adoption of a decision penalising the infringement …
>
> 52. Likewise, and for the same reasons, it is not necessary that the structural links on the basis of which economic continuity may be established subsist for a minimum period, a period which, in any event, could only be determined retroactively and on a case-by-case basis.
>
> 53. As regards … the taking into consideration, for the purpose of examining the existence of economic continuity, of the objective of the transfer of activities, the principle of legal certainty also provides grounds for dismissing as irrelevant the fact, referred to in paragraph 115 of the judgment under appeal, that the transferee entity was created and received the assets with a view to its subsequent sale to an independent third party. The taking into consideration of the economic reasons which led to the creation of a subsidiary, or the objective, in the long- or

short-term, of transferring that subsidiary to a third-party undertaking, would introduce into the application of the principle of economic continuity subjective factors which are incompatible with a transparent and predictable application of that principle.'

44 In paragraphs 54 to 56 of the judgment on appeal, the Court held that the General Court had erred in law by ruling out the application of the principle of economic continuity in the following terms:

'54. As regards … the assertion in paragraph 116 of the judgment under appeal that, in the circumstances of the present case, the Commission should have attributed to the former operators liability for the infringement committed before the transfer of activities, that assertion forms part of the erroneous reasoning by which the General Court dismissed from the outset the existence of economic continuity. It is settled case-law that, where such a situation is established, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred …

55. In view of the foregoing, it must be held that the General Court erred in law in so far as it held, in paragraphs 115 and 116 of the judgment under appeal, that a situation of economic continuity was precluded in the present case because of the absence of structural links between the transferor and the transferee, which it identified as Saiag … or ITR … and Parker-Hannifin, without taking into consideration the links between ITR … and ITR Rubber at the time of the transfer of activities between those two entities.

56. That error might nevertheless be irrelevant if, in any event, a situation of economic continuity must be precluded because of the absence of real links between ITR … and ITR Rubber. It is in that context that it is appropriate to assess the respondents' argument that the General Court was correct to dismiss the existence of a situation of economic continuity since the Commission had failed, in the contested decision, to examine whether ITR Rubber was indeed under the actual control of ITR ...'

45 First, it is apparent from the foregoing findings that, for the purposes of examining the attribution of liability for the infringement committed by ITR during the period prior to 1 January 2002, the intra-group transfer of the activities in the marine hose sector from ITR to ITR Rubber must be taken into consideration.

46 Secondly, it is apparent from the judgment on appeal that the date to be taken into consideration in order to assess whether the principle of economic continuity must be applied is that of the transfer of the activities in question.

47 Thirdly, it is apparent from the findings of the Court of Justice in the judgment on appeal that no consideration should attach to the objective of the transfer, by Saiag and its subsidiary ITR, of the activities relating to marine hoses to Parker-Hannifin, a company in the Parker group, by means of the incorporation of those activities into a subsidiary, namely the formation of the company ITR Rubber. According to the Court of Justice, the objective of and economic reasons for such a transaction are irrelevant.

48 Fourthly, it follows from those findings that, as a result of the intra-group transfer of activities between ITR and its wholly-owned subsidiary, ITR Rubber, the application of the principle of economic continuity cannot be ruled out in the present case in light of the structural links existing between those two companies at the time of the transfer in question, namely 1 January 2002.

49 Lastly, it is apparent from the findings of the Court of Justice that, notwithstanding the structural links between ITR and ITR Rubber, the application of the principle of economic continuity could be ruled out in the present case if ITR did not have any real control over ITR Rubber, in the form of the

actual exercise of decisive influence. Such control must be considered to be established unless Parker ITR and Parker-Hannifin rebut the presumption that ITR actually exercised decisive influence over ITR Rubber at the time of the relevant transfer within the Saiag Group on 1 January 2002.

– The presumption of actual exercise of decisive influence

50 In recital 370 of the contested decision, the Commission stated that, at the time of the transfer of the unlawful activities by ITR to ITR Rubber, those two companies were economically joined by the link of a parent to a wholly-owned subsidiary and were part of the same undertaking. The applicants do not dispute the existence of those structural links.

51 In that regard, the Court of Justice stated, in paragraph 62 of the judgment on appeal, that it was for the applicants to overturn the rebuttable presumption of actual exercise of decisive influence by ITR over ITR Rubber by the production of sufficient evidence to show that the subsidiary acted independently on the market.

52 The Court of Justice pointed out, in paragraphs 65 and 66 of the judgment on appeal, that the General Court had erred in law, for the purpose of verifying whether the Commission had correctly applied the principle of economic continuity in the present case, by failing to examine the evidence submitted to it by the applicants concerning the existence or absence of real links in the form of decisive influence exercised by ITR over ITR Rubber.

53 Consequently, in the context of the present case after its referral back to the General Court, it is necessary to examine whether the evidence which the applicants submitted is sufficient to show that the subsidiary ITR Rubber acted independently on the market.

54 The General Court is required to conduct that examination with a view to the attribution of liability for the infringement committed by the parent company, namely ITR, to its subsidiary, ITR Rubber, in the light of the case-law referred to by the Court of Justice in paragraph 58 of the judgment on appeal. According to that case-law, in the particular case in which a parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of the European Union competition rules, there is a rebuttable presumption that that parent company in fact exercises a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies. The presumption is, however, rebuttable and the entities wishing to rebut it may adduce all factors relating to the economic, organisational and legal links tying the subsidiary to the parent company that they consider to be capable of demonstrating that the subsidiary and the parent company do not constitute a single economic entity, but that the subsidiary acts independently on the market (see judgments of 10 September 2009 in *Akzo Nobel and Others* v *Commission*, C-97/08 P, EU:C:2009:536, paragraph 60 and the case-law cited, and of 8 May 2013 in *Eni* v *Commission*, C-508/11 P, EU:C:2013:289, paragraph 47 and the case-law cited; judgment of 18 July 2013 in *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraphs 105 to 111).

– The rebuttal of the presumption of actual exercise of decisive influence

55 The applicants submit that, in the light of the following factors, ITR had no decisive influence over ITR Rubber.

56 In the first place, the applicants submit that, as from its creation as a company, on 27 June 2001, until 1 January 2002, ITR Rubber did not exercise any economic activity, with the result that, during that period, ITR could not have exercised any decisive influence over or given the slightest commercial instruction to its subsidiary.

57 In that regard, it must be pointed out that, as is apparent in particular from paragraph 56 et seq. of the judgment on appeal and as the applicants themselves conceded at the hearing, the date to be taken into account in assessing the existence of economic continuity is that of the transfer of activities from ITR to ITR Rubber. The applicants' arguments relating to the period prior to that transfer are therefore inoperative.

58 The applicants admit that, as from the transfer of activities from ITR to ITR Rubber, which took place on 1 January 2002, ITR Rubber carried on the ordinary course of the business in question and thus carried out the activities which had been transferred to it.

59 In the second place, the applicants maintain that, pursuant to section 7.21 of the purchase and sale agreement with Parker-Hannifin, between 1 January 2002 and 31 January 2002, Saiag, ITR and ITR Rubber could not take any action in the rubber business which could affect the interests of Parker-Hannifin, as the future purchaser, without Parker-Hannifin's prior consent. The applicants submit that that not only prevented Saiag and ITR from exercising any influence – let alone any decisive influence – over ITR Rubber, but also accorded Parker-Hannifin the right to control ITR Rubber together with ITR.

60 In that regard, it must be pointed out that, according to section 7.21 of the purchase and sale agreement, the seller, ITR, undertook, inter alia, to ensure that ITR Rubber would operate and be managed in the ordinary course of business, the prior consent of the purchaser being necessary for any decision going beyond that ordinary course of business. Specifically, the prior consent of the purchaser was particularly required for alterations relating to the pay system applicable to employees, the distribution of dividends, capital expenditure exceeding EUR 100 000 or the sale of assets unless such a sale was made in the ordinary course of business.

61 First of all, it is common ground that the date on which ITR Rubber was sold to Parker-Hannifin was 31 January 2002. Consequently, the fact that the purchase and sale agreement of 5 December 2001 stipulated how ITR Rubber was to be managed between that latter date and the actual closing date of the sales transaction cannot be considered to be a transfer of control over that company from the seller to the purchaser. As the applicants themselves admit, the aim of those stipulations was to protect the purchaser's interests in ensuring that the company or the assets in question, and in particular their value, would be safeguarded until the closing date in a condition which reflected that which had been taken into consideration by the purchaser when the purchase and sale agreement was signed.

62 Secondly, although those obligations of the seller towards the purchaser with regard to what was known as the interim period preceding the closure of the sale represent rights for the purchaser, in particular as regards the prior authorisation for actions going beyond the ordinary course of business, they were, by their very nature, temporary and remained dependent on the actual closing of the transaction.

63 Lastly, it must be stated that, under section 7.21 of the purchase and sale agreement, ITR undertook to ensure that ITR Rubber would operate and be managed in the ordinary course of business during what was known as the interim period running from the date on which the agreement was signed to the closing date of the transaction. However, such an undertaking meant that ITR could, in fact, make decisions relating to the management of ITR Rubber. It is true that ITR needed the prior consent of Parker-Hannifin with regard to decisions going beyond the ordinary course of business. However, ITR had the power and the obligation, as a result of the purchase and sale agreement, to ensure the ordinary course of business of ITR Rubber. Contrary to what the applicants submit, that obligation, which ITR undertook in the purchase and sale agreement, constitutes an indication of the fact that the subsidiary ITR Rubber did not function independently on the market.

64 Although, in that period known as the 'interim' period, ITR Rubber cannot be considered to have been controlled by Parker-Hannifin, neither can it be considered an independent entity, which was capable of deciding on its activities in a completely independent way, since ITR ensured that ITR Rubber did not deviate, in particular with respect to its commercial policy, from the ordinary course of business. Consequently, on account of the undertaking of its parent company, ITR Rubber could not have unilaterally decided, for example, to alter its commercial policy or to cease its activities, which would have been possible had ITR Rubber been a completely independent entity.

65 Furthermore, it was also ITR, which, on 1 January 2002, transferred to ITR Rubber the only assets which ITR Rubber held, whereas prior to that, as the applicants state, ITR Rubber was a shell company and carried on no activity.

66 In addition, it must be stated that, until the closing of the transaction, the sale of ITR Rubber to Parker-Hannifin was not final. Consequently, as the Commission has correctly pointed out, during what was known as the interim period, ITR, as the sole owner of ITR Rubber, had the power to withdraw from the sale, albeit by running the risk of having to compensate the prospective purchaser in particular under the compensation mechanisms provided for in the agreement itself.

67 In the third place, the applicants state that the one-month period during which ITR wholly owned ITR Rubber following the transfer of the activities relating to marine hoses and before the sale to Parker-Hannifin became effective, is too short a period for ITR or Saiag to have been capable of exercising decisive influence over ITR Rubber, even if they had had such a power.

68 It must be pointed out that the length of the period during which ITR wholly owned ITR Rubber following the transfer of the activities relating to marine hoses cannot in itself constitute a factor which is capable of establishing that, during that period, ITR Rubber acted independently on the market.

69 The fact remains that, at the time when the activities in question were actually transferred to ITR Rubber on 1 January 2002, ITR wholly owned its subsidiary and that, as has been stated in paragraph 63 above, under the purchase and sale agreement with Parker-Hannifin signed on 5 December 2001, ITR had to ensure, even if only for a short period, that ITR Rubber would operate and be managed in the ordinary course of business.

70 Furthermore, as has been stated in paragraph 66 above, up until the time when the sale to Parker-Hannifin became effective, ITR had the power to take decisions regarding the sale of ITR Rubber, which could have been exercised at any time before the closing of the transaction. In addition, the closing date of the transaction was not fixed in advance by the purchase and sale agreement, since it was subject, inter alia, to certain conditions precedent. Accordingly, although the acquisition of ITR Rubber by Parker-Hannifin became effective on 31 January 2002, it could have taken place on another, in particular a later, date.

71 Consequently, the fact that, in the end, the period between the transfer of the activities relating to marine hoses to ITR Rubber and the sale of ITR Rubber to Parker-Hannifin was only a month cannot be regarded as a factor which is capable of establishing that ITR Rubber, although it was a wholly-owned subsidiary of ITR, acted independently on the market.

72 It follows from the foregoing that the evidence put forward by the applicants cannot be regarded as sufficient to prove that, during the period which ran from 1 to 31 January 2002, ITR Rubber acted independently on the market. Consequently, the applicants have not rebutted the presumption that ITR actually exercised decisive influence over its wholly-owned subsidiary ITR Rubber.

73 Accordingly, it must be held that the Commission did not err when it found that, in accordance with the principle of economic continuity, Parker ITR could be held liable for the conduct of its predecessor, ITR, owing to the transfer of the infringing assets to ITR Rubber, in view of the links which existed between ITR and ITR Rubber at the time of that transfer, in particular the ownership of 100% of its capital, which makes it possible to presume that the parent company actually exercised decisive influence over its subsidiary.

74 The first part of the first plea must therefore be rejected.

The application of Article 25 of Regulation No 1/2003

75 According to Article 25 of Regulation No 1/2003, the powers conferred on the Commission with regard to the imposition of fines or periodic penalty payments are subject to a limitation period of five years, which, in the case of continuing or repeated infringements, begins to run on the day on which the infringement ceases. Any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement interrupts that period.

76 The applicants submit that there are, in the present case, objective, relevant and consistent factors to demonstrate that the sole purpose of holding Parker ITR liable for the infringement committed by its predecessors was to circumvent the limitation period provided for by Article 25 of Regulation No 1/2003.

77 The Commission submits that, as is apparent from settled case-law, it has discretion as to whom to address a decision in the event of economic succession, which it exercised correctly in this instance.

78 In the present case, since the presumption of actual exercise of decisive influence by ITR over ITR Rubber has not been rebutted, it has been held that the principle of economic continuity was applicable on account of the links between ITR and ITR Rubber at the time of the transfer of the activities relating to marine hoses. Accordingly, the attribution to ITR Rubber of liability for the single and continuous infringement from 1 April 1986 until 2 May 2007 is the result, as regards the period prior to 1 January 2002 during which ITR, its predecessor, participated in the infringement, of an application of the principle of economic continuity which has been held, in paragraph 73 above, to have been correctly carried out. Consequently, contrary to what the applicants submit, that attribution of liability cannot stem from a misuse of powers and circumvention of Article 25 of Regulation No 1/2003.

79 It follows that the limitation period relating to that single and continuous infringement attributed to Parker ITR only began to run on 2 May 2007, the date on which the Commission, having initiated an investigation, carried out a series of inspections at, inter alia, the premises of Parker ITR. Consequently, the Commission's power to penalise Parker ITR for that infringement was not time-barred in the present case.

80 Accordingly, the second part of the first plea put forward by the applicants, relating to a misuse of powers and the circumvention of Article 25 of Regulation No 1/2003, must be rejected.

The obligation to state reasons and the principle of equal treatment

81 As regards the claim relating to infringement of the obligation to state reasons, it is necessary to assess whether the contested decision was sufficiently reasoned as regards the application of the principle of economic continuity, including with regard to the links existing between ITR and ITR Rubber, for Parker ITR to be held liable for the period prior to 1 January 2002.

82 According to settled case-law, the statement of reasons required by Article 253 EC must be appropriate to the measure in question and must set out clearly and unequivocally the reasoning of the institution which adopted that measure, in such a way as to enable the interested parties to ascertain the reasons for the measure taken and to enable the Court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 2 April 1998 in *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63; judgment of 30 September 2003 in *Germany* v *Commission*, C-301/96, EU:C:2003:509, paragraph 87, and judgment of 22 June 2004 in *Portugal* v *Commission*, C-42/01, EU:C:2004:379, paragraph 66).

83 In recitals 327 to 329 of the contested decision, the Commission set out the reasoning which had led it to refrain from applying the principle of personal liability and to apply the principle of economic continuity in the present case. Accordingly, after setting out the situations in which it took the view that the principle of personal liability applied, the Commission stated that, by contrast, if the entity answerable for the infringement ceased to exist, having been absorbed by another legal entity, that latter entity had to be held answerable. Furthermore, in recital 328, the Commission set out the principle according to which, when a business was transferred from one legal entity to another, in cases where transferor and transferee were economically linked, liability for past behaviour of the transferor could transfer to the transferee, even if the transferor continued in existence.

84 Specifically, in recital 370 of the contested decision, referring to the reasoning set out in recital 328, the Commission stated which considerations had led it, in accordance with the principle of economic continuity, to attribute to ITR Rubber, now Parker ITR, liability for the infringement in respect of the period prior to 31 January 2002, namely the existence of economic links between a parent company and a subsidiary in which it had a 100% shareholding.

85 Furthermore, it must be pointed out that, in recital 369 of the contested decision, the Commission set out the arguments disputing the application of the principle of economic continuity which had been put forward by the applicants in reply to the statement of objections, in which arguments the applicants submitted, inter alia, that there were no links between, on the one hand, Parker ITR, formerly ITR Rubber, and, on the other hand, ITR and the Saiag group.

86 In recitals 370 to 373 of the contested decision, the Commission replied to those arguments, inter alia by stating that, even if the transfer of the assets from ITR to ITR Rubber had been carried out with the aim of their subsequent sale to Parker-Hannifin, that transfer took place at a point in time when those two undertakings belonged to the same group, which, in accordance with the case-law derived from the judgment of 11 December 2007 in *ETI and Others* (C-280/06, EU:C:2007:775), meant that ITR's liability was attributed to ITR Rubber, in accordance with the principle of economic continuity. The Commission also stated that a subsequent severing of the links between ITR and ITR Rubber could not alter such a conclusion.

87 Consequently, it must be held that the contested decision sets out clearly and unequivocally the factors on which the Commission relied in order to conclude that the principle of economic continuity applied in the present case, including those regarding the links existing between ITR and ITR Rubber, while at the same time replying to the arguments put forward by the applicants during the administrative procedure.

88 As regards the alleged infringement of the principle of equal treatment by reason of the application of the principle of economic continuity with regard to ITR Rubber but not with regard to DOM, although DOM was, according to the applicants, in a very similar situation, it is important to bear in mind that, according to settled case-law, that principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see judgment of 14 September 2010 in *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, C-550/07 P, EU:C:2010:512, paragraph 55 and the case-law cited).

89 In the present case, it is apparent from recital 19 of the contested decision that DOM, which was incorporated by the Unipoly group, acquired the marine hose assets of the BTR group. Consequently, in the case of DOM, the transfer of assets in question was carried out between companies which were not connected by structural links, namely BTR, on the one hand, and DOM in the Unipoly group, on the other hand.

90 By contrast, in the case of ITR Rubber, as has been stated in paragraph 45 above, in accordance with the judgment on appeal, it is the transfer of the activities in the marine hose sector from ITR to ITR Rubber, a parent company and its subsidiary respectively, within the Saiag group, that must be taken into consideration, as the objective of and economic reasons for such a transfer are, as is apparent from paragraph 53 of that judgment, irrelevant.

91 It is apparent from the findings in the judgment on appeal, referred to in paragraphs 42 and 43 above, that the principle of economic continuity applies in circumstances in which there are real structural links between the company which participated in the infringement and the subsidiary to which the infringing assets were transferred with a view to a subsequent sale to a third-party group. By contrast, in accordance with that case-law, the principle of economic continuity cannot be applied in cases where the infringing assets are transferred to a subsidiary created within the purchaser group and which has no structural links with the seller.

92 Consequently, by applying the principle of economic continuity with regard to ITR Rubber and discounting that principle as regards DOM, the Commission cannot be accused of having acted contrary to the principle of equal treatment, as the two situations are not comparable.

93 Accordingly, the third part of the first plea must be rejected, as must that plea in its entirety.

The fifth plea, relating to the unlawful increase in the amount of the fine imposed on Parker ITR on account of its alleged role as leader in the infringement

94 The applicants dispute, first, the fact that ITR had the role of cartel leader from 11 June 1999 to 30 September 2001, submitting that that has not been sufficiently proved by the Commission, secondly, the attribution of ITR's alleged role of leader to ITR Rubber and, thirdly, the increase in the amount of the fine imposed on Parker ITR in respect of the role of leader attributed to ITR.

95 The Commission submits that, as a whole, the evidence on which it relied proves that ITR contributed towards making the cartel fully operational again and, in particular, played the key role of bringing Yokohama back to participate in it. The Commission maintains that that justifies the 30% increase in the amount of the fine imposed on Parker ITR. Furthermore, the Commission states that the fact that it refers to Parker ITR is justified because that entity was the economic successor to ITR.

The attribution to ITR Rubber of the role of leader attributed to ITR

96 It should be noted at the outset, as regards the reference in the contested decision to Parker ITR and not to ITR as cartel leader during a period in which Parker ITR, originally named ITR Rubber, did not yet exist, that, as has been held in paragraph 73 above, in accordance with the principle of economic

continuity, Parker ITR should be held liable for the conduct of ITR, including for its conduct prior to the creation of ITR Rubber on 27 June 2001. Consequently, and without prejudging the merits of the claim relating to the role of leader attributed to ITR, the Commission cannot be criticised for referring to Parker ITR, formerly ITR Rubber, as regards the role of leader attributed to ITR during the period which ran from 11 June 1999 to 30 September 2001.

The role of leader attributed to ITR

97 In recital 243 of the contested decision, the Commission stated that, during the period which ran from 11 June 1999 to 30 September 2001, ITR shared the coordination of the cartel with Mr W.

98 According to settled case-law, where an infringement has been committed by a number of undertakings, it is necessary, in determining the amount of the fines, to establish their respective roles in the infringement throughout the duration of their participation in it. It follows, in particular, that the role of 'ringleader' (leader) played by one or more undertakings in a cartel must be taken into account for the purposes of calculating the amount of the fine, in so far as the undertakings which played such a role must therefore bear special responsibility in comparison with the other undertakings (see judgment of 11 July 2014 in *Sasol and Others* v *Commission*, T-541/08, EU:T:2014:628, paragraph 355 and the case-law cited).

99 In accordance with those principles, point 28 of 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 Guidelines') sets out, under the heading 'Aggravating circumstances', a non-exhaustive list of circumstances which may lead to an increase in the basic amount of the fine, one of which is the role of leader in the infringement.

100 In order to be classified as a leader in a cartel, an undertaking must have been a significant driving force for the cartel and have borne individual and specific liability for the operation of the cartel. That factor may, inter alia, be inferred from the fact that the undertaking, through specific initiatives, voluntarily gave a fundamental boost to the cartel, or from a combination of indicia which reveal the determination of the undertaking to ensure the stability and success of the cartel (judgments of 15 March 2006 in *BASF* v *Commission*, T-15/02, EU:T:2006:74, paragraphs 299, 300, 351, 370 to 375 and 427, and of 27 September 2012 in *Shell Petroleum and Others* v *Commission*, T-343/06, EU:T:2012:478, paragraph 198).

101 That is the case where the undertaking participated in cartel meetings on behalf of another undertaking which did not attend them and notified that other undertaking of the results of those meetings (judgment of 15 March 2006 in *BASF* v *Commission*, T-15/02, EU:T:2006:74, paragraph 439). The same applies where it is shown that that undertaking played a central role in the actual operation of the cartel, for example by organising various meetings, collecting and distributing information within the cartel, and by most often suggesting proposals relating to the operation of the cartel (judgment of 27 September 2012 in *Koninklijke Wegenbouw Stevin* v *Commission*, T-357/06, EU:T:2012:488, paragraph 284).

102 Lastly, two undertakings, or even a greater number, may simultaneously have the role of leader attributed to them (see, to that effect, judgments of 15 March 2006 in *BASF* v *Commission*, T-15/02, EU:T:2006:74, paragraphs 439 and 440, and of 26 April 2007 in *Bolloré and Others* v *Commission*, T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, EU:T:2007:115, paragraph 561).

103 It is in the light of the foregoing considerations that it must be examined whether the Commission could, on the basis of sufficient evidence, correctly conclude that ITR had actually played the role of leader in the infringement from 11 June 1999 to 30 September 2001.

104 In the contested decision, for the purposes of establishing that ITR had played the role of leader, the Commission relied, in addition to the statements of Yokohama in that regard, on the following evidence, which supports those statements.

105 In the first place, the Commission relied, in recital 461 of the contested decision, in particular, on faxes which ITR sent to other members of the cartel. Those documents, contained in the case-file, have not, moreover, been called into question by the applicants, which, however, dispute the Commission's interpretation of them. Those documents, dating from June 1999 to June 2001, show, inter alia, that communication between ITR and other members of the cartel took place with a certain regularity and also took place during the period following the month of January 2000, which the applicants themselves admitted during the hearing.

106 First, it is apparent from those communications that ITR's employee, Mr P., presented himself as coordinator of a sub-group of participants in the cartel, which confirms Yokohama's statements.

107 Secondly, that correspondence shows that, during that period, that employee of ITR took the initiative in gathering confidential information from other participants, in particular Yokohama and Trelleborg, and coordinating the participation of Yokohama and Trelleborg in calls for tenders. It is also apparent from the documents on which the Commission relied that ITR specifically sought to ensure that a joint market share between itself and Yokohama was taken into account within the cartel and to facilitate the participation of Yokohama in meetings.

108 In the second place, as regards the faxes sent by ITR dated 11 and 21 June 1999, which are referred to in recital 179 of the contested decision, it must be pointed out that, contrary to what the applicants submit, the fact that they concern calls for tender in respect of later dates does not cast doubt on the finding that ITR can be regarded as a coordinator for the cartel during the period in which the faxes were sent. It is precisely the coordination of strategies to be adopted by the participants in the cartel with a view to future calls for tenders that is alleged against ITR.

109 In the third place, the documents dating from October 1999, which are referred to in recitals 189 and 196 of the contested decision, show, inter alia, that, during that period, ITR's representative started to collaborate closely with Yokohama and carried out other coordination tasks between some of the members of the cartel which contributed to the operation of the cartel and that has not been disputed by the applicants.

110 In the fourth place, as regards the communications sent by ITR in December 1999 following the meeting which took place in London (United Kingdom) on 10 December 1999, it must be stated that, irrespective of whether the suggestions made by ITR's representative were, in the end, accepted or not, the very fact, which has not been disputed by the applicants, that that representative undertook to send such communications shows that he took on a dominant role in maintaining and supervising the activities of the cartel following that meeting.

111 In the fifth place, as regards the chairmanship of that meeting, it is true that it is common ground that the minutes do not contain any express references to the person who chaired the meeting. However, in addition to the statements of Yokohama in that regard, the Commission relied, without doubt being cast upon its findings in that regard by the applicants, on documents showing that ITR had sent an invitation to that meeting to Yokohama and had made communications following the meeting and on the fact that its contribution at the meeting was reproduced last in the minutes. It must be held that that evidence constitutes at the very least an indication of a dominant role in the preparation and holding of the meeting and in the follow-up to that meeting.

112 In the sixth place, it must be pointed out that the applicants do not dispute the fact that ITR started to collaborate closely with Yokohama, which is apparent from a number of documents which are referred to, inter alia, in recitals 219 and 241 of the contested decision and which show that ITR organised

meetings with Yokohama and kept up a correspondence relating to that collaboration not only with Yokohama, but also with other members of the cartel, in particular during the period from January 2000 to June 2001.

113 First, the fact that ITR actively undertook to ensure the participation of Yokohama, one of the two Japanese players, and therefore to ensure the participation in the cartel of two undertakings representing almost one quarter of the global market, may in itself be regarded as a key element in re-establishing and strengthening the cartel.

114 Secondly, the fact that information relating to that collaboration was communicated to the other members of the cartel would have contributed towards reassuring them as regards that part of the cartel and accordingly towards the operation of the cartel in general.

115 In that regard, the minutes of the meeting of 11 and 12 June 2001 confirm that, at that time, within the cartel, Yokohoma and ITR were perceived as players which were collaborating so closely in the market that a common quota was allocated to them.

116 Consequently, that evidence regarding ITR's close collaboration with Yokohama and the fact that it ensured that Yokohama would participate in the cartel may reasonably be held to support the Commission's finding relating to the role of leader in the cartel which it attributed to ITR.

117 In the seventh place, it must be stated that, contrary to what the applicants submit, the evidence set out by the Commission, including that relating to the close coordination between Yokohama and ITR, refers to a period covering at least from 11 June 1999 to the month of June 2001. Furthermore, it is apparent from the case-file that, as from October 2001, ITR was no longer in charge of coordinating Yokohama's participation in the cartel, which is not, moreover, disputed by the applicants. Consequently, the Commission took 30 September 2001 as the date on which ITR's activities as leader in the cartel ceased.

118 In the light of all of the evidence which has just been examined, it must be held that the Commission was right in classifying ITR as a leader in the cartel in respect of the period covering at least from 11 June 1999 to 30 September 2001.

119 That finding cannot be invalidated by the applicants' arguments relating to the evidence which they regard as disproving the contention that ITR played the role of a leader in the cartel.

120 First of all, the claim that Yokohama and ITR were interested, from a commercial perspective, in the objectives of the cartel does not cast doubt on the finding that Yokohama's participation in the cartel was made easier by ITR's assistance as coordinator during the period that the Commission took into consideration.

121 Secondly, the role played by other members of the cartel, such as Bridgestone and DOM, as well as by Mr W. or his undertakings, which allegedly provided the management and overall coordination of the cartel during long periods in the course of its existence, and the claim that they were perceived by the other members as the main coordinators of the cartel is not incompatible with the role of leader such as that which the Commission attributed to ITR. As regards specifically the period from 11 June 1999 to 30 September 2001, the arguments put forward by the applicants do not establish that Mr W., in particular through his undertakings, was the sole coordinator of the cartel. The coordination functions which ITR provided during that period are not such as to preclude a main coordinator from providing the overall leadership of the cartel. That coexistence would explain in particular the fact that ITR was not present at all the meetings of the cartel.

122 Lastly, the claims that other members had doubts about ITR's role as coordinator of the cartel and that that role was not formalised do not invalidate the Commission's finding that ITR acted as coordinator, at least of the ITR/Yokohama block, and ensured that there was some coordination with the other members of the cartel, in particular following the meeting of 10 December 1999. The doubts expressed, in particular by Manuli in June 1999 with regard to a European cartel coordinator, cannot call into question the various documents put forward by the Commission which prove that ITR actually carried out coordination activities among other participants in the cartel, irrespective of whether and for how long fixed sub-groups were formally established within the cartel.

The increase in the fine in respect of the role of leader attributed to ITR

123 The applicants dispute the 30% increase applied to the amount of the fine imposed on Parker ITR in respect of the role of leader attributed to ITR, which they claim is not justified, in particular with regard to the fact that the same level of increase was applied to the amount of the fine imposed on Bridgestone, which coordinated the cartel for 11 years.

124 Point 28 of the Guidelines provides that the basic amount of the fine may be increased where the Commission finds that there are aggravating circumstances, such as the role of leader in the infringement.

125 In that regard, it is apparent from the case-law that the fact that an undertaking acted as leader of a cartel means that it must bear special responsibility in relation to the other undertakings (judgment of 3 March 2011 in *Siemens* v *Commission*, T-110/07, EU:T:2011:68, paragraph 367).

126 Furthermore, it is apparent from settled case-law that, when determining the amount of each fine, the Commission has a margin of discretion and is not required to apply any particular mathematical formula for that purpose (judgments of 6 April 1995 in *Martinelli* v *Commission*, T-150/89, EU:T:1995:70, paragraph 59; of 14 May 1998 in *Mo och Domsjö* v *Commission*, T-352/94, EU:T:1998:103, paragraph 268, and of 13 July 2011 in *Polimeri Europa* v *Commission*, T-59/07, EU:T:2011:361, paragraph 251).

127 In the present case, as has been held in paragraphs 118 and 119 above, the Commission was correct in finding that ITR had played the role of leader in the cartel from 11 June 1999 to 30 September 2001.

128 In recitals 457 to 463 of the contested decision concerning the aggravating circumstances, the Commission specifically referred, as regards ITR, inter alia to the findings relating to the role played by ITR's representative during the period from June 1999 to September 2001. The Commission stated in those recitals that ITR had provided coordination for a part of the cartel at the same time as Mr W.'s provision of coordination and pointed out that it was precisely during that period that the cartel had been re-established after undergoing a period of instability.

129 It is not disputed that the cartel underwent a period of relative inactivity from May 1997 to June 1999. As has been pointed out, in particular in paragraphs 105 and 108 above, it was precisely as from June 1999 that ITR carried out coordination activities as regards some of the participants in the cartel.

130 Furthermore, the Commission also pointed out, in paragraph 458 of the contested decision, that ITR's contribution had been crucial with regard to successfully overcoming reluctance on the part of certain members of the cartel and re-establishing the cartel.

131 As the applicants themselves admit, ITR started to collaborate more closely with Yokohama, by coordinating the participation of the two undertakings within the cartel, although Yokohama had expressed reluctance to rejoin the cartel on account of its bad relations with its Japanese competitor, Bridgestone. That rivalry, which preceded the re-establishment of the cartel in 1999, which ITR's intervention contributed towards reinstating, was acknowledged by the applicants themselves.

132 Consequently, the 30% increase applied to the amount of the fine imposed on Parker ITR in respect of its role of leader appears justified by the circumstances of the present case.

133 In so far as the applicants' arguments relating to the fact that the same 30% increase was applied to the amount of the fine imposed on Bridgestone, although Bridgestone coordinated the cartel for 11 years, must be understood as claiming infringement of the principle of equal treatment, it is necessary to examine, in accordance with the case-law cited in paragraph 88 above, whether the two situations are comparable.

134 As regards the 30% increase in the fine imposed on Bridgestone, the Commission refers, in recitals 458 and 462 of the contested decision, to findings that during the period of 11 years from 1986 to 1997, Bridgestone coordinated the cartel, in particular with regard to the Japanese participants, whereas Dunlop/DOM coordinated the cartel with regard to the European participants.

135 It is thus apparent from the evidence taken into account by the Commission in its findings relating to the aggravating circumstances that, whereas Bridgestone coordinated the cartel with regard to certain participants for a lengthy period of 11 years, ITR coordinated some of the participants in the cartel for two years.

136 It must be held that the two situations are not factually similar. However, it must be pointed out that, in accordance with the case-law cited in paragraph 88 above, the same treatment of the two situations appears to be objectively justified, in the light of the fact that, although ITR carried out coordination activities for only two years, those activities contributed very significantly towards the successful re-establishment of the cartel. In view of the gravity of the infringement and of the liability for that infringement, it seems justified that the increase in the amount of the fine imposed on Parker ITR in respect of ITR's coordination activities at a critical point in time for the cartel was as high as that applied to the amount of the fine imposed on Bridgestone in respect of its coordination activities which extended over a longer period.

137 Accordingly, the Commission cannot be criticised, in exercising its discretion, for having applied the same rate of increase to the amounts of the fines imposed on Parker ITR and Bridgestone.

138 In any event, even if the Commission were to have erroneously applied an increase of only 30% to the amount of the fine imposed on Bridgestone, in spite of the lengthy period during which Bridgestone undertook the role of leader in the cartel, such an unlawful act, in favour of a third party, would not justify upholding the plea for annulment raised by the applicants. According to settled case-law, respect for the principle of equal treatment or non-discrimination must be reconciled with the principle of legality, according to which a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party (see judgment of 3 March 2011 in *Siemens* v *Commission*, T-110/07, EU:T:2011:68, paragraph 358 and the case-law cited).

139 In view of the foregoing considerations, the fifth plea put forward by the applicants must be rejected.

The sixth plea, relating to infringement of the principle of personal liability and to the failure to state reasons which vitiates the increase applied to the amount of the fine imposed on Parker-Hannifin for Parker ITR's alleged role of leader

140 The applicants submit, in essence, that the Commission infringed the principle of personal liability when it took the role of leader attributed to ITR from 11 June 1999 to 30 September 2001 into consideration in order to increase the amount of the part of the fine for which Parker-Hannifin was held to be jointly and severally liable. They further claim infringement of the obligation to state reasons inasmuch as the contested decision does not contain the reasons why a 30% increase was applied to the amount of the fine for which Parker-Hannifin was held liable.

141 As regards the infringement of the principle of personal liability, it must be borne in mind that it is apparent from settled case-law that, if the unlawful conduct of a subsidiary can be imputed to its parent company, those companies may be regarded, during the period of the infringement, as forming a single economic unit and thus a single undertaking for the purposes of the competition law of the European Union. In those circumstances, the Commission will be entitled to hold the parent company jointly and severally liable for the unlawful conduct of its subsidiary during that period and, as a consequence, for payment of the amount of the fine imposed on the subsidiary (see judgment of 10 April 2014 in *Areva and Others* v *Commission*, C-247/11 P and C-253/11 P, EU:C:2014:257, paragraph 49 and the case-law cited).

142 Furthermore, it has been held that in determining joint and several liability from its external perspective, namely the liability imposed by the Commission on the various persons comprising the undertaking who may be required to pay the whole of the amount of the fine imposed on the undertaking, the Commission is subject to certain restrictions, inter alia, adherence to the principle that penalties must be specific to the offender and the offence, which requires, in accordance with Article 23(3) of Regulation No 1/2003, that the amount of the fine to be paid jointly and severally must be determined by reference to the gravity of the infringement for which the undertaking concerned is held individually responsible and the duration of the infringement (judgment of 10 April 2014 in *Commission* v *Siemens Österreich and Others*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 52).

143 A definition of joint and several liability permitting the Commission to require one of the parent companies to pay a fine punishing infringements for another part of the infringement period, for which an undertaking of which it has never formed part is responsible, is at odds with the principle that the penalty must be specific to the offender and the offence (judgment of 10 April 2014 in *Areva and Others* v *Commission*, C-247/11 P and C-253/11 P, EU:C:2014:257, paragraphs 126 to 133).

144 More specifically, a company cannot be held to be responsible for infringements committed independently by its subsidiaries before the date of their acquisition, since the latter must themselves answer for their unlawful conduct prior to that acquisition, and the company which has acquired them cannot be held to be responsible (judgments of 16 November 2000 in *Cascades* v *Commission*, C-279/98 P, EU:C:2000:626, paragraphs 77 to 79, and of 4 September 2014 in *YKK and Others* v *Commission*, C-408/12 P, EU:C:2014:2153, paragraph 65).

145 In the light of the foregoing considerations, it is necessary to examine whether the Commission erred in law when it applied a 30% increase to the amount of the fine for which Parker-Hannifin is jointly and severally liable.

146 In that regard, it is necessary to bear in mind the finding in paragraph 118 above, that the Commission was correct in finding that ITR was a leader in the cartel in respect of the period from 11 June 1999 to 30 September 2001. Neither ITR nor its successor ITR Rubber was found to have been involved in any leadership activity outside that period, a fact the Commission, moreover, confirmed during the hearing.

147 Furthermore, it is common ground that ITR Rubber, to which its then parent company, ITR, transferred its assets in the marine hose business on 1 January 2002, was sold to Parker-Hannifin of the Parker group, on 31 January 2002. Consequently, the Commission, in recital 389 of the contested decision, found Parker-Hannifin jointly and severally liable for the conduct of Parker ITR as from the date on which it acquired it, namely 31 January 2002.

148 In addition, it is necessary to bear in mind the methodology which the Commission followed in the contested decision for the purposes of calculating the amount of the fine.

149 Accordingly, first, the Commission calculated the basic amount of the fine as follows:

— in recitals 420 to 428 of the contested decision, the Commission stated that the relevant sales had to be calculated using the average annual value of the sales made by the main marine hoses producers in the European Economic Area (EEA) in the three full business years before the end of the infringement, namely EUR 32 710 069;

— in the light of the worldwide scope of the infringement, the Commission took the view, in recitals 429 to 433 of the contested decision, that it was necessary to multiply that figure by the worldwide market share held by each participant and that, in the case of Parker ITR, its worldwide market share amounted to 12.1%;

— as a result of that multiplication, the Commission arrived, in recital 436 of the contested decision, at the sum of EUR 3 955 777, in respect of the relevant sales of Parker ITR;

— on the basis of the gravity of the infringement, the Commission concluded, in recital 445, that, in view of the circumstances of the case, the nature of the infringement, its geographic scope and the combined market share concerned, 25% of the value of the relevant sales should be taken into consideration;

— in respect of the duration of the infringement, the Commission found, in recital 448 of the contested decision, that the duration with regard to Parker ITR was 19 years and 5 days and that the duration with regard to Parker-Hannifin was 5 years, 3 months and 3 days, which gave rise to multipliers of 19 and 5.5 respectively;

— in recital 449, the Commission stated that it was necessary to add an additional sum of 25% of the value of the sales as a further amount for the purposes of deterrence;

— the Commission stated in recital 455 of the contested decision that the calculations described above gave rise to basic amounts of EUR 19 700 000 in respect of Parker ITR and EUR 6 400 000 in respect of Parker-Hannifin.

150 Secondly, having obtained two basic amounts, namely a basic amount for Parker ITR and a basic amount for Parker-Hannifin, the Commission stated, in recital 463 of the contested decision, that the basic amount of the fine imposed on Parker ITR should be increased by 30% to take account of aggravating circumstances.

151 In recital 471 of the contested decision, the Commission increased by 30% the basic amount for Parker ITR, which gave rise to an amount of EUR 25 610 000, and also for Parker-Hannifin, which gave rise to an amount of EUR 8 320 000.

152 It is apparent from the foregoing considerations that, although the Commission found Parker-Hannifin to be jointly and severally liable only as from 31 January 2002, the basic amount of the fine which had to be paid jointly and severally by Parker-Hannifin in respect of that liability was increased by 30% on

the basis of the aggravating circumstance of the role of leader played by ITR from 11 June 1999 to 30 September 2001, a period during which Parker-Hannifin did not have any links with ITR or its successor ITR Rubber.

153 It is thus apparent from the foregoing that the amount of the fine which had to be paid jointly and severally by Parker-Hannifin was not determined by reference to the gravity of the infringement which was committed individually by its subsidiary ITR Rubber after its acquisition on 31 January 2002.

154 Consequently, the Commission erred in law when it applied, on the basis of the aggravating circumstance of the role of leader played by ITR from 11 June 1999 to 30 September 2001, a 30% increase to the amount of the fine which had to be paid jointly and severally by Parker-Hannifin.

155 Accordingly, the sixth plea in law put forward by the applicants must be upheld, without it being necessary to examine the arguments relating to infringement of the obligation to state reasons which they have raised in the context of that plea.

156 As a result, subparagraph (e) of the first paragraph of Article 2 of the contested decision must be annulled in so far as a 30% increase was applied to the amount of the fine to be paid jointly and severally by Parker-Hannifin, on the basis of the aggravating circumstance of the role of leader played by ITR from 11 June 1999 to 30 September 2001.

The eighth plea, relating to the calculation of the ceiling of 10% of turnover

157 As has been stated in paragraph 31 above, the eighth plea put forward by the applicants must be examined as regards the period prior to 1 January 2002.

158 In the context of their eighth plea the applicants put forward three complaints, alleging (i) infringement of Article 23(2) of Regulation No 1/2003; (ii) infringement of the principle of personal liability; and, (iii) infringement of the obligation to state reasons.

159 As regards the first complaint, relating to infringement of Article 23(2) of Regulation No 1/2003, it must be borne in mind that that provision provides that:

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

(a) they infringe Article 81 [EC] or Article 82 [EC] …

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.

…’

160 Furthermore, it is necessary to bear in mind, in particular, the case-law deriving from the judgment of 4 September 2014 in *YKK and Others* v *Commission* (C-408/12 P, EU:C:2014:2153). In paragraph 60 of that judgment, the Court of Justice stated the following:

‘… [W]here … an undertaking regarded by the Commission as responsible for an infringement of Article 81 EC is acquired by another undertaking within which it retains, as a subsidiary, the status of a distinct economic entity, the Commission must take account of the specific turnover of each of those economic entities in order to apply to them, where necessary, the 10% upper limit.’

161 Furthermore, in paragraphs 63 and 64 of the judgment of 4 September 2014 in *YKK and Others* v *Commission* (C-408/12 P, EU:C:2014:2153), the following was held:

> '63. It must be observed, in that regard, that the objective sought by the establishment, in Article 23(2), of an upper limit of 10% of the turnover of each undertaking participating in an infringement is, inter alia, to ensure that the imposition of a fine higher in amount than that ceiling should not exceed the capacity of an undertaking to make payment at the time when it is identified as responsible for the infringement and a financial penalty is imposed on it by the Commission.
>
> 64. The finding in the preceding paragraph is confirmed by the second subparagraph of Article 23(2) of Regulation No 1/2003 which requires, as regards the 10% upper limit, that it should be calculated on the basis of the turnover in the business year preceding the Commission decision imposing a penalty for an infringement. Such a requirement is fully respected where, as in this case, that ceiling is determined solely on the basis of the turnover of the subsidiary, in respect of the fine which is imposed exclusively on it, in relation to the period prior to its acquisition by the parent company ... It follows that, in such circumstances, the structural changes in the undertaking responsible as an economic entity are in fact taken into account in the calculation of the fine.'

162 It is apparent from subparagraph (e) of the first paragraph of Article 2 of the contested decision that Parker-Hannifin was held jointly and severally liable for EUR 8 320 000 of the amount of the fine of EUR 25 610 000 imposed on Parker ITR. It follows from that that the part of the fine that must be regarded as having been imposed exclusively on Parker ITR amounts to EUR 17 290 000. However, in the light of the error which has been held to exist in paragraph 154 above and the finding in paragraph 156 above, the 30% increase applied to the basic amount of the fine of EUR 6 400 000 which had to be paid jointly and severally by Parker-Hannifin must not be taken into account. In the light of the foregoing, the part of the fine which must actually be held to have been imposed exclusively on Parker ITR amounts to EUR 19 210 000.

163 In view of the allocation of liability between Parker ITR and Parker-Hannifin found to exist by the Commission, as described, in particular, in recital 389 of the contested decision, it must be held that the part of the fine for which Parker ITR was held exclusively liable is due to the participation in the infringement of its economic predecessor, ITR, with regard to the period from 1 April 1986 to 31 December 2001, as well as to its own participation with regard to the period from 1 to 31 January 2002. It is only as from 31 January 2002 that Parker-Hannifin was found to be liable as the parent company of Parker ITR and, on that basis, Parker-Hannifin was held jointly and severally liable with Parker ITR for part of the fine.

164 In recital 474 of the contested decision, the Commission, relying on the turnover in the section of the decision relating to the undertakings subject to the proceedings, stated that the amounts of the fines imposed on those undertakings did not exceed the ceiling of 10% of turnover provided for by Article 23(2) of Regulation No 1/2003. However, as regards the applicants, the Commission stated, in recital 36 of the contested decision, that Parker-Hannifin's worldwide consolidated turnover for the business year 2006 ending on 30 June was EUR 7 410 million.

165 Consequently, it is apparent from the contested decision that the Commission relied solely on Parker-Hannifin's overall turnover for the purposes of calculating the 10% turnover ceiling provided for by Article 23(2) of Regulation No 1/2003, including as regards the part of the fine for which Parker ITR was held exclusively liable, in particular in respect of the period prior to 1 January 2002.

166 As the applicants correctly submit, inasmuch as that ceiling was not determined solely on the basis of the turnover of Parker ITR as regards the part of the fine imposed exclusively on it, including, necessarily, as regards the period prior to 1 January 2002, the Commission erred in its application of Article 23(2) of Regulation No 1/2003 (see, to that effect, judgment of 4 September 2014 in *YKK and Others* v *Commission*, C-408/12 P, EU:C:2014:2153, paragraph 64).

167 In view of the foregoing, the eighth plea, as circumscribed in paragraph 31 above, must be upheld, without it being necessary to examine the second and third complaints put forward by the applicants in the context of that plea.

168 Accordingly, subparagraph (e) of the first paragraph of Article 2 of the contested decision must also be annulled in so far as the Commission did not calculate, as regards the part of the fine for which Parker ITR was held exclusively liable with regard to the period prior to 1 January 2002, the 10% turnover ceiling provided for by Article 23(2) of Regulation No 1/2003 solely on the basis of the turnover of Parker ITR.

The exercise of unlimited jurisdiction

169 The unlimited jurisdiction conferred on the General Court, pursuant to Article 229 EC, by Article 31 of Regulation No 1/2003 empowers that Court, in addition to carrying out a mere review of the lawfulness of the penalty, to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the amount of the fine or penalty payment imposed. It follows that the EU judicature is empowered to exercise its unlimited jurisdiction where the question of the amount of the fine is before it and that that jurisdiction may be exercised to reduce that amount as well as to increase it (judgment of 8 February 2007 in *Groupe Danone* v *Commission*, C-3/06 P, EU:C:2007:88, paragraphs 61 and 62).

170 It should be observed that, by its nature, the fixing of the amount of a fine by the Court is not an arithmetically precise exercise. Furthermore, the Court is not bound by the Commission's calculations or by its Guidelines when it adjudicates in the exercise of its unlimited jurisdiction. It must make its own appraisal, taking account of all the circumstances of the case (see judgment of 5 October 2011 in *Romana Tabacchi* v *Commission*, T-11/06, EU:T:2011:560, paragraph 266 and the case-law cited).

171 Furthermore, under Article 23(3) of Regulation No 1/2003, in fixing the amount of the fine, regard must be had both to the gravity and to the duration of the infringement.

172 In addition, as stated in Article 49 of the Charter of Fundamental Rights of the European Union, the severity of penalties must not be disproportionate to the offence.

173 Article 23(2) of Regulation No 1/2003 provides that the amount of the fine imposed cannot, in addition, exceed 10% of the total turnover of the undertaking in the preceding business year.

174 In that regard, it is apparent from the case-law, in particular that deriving from the judgment of 4 September 2014 in *YKK and Others* v *Commission* (C-408/12 P, EU:C:2014:2153), that, for the purposes of applying the ceiling provided for by Article 23(2) of Regulation No 1/2003, it is necessary to take into account the turnover of the subsidiary in question (see, to that effect, judgment of 4 September 2014 in *YKK and Others* v *Commission*, C-408/12 P, EU:C:2014:2153, paragraph 97). Accordingly, since it is not the consolidated turnover of the Parker group, but solely that of the subsidiary Parker ITR which must be taken into account for the purpose of adjusting the amount of the fine to that subsidiary's capacity to make payment, it is necessary, for the purpose of calculating the 10% ceiling, to rely on the total turnover of Parker ITR, including captive sales within the group.

175 The Court of Justice has also held that, in order to determine the amount of a fine, it is necessary to take account of the duration of the infringements and of all the factors capable of affecting the assessment of their gravity, such as, inter alia, the conduct of each of the undertakings and the role played by each of them in the establishment of the concerted practices (see, to that effect, judgment of 8 December 2011 in *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 56 and the case-law cited).

176 In the judgment on appeal, the Court of Justice set aside, inter alia, paragraphs 2 and 3 of the operative part of the judgment of the General Court by which the fine that the Commission imposed on Parker ITR and on Parker-Hannifin was annulled and, as a result of the General Court's findings relating to the exercise of its unlimited jurisdiction, the amount of the fine imposed on Parker ITR was set at EUR 6 400 000, for EUR 6 300 000 of which Parker-Hannifin was jointly and severally liable.

177 Following the referral of their case back to the General Court, the applicants submit that the pleas that they have put forward justify the annulment of the contested decision and, as a result, the exercise by the General Court of its unlimited jurisdiction to reduce the amount of the fine imposed on them.

178 In the present case, having regard to the General Court's assessment in the context of the sixth and eighth pleas and to the errors which have been held to exist in paragraphs 154 and 166 above, the General Court considers it appropriate, in addition to the partial annulment of the contested decision which it has decided on in paragraphs 156 and 168 above, to exercise the unlimited jurisdiction conferred upon it by Article 31 of Regulation No 1/2003 and to substitute its own appraisal for the Commission's as regards the amount of the fine which must be imposed on the applicants.

179 Accordingly, the General Court considers it appropriate to take the following circumstances into account.

180 First, it is apparent to the requisite evidential standard from the case-file that the cartel constituted a serious infringement, in the light of the fact that its objectives were the allocation of tenders; price-fixing; quota-setting; the fixing of sales conditions; the sharing of geographic markets; and the exchange of sensitive information on prices, sales volumes and procurement tenders. Furthermore it was a worldwide cartel.

181 Secondly, as regards specifically the duration of the infringement, first, it must be borne in mind that ITR Rubber (which later became Parker ITR) was correctly held liable for the participation of its economic predecessor ITR in the infringement with regard to the period from 1 April 1986 to 31 December 2001 and for its own participation in the infringement with regard to the period from 1 January 2002 to 2 May 2007. Secondly, Parker-Hannifin was correctly held jointly and severally liable, as the parent company of Parker ITR, with regard to the period from 31 January 2002 to 2 May 2007.

182 Thirdly, it has been established that ITR played the role of leader in the cartel from 11 June 1999 to 30 September 2001, during a critical period for the cartel, which followed a period of relative inactivity, and contributed very significantly towards the successful re-establishment of the cartel. By contrast, neither ITR nor its successor ITR Rubber has been found to have been involved in any leadership activity outside that period.

183 In the light of those circumstances, the Court holds that a fine in the amount of EUR 19 210 000 such as that which the Commission imposed exclusively on Parker ITR makes it possible effectively to penalise the unlawful conduct which has been held to exist, in a manner which is not negligible and remains sufficiently deterrent. Any fine above that amount would be disproportionate with regard to that infringement.

184 However, on account of the legal maximum of 10% of total turnover provided for by Article 23(2) of Regulation No 1/2003, it is necessary to take into account, for the purposes of applying that article, the total turnover of the undertaking, namely Parker ITR, in the business year preceding the decision imposing the fine in question, in the case of Parker ITR, the business year 2008, which ended on 30 June. Accordingly, it is apparent from the balance sheet of Parker ITR as at 30 June 2008, which is attached as an annex to the observations which they submitted following the judgment on appeal, in particular from page 18 thereof, that the total turnover, including captive sales, for the business year 2008 was EUR 135 457 283.

185 The General Court thus holds that the amount of the fine for which Parker ITR must be held exclusively liable in the present case must not exceed 10% of the turnover set out in paragraph 184 above, namely EUR 13 545 728.

186 Lastly, the General Court holds that it is necessary to reduce the amount of the fine for which Parker-Hannifin must be held jointly and severally liable in the light, in particular, of the gravity of the infringement and of the fact that its participation in the infringement, as the parent company of Parker ITR, began only when it acquired Parker ITR on 31 January 2002, when Parker ITR was no longer playing the role of leader in the cartel, and to set the amount of that fine at EUR 6 400 000.

187 Consequently, the General Court holds that the total amount of the fine imposed on Parker ITR must be set at EUR 19 945 728, for EUR 6 400 000 of which Parker-Hannifin must be held jointly and severally liable.

188 The action is dismissed as to the remainder.

Costs

189 Under Article 134(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the parties are to bear their own costs.

190 In the light of the circumstances of the present case, it must be held that each party is to bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Annuls subparagraph (e) of the first paragraph of Article 2 of Commission Decision C(2009) 428 final of 28 January 2009 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39406 — Marine hoses) in so far as a 30% increase was applied to the amount of the fine to be paid jointly and severally by Parker-Hannifin Corp., on the basis of the aggravating circumstance of the role of leader played by ITR SpA from 11 June 1999 to 30 September 2001 and in so far as the European Commission did not calculate, as regards the part of the fine for which Parker ITR was held exclusively liable with regard to the period prior to 1 January 2002, the ceiling of 10% of turnover provided for by Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] solely on the basis of the turnover of Parker ITR Srl;**

2. Sets the amount of the fine imposed on Parker Hannifin Manufacturing Srl, formerly Parker ITR, at EUR 19 945 728, for EUR 6 400 000 of which Parker-Hannifin is jointly and severally liable;

3. Dismisses the action as to the remainder;

4. Orders Parker Hannifin Manufacturing, Parker-Hannifin and the Commission to bear their own costs.

Frimodt Nielsen Schwarcz Collins

Delivered in open court in Luxembourg on 14 July 2016.

[Signatures]