Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

16 September 2013*

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Distortion of competition — Proof — Calculation of the fine — Cooperation during the administrative procedure — 2002 Leniency Notice — Immunity from fines — Reduction of the fine — Significant added value — 2006 Guidelines on the method of setting fines — Principle of non-retroactivity)

In Case T-380/10,

Wabco Europe, established in Brussels (Belgium),

Wabco Austria GesmbH, established in Vienna (Austria),

Trane Inc., established in Piscataway, New Jersey (United States),

Ideal Standard Italia Srl, established in Milan (Italy),

Ideal Standard GmbH, established in Bonn (Germany),

represented by S. Völcker, F. Louis, A. Israel, N. Niejahr, lawyers, C. O'Daly, E. Batchelor, Solicitors, and F. Carlin, Barrister,

applicants,

v

European Commission, represented by F. Castillo de la Torre, F. Ronkes Agerbeek and G. Koleva, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 – Bathroom Fittings and Fixtures) in so far as it concerns the applicants, and for reduction of the fines imposed on them,

THE GENERAL COURT (Fourth Chamber),

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

* Language of the case: English

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 27 March 2012,

gives the following

Judgment

Background to the dispute

1 By Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 – Bathroom Fittings and Fixtures) ('the contested decision'), the European Commission found there to be an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area (EEA) in the bathroom fittings and fixtures sector. It found that 17 undertakings had participated, over various periods between 16 October 1992 and 9 November 2004, in that infringement, which took the form of anti-competitive agreements or concerted practices spanning Belgium, Germany, France, Italy, the Netherlands and Austria (recitals 2 and 3 to the contested decision and Article 1 thereof).

2 More specifically, the Commission stated in the contested decision that the infringement consisted in (i) the coordination, by those bathroom fittings and fixtures manufacturers, of annual price increases and other pricing elements within the framework of regular meetings of national industry associations; (ii) the setting or coordination of prices on the occasion of specific events such as increases in raw material costs, the introduction of the euro and the introduction of road tolls; and (iii) the disclosure and exchange of sensitive business information (recitals 152 to 163 to the contested decision). The Commission also found that price setting in the bathroom fittings and fixtures industry followed an annual cycle. In that context, the manufacturers set price lists which generally remained in force for a year and formed the basis for commercial relations with wholesalers (recitals 152 to 163 to the contested decision).

3 The products covered by the cartel are bathroom fittings and fixtures belonging to the following three product sub-groups: taps and fittings, shower enclosures and accessories, and ceramics (the 'three product sub-groups') (recitals 5 and 6 to the contested decision).

4 American Standard Inc., which became Trane Inc. in 2007, was an American group manufacturing and distributing ceramics and taps and fittings under the Ideal Standard brand. The group's European activities in that sector were, from 29 October 2001, taken over by American Standard Europe BVBA, which, in 2007, became Wabco Europe. That group wholly owned the subsidiaries active in six Member States of the European Union, namely (i) Ideal Standard GmbH and Ideal-Standard Produktions-GmbH in Germany, (ii) Ideal Standard SAS in France, (iii) Ideal Standard Italia Srl in Italy, (iv) as of 2001, de Metaalwarenfabriek Venlo BV, which, in 2005, became Ideal Standard Nederland BV Europe, in the Netherlands, (v) Wabco Austria GesmbH, sold to Ideal Standard GmbH in 2007, in Austria and (vi) a subsidiary of the latter in Belgium (recitals 21 to 26 and 1043 to 1049 to the contested decision).

5 Wabco Europe, Wabco Austria, Trane, Ideal Standard Italia and Ideal Standard will hereinafter be referred to collectively as 'the applicants'.

6 On 15 July 2004, Masco Corp. and its subsidiaries, including Hansgrohe AG, which manufactures taps and fittings, and Hüppe GmbH, which manufactures shower enclosures, informed the Commission of the existence of a cartel in the bathroom fittings and fixtures sector and submitted an application for immunity from fines, or, in the alternative, for a reduction of fines, under the Commission notice on

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

7 On 9 and 10 November 2004, the Commission, pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), conducted unannounced inspections on the premises of various companies and national industry associations operating in the bathroom fittings and fixtures sector (recital 129 to the contested decision).

8 On 15 and 19 November 2004 respectively, Grohe Beteiligungs GmbH and its subsidiaries ('Grohe') and the applicants each applied for immunity from fines under the 2002 Leniency Notice or, in the alternative, for a reduction in fines (recitals 131 and 132 to the contested decision).

9 Between 15 November 2005 and 16 May 2006, the Commission, pursuant to Article 18 of Regulation No 1/2003, sent requests for information to various companies and associations operating in the bathroom fittings and fixtures sector, including the applicants (recital 133 to the contested decision).

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

11 On 26 March 2007, the Commission adopted a statement of objections, which was notified to the applicants (recital 139 to the contested decision).

12 A hearing took place from 12 to 14 November 2007, in which the applicants participated (recital 143 to the contested decision).

13 On 9 July 2009, the Commission sent certain companies, including the applicants, a letter of facts, drawing their attention to certain evidence on which the Commission was minded to rely when adopting a final decision (recitals 147 and 148 to the contested decision).

14 Between 19 June 2009 and 8 March 2010, the Commission, pursuant to Article 18 of Regulation No 1/2003, sent further requests for information to several companies, including the applicants (recitals 149 to 151 to the contested decision).

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

16 In the contested decision, in the first place, the Commission found that the practices described in paragraph 2 above formed part of an overall plan to restrict competition between the addressees of that decision and had the characteristics of a single and continuous infringement, which covered the three product sub-groups referred to in paragraph 3 above and extended to Belgium, Germany, France, Italy, the Netherlands and Austria (recitals 778 and 793 to the contested decision) ('the infringement found'). In that regard, it highlighted, in particular, the fact that those practices had followed a recurring pattern which was consistent in each of the six Member States covered by the Commission's investigation (recitals 778 and 793 to the contested decision). The Commission also pointed to the existence of national industry associations concerning all three product sub-groups, which it termed 'umbrella associations', national industry associations with members active in at least two of those three product sub-groups, which it termed 'cross-product associations', as well as product-specific associations with members active in only one product sub-group (recitals 796

and 798 to the contested decision). Lastly, it found that a central group of undertakings participated in the cartel in various Member States and in cross-product associations and umbrella associations (recitals 796 and 797 to the contested decision).

17 With regard to the applicants in particular, the Commission found that they had participated in infringements relating to ceramics and taps and fittings during various periods, from 15 March 1993 to 9 November 2004, in Belgium, Germany, France, Italy and Austria. However, the Commission stated that they could not be held liable for an infringement in the Netherlands, since the infringement had come to an end there in 1999 before their acquisition, in 2001, of the subsidiary which took part in it. The Commission concluded that the applicants had participated in the single infringement since they could reasonably have foreseen that anti-competitive activities had taken place before 2001 (recitals 853 to 856 to the contested decision).

18 In the second place, for the purposes of setting the fines imposed on each undertaking, the Commission took as its basis the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines') (recital 1184 to the contested decision).

19 In Article 1 of the contested decision, the Commission lists the undertakings which it finds have committed an infringement of Article 101 TFEU and, from 1 January 1994, Article 53 of the EEA Agreement on account of their participation, for various periods between 16 October 1992 and 9 November 2004, in a cartel active in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

20 As regards the applicants, points (3) to (5) of Article 1(1) of the contested decision are worded as follows:

'(1) The following undertakings have infringed Article 101 [TFEU] and – from 1 January 1994 – Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector covering the territory of Germany, Austria, Italy, France, Belgium and the Netherlands:

…

3. Trane … from 15 March 1993 to 9 November 2004.

4. W[abco] Europe … from 29 October 2001 to 9 November 2004 and W[abco] Austria … from 21 July 1994 to 9 November 2004, Ideal Standard … from 19 March 2003 to 9 November 2004; Ideal Standard Produktions … from 30 October 2001 to 9 November 2004; Ideal Standard [SAS] from 10 December 2002 to 9 November 2004; Ideal Standard Italia … from 15 March 1993 to 9 November 2004.

5. Ideal Standard Nederland … from 30 November 1994 to 31 December 1999.'

21 In Article 2 of the contested decision, the Commission imposed fines on the undertakings concerned. The highest fine was the applicants', which amounted to EUR 326 091 196. With regard to the applicants, point (3) of Article 2 of the decision is worded as follows:

'For the infringement referred to in Article 1, the following fines are imposed:

(a) EUR 259 066 294 on Trane …;

(b) EUR 44 995 552 jointly and severally on W[abco] Europe … and Trane …;

(c) EUR 1 519 000 jointly and severally on W[abco] Austria …, W[abco] Europe … and Trane …;

(d) EUR 0 jointly and severally on Ideal Standard [SAS], W[abco] Europe … and Trane …;

(e) EUR 12 323 430 … jointly and severally on Ideal Standard Italia …, W[abco] Europe … and Trane …;

(f) EUR 5 575 920 jointly and severally on Ideal Standard …, W[abco] Europe … and Trane …;

(g) EUR 0 jointly and severally on Ideal Standard Produktions …, W[abco] Europe … and Trane …;

(h) EUR 2 611 000 jointly and severally on W[abco] Austria …and Trane …;

(i) EUR 0 on Ideal Standard Nederland …'.

Procedure and forms of order sought

22 By application lodged at the Court Registry on 8 September 2010, the applicants brought the present action. By a separate document lodged at the Court Registry on the same date, the applicants requested that the case be dealt with under the expedited procedure pursuant to Article 76a of the Rules of Procedure of the General Court.

23 By decision of 19 October 2010, the Court (Fourth Chamber) refused the applicants' request that the case be decided under the expedited procedure provided for by Article 76a of the Rules of Procedure.

24 On hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 64 of the Rules of Procedure, put questions in writing to the parties. The parties provided answers to those questions within the prescribed period.

25 The parties presented oral argument and replied to the Court's oral questions at the hearing on 27 March 2012.

26 The applicants claim that the Court should:

— annul in part Article 2(3) of the contested decision in so far as fines have been imposed on them and, to the extent necessary, points (3) and (4) of Article 1(1) of the contested decision;

— reduce the fine imposed on them;

— order the Commission to pay the costs.

27 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

28 As a preliminary point, it should be recalled that the judicial review carried out by the Courts of the European Union ('Courts of the Union') of decisions adopted by the Commission to punish infringements of competition law is based on the review of legality, provided for in Article 263 TFEU, which is supplemented, where an application for such review is made to them, by the unlimited jurisdiction conferred upon those Courts by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU (see, to that effect, Case C-386/10 P *Chalkor* v *Commission* [2011] ECR I-13085, paragraphs 53, 63 and 64). That jurisdiction enables the Courts, in addition to carrying out a mere review of the lawfulness of the penalty, to substitute their own appraisal for the Commission's and, consequently, depending on the circumstances, to cancel, reduce or increase the fine or penalty payment imposed (see Case C-272/09 P *KME and Others* v *Commission* [2011] ECR I-12789, paragraph 103 and the case-law cited; see, to that effect, Case T-11/06 *Romana Tabacchi* v *Commission* [2011] ECR II-6681, paragraph 265).

29 In the light of the case-law referred to in the preceding paragraph, it is necessary to consider, first of all, in the context of the review of the legality of the contested decision, the applicants' claim for annulment of Articles 1 and 2 of the contested decision in so far as those articles concern them and, subsequently, their claim that the General Court should exercise its unlimited jurisdiction to vary – by reducing them – the fines which the Commission has imposed on them.

A – *Principal head of claim, application for partial annulment of the contested decision*

30 In support of their action for annulment the applicants raise four pleas in law. The first plea in law alleges that there was an error in the calculation of the fine as a result of the value of the applicants' ceramics sales in Italy being taken into account. The second plea in law concerns the fact that the Commission failed to take into account, in the calculation of the fine, the fact that it had granted them partial immunity from fines pursuant to the last sentence of point 23(b) of the 2002 Leniency Notice for the infringements in Belgium and France. The third plea in law alleges that the Commission ought to have found that they had been the first to provide it with evidence representing significant added value within the meaning of the 2002 Leniency Notice and that they should accordingly have been granted a 50%, rather than a 30%, reduction in their fine. By their fourth plea in law, they submit that the Commission infringed the principle of non-retroactivity in applying the 2006 Guidelines to the facts of the present case.

1. *First plea in law: error in the calculation of the fine as a result of the value of the applicants' ceramics sales on the Italian market being taken into account*

31 The applicants submit, in essence, that the Commission failed to make out a satisfactory case for the existence of the infringement in question in so far as it relates to ceramics sold on the Italian market over a period of 11 years and 7 months, that is, from 15 March 1993 to 9 November 2004; nor, *a fortiori*, has it established that they participated in such an infringement. In that regard, the applicants state that the Commission undertook, in recital 1140 to the contested decision, to calculate the fine imposed on each undertaking only by reference to the features specific to the infringement committed by it, that is to say, in terms of the territory and product sub-groups concerned and the actual duration of its participation in the infringement. Therefore, the total amount of the fine imposed on them should, in their submission, be reduced by 75%, in other words a reduction of around EUR 248 million.

32 The Commission contests those arguments.

33 It is therefore appropriate to consider whether the Commission established to the requisite legal standard that the applicants participated in an infringement relating to ceramics sold on the Italian market which the Commission maintains lasted from 15 March 1993 to 9 November 2004.

a) Summary of the case-law concerning the existence and establishment of an infringement of Article 101(1) TFEU

34 In the first place, so far as the actual existence of a cartel is concerned, it should be recalled that Article 101(1) TFEU prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

35 In order for there to be an agreement within the meaning of Article 101(1) TFEU, it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way (Case T-7/89 *Hercules Chemicals* v *Commission* [1991] ECR II-1711, paragraph 256, and Case T-9/99 *HFB Holding and Others* v *Commission* [2002] ECR II-1487, paragraph 199).

36 An agreement within the meaning of Article 101(1) TFEU can be regarded as having been concluded where there is a concurrence of wills on the very principle of a restriction of competition, even if the specific features of the restriction envisaged are still under negotiation (see, to that effect, *HFB Holding and Others* v *Commission*, paragraph 35 above, paragraphs 151 to 157 and 206).

37 The concept of a concerted practice refers to a form of coordination between undertakings which, without being taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition practical cooperation between them (Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraph 115, and Case C-199/92 P *Hüls* v *Commission* [1999] ECR I-4287, paragraph 158).

38 In this respect, Article 101(1) TFEU precludes any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates adopting, on the market, where the object or effect of those contacts is to restrict competition (see, to that effect, *Commission* v *Anic Partecipazioni*, paragraph 37 above, paragraphs 116 and 117).

39 An exchange of information between competitors is incompatible with the European Union ('EU') rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted (see, to that effect, Case C-194/99 P *Thyssen Stahl* v *Commission* [2003] ECR I-10821, paragraph 81 and the case-law cited).

40 The disclosure of sensitive information removes uncertainty as to the future conduct of a competitor and thus directly or indirectly influences the strategy of the recipient of the information (see, to that effect, Case C-238/05 *Asnef-Equifax and Administración del Estado* [2006] ECR I-11125, paragraph 51 and the case-law cited). Each economic operator must therefore determine independently the policy which he intends to adopt on the internal market and the conditions which he intends to offer to his customers (see *Thyssen Stahl* v *Commission*, paragraph 39 above, paragraph 82 and the case-law cited).

41 While it is true that this requirement of independence does not deprive operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, however, strictly preclude any direct or indirect contact between them, the object or effect of which is to create

conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market (*Thyssen Stahl* v *Commission*, paragraph 39 above, paragraph 83).

42 In the second place, in relation to the adducing of evidence of an infringement of Article 101(1) TFEU, it should be borne in mind that, according to settled case-law, the Commission must prove the infringements found by it and adduce evidence capable of demonstrating to the requisite legal standard the existence of circumstances constituting an infringement (Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 58, and *Commission* v *Anic Partecipazioni*, paragraph 37 above, paragraph 86).

43 Moreover, when they adjudicate on heads of claim seeking annulment of a Commission decision finding an infringement of the competition rules and imposing fines on the addressees, all that is required of the Courts of the Union is to verify the legality of the contested measure and they thus cannot substitute their own assessment for that of the Commission (see to that effect, Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering and Others* v *Commission* [2004] ECR II-2501, paragraph 174).

44 Thus, the role of a Court hearing an application for annulment of a Commission decision finding an infringement of the competition rules and imposing fines on the addressees is to assess whether the evidence relied on by the Commission is sufficient to establish the existence of the alleged infringement (see, to that effect, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission ('PVC II')* [1999] ECR II-931, paragraph 891).

45 Any doubt in the mind of the Court must operate to the advantage of the undertaking to which the decision finding an infringement is addressed (see, to that effect, Case 27/76 *United Brands and United Brands Continentaal* v *Commission* [1978] ECR 207, paragraph 265). The Court cannot therefore conclude that the Commission has established the infringement at issue to the requisite legal standard if it still entertains any doubts on that point (see, to that effect, *JFE Engineering and Others* v *Commission*, paragraph 43 above, paragraph 177).

46 In the latter situation, account must be taken of the presumption of innocence, as it results in particular from Article 47 of the Charter of Fundamental Rights of the European Union proclaimed on 7 December 2000 in Nice (OJ 2010 C 83, p. 1), which Article 6(1) TEU recognises as having the same legal value as the Treaties (see, to that effect, Case C-214/10 *KHS* [2011] ECR I-11757, paragraph 37). Given the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, the presumption of innocence applies in particular to the procedures relating to infringements of the competition rules applicable to undertakings which may result in the imposition of fines or periodic penalty payments (see, to that effect, *Hüls* v *Commission*, paragraph 37 above, paragraphs 149 and 150, and Case C-235/92 P *Montecatini* v *Commission* [1999] ECR I-4539, paragraphs 175 and 176; the judgments of the European Court of Human Rights of 21 February 1984 in *Öztürk v. Germany*, Series A no 73, and of 25 August 1987 in *Lutz v. Germany*, Series A no 123).

47 The Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place (see, to that effect, Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307, paragraph 127; Case T-62/98 *Volkswagen* v *Commission* [2000] ECR II-2707, paragraphs 43 and 72).

48 However, it is important to emphasise that it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement (see, to

that effect, *PVC II*, paragraph 44 above, paragraphs 768 to 778, and in particular paragraph 777, confirmed on the relevant point by the Court of Justice, on appeal, in its judgment in Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschaappij and Others* v *Commission* [2002] ECR I-8375, paragraphs 513 to 523).

49 Moreover, as anti-competitive agreements are known to be prohibited, the Commission cannot be required to produce documents expressly attesting to contacts between the economic operators concerned. The fragmentary and sporadic items of evidence which may be available to the Commission must, in any event, be capable of being supplemented by inferences which allow the relevant circumstances to be reconstituted. The existence of an anti-competitive practice or agreement may therefore be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others* v *Commission* [2004] ECR I-123, paragraphs 55 to 57, Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61/02 OP *Dresdner Bank and Others* v *Commission* [2006] ECR II-3567, paragraphs 64 and 65).

50 So far as concerns the types of evidence which may be relied on to establish an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, the basic principle in EU law is that evidence may be freely adduced (see, to that effect, Case T-50/00 *Dalmine* v *Commission* [2004] ECR II-2395, paragraph 72).

51 Consequently, an absence of documentary evidence is relevant only in the overall assessment of the body of evidence relied on by the Commission. It does not, in itself, however, enable the undertaking concerned to call the Commission's claims into question by presenting a different explanation of the facts. An applicant may do so only where the evidence submitted by the Commission does not enable the infringement to be established unequivocally and without the need for interpretation (see, to that effect, judgment of 12 September 2007 in Case T-36/05 *Coats Holdings and Coats* v *Commission*, not published in the ECR, paragraph 74).

52 As regards the probative value of the various items of evidence, the only relevant criterion for the purpose of evaluating the evidence produced is its reliability (*Dalmine* v *Commission*, paragraph 50 above, paragraph 72).

53 Moreover, it is also for the Commission to prove the duration of the infringement, since duration is a constituent element of the concept of an infringement under Article 101(1) TFEU. The rules mentioned in paragraphs 40 to 50 above are applicable in that regard (see, to that effect, Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission* [2006] ECR I-8725, paragraphs 95 and 96). In addition, if there is no evidence directly establishing the duration of an infringement, the Commission must adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates (see Case T-120/04 *Peróxidos Orgánicos* v *Commission* [2006] ECR II-4441, paragraph 51 and the case-law cited).

54 Lastly, the case-law set out in paragraphs 35 to 53 above is applicable, by analogy, to Article 53(1) of the EEA Agreement.

b) Summary of the findings which led the Commission to impose penalties, in the contested decision, on the applicants for their participation in an infringement in Italy

55 In the contested decision, the Commission made three main findings concerning the applicants' participation in a ceramics cartel in Italy.

56 First, it states that from the early 1990s until 1995 or 1996, the applicants – as they acknowledged in their application under the 2002 Leniency Notice – took part, in Italy, in unlawful discussions concerning ceramics within the association Federceramica, whose members were ceramic manufacturers. However, since those discussions took place before the date which the Commission set in the contested decision as the start of the infringement for the purpose of penalising the applicants, namely 15 March 1993, the Commission took those discussions into account solely in so far as they were 'indicative of the overall behavioural pattern of certain producers ([the applicants] and Pozzi Ginori [SpA]), which also engaged in the anti-competitive practices within the framework of [the cross-product association] Euroitalia' from 15 March 1993 (see recital 409 to the contested decision and footnotes 501 to 505 thereto).

57 Secondly, from 15 March 1993 to 15 October 2004, which are the exact dates taken into consideration by the Commission in relation to the duration of the ceramics-related infringement in Italy, the applicants are said to have taken part in meetings at which price increases were coordinated within Euroitalia for taps and fittings and for ceramics. As regards ceramics more particularly, regular price increases and other pricing elements, such as minimum prices and discounts, were allegedly discussed, in the same way and at the same meetings as taps and fittings, as is said to be shown in particular by the notes taken at the Euroitalia meetings held on 9 July 1993, 12 March 1996, 31 January 1997, 15 October 1999, 21 January 2000 and 14 February 2003 (see recitals 411 to 460 to the contested decision, footnotes 506 to 580 thereto and Annexes 6 and 7 thereto, which concern the dates of the meetings of Euroitalia and of the Michelangelo group).

58 Thirdly, according to the contested decision, the applicants participated, from 12 March 1996 to 25 July 2003, in Michelangelo meetings at which, as with the Euroitalia meetings, the prices of ceramics were mentioned, as is shown by the notes taken at the meetings on 12 May and 20 July 2000 in particular (see recitals 411 to 460 to the contested decision, footnotes 506 to 580 of that decision and Annexes 6 and 7 thereto, which concern the dates of the Euroitalia and Michelangelo meetings).

c) Examination of the evidence relied on by the Commission to establish an infringement concerning ceramics in Italy from 15 March 1993 to 9 November 2004

59 The applicants submit that, although, as they acknowledged in the administrative procedure, they took part in an infringement covering taps and fittings in Italy, the Commission none the less could not reasonably infer that they were involved in a ceramics-related infringement in Italy in the absence of sufficient evidence to establish such an infringement.

60 The Commission disputes those arguments, contending (i) that the absence of any challenge by the applicants during the administrative procedure is additional evidence of their participation in a ceramics-related infringement in Italy and (ii) that it provided sufficient proof of their involvement in such an infringement.

61 The Court will first ascertain whether, as the Commission maintains, the applicants did not deny that they had participated in the infringement in so far as it covered ceramics and will then consider whether the Commission assembled sufficient evidence to conclude that the applicants did participate in such an infringement.

The applicants' denial, during the administrative procedure, that an infringement concerning ceramics existed in Italy from 15 March 1993 to 9 November 2004

62 As a preliminary point, it should be observed that, according to the case-law, although an undertaking's express or implicit acknowledgement of matters of fact or of law during the administrative procedure before the Commission may constitute additional evidence when determining whether an action is well

founded, it cannot restrict the actual exercise of a natural or legal person's right to bring proceedings before the General Court under the fourth paragraph of Article 263 TFEU (Case C-407/08 P *Knauf Gips* v *Commission* [2010] ECR I-6375, paragraph 90).

63 It is thus necessary to consider whether the Commission, in the statement of objections, which is the only document it refers to in support of its arguments, found that the applicants had participated in a ceramics-related infringement in Italy and, next, whether, as the Commission maintains, the applicants failed to challenge that finding when they responded to the statement of objections.

64 In the first place, it should be noted that, in point 256 of the statement of objections, the Commission found that there was, on the Italian market, a regular exchange of information on price increases between bathroom fittings and fixtures manufacturers from 1990 until 2004. The Commission added that the undertakings in question met 'within the Euroitalia and Michelangelo groupings, and also discussed prices within Federceramica and Anima meetings'. In point 257 of the statement of objections, the Commission stated that 'exchange of price lists, price increases and other market information in the Italian ceramics sector' had taken place in Federceramica meetings. It referred in that regard, in footnote 592 of the statement of objections, to the applicants' leniency application. In addition, in point 260 of the statement of objections, it is stated that the applicants had claimed in their leniency application that the meetings which had taken place in Federceramica had ended in 1995 or 1996. In points 259 and 261 to 277 of the statement of objections, the Commission described the price increases discussed at the Euroitalia and Michelangelo meetings.

65 It follows from the findings referred to in paragraph 64 above that, although it is clear from the statement of objections that the Commission considered that a cartel existed in Italy in the bathrooms fittings and fixtures sector from 1990 to 2004, it mentioned a cartel concerning ceramics in particular only in connection with the anti-competitive discussions which had taken place within Federceramica between 1990 and 1995 or 1996, which reflects what the applicants had told it in their application under the 2002 Leniency Notice.

66 In the second place, in point 138 of their response to the statement of objections, the applicants explicitly state that all the specific allegations made by the Commission in the statement of objections in relation to a cartel on the Italian ceramics market are based entirely on their application under the 2002 Leniency Notice and that, if that information were removed from the case-file, the Commission would have no case against them in that regard. For that reason, they also submit that they should be granted immunity from fines with regard to the cartel in question.

67 Moreover, in point 3.1. of their response to the statement of objections, the applicants point out that all the allegations made in the statement of objections about coordination of ceramics price increases concern Federceramica meetings and that, although that statement refers to regular coordination of price increases in Euroitalia, Euroitalia was not a forum for discussions about ceramics. The applicants state that they were the only ceramics producer to attend Euroitalia meetings, but that they were not present in their capacity as a ceramics producer. They explain that they would discuss information about taps and fittings and might 'throw out' an observation on 'how things were going' in the ceramics sector, those observations serving no anti-competitive purpose.

68 The applicants' response to the statement of objections thus shows unambiguously that they acknowledged that they had been involved in a cartel in the Italian ceramics sector only in relation to the exchange of information which occurred within the association Federceramica between 1990 and 1995 or 1996, a matter which they had themselves disclosed to the Commission in their application under the 2002 Leniency Notice. Moreover, they specifically denied that they had taken part at all in a ceramics cartel within the framework of Euroitalia. Furthermore, although the applicants – as the Commission observes in its pleadings – did not deny that they attended Michelangelo meetings, the Court notes, however, that the Commission, in point 277 of the statement

of objections, merely listed the dates of the Michelangelo meetings and stated who the participants were, without indicating the precise subject-matter of the discussions which had taken place there or, in particular, whether those discussions concerned ceramics.

69 In the light of the findings made in paragraphs 64 to 68 above, the Court finds that, contrary to what is maintained by the Commission, the applicants did deny that they participated in an infringement relating to ceramics which was allegedly committed in Italy from 15 March 1993 to 9 November 2004 within the framework of Euroitalia and Michelangelo. It is clear from their response to the statement of objections, that, whilst they admitted taking part in a ceramics-related infringement within Federceramica from 1990 until 1995 or 1996, they considered, on the contrary, that they had not been involved in any infringement, at least within Euroitalia, in relation to ceramics in Italy.

70 Consequently, the Commission's argument set out in paragraph 60 above – according to which the Court, in accordance with the case-law cited in paragraph 62 above, should take into account as 'additional evidence' the applicants' failure to contest, during the administrative procedure, the existence of a ceramics cartel in Italy – cannot succeed.

The evidence relied on in the contested decision to establish the existence of an infringement concerning ceramics in Italy from 15 March 1993 until 9 November 2004

71 The applicants put forward two main complaints whose purpose is to dispute the existence of a ceramics-related infringement which allegedly took place in Italy from 15 March 1993 until 9 November 2004.

72 By their first complaint, the applicants argue that the discussions that were held within Euroitalia and Michelangelo did not support the conclusion that a cartel existed. First, the Commission failed to establish how the applicants distorted competition on the ceramics market although (i) they were the only manufacturer of that product sub-group which attended the Euroitalia meetings and (ii) they were also, in most cases, the only manufacturer of that sub-group to attend Michelangelo meetings. Secondly, and in any event, the information relating to ceramics that was provided at the Euroitalia and Michelangelo meetings had no anti-competitive significance.

73 By their second complaint, the applicants maintain that the Commission could not rely on their participation at the Federceramica meetings to establish the infringement. First, since the Commission did not formally censure the applicants, in the contested decision, for that conduct, the presumption of innocence bars the Commission from inferring, on the basis of their involvement in Federceramica, that they engaged elsewhere in a ceramics-related infringement in the context of Euroitalia or Michelangelo. Secondly, the Commission cannot rely on their participation in the Federceramica meetings for the purpose of establishing an infringement in the context of Euroitalia and Michelangelo and, as a consequence, impose a fine on them, since that amounts to a breach of the last sentence of point 23(b) of the 2002 Leniency Notice.

74 The Commission contests those arguments.

75 As a preliminary point, it should be noted that, as can be seen from the summary of the Commission's findings in the contested decision (see paragraphs 55 to 58 above), the Commission held that the applicants had participated in a ceramics-related infringement in Italy by reason of their participation in Euroitalia and Michelangelo – but not Federceramica – meetings. Furthermore, it is undisputed that from 15 March 1993 until at least 2001 the applicants were, within Euroitalia, the only undertaking which manufactured both taps and fittings and ceramics, whilst the other eight undertakings which attended the Euroitalia meetings manufactured only taps and fittings (see the table in Annex 6 to the contested decision). Moreover, within Michelangelo, meetings of which took

place over a period from 12 March 1996 to 25 July 2003, the applicants attended, between 8 July 1998 and 9 March 2001, only seven meetings at which another ceramics manufacturer – namely Pozzi Ginori – was present (see the table in Annex 7 to the contested decision).

76 In the light of the findings set out in paragraph 75 above, consideration must initially be given to whether the Commission was entitled to conclude that the applicants had infringed Article 101(1) TFEU, even though (i) within Euroitalia, they were the only ceramics manufacturer to have taken part in all the meetings of that association, from 15 March 1993 until at least 2001 (that is to say, until the point when Grohe was acquired by Sanitec Europe Oy ('Sanitec'), which owned Pozzi Ginori) and, (ii) within Michelangelo, they were the only ceramics manufacturer to be present at the meetings held between 12 March 1996 and 8 July 1998 and between 9 March 2001 and 25 July 2003. Thereafter, it will be necessary to consider whether the Commission provided sufficient evidence of a ceramics-related infringement having regard (i) to the 7 Michelangelo meetings attended by the applicants, which were held during the period from 8 July 1998 to 9 March 2001 and at which another ceramics manufacturer (Pozzi Ginori) was also present, and (ii) to the 14 Euroitalia meetings which were held during the period from 9 March 2001 to 15 October 2004, which the applicants attended and at which Grohe, which belonged to Sanitec, was also present.

– Proof of a ceramics cartel within the framework of Euroitalia and Michelangelo, as regards meetings at which the applicants were the only ceramics manufacturer present

77 It is necessary to ascertain whether the Commission was entitled to hold that the applicants had taken part in an agreement between undertakings which had as its object or effect the distortion of competition on the Italian ceramics market within the framework of Euroitalia and Michelangelo, throughout the periods when they were the only ceramics manufacturer to be present, all the other undertakings being at that time taps and fittings manufacturers.

78 It follows from the case-law set out in paragraphs 35 to 41 above that the provision of sensitive business information, such as an exchange of future price increases, has – where that information is given to one or more competitors – an anti-competitive effect inasmuch as the independence of the undertakings concerned in their conduct on the market is modified as a result. Where such practices occur, the Commission is not obliged to prove their anti-competitive effects on the relevant market if they are capable in an individual case, having regard to the specific legal and economic context, of resulting in the prevention, restriction or distortion of competition within the internal market (see, to that effect, Case C-8/08 *T-Mobile Netherlands and Others* [2009] ECR I-4529, paragraph 31).

79 However, it cannot be presumed that an agreement or a concerted practice whereby undertakings exchange information which is commercially sensitive but which relates to a product sold on a market on which they are not competitors has an anti-competitive object or effect on that market. A practice whereby an undertaking which is active on two distinct product markets provides to its competitors – which are present on one market – commercially sensitive information which relates to a second market – on which those competitors are not present – is not capable, in principle, of having an impact on competition on the second market.

80 In the present case, the Court notes that the Commission, in response to the applicants' observations on the statement of objections, put forward in the contested decision two reasons that were intended to provide proof of the existence of a ceramics cartel within the framework of Euroitalia and Michelangelo, even though the applicants were the only undertaking whose business concerned ceramics to take part in the meetings of those associations.

81 First, in footnote 587 to the contested decision, the Commission notes, principally, that the information relating to ceramics communicated by the applicants is commercially sensitive information since it concerns price increases and other pricing elements such as minimum prices and discounts. In addition, the information exchanged on ceramics is 'similar to, and entirely consistent

with, corresponding references about taps and fittings made at the same meetings'. There is thus, in the Commission's view, no reason 'to distinguish [between taps and fittings and ceramics as regards] the undertaking's pursued objective when specifically communicating [the] references [to ceramics] (particularly taking into account their degree of detail and the overall context of discussions at those meetings)'. The Commission develops that analysis in footnote 1779 to the contested decision, stating that the degree of detail and the context of the discussions show that 'there is no doubt as to the company's anti-competitive object'.

82 The fact remains, however, that neither of the reasons summarised in paragraph 81 above establishes that the practices in question had the object or effect of distorting competition on the ceramics market.

83 For one thing, the Commission advances no argument or evidence establishing that, in the present case, competition on the ceramics market was liable to be affected by the fact that the applicants disclosed commercially sensitive information to taps and fittings manufacturers.

84 Nor does the finding that the nature and manner of the exchange of information disclosed within Euroitalia were similar, irrespective of whether taps and fittings or ceramics were in issue, establish that the provision to the taps and fittings manufacturers of information relating to the prices of ceramics distorted competition on the ceramics market. In that regard, attention must be drawn to the fact that the Commission does not establish, in the contested decision, that the taps and fittings manufacturers passed the information that they had received to the applicants' competitors on the ceramics market so that an effect on that market could be presumed or found.

85 Secondly, in footnote 587 to the contested decision, the Commission also considers, but only incidentally, that the applicants' communication of price increases for ceramics within Euroitalia, '[was] not in any way extraordinary, given the undertaking's leading position in that market segment in Italy (with shares far exceeding those of its nearest competitors) and its interest in maintaining an informed and integrated price-setting approach with respect to its products (both ceramics and taps and fittings)'.

86 In that regard, the Court notes that the fact that the applicants had a large share of the ceramics market has no bearing on the fact that the Commission failed to establish in the contested decision that the disclosure to taps and fittings manufacturers of commercially sensitive information relating to ceramics was liable to affect competition on the ceramics market.

87 Moreover, even if, as the Commission held, the applicants did in fact have an interest in having an 'informed and integrated price-setting approach' with respect to all the ceramics and taps and fittings which they marketed, such a finding does not prove that there was a distortion of competition on the ceramics market. Indeed, although the announcement, within Euroitalia, of the applicants' future price increase on the ceramics market proves that bathroom fittings and fixtures manufacturers had an interest in coordinating their conduct, the Commission has not established that such a practice, on the applicants' part, had as its object or effect to diminish or remove any uncertainty as to the functioning of the ceramics market.

88 Accordingly, the Commission must be held to have made an error of assessment in finding that the applicants had participated in a ceramics-related infringement in Italy within the framework of Euroitalia and Michelangelo throughout the whole period in which they were the only manufacturer of ceramics to be present at the meetings of those associations.

89 The six arguments put forward by the Commission do not cast doubt on the finding made in paragraph 88 above.

90 First, the Commission has submitted in its pleadings and stated, in response to questions put by the Court at the hearing, that the fact that the applicants were the only ceramics manufacturer at the Euroitalia meetings did not affect the finding that they participated in an infringement, since the unlawful practices in issue were part of a single infringement. It refers to recitals 845 and 846 to the contested decision, according to which the three product sub-groups are 'complementary', which the applicants have not disputed in their pleadings. It also submits that there was an incentive for all manufacturers to present a common front in terms of increasing prices.

91 In that regard, the Court notes, first, that it is true that, in disclosing to taps and fittings manufacturers commercially sensitive information relating to ceramics in Italy, the applicants engaged in conduct which was liable to lend support to the cartel on the taps and fittings market for the reasons given by the Commission and set out in paragraph 87 above. However, the fact remains that such conduct does not prove that conditions on the ceramics market were likely to be altered as a result of it.

92 Next, it is important to point out that, contrary to the arguments raised by the Commission in response to the questions put by the Court at the hearing, according to which the Commission was not obliged to establish that a distortion of competition resulted from every association meeting since ceramics were among the product sub-groups covered by the single infringement, characterisation as a single infringement did not relieve the Commission of its obligation to establish a distortion of competition in relation to each of the three product sub-groups covered by that infringement. Although there is a single infringement in the case of agreements or concerted practices which, whilst they relate to distinct goods, services or territories, form part of an overall plan knowingly implemented by undertakings with a view to achieving a single anti-competitive objective (see, to that effect, *Aalborg Portland and Others* v *Commission*, paragraph 49 above, paragraphs 258 and 260, and the judgment of 8 July 2008 in Case T-54/03 *Lafarge* v *Commission*, not published in the ECR, paragraph 482), a finding that there is such an infringement does not remove the precondition that there be a distortion of competition affecting each of the product markets covered by that single infringement.

93 Secondly, the Court rejects the Commission's argument that the evidence regarding the cartel in Germany shows that taps and fittings manufacturers in Italy 'took information regarding ceramics into account' and that the Michelangelo meetings brought together many manufacturers who were not active on the ceramics market. First, the Commission's argument tends to confirm, rather than undermine, the finding in paragraph 87 above that the applicants' practice of informing taps and fittings manufacturers of the price increases for their ceramics in actual fact contributed to the smooth operation of the taps and fittings cartel. Second, and in any event, that argument does not support a finding that competition was distorted on the ceramics market.

94 Thirdly, the Court rejects as ineffective the Commission's argument that the applicants have failed to provide a plausible explanation, other than the existence of a cartel, of why they were providing commercially sensitive information about ceramics at Euroitalia meetings if the disclosure of that information was pointless or irrelevant. First that argument is not capable of establishing the existence of a ceramics cartel in the absence of any objective elements demonstrating that the practices in issue had an anti-competitive object or effect on that market. Second, in accordance with the case-law cited in paragraph 47 above, it falls to the Commission to produce evidence showing that the conditions for an infringement of Article 101 TFEU are met; it has failed to do that in the present case.

95 Fourthly, the Court rejects as ineffective the Commission's argument that – as is apparent from recital 410 and footnote 504 to the contested decision, which refer to the minutes of the Federceramica meeting headed 386/93 PGM/ed – the applicants discussed ceramics price increases at the Federceramica meeting on 5 July 1993 before announcing those price increases at the Euroitalia meeting held a few days later. First, if the applicants discussed prices with their competitors at a Federceramica meeting a few days before a Euroitalia meeting took place, that demonstrates that there was a ceramics cartel within the framework of Federceramica but not that unlawful discussions took

place within Euroitalia. Next and in any event, as the Commission accepted in recital 409 to the contested decision, the evidence of unlawful practices concerning Federceramica 'predates the period concerned by the [contested] decision (1993-2004)'. Therefore, although that evidence is, as the Commission also states in recital 409, 'indicative of the overall behaviour pattern of certain producers' from 1990 to 1993, it nevertheless does not serve to prove the existence of an infringement at subsequent Euroitalia meetings, at which the applicants were the only ceramics manufacturer.

96 Accordingly, the Commission cannot rely on unlawful discussions within Federceramica in support of the assessment whereby it sought to establish a ceramics-related infringement in Italy.

97 In that regard, it is important to point out that the judgments in Case T-240/07 *Heineken Nederland and Heineken* v *Commission* [2011] ECR II-3355, paragraph 212, Case T-39/06 *Transcatab* v *Commission* [2011] ECR II-6831, paragraphs 381 and 382, and Joined Cases T-458/09 and T-171/10 *Slovak Telekom* v *Commission* [2012] ECR, paragraph 51, which the Commission mentioned at the hearing, do not invalidate the finding in the preceding paragraph. The Court did not hold in any of those judgments that the Commission was entitled to substitute, for proof of the existence of an infringement within a specific association over a given period, proof of anti-competitive practices which allegedly occurred, during an earlier period, in the framework of another industry association – a period which the Commission has, moreover, explicitly excluded from the finding of infringement.

98 Fifthly, the Commission submits that it was not obliged to prove that the unlawful discussions had been between competitors. It maintains in that regard that the Court held in paragraph 53 of its judgment in Joined Cases T-456/05 and T-457/05 *Gütermann and Zwicky* v *Commission* [2010] ECR II-1443 that, in the case of a single infringement, an undertaking's lack of activity on the market in question is insufficient of itself for the undertaking to escape liability.

99 In that regard, it must be observed that, in paragraph 53 of *Gütermann and Zwicky* v *Commission*, paragraph 98 above, the Court held that an undertaking could infringe the prohibition laid down in Article 101(1) TFEU where the purpose of its conduct, as coordinated with that of other undertakings, was to restrict competition on a specific relevant market within the internal market, without that meaning that the undertaking itself has to be active on that relevant market. It therefore follows from the principle developed by the Court in that judgment that, in the present case, the Commission could properly have found that the applicants' practice of announcing their future price increases to the taps and fittings manufacturers facilitated the operation of the cartel on the taps and fittings market, even if the applicants had not been active on that market. However, that principle in no way modifies the finding, made in paragraph 82 above, that the Commission did not establish that the applicants' practice of announcing price increases to undertakings which were not their competitors on the ceramics market had as its object or effect a distortion of competition on that market.

100 Sixth, the Commission contends that, by disclosing commercially sensitive information concerning ceramics, the applicants reassured the taps and fittings manufacturers by informing them that ceramics prices in Italy would also increase. It argues in that regard that, according to Case T-377/06 *Comap* v *Commission* [2011] ECR II-1115, paragraph 70, an exchange of commercially sensitive information does not have to be reciprocal for the principle of autonomous conduct on the market to be undermined.

101 Suffice it to observe that the fact that the Commission does not have to establish reciprocity where commercially sensitive information passes between two competing undertakings in order to make a finding of infringement does not, however, support the conclusion that an exchange of such information between undertakings which are not in competition entails a distortion of competition on the ceramics market.

102 In the light of all the foregoing considerations, the Court finds that the Commission erred in concluding that there was a ceramics cartel in Italy, within the framework of Euroitalia, throughout the whole period from 15 March 1993 until the year 2001 and, within the framework of Michelangelo, in any period other than that between 8 July 1998 and 9 March 2001.

103 The applicants' complaint in that regard must therefore be accepted.

– Proof of a ceramics cartel in the framework of Euroitalia and Michelangelo, as regards meetings at which the applicants were present with other ceramics manufacturers

104 The applicants maintain, first, that they were the only ceramics manufacturer present at all the Euroitalia meetings and often the only such manufacturer present at the Michelangelo meetings. They go on to state in the reply, in response to the Commission's arguments, that the contested decision does not record the fact that other ceramics manufacturers took part in Euroitalia meetings. Finally, they draw attention to the fact that it was only from March 2000 until March 2001 that another ceramics manufacturer, namely Pozzi Ginori, was also present at the Michelangelo meetings.

105 The Commission contests those arguments. It contends, first, that the applicants were not the only ceramics manufacturer within Euroitalia. Indeed, as is apparent from Commission Decision IV/M.2397 – BC Funds/Sanitec (OJ 2001 C 207, p. 9), Grohe, a taps and fittings manufacturer, was acquired in 2001 by Sanitec, which also owned Pozzi Ginori, a ceramics producer. Accordingly, Grohe formed part of Sanitec, which was an undertaking for the purposes of competition law and produced ceramics as well as taps and fittings and was a member of Euroitalia. Within Michelangelo, Pozzi Ginori, which also belonged to Sanitec, attended meetings at which the applicants were present between 8 July 1998 and 9 March 2001.

106 It is necessary to ascertain in the present case whether the Commission has proved to the requisite legal standard that a ceramics cartel existed, taking account of the presence, in the first place, of Grohe in Euroitalia and, in the second place, of Pozzi Ginori in Michelangelo.

107 In the first place, before considering whether, as the applicants claim, the Commission has not made out a satisfactory case for the existence of a ceramics cartel within Euroitalia, it is necessary to consider, as the applicants have also argued in response to the Commission's arguments, whether the Commission complied with its obligation to state reasons in that regard, as provided for in Article 293 TFEU. It should be recalled that, according to settled case-law, the reasons for a decision must appear in the actual body of the decision and that, save in exceptional circumstances, explanations given *ex post facto* by the Commission cannot be taken into account (Case T-61/89 *Dansk Pelsdyravlerforening* v *Commission* [1992] ECR II-1931, paragraph 131; Case T-295/94 *Buchmann* v *Commission* [1998] ECR II-813, paragraph 171; and Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others* v *Commission* [1998] ECR II-3141, paragraph 95). Accordingly, the decision must be sufficient in itself and the reasons on which it is based may not be stated in written or oral explanations given subsequently when the decision in question is already the subject of proceedings brought before the EU judicature (Case T-349/03 *Corsica Ferries France* v *Commission* [2005] ECR II-2197, paragraph 287).

108 In the present case, it must be noted that, as the applicants have pointed out, the Commission did not state either in the statement of objections or in the contested decision (i) that Grohe formed part of a single undertaking, within the meaning of competition law, with Sanitec or (ii) that the commercially sensitive information concerning ceramics which was provided by the applicants at Euroitalia meetings was not made available only to taps and fittings manufacturers, but also to at least one other ceramics producer. Indeed, the two reasons advanced by the Commission in the contested decision, which are summarised in paragraphs 81 and 85 above, are unrelated to the fact that at least one other participant in Euroitalia belonged to a group of undertakings which was a competitor of the applicants on the ceramics market.

109 The Commission is therefore not entitled to replace the reasons stated in the contested decision with different reasons put forward in its pleadings in order to support its conclusion that the applicants had participated in an infringement concerning ceramics within the framework of Euroitalia.

110 In that regard, the Commission contends that it is consistent with Case 48/69 *Imperial Chemical Industries* v *Commission* [1972] ECR 619, paragraph 145, for it to rely on the links between Sanitec and Grohe in order to rebut the arguments which the applicants have put forward before the General Court to dispute the existence of a ceramics-related infringement. This argument must, however, be held to be unfounded. In fact, in paragraph 145 of that judgment, the Court of Justice stated that the Commission was not obliged to include in its decisions all the arguments which it might later use in response to submissions of illegality which might be raised against its measures. However, the fact that the Commission cannot anticipate in its decisions all the arguments which might be raised against it by an undertaking does not mean that it may, contrary to the case-law set out in paragraph 107 above, substitute for the reasons relied on in the contested decision new reasons included in the pleadings formulated in the course of proceedings before the General Court.

111 Furthermore, for the same reason as that given in paragraph 110 above, the Commission cannot successfully argue, for the first time at the stage of proceedings before the Court, that there were unlawful bilateral contacts between the applicants and Grohe to substantiate its assertion that unlawful discussions had taken place between competitors.

112 The contested decision must therefore be found to be vitiated by a defect in the statement of reasons. The reasons stated in the decision did not enable the applicants to understand why the Commission had considered the discussions within Euroitalia concerning sales of ceramics in Italy to be capable of distorting competition on that market. The applicants were not able properly to defend their rights in that regard. That being so, there is no need to adjudicate on the applicants' complaint that the Commission has not made out a satisfactory case as regards unlawful practices in that context.

113 In the second place, with regard to the Michelangelo meetings, the Court notes that it is undisputed (i) that Pozzi Ginori was the only ceramics manufacturer other than the applicants which was a member of Michelangelo and (ii) as can be seen from Annex 7 to the contested decision, that the applicants took part in only seven meetings at which Pozzi Ginori was also present, on 8 July 1998, 14 May 1999, 16 March, 12 May, 20 July and 26 October 2000, and 9 March 2001. The Commission could therefore conclude that there was an exchange of commercially sensitive information in the Michelangelo meetings only in the period when those two undertakings were attending the meetings. The Court notes that the Commission has not stated in the contested decision, or maintained in its pleadings, that the exchanges of information in question took place other than when Michelangelo meetings were held or, in particular, that the applicants directly passed that information to Pozzi Ginori outside the framework of the Michelangelo meetings.

114 In those circumstances, it is necessary to ascertain whether, solely for the meetings on 8 July 1998, 14 May 1999, 16 March, 12 May, 20 July and 26 October 2000 and 9 March 2001, the evidence assembled by the Commission is sufficient to establish an infringement and the applicants' participation in it.

115 First, in the contested decision the Commission specifically refers to the applicants disclosing commercially sensitive information about ceramics only at the meetings of 16 March and 12 May 2000 (see recital 439 to the contested decision) and the meeting of 20 July 2000 (see recital 441 to the contested decision). However, the Commission makes no mention of any unlawful discussions specifically concerning ceramics at the four other meetings on 8 July 1998 (see recital 430 to the contested decision), 14 May 1999 (see recital 435 to the contested decision), 26 October 2000 (see recital 442 to the contested decision) and 9 March 2001 (see recital 445 to the contested decision).

116 Secondly, as regards the meetings on 8 July 1998 and 14 May 1999, the Commission does not refer, either in recital 430 or 435 to the contested decision or in its pleadings, to the fact that the applicants allegedly announced their future price increases for ceramics at those two meetings. Instead, the documents mentioned in footnotes 533 and 538 to the contested decision relating to the two abovementioned meetings, which the Commission has provided to the Court in response to the measures of organisation of procedure addressed to it, show that the only future price increases discussed in those meetings were those that Hansa Metallwerke, which did not manufacture ceramics, had formulated.

117 In addition, contrary to what is suggested by the Commission in recital 439 to the contested decision, the notes of the meeting of 16 March 2000 drawn up by Grohe do not show that the applicants exchanged commercially sensitive information concerning ceramics. All that is mentioned is an increase in the applicants' sales of around 12%, but it is not stated whether that percentage increase concerns taps and fittings, ceramics or both. However, in view of all the other minutes of meetings which expressly refer to the fact that the information exchanged concerned ceramics and not taps and fittings, it must be observed, by comparison, that the notes of the meeting on 16 March 2000 do not show that the discussions had concerned ceramics.

118 Next, as regards the three meetings of 12 May, 20 July and 26 October 2000, the Court concurs with the Commission's statements in recitals 439 to 442 and 445 to the contested decision that Grohe's notes show that the applicants provided commercially sensitive information specifically concerning ceramics at those three meetings.

119 Indeed, it is apparent from the notes mentioned in the preceding paragraph that at the meeting on 16 March 2000 the applicants informed the participants at the Michelangelo meetings, including their competitor Pozzi Ginori, of a 3% price increase on the ceramics market. That announcement of a price increase was confirmed at the meeting on 20 July 2000, inasmuch as it was repeated there that the increase would take effect from 1 September and, at the latest, before the end of the year. Furthermore, it is apparent from the notes of the latter meeting that Pozzi Ginori announced that the increase of 4% or 5% in its list prices for ceramics would be published as of the Cersaie trade fair and would be applied from 1 January 2001. Lastly, so far as the meeting on 26 October 2000 is concerned, Grohe's notes confirm that the applicants informed the other attendees, including Pozzi Ginori, of their 3% price increase for ceramics. In that regard, the fact that it is not entirely clear from those documents whether that increase had already been implemented or whether it would take effect from 1 January 2001 does not affect the finding that the increase in question concerned future price rises.

120 Finally, it can be seen from Grohe's notes of the meeting on 9 March 2001 that, as the Commission stated at the hearing in response to questions put by the Court, the undertakings present at that meeting exchanged percentage increases, not for their prices but for their February 2001 sales. The Commission did not, in the contested decision, find that such exchanges amounted to an infringement of Article 101(1) TFEU. As is apparent from recital 492 to the contested decision, the Commission made a finding of infringement in Italy only on the basis of coordination in price increases.

121 In the light of the foregoing findings, it must be concluded that the Commission was fully entitled to hold that the exchanges of information which had taken place at the three meetings of 12 May, 20 July and 26 October 2000 and which entailed announcing future price increases of 3% in the applicants' case and 4.5% in Pozzi Ginori's case constitute an anti-competitive practice for the purposes of Article 101(1) TFEU, as the Commission rightly stated in recital 492 to the contested decision. However, the Commission made an error of assessment in holding that the discussions that took place at the other Michelangelo meetings, at which both the applicants and Pozzi Ginori were present, amounted to an infringement of Article 101(1) TFEU.

122 The Court must reject as unfounded the arguments which the applicants put forward to establish that the three meetings mentioned in paragraph 118 above did not support the conclusion that a ceramics cartel existed.

123 First, the Court does not find persuasive the applicants' interpretation of Grohe's notes of the meeting on 12 May 2000, according to which the 3% ceramics price increase concerned a past increase which had been decided in November 1999 and which was thus of no competitive significance. As is apparent from the notes of the subsequent meetings, on 20 July and 26 October 2000, that increase concerned future sales of ceramics starting from either 1 September 2000 or 1 January 2001. Information of that kind concerning future price increases was thus capable of influencing the conduct of competitors and giving rise to a distortion of competition.

124 Next, the applicants' argument that the notes of the meetings on 20 July and 26 October 2000 do not show that there were discussions between the participants after they had informed them of their future price increases does not affect the finding that the mere communication of that commercially sensitive information constitutes an anti-competitive practice. Indeed, as is clear from the case-law cited in paragraphs 39 and 40 above, the mere disclosure of commercially sensitive information to competitors amounts to a prohibited practice since it removes uncertainty as to the future conduct of a competitor and thus directly or indirectly influences the strategy of the recipient of the information. For that reason, nor was it necessary – contrary to what is claimed by the applicants – for the Commission to show that that exchange of information had any impact on the pricing strategy of the applicants and Pozzi Ginori in the light of the specific market conditions.

125 In view of the foregoing, the Court thus concludes that the Commission could properly establish the existence of a ceramics cartel in Italy only with regard to the Michelangelo meetings of 12 May, 20 July and 26 October 2000.

126 In order to establish the precise duration of that cartel, the Court notes that, in the contested decision, the Commission held – in recital 1140 thereto, regarding the starting date of each cartel for each product on each territory – that it was appropriate to take into account the first meeting for which there was uncontroversial evidence of discussion on future price increases and of the participation of the undertaking concerned in such discussions. Moreover, while it appears from recital 1170 to the decision that the Commission normally took the date on which it carried out its unannounced inspections as the date on which most of the cartels on each of the territories concerned came to an end, it is none the less clear from recital 1172 to the decision that the Commission considered that Pozzi Ginori had ceased participating in the ceramics-related infringement in Italy on the day that it last attended a Michelangelo meeting.

127 The Court therefore finds that, for reasons of equal treatment as between the applicants and Pozzi Ginori, the applicants participated in the ceramics cartel in Italy for 11 months, that is to say, from 12 May 2000, the date of the first meeting for which the Commission has evidence that they participated in an infringement within Michelangelo, to 9 March 2001, the date of the last Michelangelo meeting which the applicants attended. In that regard, the anti-competitive effects of the meeting on 26 October 2000 must be regarded as having continued at least until the meeting of 9 March 2001.

128 The first plea must therefore be accepted in part, in so far as the Commission held that the applicants had participated, in a ceramics cartel in Italy from 15 March 1993 until 9 November 2004 within the framework of Euroitalia and Michelangelo. In fact the Commission made out a satisfactory legal case for their participation in that infringement only for the period from 12 May 2000 until 9 March 2001, within the framework of Michelangelo. The first plea must be rejected as to the remainder.

129 In those circumstances, as the Commission has made an error of assessment in relation to the duration of the infringement in which the applicants participated, first, points (3) and (4) of Article 1(1) of the contested decision must be annulled in part.

130 Second, any consequences that follow from that illegality with regard to the calculation of the fine imposed on the applicants will be examined by the Court in paragraphs 186 to 193 below in the exercise of its unlimited jurisdiction.

2. *Second plea in law: failure to take account, in the calculation of the fine, of the fact that the applicants were granted partial immunity from fines with regard to the infringements in Belgium and France*

131 The applicants maintain that the Commission failed to take into account in the calculation of the total amount of the fine imposed on them the fact that it had granted them partial immunity from fines under the last paragraph of point 23(b) of the 2002 Leniency Notice with regard to the infringements in which they had been involved in Belgium and France. They thus take the view that that partial immunity should have been taken into account at the final stage of calculating the fine, that is to say, after the Commission had reduced the fine by 30% rather than before it applied the 10% of turnover ceiling.

132 The Commission contests the applicant's arguments.

133 According to the final paragraph of point 23(b) of the 2002 Leniency Notice, if an undertaking provides evidence relating to facts previously unknown to the Commission which have a direct bearing on the gravity or duration of the suspected cartel, the Commission will not take these elements into account when setting any fine to be imposed on the undertaking which provided this evidence.

134 The interpretation of the purpose of a provision of the 2002 Leniency Notice must be consistent with the specific logic of that notice. From that aspect, the final paragraph of point 23(b) of the notice must be interpreted as being aimed at rewarding an undertaking, even if it was not the first to submit an application for immunity in relation to the cartel concerned, if it is the first to provide the Commission with evidence concerning facts of which the Commission was not aware and which have a direct impact on the gravity or duration of the infringement. In other words, if the evidence supplied by an undertaking relates to facts which enable the Commission to modify the assessment which it then has of the gravity or duration of the infringement, the undertaking which provides that evidence is rewarded by immunity concerning the assessment of the facts which that evidence is capable of demonstrating (*Transcatab* v *Commission*, paragraph 97 above, paragraph 381).

135 The grant of partial immunity from fines provided for by the last paragraph of point 23(b) of the 2002 Leniency Notice is intended to encourage undertakings to provide the Commission with all the information and evidence in their possession which concerns the infringement, without that resulting in an increase in the fine they will incur. Indeed, if partial immunity from fines was not granted, undertakings cooperating with the Commission under the 2002 Leniency Notice might be deterred from providing the Commission with all the information and evidence available to them concerning the duration or the geographic scope of an infringement.

136 Accordingly, once the Commission has granted partial immunity from fines under the last paragraph of point 23(b) of the 2002 Leniency Notice, it will not, as from the stage of calculating the basic amount of the fine, take into account the turnover related to sales of goods or services forming the subject-matter of the unlawful conduct in respect of which the Commission has granted partial immunity from fines.

137 In the present case it is undisputed that, as the Commission stated in recitals 1313 and 1315 to the contested decision, the applicants were entitled to partial immunity from fines as regards the infringements in which they had been involved in Belgium and France.

138 However, despite the finding made in the preceding paragraph, the fact remains that it is apparent from Table E in the contested decision that the Commission took into account in the calculation of the basic amount of the applicants' fine amounts related to the infringements in which they had been involved in France and Belgium.

139 The Commission therefore made errors of assessment in taking into consideration in the calculation of the basic amount of the fine (i) the sum of EUR 3 490 000 corresponding to the fine relating to an infringement concerning taps and fittings in France and (ii) the sums of EUR 1 980 000 and EUR 3 060 000 corresponding to the ceramics-related infringements in Belgium and France respectively.

140 In those circumstances, the applicants' second plea must be accepted inasmuch as the Commission wrongly took into account, in the calculation of the basic amount of the fine, the amounts mentioned in the preceding paragraph. Since that illegality concerns only the calculation of the fine and not the finding of infringement made by the Commission in the contested decision, the consequences that should follow from that illegality will be directly considered by the Court when it comes to exercise its unlimited jurisdiction in paragraph 192 below. It is settled case law that the EU judicature is entitled to exercise that jurisdiction even if the contested measure is not annulled (see *Limburgse Vinyl Maatschappij and Others* v *Commission*, paragraph 48 above, paragraph 692; see also, to that effect, Case C-3/06 P *Groupe Danone* v *Commission* [2007] ECR I-1331, paragraph 61).

3. *Third plea: the Commission erred in finding that the applicants were only the second undertaking, and not the first, to provide it with evidence representing significant added value within the meaning of point 21 of the 2002 Leniency Notice*

141 The applicants assert, in essence, that the Commission erred in finding that Grohe had provided it with evidence representing significant added value within the meaning of point 21 of the 2002 Leniency Notice before they did. For that reason, they submit that they should have received a 50%, rather than a 30%, reduction in the total amount of their fine. They put forward two principal complaints in that regard. In the first place, they argue that it is clear from the contested decision that the Commission did not give proper consideration to the question whether they or Grohe had been the first to meet the condition relating to significant added value. In the second place, they maintain that the Commission incorrectly concluded that Grohe's application under the 2002 Leniency Notice met the 'significant added value condition' before the applicants submitted their leniency applications.

142 It should be recalled at the outset that in the 2002 Leniency Notice the Commission sets out the conditions under which undertakings cooperating with it during its investigation into a cartel may be exempted from fines, or may be granted a reduction of the fine which would otherwise have been imposed upon them.

143 According to point 20 of the 2002 Leniency Notice, '[u]ndertakings that do not meet the conditions [to obtain exemption from a fine] may be eligible to benefit from a reduction of any fine that would otherwise have been imposed'.

144 Point 21 of the 2002 Leniency Notice provides that, '[i]n order to qualify [for a reduction of its fine under point 20 of the notice], an undertaking must provide the Commission with evidence of the suspected infringement which represents significant added value with respect to the evidence already in the Commission's possession and must terminate its involvement in the suspected infringement no later than the time at which it submits the evidence'.

145 The first paragraph of point 23(b) of the 2002 Leniency Notice provides for three fine-reduction bands. The first undertaking to meet the condition laid down in point 21 of that notice is entitled to receive a reduction of the fine of between 30% and 50%; the second undertaking is entitled to a reduction of its fine of between 20% and 30%; and subsequent undertakings are entitled to a reduction of up to 20% of their fines.

146 The second paragraph of point 23(b) of the 2002 Leniency Notice states that, '[i]n order to determine the level of reduction within each of these bands, the Commission will take into account the time at which the evidence fulfilling the condition in point 21 [of the notice] was submitted and the extent to which it represents added value' and that '[i]t may also take into account the extent and continuity of any cooperation provided by the undertaking following the date of its submission'.

147 It is apparent from the very logic of the 2002 Leniency Notice that the effect sought is to create a climate of uncertainty within cartels by encouraging those participating in them to denounce the cartels to the Commission. That uncertainty results precisely from the fact that the cartel participants know that only one of them can benefit from immunity from fines by denouncing the other participants in the infringement, thereby exposing them to the risk that they face being fined. In the context of that system, and according to the same logic, the undertakings that are quickest to provide their cooperation are supposed to benefit from greater reductions of the fines that would otherwise be imposed on them than those granted to the undertakings that are less quick to cooperate (*Transcatab* v *Commission*, paragraph 97 above, paragraph 379).

148 The chronological order and the speed of the cooperation provided by the members of the cartel therefore constitute fundamental elements of the system put in place by the 2002 Leniency Notice (*Transcatab* v *Commission*, paragraph 97 above, paragraph 380).

149 It should be borne in mind in that regard that, whilst the Commission is required to state the reasons for which it considers that information provided by undertakings under the Leniency Notice represents a contribution which does or does not justify a reduction of the fine, it is incumbent on undertakings wishing to contest the Commission's decision in that regard to show that, in the absence of such information provided voluntarily by the undertakings, the Commission would not have been in a position to prove the essential elements of the infringement and therefore adopt a decision imposing fines (Joined Cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P *Erste Group Bank and Others* v *Commission* [2009] ECR I-8681, paragraph 297, and Case T-343/08 *Arkema France* v *Commission* [2011] ECR II-2287, paragraph 135).

150 In view of the rationale for the reduction, the Commission cannot disregard the usefulness of the information provided, which will inevitably depend on the evidence already in its possession (*Gütermann and Zwicky* v *Commission*, paragraph 98 above, paragraph 220, and *Arkema France* v *Commission*, paragraph 149 above, paragraph 136).

151 Where an undertaking providing cooperation does no more than confirm, in a less precise and explicit manner, certain information that has already been provided by another undertaking by way of cooperation, the extent of the cooperation provided by the former undertaking, while possibly of some benefit to the Commission, cannot be treated as comparable with that provided by the undertaking which was the first to supply that information. A statement which merely corroborates to a certain degree a statement which the Commission already had at its disposal does not facilitate the Commission's task significantly. Accordingly, it cannot be sufficient to justify a reduction of the fine for cooperation (see *Arkema France* v *Commission*, paragraph 149 above, paragraph 137 and the case-law cited).

152 Moreover, the cooperation of an undertaking in the investigation does not entitle it to a reduction of its fine where that cooperation went no further than the cooperation incumbent upon it under Article 18 of Regulation No 1/2003 (see *Arkema France* v *Commission*, paragraph 149 above, paragraph 138 and the case-law cited).

153 Last, even though the Commission must, as it maintains, be held to have a margin of discretion when it considers whether information provided to it under the 2002 Leniency Notice represents significant added value, the fact remains that the Court cannot use that margin of discretion as a basis for dispensing with a thorough review as to matters of law and of fact of the Commission's assessment in that regard (see, by analogy, *Chalkor* v *Commission*, paragraph 28 above, paragraph 62).

154 The applicants' two principal complaints, which are summarised in paragraph 141 above, must be considered in the light of the considerations set out in paragraphs 142 to 153 above.

155 In the first place, as regards the applicants' complaint that it is apparent from the contested decision that the Commission did not give proper consideration to the argument that it was they, and not Grohe, which should have been held to be the first undertaking, after the undertaking granted immunity from fines, to have met the significant added value condition, the Commission, in recitals 1277 to 1280 to the contested decision, held as follows:

'(1277) Grohe was the first undertaking to apply for leniency after Masco. …

(1278) The Commission is of the opinion that Grohe's leniency submissions represented significant added value for the following reasons: first, they corroborated information already in the Commission's possession with regard to (i) the undertakings' involvement, (ii) the time period the Commission was investigating, (iii) the circumstances in which the cartel members met and communicated with each other, as well as (iv) the overall way in which the cartel operated and the way in which the agreements were implemented. Second. Grohe's submissions enabled the Commission to reconstruct with more accuracy the pattern of coordinative efforts undertaken by the cartel participants in the context of a few associations. Finally, they contained some new evidence in the form of written descriptions of the cartel organisation and of minutes of meetings revealing the price coordination arrangements made among the cartel members.

(1279) However, Grohe's submissions were mostly of corroborative and explanatory nature. Although they reinforced the Commission's ability to prove certain facts, the Commission already had evidence on the file with regard to most of those facts. Overall, as regards the extent of the cooperation, Grohe's cooperation was of no or very little value as regards certain Member States (such as Austria, the Netherlands or Italy). Although evidence as regards AFPR was valuable, it was submitted after [the applicants] would have provided evidence on the activities of that association, which diminished greatly its added value. In addition, even as regards those Member States where Grohe's cooperation was more important, Grohe rarely submitted contemporaneous (*in tempore non suspecto*) documentary evidence specifically attesting to price increase exchanges. Based on those considerations, although the leniency status of Grohe pursuant to Articles 23(b) and 26 of the [2002] Leniency Notice is not called into question, the Commission considers that Grohe should be granted the lowest reduction in the available range.

(1280) In its reply to the [statement of objections], [the applicants] disputed on several occasions the added value of Grohe's submissions or sought to establish that [their] own submissions should be deemed to have considerably more added value than Grohe's. … The Commission considers that these arguments are not sufficient to conclude that Grohe has not provided

> significant added value. Moreover, the Commission, to the extent that it agrees that the quality of Grohe's contribution could have been substantially higher, has taken into account such factor when deciding the specific reduction to be applied within the range.'

156 In the present case, the recitals to the contested decision set out in the previous paragraph show unequivocally that the Commission (i) put forward four reasons in support of its conclusion that Grohe's application under the 2002 Leniency Notice met the significant added value condition by comparison with the information already in its possession, (ii) explained the reasons why it considered that Grohe was entitled to only a minimum reduction of 30% and (iii) responded to the arguments advanced by the applicants with a view to casting doubt on the Commission's conclusion that Grohe's application represented significant added value.

157 Under the last paragraph of point 23(b) of the 2002 Leniency Notice, the Commission was obliged, not to compare the usefulness of the information provided in Grohe's application with the information supplied by the applicants, but to ascertain whether, before the applicants submitted their leniency application, the information which Grohe had supplied to it represented significant added value by comparison with the information which the Commission already had in its case-file at that date.

158 As is apparent from the reasons stated in the contested decision that are set out in paragraph 155 above, the Commission gave proper consideration to whether the information provided by Grohe met the significant added value condition before the applicants submitted their own application.

159 Accordingly, the applicants' first complaint must be rejected as unfounded.

160 In that regard, it should be noted that the applicants have requested (i) that the Court order the Commission, by way of measure of enquiry, to produce the internal documents in which it explained the reasons why the applicants, rather than Grohe, were held to be the second undertaking to have provided information representing significant added value or (ii) that the Court find that the Commission did not conduct a proper analysis of that question. In that regard, the Court would point out that it is apparent from point 21 of the 2002 Leniency Notice, set out in paragraph 144 above, that the Commission was not obliged to compare the applicants' leniency application with that of Grohe, but solely to determine whether, at the point when the applicants' leniency application was submitted, that of Grohe already met the significant added value condition in view of the information already in the Commission's possession at that date. That being so, the applicants' request must be rejected as ineffective since it would not in any event be capable of invalidating the finding made in paragraph 158 above.

161 In the second place, as regards the applicants' complaint that the Commission erred in finding that Grohe's application represented significant added value, first, it is undisputed that the applicants submitted their application under the 2002 Leniency Notice on 19 November 2004. Nor is it disputed that the question whether the information that Grohe provided to the Commission on 15 and 17 November 2004 represented significant added value before the applicants submitted their own application on 19 November 2004 falls to be examined solely on the basis of that information.

162 Secondly, as regards the applicants' request that the General Court declare Annexes 35 and 37 to the defence inadmissible, since, in accordance with the case-law, the parties' arguments must be contained in the body of the pleadings and not in annexes, it must be recalled that, under Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1)(c) of the Rules of Procedure of the General Court, whilst the body of an application, as with other pleadings exchanged by the parties before the General Court, may be supported and supplemented on specific points by references to extracts from documents annexed thereto, a general reference to other documents, even those annexed to the application or other pleadings, cannot make up for the absence of the essential arguments in law, which must appear in the application or in another pleading (see, to that effect, Case T-201/04 *Microsoft* v *Commission* [2007] ECR II-3601, paragraphs 94 and 95).

163 In the present case, the Court notes that in Annexes 35 and 37 to the defence the Commission provides two tables in which it indicates the reasons why, in relation to each of the documents provided by Grohe on 15 and 17 November 2004, it considers that they do or do not represent significant added value by comparison with the documents already in its possession. As the Commission rightly points out, those tables support and supplement the arguments presented in points 77, 79, 81 and 82 of the defence, in which, first, it considered, generally, that the information provided by Grohe represented significant added value and, second, it explained, more specifically, the reasons why it had concluded that the documents provided by Grohe had enabled it to corroborate the evidence in its case-file and thus represented significant added value.

164 The Court must therefore reject the applicants' request that Annexes 35 and 37 to the defence be declared inadmissible.

165 Thirdly, the Court notes that the tables provided in Annexes 35 and 37 to the defence show, as the Commission acknowledged in recital 1279 to the contested decision (see paragraph 155 above), that a very large number of the documents supplied by Grohe on 15 and 17 November 2004 could not be regarded as representing significant added value given that they were already in the Commission's possession because it had obtained the information during its inspections or because Masco had already provided it with the information. It is also true that, contrary to what is maintained by the Commission, many of the documents supplied by Grohe, such as invitations to the meetings of the German association AGSI or Euroitalia, could not be regarded as representing significant added value either since they could have been obtained under Article 18 of Regulation No 1/2003 (see the case-law cited in paragraph 152 above) and since the Commission was already in possession of notes of those meetings. The same is true of the documents provided by Grohe which the Commission did not use in the contested decision for the purpose of establishing the infringement.

166 However, without prejudice to the findings made in the preceding paragraph, it must be stated that, as is clear inter alia from Annex 28 to the application and Annex 34 to the defence, Grohe, in its oral statements in support of its application under the 2002 Leniency Notice, on the one hand, acknowledged its involvement in the infringement and, on the other, corroborated, in its statements, the information already held by the Commission concerning the operation of the cartel and its own involvement in the cartel within the German and Italian associations – and did so in a relatively specific way inasmuch as it indicated the dates, places, participants and subjects discussed at the meetings of those associations.

167 Furthermore, Grohe provided certain information relating to the infringement which was not previously available to the Commission and some contemporaneous documents substantiating it. Two meetings support that finding.

168 First, in Italy, as regards the Michelangelo meeting held on 19 July 2002, to which Grohe referred in its submission of 17 November 2004, Grohe explained that detailed information on sales and individual market shares had been exchanged between the participants and established that fact by providing the Commission with evidence of those discussions on the basis of the notes of that meeting. The applicants' argument that this concerns only one single meeting out of a total of 65 Euroitalia and Michelangelo meetings and that the Commission already had sufficient information to prove a taps and fittings cartel in Italy has no impact on the finding that that evidence facilitated the Commission's task by increasing the items of evidence on which it could rely in order to punish the infringement.

169 Second, concerning Germany, as regards the AGSI meeting on 14 July 2004, the Commission states that it was only the table provided by Grohe which enabled it to establish with precision the exchange of information concerning inter alia future price increases for 2005. In that regard, it must be stated that, although it is clear from footnote 221 to the contested decision that the Commission already had

other evidence allowing it to find the infringement, the applicants do not deny that no documentary evidence achieved that level of detail, with the result that the Commission's ability to prove the functioning of the cartel was strengthened.

170 In the light of the considerations set out in paragraphs 165 to 169 above, the Court finds that, contrary to the submissions made by the applicants in their pleadings and at the hearing, the information provided by Grohe, considered in its entirety, represented significant added value such as to warrant the Commission granting Grohe a reduction of fines.

171 The Court must reject as unfounded the applicants' argument that it follows from recital 550 to Commission Decision 2004/138/EC of 11 June 2002 relating to a proceeding under Article 81 [EC] (Case COMP/36.571/D-1: Austrian banks – 'Lombard Club') (OJ 2004, L 56, p. 1) that an application for fine reduction under a leniency notice can represent significant added value only if the undertaking in question brings forward new facts, previously unknown to the Commission, and if it provides explanations facilitating the Commission's understanding of the infringement. In fact, if an undertaking provides information concerning facts pertaining to the infringement that were already known to the Commission which allows the latter to prove facts which it could not otherwise have punished, such information represents significant added value. Such corroboration, which is different from that described in paragraph 151 above, is useful for the Commission when penalties are imposed in respect of the cartel. That being so, the mere fact that an undertaking does not inform the Commission of facts of which it was previously unaware does not therefore invalidate a finding that the undertaking's cooperation none the less represented significant added value.

172 Accordingly, the applicants' third plea must be rejected as unfounded.

4. *Fourth plea: retroactive application of the 2006 Guidelines*

173 The applicants maintain, in essence, that the application to the facts of the present case of the 2006 Guidelines, instead of the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3; 'the 1998 Guidelines') which were in force at the time when they applied for leniency, is an infringement of the principle of non-retroactivity as enshrined in the case-law, of Article 49(1) of the Charter of Fundamental Rights and of Article 7 of the Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

174 The Commission contests that line of argument.

175 According to the case-law, the principle of non-retroactivity of criminal law, as affirmed by Article 49 of the Charter of Fundamental Rights, applies in any administrative procedure that may lead to the imposition of penalties under the competition rules laid down by the Treaty (see, to that effect, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 202) and may be relied on to challenge the retroactive application of a new interpretation of a provision establishing an infringement where that interpretation produces a result which was not reasonably foreseeable at the time when the infringement was committed (see, to that effect and by analogy, *Groupe Danone* v *Commission*, paragraph 140 above, paragraphs 87 to 89 and the case-law cited, and the judgment of 2 February 2012 in Case T-83/08 *Denki Kagaku Kogyo and Denka Chemicals* v *Commission*, not published in the ECR, paragraph 120). In order to ensure that the principle of non-retroactivity is observed, it has been held that it is necessary to ascertain whether the change in question was reasonably foreseeable at the time when the infringements concerned were committed (*Dansk Rørindustri and Others* v *Commission*, cited above, paragraph 224). The scope of the notion of foreseeability depends to a considerable degree on the content of the text in issue, the field it is designed to cover and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person

concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such an activity entails (*Dansk Rørindustri and Others* v *Commission*, cited above, paragraph 219).

176 On this point, it should be recalled that the proper application of the competition rules, as they follow from Regulation No 1/2003, requires that the Commission may, within the limits of the ceiling fixed by Article 23(2) of that regulation, at any time raise the level of fines if that is necessary to ensure the implementation of competition policy. It follows that undertakings involved in an administrative procedure in which fines may be imposed cannot acquire a legitimate expectation either in the fact that the Commission will not exceed the level of fines previously imposed or in a method of calculating the fines; on the contrary, those undertakings must take account of the possibility that the Commission may decide at any time to raise the level of the fines by reference to that applied in the past, either by raising the level of the amounts of fines when imposing fines in individual decisions or by applying, in particular cases, rules of conduct of general application, such as guidelines (*Dansk Rørindustri and Others* v *Commission*, paragraph 175 above, paragraphs 227 to 230, and *Groupe Danone* v *Commission*, paragraph 140 above, paragraphs 90 and 91).

177 In the present case, it must be observed that the 2006 Guidelines form part of the legal framework laid down by Article 23(2) and (3) of Regulation No 1/2003, that they contribute to defining the limits within which the Commission exercises its discretion under that provision and that, in accordance with Article 23(2) of Regulation No 1/2003, point 32 of the 2006 Guidelines caps the final amount of the fine for each undertaking or association of undertakings participating in the infringement at 10% of the total turnover in the preceding business year.

178 It should also be observed that even in the absence of any express provision relating to a periodic revision of the 1998 Guidelines, the applicants ought, in the light of the existing case-law, to have taken into account the possibility that, after the infringement had been committed, the Commission would decide to adopt and apply new guidelines on the method of setting fines (*Denki Kagaku Kogyo et Denka Chemicals* v *Commission*, paragraph 175 above, paragraph 116).

179 In the light of all the foregoing considerations, it must be concluded that the 2006 Guidelines and, in particular, the new method of calculating fines contained therein, on the assumption that this new method had the effect of increasing the level of the fines imposed, were reasonably foreseeable for undertakings such as the applicants at the time when the infringement found was committed and that in applying the 2006 Guidelines in the contested decision to an infringement committed before they were adopted, the Commission did not breach the principle of non-retroactivity (see, to that effect, *Dansk Rørindustri and Others* v *Commission*, paragraph 175 above, paragraphs 231 and 232, and Case C-397/03 P *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2006] ECR I-4429, paragraph 25).

180 Neither of the arguments raised by the applicants to demonstrate that the retroactive application of the 2006 Guidelines was not foreseeable in the present case casts any doubt on the finding made in the preceding paragraph.

181 First, the applicants argue that, although undertakings could not, before the 1998 Guidelines were adopted, have any legitimate expectation that the method of calculating fines would remain unchanged, the situation was different following the adoption of those guidelines, account being taken of the increased importance placed on the criterion of duration in the 2006 Guidelines. It must be stated that, since there was no indication in the 1998 Guidelines that the latter would not be altered if that were necessary to ensure the proper application of the EU competition rules, the applicants could have no legitimate expectation in that regard, including as to the fact that the criterion concerning the

cartel's duration would not assume increased importance in the determination of the amount of the fine when new guidelines were adopted. Accordingly, the applicants' argument on this point must be rejected as unfounded.

182 Secondly, the applicants argue that they had a legitimate expectation that the 1998 Guidelines would be applied to the facts of the present case since (i) they submitted their application just after the Court of Justice had confirmed the legality of the 1998 Guidelines in *Dansk Rørindustri and Others* v *Commission*, paragraph 175 above, and (ii) the Commission took two years, from the time of the inspections, to adopt its statement of objections. In that regard, this Court finds that neither of those two arguments affects the finding, mentioned in paragraphs 176 and 177 above, that it was reasonably foreseeable that the Commission would adjust the level of fines to the needs of its policy and thus apply the 2006 Guidelines to the facts of the present case. Those arguments must therefore be rejected as ineffective.

183 Accordingly, the fourth plea must be rejected in its entirety.

184 Following its examination of the four pleas in law raised by the applicants, first, the Court upholds the first plea in part and, having regard to the fact that the Commission's error in that respect goes to the very finding of infringement (here, a cartel), annuls in part points (3) and (4) of Article 1(1) of the contested decision for the reason stated in paragraph 128 above. The consequences of that illegality for the amounts of the fines imposed on the applicants must be determined by the Court in the examination of the applicants' claim for variation of the contested decision. Secondly, the Court upholds the second plea for the reason stated in paragraph 138 above and must determine the consequences of that illegality for the amounts of the fines in its examination of the applicants' claim for variation of the contested decision. Thirdly, the application for annulment must be rejected as to the remainder.

B – *The alternative head of claim: reduction of the fines imposed on the applicants*

185 Having regard to the second head of claim, by which the applicants request that the Court reduce the fines imposed on them (see paragraph 26 above), it falls to the Court, in the exercise of its unlimited jurisdiction, to examine (i) the consequences that the errors made by the Commission, which are explained in paragraphs 128 and 139 above, have on the calculation of the fine imposed on the applicants and (ii) the other arguments whereby the applicants seek to persuade the Court to grant them a reduction in the amount of the fines.

1. *The consequences which follow from the errors made by the Commission concerning the amounts of the fines*

186 Although the guidelines do not prejudge the assessment of the fine by the Courts of the Union when they adjudicate in the exercise of their unlimited jurisdiction (Joined Cases T-49/02 to T-51/02 *Brasserie nationale and Others* v *Commission* [2005] ECR II-3033, paragraph 169), the Court deems it appropriate in the present case to draw on them in recalculating the fine, in particular because they allow all the relevant elements of the case in point to be taken into account and proportionate fines to be imposed on all the undertakings that have participated in the infringement found.

187 In the present case, it is necessary to start by recalculating the amount of the fine which relates to the error found in paragraph 128 above, which concerns the ceramics-related infringement in Italy, and then go on to recalculate the final amount of the fine to be imposed, taking account in particular of the error described in paragraph 139 above.

188 In the first place, as regards the fine that the Commission was entitled to impose on the applicants on the basis solely of their participation in the ceramics-related infringement in Italy, account should be taken – in accordance with point 13 of the 2006 Guidelines and as was correctly stated by the Commission in recital 1200 to the contested decision – of the sales of the undertaking concerned during the last business year preceding its participation in the infringement. Since the last business year preceding the applicants' participation in the infringement on the Italian ceramics market is the year 2000, the value of the applicants' sales on that product market for that year must be taken into account. Those sales figures, which the applicants provided to the Court in response to its measures of organisation of procedure and which the Commission – also in response to the measures of organisation of procedure – has stated that it does not dispute, amount to EUR 210 461 486. Those sales must therefore be taken into account for the purpose of calculating the fine instead of those in Table C in the contested decision (EUR 191 641 141, the amount achieved by the applicants in 2003).

189 Secondly, as regards the proportion of the sales that must be taken into account under points 23 and 25 of the 2006 Guidelines, the Court notes, first of all, that the applicants' participation in the infringement in question was of long duration, since it is undisputed, inter alia, that in Austria they participated in an infringement lasting 10 years and 3 months as regards taps and fittings and 9 years and 8 months as regards ceramics. Next, the infringement in which they participated must be regarded as very serious, since it entailed the implementation of coordinated price increases concerning several products in a number of Member States. Those elements alone are sufficient grounds for holding, as the Commission did in recitals 1220 and 1225 to the contested decision, that a rate of 15% should be applied for the purpose of calculating the basic amount of the fine provided for in points 21 to 23 of the 2006 Guidelines and, after application of a multiplier for duration (see paragraph 190 below), the additional sum for deterrence provided for in point 25 of the guidelines.

190 Thirdly, since the ceramics-related infringement in Italy lasted 11 months rather than 11 years and 7 months, the basic amount must, in accordance with point 24 of the 2006 Guidelines, be multiplied by a multiplier of 0.92 rather than 11.58, as the Commission stated in Table D in the contested decision.

191 In the light of the considerations set out in paragraphs 188 to 190 above, the amount of the fine to be imposed on the applicants for the ceramics-related infringement in Italy is, rounded down, EUR 60 612 000 rather than EUR 360 000 000, as stated by the Commission in Table E in the contested decision. That amount (EUR 60 612 000) results from the following calculation: [(210 461 486 x 15%) x 0.92] + (210 461 486 x 15%).

192 In the second place, in view of the calculation made in the previous paragraph and the finding, in paragraph 139 above, that the Commission was not entitled to fine the applicants so far as the ceramics-related infringements in Belgium and France were concerned, the total amount of the fine is, before application of a 30% reduction under the 2002 Leniency Notice, EUR 171 812 000, instead of EUR 479 730 000 reduced to EUR 465 844 000 (see Table G in the contested decision) to take account of the ceiling of 10% of the applicants' turnover (see Table F in the contested decision). That amount of EUR 171 812 000 corresponds to the fines imposed for the infringements concerning (i) ceramics in Germany (EUR 5 700 000, which amount is not challenged by the applicants), Italy (EUR 60 612 000), and Austria (EUR 2 700 000, which amount is not challenged by the applicants) and (ii) taps and fittings, in Germany (EUR 9 600 000), Italy (EUR 90 000 000) and Austria (EUR 3 200 000). Since the Commission granted a 30% reduction in the fine under the 2002 Leniency Notice, the total amount of the fine for the infringement committed by the applicants is thus EUR 122 711 400, and not EUR 326 091 196 as stated in Table H in the contested decision.

193 The Court considers it appropriate, in the exercise of its unlimited jurisdiction, to apportion the total amount of the fine thus recalculated (EUR 122 711 400) between the applicants on the basis of the following two rules. First, the fines set by the Commission in points (c), (d) and (f) to (i) of Article 2(3) of the contested decision are not to be altered, since the applicants have not established that the fines imposed on the companies referred to in those points are unlawful or inappropriate. For

that reason the amount to be apportioned between Trane, Wabco Europe and Ideal Standard Italia is EUR 113 005 480 (that is to say, 122 711 400 – 1 519 000 – 5 575 920 – 2 611 000). Second, it does not appear either from the applicants' arguments or from the documents before the Court that the apportionment keys used by the Commission in the contested decision for imposing fines individually or jointly and severally on Trane, Wabco Europe and Ideal Standard Italia are inappropriate. The Court thus concludes that fines should be imposed as follows: (i) on Trane, a fine of EUR 92 664 493 (instead of EUR 259 066 294 as referred to in Article 2(3)(a) of the contested decision), (ii) jointly and severally on Wabco Europe and Trane, a fine of EUR 15 820 767 (instead of EUR 44 995 552 as referred to in Article 2(3)(b) of the contested decision) and (iii) jointly and severally on Ideal Standard Italia, Wabco Europe and Trane, a fine of EUR 4 520 220 (instead of EUR 12 323 430 as referred to in Article 2(3)(e) of the contested decision).

2. *The additional arguments raised by the applicants in support of their claim for reduction in the amounts of the fines*

194 The applicants raise two additional arguments in support of their claim for variation of the amounts of the fines imposed on them.

195 It should be observed in that regard that, according to the case-law, first, in the exercise of its unlimited jurisdiction, the Court must carry out its own assessment, taking all the circumstances of the case into account and observing the general principles of EU law, such as the principle of proportionality (see, to that effect, *Romana Tabacchi* v *Commission*, paragraph 28 above, paragraphs 179 and 280) or the principle of equal treatment (*Erste Group Bank and Others* v *Commission*, paragraph 149 above, paragraph 187).

196 Second, the exercise of unlimited jurisdiction does not amount to a review of the Court's own motion. Therefore, with the exception of grounds involving matters of public policy which the Courts of the Union are required to raise of their own motion, such as the failure to state reasons for a contested decision or the inadequacy of the reasons stated, it is for the applicant to raise pleas in law against that decision and to adduce evidence in support of those pleas (see, to that effect, *Chalkor* v *Commission*, paragraph 28 above, paragraph 64).

197 In the first place, the applicants request that the Court reduce their fines on account of the quality of the cooperation they provided to the Commission. They draw particular attention to the fact that they submitted their application very quickly following the inspections, that their application was of a far higher quality than Grohe's although it was submitted only a few days after Grohe's, in particular because their application included more than 130 documents and because the Court should not give preference to, and encourage, speed in the submission of an application to the detriment of its quality.

198 In the present case, the Court does not consider that any of the reasons put forward by the applicants, summarised in paragraph 197 above, justifies granting them a further reduction of 30% to 50% in the total amount of the fine. First, those reasons were taken into account by the Commission when it evaluated the usefulness of the applications submitted by the applicants and Grohe respectively. Indeed, it was precisely because of the speed and quality of their application that the applicants obtained a 30% reduction, even though they were only the third undertaking, after Masco and Grohe, to submit an application to the Commission under the 2002 Leniency Notice. Second, the reduction in the fine which the Commission granted the applicants meets, in the present case, the objective of encouraging undertakings to provide applications under the 2002 Leniency Notice which are as full as possible and are submitted in as short a time as possible. In those circumstances, the grant of a 30% reduction both to Grohe and to the applicants is fair. Indeed, although the applicants were a little less rapid than Grohe in submitting their leniency application, their application supplied more evidence of significant added value than did Grohe's.

199 The applicants' assertion that the Commission has 'accepted' their arguments that the Court should grant them a 50% reduction since, in the defence, the Commission did not contest their submissions on that point is not convincing. First, whilst it is true that in the defence the Commission did not specifically address the applicants' request that the Court grant a reduction in the fine under its unlimited jurisdiction, the fact remains that the Commission contends that the Court should reject the third plea, which included the applicants' request that their fine be reduced on account of their cooperation with the Commission. Second, and in any event, the fact that the Commission has not contested arguments put forward by the applicants cannot bind the Court when it exercises its unlimited jurisdiction.

200 In those circumstances, the Court must reject the applicants' first request, which seeks an additional reduction on account of their cooperation with the Commission.

201 In the second place, the applicants request that the fine be reduced since, at the time when they decided to submit their application for a reduction in fines under the 2002 Leniency Notice, the 1998 Guidelines provided for the imposition of fines of lower amounts than those resulting from the retroactive application of the 2006 Guidelines.

202 The Commission contests those arguments.

203 In that regard, the Court finds that nothing in the documents before it gives grounds for considering the amounts of the fines, as it has recalculated and set them in paragraph 198 above, to be inappropriate, having regard, on the one hand, to the gravity and the duration of the applicants' infringement and, on the other, to the need to impose fines on the applicants whose amount acts as a deterrent.

204 In those circumstances, the applicants' second request must be refused.

205 Accordingly, points (a), (b) and (e) of Article 2(3) of the contested decision must be varied as stated in paragraph 193 above and the remainder of the applicants' claim for reduction of the fines must be rejected.

206 In the light of the foregoing considerations, the Court, in accordance with its findings in paragraphs 184 and 204 above, first, annuls in part points (3) and (4) of Article 1(1) of the contested decision for the reason stated in paragraph 184 above and, second, varies points (a), (b) and (e) of Article 2(3) of the contested decision as stated in paragraph 193 above and, third, dismisses the action as to the remainder.

Costs

207 Under Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads the Court may order that the costs be shared or that each party bear its own costs.

208 As the action has been partially successful, the Court considers it fair in the circumstances of the case to order the Commission to bear its own costs and to pay half of the costs incurred by the applicants. The applicants shall thus be ordered to bear half of their own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Annuls points (3) and (4) of Article 1(1) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 – Bathroom fittings and fixtures) in so far as the European Commission makes a finding of infringement against Trane Inc., Wabco Europe and Ideal Standard Italia Srl in respect of a cartel on the Italian market for ceramics for a period other than the period from 12 May 2000 to 9 March 2001;**

2. **Sets the amount of the fine imposed on Trane in Article 2(3)(a) of Decision C(2010) 4185 final at EUR 92 664 493;**

3. **Sets the amount of the fine imposed jointly and severally on Wabco Europe and Trane in Article 2(3)(b) of Decision C(2010) 4185 at EUR 15 820 767;**

4. **Sets the amount of the fine imposed jointly and severally on Ideal Standard Italia, Wabco Europe and Trane in Article 2(3)(e) of Decision C(2010) 4185 at EUR 4 520 220;**

5. **Dismisses the action as to the remainder;**

6. **Orders the Commission to pay half of the costs incurred by Wabco Europe, Wabco Austria GesmbH, Trane, Ideal Standard Italia and Ideal Standard GmbH and to bear its own costs;**

7. **Orders Wabco Europe, Wabco Austria, Trane, Ideal Standard Italia and Ideal Standard to bear half of their own costs.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 16 September 2013.

[Signatures]

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