



## 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 — Attributability of unlawful conduct — Fines — 2006 Guidelines on the method of setting fines — Gravity of the infringement — Multipliers — Mitigating circumstances — Reduction of the fine — Significant added value)

In Case T-408/10,

**Roca Sanitario, SA**, established in Barcelona (Spain), represented by J. Folguera Crespo and M. Merola, lawyers,

applicant,

v

**European Commission**, represented initially by F. Castillo de la Torre, A. Antoniadis and F. Castilla Contreras, and subsequently by F. Castillo de la Torre, A. Antoniadis and F. Jimeno Fernández, acting as Agents,

defendant,

APPLICATION for annulment in part 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), and, in the alternative, for reduction of the fines imposed on the applicant in that decision,

THE GENERAL COURT (Fourth Chamber),

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

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 March 2013,

gives the following

\* Language of the case: Spanish.

**Judgment**<sup>1</sup>

...

**Procedure and forms of order sought**

29 By application lodged at the Court Registry on 8 September 2010, the applicant brought the present action.

30 Upon 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 its Rules of Procedure, put written questions to the parties, which replied to them within the period prescribed.

31 At the hearing on 6 March 2013, the parties presented oral argument and replied to the Court's oral questions.

32 The applicant claims that the Court should:

- annul in part Articles 1, 2 and 4 of the contested decision in so far as they relate to it;
- in the alternative, reduce the fine imposed on it;
- order the Commission to pay the costs.

33 The Commission contends that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

**Law**

...

*2. The alternative head of claim, seeking reduction of the fine imposed on the applicant*

...

*Second argument, concerning any reduction that might be granted to one of the applicant's subsidiaries*

189 The applicant asks the Court to extend to it the benefit of any reduction that its subsidiaries might be granted in the actions they have brought in Case T-411/10 (*Laufen Austria v Commission*) and Case T-412/10 (*Roca v Commission*). If its liability were to stem, as the Commission maintains in the contested decision, solely from the fact that it formed a single undertaking with its subsidiaries Roca France and Laufen Austria, it should benefit from any reduction in the fine imposed on it jointly and severally which might be granted to one of those subsidiaries in the action the subsidiary has brought.

1 — Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

- 190 Although it does not formally put forward a plea of inadmissibility in relation to that argument, the Commission maintains, in essence, that the applicant cannot merely refer to the arguments advanced by its subsidiaries Roca France and Laufen Austria in their respective actions in order to benefit from any reduction in the fine which they might be granted.
- 191 In response to the questions put by the Court at the hearing concerning the impact of the judgment of the Court of Justice in Case C-286/11 P *Commission v Tomkins* [2013] ECR on the appraisal of the present argument, the Commission added that, according to that judgment, it is only when the parent company and its subsidiary raise, in their respective actions, similar pleas that the General Court may extend a reduction in a fine, granted to the subsidiary, to the parent company as well. However, it in no way follows from that judgment that there should be an automatic extension to the parent company of a reduction in a fine granted to a subsidiary in an action it has brought.
- 192 Having regard to the parties' arguments, the Court will start by examining the admissibility of the second argument put forward by the applicant in support of its claim for reduction of the fine, before going on to examine the merits of that argument.

#### The admissibility of the second argument

- 193 In this regard, it should 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, each application is required to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based.
- 194 According to the case-law, the information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to decide the case. The same is true of all claims, which must be accompanied by pleas and arguments enabling both the defendant and the Court to assess their validity (Case T-43/92 *Dunlop Slazenger v Commission* [1994] ECR II-441, paragraph 183). Thus, for an action to be admissible, it is necessary that the basic matters of law and of fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. In that regard, whilst the body of the application 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, cannot make up for the absence of the essential arguments in law which, in accordance with the abovementioned provisions, must appear in the application (see Case T-201/2004 *Microsoft v Commission* [2007] ECR II-3601, paragraph 94 and the case-law cited).
- 195 In the present case, the Court notes that, by the second argument raised in support of its claim for a reduction of the fine, the applicant, contrary to the Commission's assertion, does not merely refer to the pleadings submitted by its subsidiaries Roca France and Laufen Austria in their respective actions. On the contrary, the applicant expressly supports that argument by maintaining that, as it was held liable for the anti-competitive conduct of those subsidiaries solely on the basis of its capacity as parent company, the fine imposed on it jointly and severally merely reflects that joint and several liability. The applicant has thereby developed its own line of reasoning, according to which it maintains that it is entitled, in its capacity as parent company, to benefit from any reduction in the fine which might be granted to its subsidiaries and that, unlike its subsidiaries, it does not have to establish the error made by the Commission in calculating the amount of the fine.
- 196 In those circumstances, the Court rejects the Commission's argument that the second argument raised by the applicant in support of its claim for a reduction of the fine is inadmissible.

## The merits of the second argument

- 197 In the first place, it should be observed that by a judgment, delivered today in Case T-411/10 *Laufen Austria v Commission*, the Court has rejected Laufen Austria's request for a reduction of the fine imposed on it in Article 2(4)(a) and (c) of the contested decision.
- 198 In those circumstances, the second argument raised by the applicant in support of its claim for reduction of the fine must be rejected as ineffective, in so far as it seeks to benefit from any reduction of the fine which might be granted to Laufen Austria.
- 199 In the second place, it should be noted that by a judgment, delivered today in Case T-412/10 *Roca v Commission*, the Court has reduced the fine imposed jointly and severally on Roca France and the applicant under Article 2(4)(b) of the contested decision on account of an error made by the Commission in the assessment of the evidence submitted by Roca France in the context of its application under the 2002 Leniency Notice for a reduction in its fine. In those circumstances, the Court, after granting a reduction in the fine of 6%, set the amount of the fine imposed jointly and severally on Roca France and the applicant, in Article 2(4)(b) of the contested decision, at EUR 6 298 000.
- 200 Having regard to the parties' arguments, as set out in paragraphs 189 to 191 above, it is therefore appropriate to ascertain whether the applicant is, as it maintains, entitled, merely because of its capacity as a parent company that has been held jointly and severally liable for payment of the fine referred to in paragraph 199 above, to the same reduction of the fine.
- 201 In that regard, it should be observed that, according to the case-law, when the parent company has not actually participated in the cartel and is held liable solely on account of its subsidiary's participation therein, the parent's liability is regarded as purely derivative, secondary and dependent on that of its subsidiary (see, to that effect, *Commission v Tomkins*, paragraph 191 above, paragraph 39) and therefore cannot exceed the liability of its subsidiary (see, to that effect, Case T-382/06 *Tomkins v Commission* [2011] ECR II-1157, paragraph 38, upheld on appeal in *Commission v Tomkins*, paragraph 191 above, paragraph 39).
- 202 In the present case, the Court observes that the applicant did not actually participate in the infringement found. It was held liable for Roca France's conduct solely because of its capacity as a parent company holding the entire share capital of its subsidiary.
- 203 That being so, since the applicant's liability is regarded, in the circumstances of the present case, as purely derivative, secondary and dependent upon that of its subsidiary and thus cannot, according to the case-law cited in paragraph 201 above, exceed the liability of that subsidiary, it is appropriate, in accordance with the form of order sought by the applicant, to uphold its claim that it should benefit from the reduction of the fine granted to Roca France.
- 204 That conclusion is not called in question by the Commission's arguments.
- 205 First, the Commission, relying on the judgments of the Court of Justice in Case C-310/97 P *Commission v AssiDomän Kraft Products and Others* [1999] ECR I-5363 and Joined Cases C-201/09 P and C-216/09 P *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others* [2011] ECR I-2239, paragraph 142, maintains that, as the applicant has raised no argument concerning the fine which was imposed on it jointly and severally, the contested decision, in so far as it imposed a fine on the applicant, has become final in its regard, irrespective of any reduction in the fine which might be granted to one of the applicant's subsidiaries in their respective actions.

- 206 In that regard, it must be observed that, in the judgments mentioned in paragraph 205 above, the Court of Justice held that, if an addressee of a decision decides to bring an action for annulment, the matter to be tried by the European Union judicature relates only to those aspects of the decision which concern that addressee. Unchallenged aspects concerning other addressees, on the other hand, do not form part of the matter to be tried by the Union judicature (*Commission v AssiDomän Kraft Products and Others*, paragraph 205 above, paragraph 53, and *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others*, paragraph 205 above, paragraph 142).
- 207 First, the Court observes that that case-law is not relevant here. It concerns the effects of the partial annulment of a decision. Accordingly, it does not call in question the finding that, when a parent company's liability derives purely from that of its subsidiary, the liability of the former cannot exceed that of the latter (see, to that effect, *Commission v Tomkins*, paragraph 191 above, paragraphs 46 to 50). In those circumstances, the Court may apply to the parent company, in the action brought by the parent company and to the extent that the parent company has sought a form of order to that effect, any reduction of the fine which might be granted to its subsidiary in an action brought by the latter.
- 208 Second, in so far as the Commission's argument must be understood as seeking to show that, were it to accept the second argument raised by the applicant in support of its claim for reduction of the fine, the Court would rule *ultra petita*, it must be recalled, as has been stated in paragraph 195 above, that the applicant, in the context of its second head of claim, which seeks, in the alternative, reduction of the fine imposed on it, has put forward a line of reasoning in support of that argument. Accordingly, the Court is, in the present case, granting the applicant a reduction of the fine on the basis of that line of reasoning and not on the basis of grounds raised of its own motion.
- 209 Secondly, in response to an oral question from the Court, the Commission maintained in essence, that the extension to the parent company of the benefit of a reduction of the fine granted to the subsidiary in its action is, as the Commission submits is clear from paragraph 56 of *Commission v Tomkins*, paragraph 191 above, subject to the condition that the parent company and its subsidiary raise similar pleas in law in their respective actions. The Commission submits that, in the present case, the applicant has failed to plead an error that the Commission allegedly made when calculating the amount of the fine imposed jointly and severally on the applicant and its subsidiaries.
- 210 In that regard, it should be observed that, in paragraph 56 of *Commission v Tomkins*, paragraph 191 above, the Court of Justice confirmed that, since, in its action, Tomkins plc had not submitted that there had been any error in the application of a multiplier for deterrence, the General Court was entitled – even though, in the action brought by Pegler Ltd, Tomkins' subsidiary, the Court had reduced the fine after finding such an error (Case T-386/06 *Pegler v Commission* [2011] ECR II-1267, paragraphs 134 and 144) – not to have extended the benefit of that reduction in the fine to the parent company in the action it had brought.
- 211 In the present case, although it is true that the applicant has not alleged that the Commission made an error in calculating the amount of the fine imposed on it jointly and severally with Roca France, the point must nevertheless be made that, in contrast to the circumstances referred to in paragraph 56 of *Commission v Tomkins*, paragraph 191 above, the applicant has formally raised an argument by which it asks the Court to afford it the benefit of any reduction of the fine which may be granted to one of its subsidiaries. Consequently the considerations set out in paragraph 56 of *Commission v Tomkins*, paragraph 191 above, cannot be applied to the present case.
- 212 In those circumstances, the Court accepts the second argument raised by the applicant in support of its claim for reduction of the fine in so far as the applicant seeks to benefit from a reduction of the fine granted to Roca France.

<sup>213</sup> Accordingly, the fine imposed on the applicant, jointly and severally with Roca France, in Article 2(4)(b) of the contested decision must be reduced by 6%, namely by EUR 402 000. The Court therefore sets the amount of that fine at EUR 6 298 000.

...

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

- 1. Sets the amount of the fine imposed on Roca Sanitario, SA in Article 2(4)(b) 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) at EUR 6 298 000;**
- 2. Dismisses the action as to the remainder;**
- 3. Orders the European Commission to pay, in addition to its own costs, one third of the costs incurred by Roca Sanitario;**
- 4. Orders Roca Sanitario to bear two-thirds of its own costs.**

Pelikánová

Jürimäe

Van der Woude

Delivered in open court in Luxembourg on 16 September 2013.

[Signatures]