Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 June 2014*

(Appeal — Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Unlimited jurisdiction of the General Court — Obligation to state reasons — Attribution to the parent company of the infringement committed by the subsidiary — Liability of the parent company for payment of the fine imposed on the subsidiary — Proportionality — Proceedings before the General Court — Adjudication within a reasonable time)

In Case C-243/12 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 May 2012,

FLS Plast A/S, established in Valby (Denmark), represented by M. Thill-Tayara and Y. Anselin, avocats,

appellant,

the other party to the proceedings being:

European Commission, represented by F. Castillo de la Torre and V. Bottka, acting as Agents, and M. Gray, Barrister, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits, M. Berger (Rapporteur) and S. Rodin, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 January 2014,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

1 By its appeal, FLS Plast A/S ('FLS Plast') asks the Court to set aside the judgment of the General Court of the European Union in Case T-64/06 *FLS Plast* v *Commission* EU:T:2012:102 ('the judgment under appeal') by which the General Court dismissed in part its action for annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) ('the decision at issue') or, in the alternative, for reduction of the fine which was imposed upon it by that decision.

The background to the dispute and the decision at issue

2 FLS Plast, formerly Nyborg Plast International A/S, is an addressee of the decision at issue in its capacity as a former parent company of Trioplast Wittenheim SA (formerly Silvallac SA; 'Trioplast Wittenheim'), a producer of plastic industrial bags, films and hoods in Wittenheim (France). FLS Plast is a subsidiary of the group controlled by FLSmidth & Co. A/S ('FLSmidth').

3 In December 1990, FLS Plast acquired 60% of the share capital in Trioplast Wittenheim. The remaining 40% was acquired by FLS Plast in December 1991. The seller was the French company Cellulose de Pin, a member of the group owned by Compagnie de Saint-Gobain SA ('Saint-Gobain').

4 In turn, FLS Plast sold Trioplast Wittenheim, in 1999, to Trioplanex France SA, a French subsidiary of Trioplast Industrier AB ('Trioplast Industrier'), the parent company of the Trioplast group. That transfer took effect on 1 January 1999.

5 In November 2001, British Polythene Industries informed the European Commission of the existence of a cartel in the plastic industrial bags sector.

6 After carrying out investigations in 2002 at the premises of, inter alia, Trioplast Wittenheim, in 2002 and 2003 the Commission sent requests for information to the undertakings concerned, one of which was Trioplast Wittenheim. By a letter of 19 December 2002, supplemented by a letter of 16 January 2003, Trioplast Wittenheim indicated that it wished to cooperate with the Commission's investigation, under the Commission notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4; 'the Leniency Notice').

7 On 30 November 2005, the Commission adopted the decision at issue. It is apparent from Article 1(1)(h) of that decision that the Commission decided inter alia that, from 31 December 1990 to 19 January 1999, FLSmidth and FLS Plast had infringed Article 81 EC by participating in a complex of agreements and concerted practices in the plastic industrial bags sector in Belgium, Germany, Spain, France, Luxembourg and the Netherlands, consisting in the fixing of prices and the establishment of common price calculation models, the sharing of markets and the allocation of sales quotas, the assignment of customers, deals and orders, concerted bidding in response to certain invitations to tender, and the exchange of individualised information.

8 As set out in point (f) of the first paragraph of Article 2 of the decision at issue, the Commission imposed on Trioplast Wittenheim a fine of EUR 17.85 million, taking account of a reduction of 30% granted pursuant to the Leniency Notice. Of that amount, FLSmidth and FLS Plast were held jointly and severally liable for the sum of EUR 15.30 million and Trioplast Industrier was held jointly and severally liable for the sum of EUR 7.73 million.

The judgment under appeal

9 By application lodged at the Registry of the Court of First Instance (now 'the General Court') on 24 February 2006, FLS Plast brought an action challenging the decision at issue. The action sought, in essence, the annulment of Article 1(1)(h) and of point (f) of the first paragraph of Article 2 of that decision in so far as they concerned FLS Plast or, in the alternative, the variation of the latter provision and a reduction of the amount of the fine which had been imposed on it and for which it was jointly and severally liable.

10 FLS Plast relied upon five pleas in law in support of its action for annulment. Its first plea alleged an error of law by the Commission in the determination of the fine. The second plea, set out in four parts, concerned the fact that FLS Plast was found liable in its capacity as the parent company of Trioplast Wittenheim. By its third plea, divided into three parts, FLS Plast challenged the amount of the fine imposed on Trioplast Wittenheim. The fourth plea related to the non-application in FLS Plast's case of the 10% of turnover ceiling. The purpose of the fifth plea, comprising five parts, was to challenge the amount of the fine which had been imposed on it and for which it was jointly and severally liable.

11 By the judgment under appeal, the General Court partially upheld FLS Plast's second plea, on the ground that the Commission had not established to the required legal standard that FLS Plast exercised actual control over Trioplast Wittenheim throughout the year 1991. Consequently, the General Court annulled the decision at issue in so far as it concerned the imputability of the infringement to FLS Plast for the period from 31 December 1990 to 31 December 1991. As a result, the General Court also reduced to EUR 14.45 million the amount of the fine for which FLS Plast had been held jointly and severally liable under Article 2(f) of the decision at issue. It dismissed the action as to the remainder.

Forms of order sought

12 FLS Plast claims that the Court should:

— set aside the judgment under appeal and annul Articles 1(h) and 2(f) of the decision at issue in so far as they apply to FLS Plast;

— in the alternative, amend Article 2(f) of the decision at issue and substantially reduce the amount of the fine for which FLS Plast is held jointly and severally liable in the decision at issue;

— in any event, grant FLS Plast a 50% reduction of the amount of the fine for which it is held liable in the decision at issue, as the General Court did not deliver its judgment within a reasonable time; and

— order the Commission to pay the costs.

13 The Commission contends that the Court should:

— dismiss the appeal;

— in the alternative, dismiss the action for annulment of the decision at issue; and

— order FLS Plast to pay the costs.

The appeal

14 In support of the form of order sought by it, FLS Plast puts forward five pleas in law, the third to fifth of which are put forward in the alternative.

15 FLS Plast requests the Court to adjudicate itself, after setting aside the judgment under appeal, on the pleas raised against the decision at issue.

The first plea: the Commission applied an incorrect legal test for the purpose of establishing a parent company's liability

Arguments of the parties

16 FLS Plast contends that the General Court erred in law in accepting the legal test applied by the Commission and in holding that it did not rebut the presumption, arising from the fact that it held 100% of the capital of its subsidiary Trioplast Wittenheim, that it exercised decisive influence over the latter.

17 That test contains a strict presumption that the parent company is liable for the conduct of its subsidiary and is, therefore, contrary to the presumption of innocence laid down in Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and in Article 48 of the Charter of Fundamental Rights of the European Union ('the Charter').

18 In FLS Plast's submission, the Commission's application of that presumption renders it in reality irrebuttable in that the presumption effectively requires the parent company concerned to prove the negative that it gave no instruction to its subsidiary. In the alternative, FLS Plast asserts that neither the General Court nor the Commission drew the correct legal conclusion from the arguments and evidence which it presented, and which showed that Trioplast Wittenheim had acted independently on the market.

19 The Commission objects that this plea is inadmissible. In its submission, since the plea was not raised before the General Court, it is a new plea and accordingly inadmissible. Furthermore, the plea is purely abstract in nature and FLS Plast does not identify the paragraphs in the judgment under appeal where the General Court is alleged to have erred.

20 In the alternative, the Commission maintains that the presumption founded on a 100% shareholding is not contrary to fundamental rights and that, in any event, it was able to rely on other indicia supporting the presumption that FLS Plast exercised decisive influence over Trioplast Wittenheim.

21 In its reply, FLS Plast contests that this plea is inadmissible by submitting that the challenge to the validity of the presumption in question must be regarded as an elaboration of the plea, put forward before the General Court, contesting the existence of decisive influence exercised by it over its subsidiary.

22 The Commission states in its rejoinder that, in any event, Article 6(2) of the ECHR was not relied upon at first instance.

Findings of the Court

– Admissibility

23 So far as concerns the plea of inadmissibility raised by the Commission, FLS Plast did not submit before the General Court that the rule, set out by the Court of Justice's case-law, that a parent company holding directly or indirectly all the capital of a subsidiary is presumed to have actually exercised decisive influence over the latter infringes Article 48 of the Charter and Article 6(2) of the ECHR.

24 However, it must be pointed out in this regard, first, that FLS Plast submitted, by the second plea relied upon in support of its application at first instance, that 'the [decision at issue] is vitiated by errors of law and fact in respect of FLS Plast's liability'. In paragraphs 51 to 99 of that application, it set out detailed argument designed to prove that the Commission was not entitled to attribute liability to it for the infringement committed by Trioplast Wittenheim. In particular, in paragraph 56 of the application, FLS Plast maintained that, '[w]ith respect to wholly-owned subsidiaries, it is therefore a settled principle that even a 100% shareholding is not in itself sufficient to justify a finding of liability on the part of a parent company, as the shareholding only creates a rebuttable presumption'.

25 Second, in submitting, in essence, on appeal that the General Court based its decision on an irrebuttable presumption, contrary to the presumption of innocence laid down in Article 48 of the Charter and Article 6(2) of the ECHR, FLS Plast criticises a ground relied upon by the General Court in support of the judgment under appeal, which it cannot be prohibited from doing simply because it did not expressly put forward that complaint in the course of the proceedings which gave rise to that judgment (see, to this effect, in particular, Joined Cases C-465/09 P to C-470/09 P *Diputación Foral de Vizcaya* v *Commission* EU:C:2011:372, paragraph 146 and the case-law cited).

26 Therefore, the first plea relied upon by FLS Plast in support of its appeal is admissible.

– Substance

27 As regards, first of all, the alleged unlawfulness of the presumption, applied in European Union competition law, that a company holding directly or indirectly all the capital of another company exercises decisive influence over the latter company, it need merely be pointed out that the validity of that presumption is clear from settled case-law (see, inter alia, Case C-179/12 P *The Dow Chemical Company* v *Commission* EU:C:2013:605, paragraph 56 and the case-law cited). Furthermore, as the Court has also held, the application of such a presumption does not in any way infringe the presumption of innocence, laid down in Article 48 of the Charter and Article 6(2) of the ECHR, given in particular that it is rebuttable (see, inter alia, Case C-508/11 P *Eni* v *Commission* EU:C:2013:289, paragraph 50 and the case-law cited).

28 Contrary to FLS Plast's assertions, the General Court therefore did not err in law when, in paragraph 25 et seq. of the judgment under appeal, it recalled the principles resulting from the Court of Justice's case law that relate to the circumstances in which a subsidiary's parent company, such as FLS Plast, may be held liable for anti-competitive actions attributed to that subsidiary, namely, in this instance, Trioplast Wittenheim.

29 Consequently, on the basis of that case-law, the General Court was also correct in holding that the Commission could presume that during the period covering the years 1992 to 1998 FLS Plast had exercised decisive influence over the conduct of Trioplast Wittenheim, given the 100% stake that FLS Plast had held in Trioplast Wittenheim over that period.

30 Next, so far as concerns, in particular, the complaint that the specific application of that presumption by the Commission, and as confirmed by the General Court, rendered the presumption irrebuttable, it is to be noted that, in paragraph 30 et seq. of the judgment under appeal, the General Court examined whether FLS Plast had succeeded in rebutting the presumption by establishing that its subsidiary acted independently on the market, and concluded that that was not the case. Accordingly, the mere fact that it is difficult to prove the opposite in order to rebut a presumption does not in itself mean that it is in fact irrebuttable (see, inter alia, *Eni* v *Commission* EU:C:2013:289, paragraph 68 and the case-law cited).

31 Finally, as to the assertion that neither the General Court nor the Commission drew the correct legal conclusion from the arguments and evidence presented by FLS Plast, which are said to establish that Trioplast Wittenheim had acted independently on the market, it must be stated that, in order to substantiate this assertion, FLS Plast merely refers, in a general manner, to its explanations concerning the second plea in the appeal.

32 In that respect, it must be held that, by this line of argument, FLS Plast is in reality asking the Court to conduct a fresh appraisal of the facts and the evidence provided, without thereby asserting that the General Court distorted them. In accordance with Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, as an appeal lies only on a point of law such an appraisal falls outside the Court's powers of review (see inter alia, to this effect, Case C-601/12 P *Ningbo Yonghong Fasteners* v *Council* EU:C:2014:115, paragraph 32 and the case-law cited). The arguments put forward by FLS Plast in this context are therefore inadmissible.

33 In the light of those considerations, the first plea must be dismissed as partly unfounded and partly inadmissible.

The second plea: the General Court did not raise of its own motion breach by the Commission of its obligation to state reasons

Arguments of the parties

34 FLS Plast complains that although the General Court identified several defects in the Commission's reasoning in the decision at issue, it failed to raise of its own motion that the Commission did not comply with its obligation to state reasons when rejecting FLS Plast's evidence to rebut the presumption that it exercised decisive influence.

35 In this connection, FLS Plast submits that, on the date when it received the statement of objections from the Commission, the scope of the presumption of actual decisive influence over subsidiaries was still subject to significant uncertainties, of which the Commission itself was aware. Unlike most of the other addressees of the statement of objections, FLS Plast was the only parent company to which that document was addressed solely on the ground of its past ownership of Trioplast Wittenheim. The Commission relied on additional evidence for almost all the other parent companies to which a statement of objections was addressed. Nor was FLS Plast involved in the pre-litigation procedure at any stage prior to the statement of objections.

36 FLS Plast also submits that the Commission was required to comply with its obligation to state reasons as soon as the decision at issue was sent to FLS Plast. However, in the case in point, it was only at the hearing before the General Court that the Commission explained that it had relied on the presumption of decisive influence solely in respect of the period during which FLS Plast had a 100% shareholding in Trioplast Wittenheim.

37 In its reply to the statement of objections, FLS Plast put forward a large number of arguments, supported by evidence, showing that it did not exercise decisive influence over Trioplast Wittenheim's conduct. In FLS Plast's submission, the Commission was obliged to analyse at least evidence 'apt' to rebut the presumption at issue and to state sufficient reasons for the conclusions that it drew, which it did not do.

38 The Commission did not explain why the evidence adduced by FLS Plast, and in particular the evidence showing the purely passive role of Mr H. and Mr T., failed to rebut the presumption as to exercise of actual decisive influence over subsidiaries. Furthermore, the Commission's reasoning in this context would make the presumption in question conclusive whenever there is an 'interlocking directorship' between the parent company and its subsidiary.

39 The Commission objects, first of all, that FLS Plast's second plea is inadmissible on the ground that (i) FLS Plast puts forward a new plea, as it was, at the most, mentioned at the hearing before the General Court, and (ii) the plea seeks in reality to invite the Court to reconsider the assessment of facts by the Commission, while disregarding the appraisal conducted by the General Court in the judgment under appeal, without FLS Plast contending, however, that the clear sense of the evidence was distorted.

40 In the alternative, the Commission submits that it gave sufficient reasons in its decision for FLS Plast to be able to understand the basis of the decision, a fact which the General Court confirmed at least implicitly. Moreover, the European Union judicature is not bound to raise of its own motion issues concerning the reasoning of measures adopted by the institutions.

41 Furthermore, FLS Plast's assertion that the statement of objections was addressed to it solely on the ground of its past ownership of Trioplast Wittenheim is not accurate. On the contrary, the Commission states that it relied expressly on a number of additional elements, such as the fact that Mr H., the Chairman of Trioplast Wittenheim from 1990 to 1994, was also an officer of FLS Plast.

42 In its reply, relating to the pleas of inadmissibility raised by the Commission, FLS Plast counters that it did submit during the written procedure before the General Court that the decision at issue was vitiated by a defective statement of reasons so far as concerns the Commission's determination that FLS Plast had not rebutted the presumption that it exercised decisive influence over Trioplast Wittenheim. Furthermore, according to an established principle of European Union law, the absence, or the inadequacy, of a statement of reasons is a plea involving a matter of public policy which may, and even must, be raised by the European Union judicature of its own motion.

43 The Commission, in its rejoinder, repeats the argument that FLS Plast did not invoke a lack of reasoning before the General Court. Nor is there any obligation on the Court to raise such a plea.

Findings of the Court

44 First, as regards FLS Plast's contention, supposedly advanced in the written procedure before the General Court, that the decision at issue was vitiated by a defective statement of reasons, it should be noted that, under the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court of the European Union, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

45 It must be stated that, in its application at first instance, FLS Plast did not complain that the decision at issue was vitiated by a defective statement of reasons inasmuch as that decision attributes joint and several liability to it for the infringement at issue. Whilst FLS Plast maintains, in paragraph 9 of its reply, that this conclusion would be inaccurate 'since … this plea was in fact raised … before the

General Court', FLS Plast omits to mention the fact that it did not raise the plea until the hearing before the General Court and it does not even seek to contest the statement that such a plea had not been included in its application initiating proceedings.

46 Nor does FLS Plast explain why the introduction of that new plea at that hearing would have been possible despite the rule laid down in the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court. Finally, it does not contend that there were matters of law or of fact which came to light in the course of the procedure and could have justified the late introduction of such a plea.

47 It follows that, by the present plea, FLS Plast relies on a new line of argument, consisting in disputing that the reasons stated in the decision at issue are legally adequate in so far as the latter attributes joint and several liability to it for the infringement committed by Trioplast Wittenheim.

48 It is, however, clear from the Court's settled case-law that a party is entitled to lodge an appeal relying, before the Court, on pleas arising from the judgment under appeal itself which seek to criticise, in law, its merits (Joined Cases C-231/11 P to C-233/11 P *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission* EU:C:2014:256, paragraph 102 and the case-law cited). In so far as the second plea concerns, in essence, the General Court's failure to raise of its own motion an objection relating to insufficient reasoning of the decision at issue, the plea has its origins in the judgment under appeal itself. The plea is therefore admissible.

49 Second, as regards FLS Plast's line of argument that when an action for annulment of a measure adopted by a European Union body has been brought before the General Court, it is required to raise of its own motion an objection relating to legally insufficient reasoning, it should be recalled that, according to the Court of Justice's settled case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the European Union judicature and, second, to enable that judicature to review the legality of the act (Case C-417/11 P *Council* v *Bamba* EU:C:2012:718, paragraph 49 and the case-law cited).

50 The reasons for which the Commission held FLS Plast liable for the infringement found in respect of the period from 1 January 1992 to 19 January 1999 are clear from recitals 715 to 732 of the decision at issue, in which the Commission explains that it relied both on the fact that FLS Plast held 100% of the capital of its subsidiary Trioplast Wittenheim and on other evidence corroborating that FLS Plast exercised decisive influence over the latter company.

51 As to the matters relied upon by FLS Plast in its reply to the statement of objections in order to rebut the presumption of actual exercise of decisive influence, whilst the Commission does not seem to have addressed all those matters one by one, it nevertheless provided FLS Plast, in recitals 718 to 731 of the decision at issue, with information sufficient both to enable it to determine whether that decision is, in its view, well founded or whether it is vitiated by a defect making it possible to challenge its validity, and to enable the General Court to review the legality of that decision (see to this effect, inter alia, 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* EU:C:2005:408, paragraph 462, and *Eni* v *Commission* EU:C:2013:289, paragraph 72).

52 Furthermore, FLS Plast does not assert that it was unable to exercise its rights of defence. On the contrary, the detailed examination carried out by the General Court, in paragraphs 52 to 61 and 77 to 82 of the judgment under appeal, of the arguments put forward by FLS Plast to rebut the presumption of decisive influence demonstrates, rather, that FLS Plast was able properly to defend its rights before the General Court and that the latter was able to exercise its power of review.

53 Accordingly, the second plea in the appeal should be dismissed as partly inadmissible and partly unfounded.

The third plea: breach of the principle of the protection of legitimate expectations, of the principle of equal treatment and of the General Court's obligation to state reasons in relation to the application of the Leniency Notice

Arguments of the parties

54 By the first part of the third plea, FLS Plast submits that the Commission infringed the principle of the protection of legitimate expectations when it applied the Leniency Notice.

55 FLS Plast states in this regard that, under the second indent of Section D.2 of the Leniency Notice, an undertaking which informs the Commission that it does not substantially contest the facts on which the Commission bases its allegations is entitled to a reduction of its fine provided that such a statement is express, clear and unequivocal and facilitates the Commission's task.

56 In its reply to the statement of objections FLS Plast expressly stated that it did not contest the facts. It therefore facilitated the Commission's task by reducing the latter's burden of proof. Its defence did not affect the basis of the infringement, as it did not contest the direct participation of Trioplast Wittenheim in anticompetitive meetings, the total duration of the infringement or even the infringement's intensity or geographical scope.

57 FLS Plast consequently requests the Court to set aside the judgment under appeal in so far as the judgment refuses to grant it a reduction of its fine on this basis, and to exercise its powers of unlimited jurisdiction to grant it a 50% reduction of the fine which was imposed upon it by the decision at issue.

58 The second part of this plea concerns a breach of the principle of equal treatment in the light of a fine reduction granted to Bonar Technical Fabrics NV ('Bonar'), and a breach by the General Court of its obligation to state reasons.

59 In FLS Plast's submission, only Bonar obtained a 10% reduction of the amount of the fine which would have had to be imposed upon it, although they had both applied for such a reduction. Bonar's cooperation with the Commission, like that of FLS Plast, was limited to a general statement that it was not contesting the facts. In the same way, Bonar and FLS Plast both admitted the direct involvement of their subsidiary in the infringement and endeavoured to contest their liability as a parent company. Those two undertakings were therefore in the same situation and should have been granted the same reduction. Moreover, Bonar contested the participation of its former subsidiary at least one cartel meeting and more generally limited its non-contestation of the facts to the involvement of its subsidiary in 'certain meetings'.

60 However, in paragraph 177 of the judgment under appeal, the General Court merely stated that, 'contrary to what occurred in the case of [Bonar]', FLS Plast's challenge affected the very basis of the infringement, without justifying its position more precisely.

61 The General Court therefore erred in law by not holding that the Commission infringed the principle of equal treatment. In addition, the General Court infringed its obligation to state reasons by not carrying out a proper comparison of Bonar's and FLS Plast's respective non-contestation of the facts.

62 The third part of FLS Plast's third plea concerns a breach of the principle of equal treatment in the light of the fine reduction granted to Trioplast Industrier.

63 FLS Plast contends that the General Court wrongly held that the benefit of a 30% reduction of the amount of the fine, like the reduction which was granted to Trioplast Industrier, could not be extended to FLS Plast, on the ground that Trioplast Industrier was granted that reduction unlawfully.

64 In FLS Plast's submission, in order to avoid a breach of the principle of equal treatment, the 30% reduction of the amount of the fine, obtained by Trioplast Wittenheim with which it formed an economic entity for eight years of the infringement period, must be extended to it. It consequently requests the Court to set aside the judgment under appeal in so far as it refuses to grant FLS Plast a reduction of its fine on the basis of non-contestation of the facts, and to exercise its powers of unlimited jurisdiction to grant it a fine reduction of 50% or, at least, 30%.

65 The Commission objects that the first and second parts of this plea are inadmissible. They seek, without FLS Plast alleging distortion of the facts, a factual re-examination, first, of the assessment of the value of the submissions made by FLS Plast during the investigation and, second, of the Commission's analysis regarding the substance of its decision to grant Bonar a 10% reduction of the fine.

66 In the alternative, as regards the first part, the Commission contends that there is a sufficient basis in FLS Plast's replies to the statement of objections and in the decision at issue for it to be held that FLS Plast's non-contestation of the facts did not meet the necessary criteria in Section D.2 of the Leniency Notice.

67 As regards the second part of this plea, concerning a breach of the principle of equal treatment in relation to Bonar, the Commission contends that it is clear from the judgment under appeal, read together with the decision at issue and the replies to the statement of objections, that the General Court can be considered to have carried out an adequate comparison of the respective situations of those two companies. Furthermore, it is immaterial whether the level of cooperation of FLS Plast was, in fact, comparable to that of Bonar given that, in any event, FLS Plast's cooperation did not satisfy the requirements resulting from the Leniency Notice.

68 The Commission also contends that the General Court cannot be criticised for failing to give sufficient reasons on this point, given that the line of argument put forward by FLS Plast is clearly irrelevant.

69 As to the third part of the third plea, the Commission submits that, although the General Court was correct in holding that there was no legal basis upon which FLS Plast was entitled to benefit from a 30% reduction of the amount of the fine, it founded that determination on incorrect grounds. At the relevant point in the infringement period, FLS Plast no longer formed an economic entity with Trioplast Wittenheim, for the purposes of Article 101 TFEU, and it is for that reason that extension of the 30% reduction to FLS Plast was precluded. The Commission consequently invites the Court to set aside paragraphs 172 to 176 of the judgment under appeal and to substitute them with alternative reasoning.

70 In its reply, FLS Plast counters that the first and second parts of the third plea of its appeal seek not to obtain a factual re-examination, but to challenge the legal conclusions drawn by the General Court from the facts analysed in the judgment under appeal. So far as concerns the first part, in paragraphs 68 to 75 of its appeal it indicated evidence alleged to have been distorted by the General Court. The second part of the plea also concerns the legal conclusions that the General Court drew from the facts before it. Furthermore, distortion of the facts was also alleged in paragraph 82 of the appeal.

71 In its rejoinder, the Commission repeats the argument that the assessment that FLS Plast asks the Court to undertake does not fall within its jurisdiction on appeal. It is settled case-law that a distortion must be obvious from the evidence on the file without the need to conduct a new assessment of the facts and evidence, which is not the case here.

Findings of the Court

– The first and second parts of the third plea

72 By the first and second parts of its third plea, which it is appropriate to examine together, FLS Plast contends in essence, first, that it did not substantially contest the facts that the Commission alleged against it in the statement of objections, which facilitated the Commission's task of proving the infringement at issue and should have earned it, on the basis of the Leniency Notice, a 10% reduction of the amount of the fine that normally would have had to be imposed upon it. Second, it submits that under the principle of equal treatment the General Court should have applied that 10% reduction to it in particular on the ground that Bonar, which obtained the reduction, had cooperated with the Commission in a manner essentially identical to the manner in which FLS Plast had. In any event, the reasoning of the judgment under appeal is not adequate in this regard.

73 As regards the first complaint relied upon, the General Court was correct in recalling, in paragraph 164 of the judgment under appeal, that '[t]he Commission enjoys … a broad discretion in assessing the quality and usefulness of the cooperation provided by an undertaking, in particular by reference to the contributions made by other undertakings', and that '[i]n exercising that discretion … the Commission cannot disregard the principle of equal treatment'.

74 In addition, in paragraph 177 of the judgment under appeal the General Court held that '[FLS Plast]'s position during the administrative procedure was ambiguous' and that, although FLS Plast '[had] stated that its challenge was limited to the facts which the Commission took as its basis in order to hold it jointly and severally liable for the infringement …, contrary to what occurred in the case of [Bonar] [FLS Plast]'s challenge affected the very basis of the infringement'. In the same paragraph of the judgment under appeal, the General Court also found that FLS Plast, 'in particular, contested Mr H.'s attendance of the … meeting on 21 December 1993'.

75 Furthermore, the General Court stated in paragraph 178 of the judgment under appeal that FLS Plast '[did] not put forward any argument establishing that its cooperation had facilitated the Commission's task, as [was] required by the [case-law]', holding, finally, in paragraph 179, that '[i]n those circumstances, the Commission did not exceed the limits of its discretion in granting [Bonar] a 10% reduction for not having contested the facts and in refusing to grant [FLS Plast] such a reduction'.

76 In order to challenge on appeal that factual assessment made by the General Court, FLS Plast would, in accordance with settled-case law, have had to allege distortion of the facts or the evidence by the General Court, which it did not do. Contrary to what is suggested by FLS Plast in its reply, it is not in any way apparent from paragraphs 68 to 75 and 82 of the appeal that it alleges distortion of facts or evidence by the General Court.

77 It follows from the foregoing considerations that this complaint, put forward in the context of the first and second parts of FLS Plast's third plea, must be rejected as inadmissible.

78 Next, as regards the complaint alleging that the General Court infringed the principle of equal treatment, as has already been explained in paragraphs 73 to 77 of the present judgment, in order to be able to compare, on the one hand, the conduct of FLS Plast and, on the other, that of Bonar, it would be necessary for the Court to substitute its own assessment of the facts for that of the General Court, which does not fall within the Court's jurisdiction on appeal except in the case of distortion by the General Court of the facts or evidence submitted to it for examination. Such distortion has been neither alleged at the appropriate time nor, *a fortiori*, demonstrated by FLS Plast. Accordingly, this complaint must also be rejected as inadmissible.

79 Finally, so far as concerns the failure to state reasons that is pleaded by FLS Plast in this context, it has already been stated in paragraphs 73 to 75 of the present judgment that the General Court, taking account of the broad discretion available to the Commission in assessing the quality and usefulness of the cooperation provided by an undertaking, in particular by reference to the contributions made by other undertakings (see, to this effect, Case C-328/05 P *SGL Carbon* v *Commission* EU:C:2007:277, paragraph 88), considered that the evidence and arguments put forward by FLS Plast to establish that its alleged abstention from substantially contesting the facts had assisted the Commission, or that that non-contestation was at least comparable to that of Bonar, were insufficient. It is evident that the reasoning provided by the General Court in this regard enables FLS Plast to understand the reasons why the General Court rejected its line of argument and the Court of Justice to conduct its judicial review. This argument advanced by FLS Plast is therefore unfounded.

80 Consequently, the first and second parts of the third plea must be dismissed as partly inadmissible and partly unfounded.

– The third part of the third plea

81 As regards the third part of FLS Plast's third plea in support of its appeal, to the effect that the Commission was wrong in not granting it a 30% reduction in the amount of the fine although it formed an economic entity with Trioplast Wittenheim, it should be noted that in paragraph 168 of the judgment under appeal the General Court rejected that argument, holding that 'it was for the Commission to consider the two companies' cooperation in the investigation on an individual basis'.

82 In this regard, the General Court held in paragraph 172 of the judgment under appeal that 'Trioplast Wittenheim, Trioplast Industrier and [FLS Plast] were, correctly, assigned individual starting amounts, which were subsequently adjusted according to the circumstances specific to them'. However, the General Court found, in paragraph 173 of that judgment, that 'it is not apparent from either the contested decision or the documents produced before the Court that Trioplast Industrier provided information justifying a reduction of 30% [of the fine]' and, in paragraph 174, that, 'since neither of the successive parent companies provided the Commission with relevant information, the Commission … treated two comparable situations differently'. The General Court nevertheless decided, as stated in paragraphs 175 and 176 of the judgment, that since a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party, FLS Plast 'cannot rely on the fact that the Commission, wrongly, extended the benefit of Trioplast Wittenheim's cooperation to Trioplast Industrier'.

83 Whilst the General Court was right in holding that FLS Plast was not entitled to the 30% reduction in the amount of the fine, which was also granted to Trioplast Industrier under the Leniency Notice, that determination by the General Court is founded on legally incorrect grounds.

84 However, it is to be recalled that, if the grounds of a judgment of the General Court disclose an infringement of European Union law but the operative part is shown to be well founded on other legal grounds, such an infringement is not capable of bringing about the setting aside of that judgment, and a substitution of grounds must be made (see *Diputación Foral de Vizcaya* v *Commission* EU:C:2011:372, paragraph 171 and the case-law cited).

85 It must be held, in this regard, that only the undertaking which has cooperated with the Commission on the basis of the Leniency Notice can be granted, under that notice, a reduction of the fine which would have been imposed upon it without that cooperation. That reduction cannot be extended to a company which, for part of the infringement period, had formed part of the economic entity constituted by that undertaking, but no longer formed part of it at the time when that undertaking cooperated with the Commission.

86 A contrary interpretation, such as that contended for by FLS Plast, would mean generally that, in instances where one undertaking succeeds another, a company which participated initially in an infringement, as the parent company of a subsidiary directly involved in it, and which then transferred that subsidiary to another undertaking would benefit, as the case may be, from a fine reduction granted to the latter undertaking in respect of its cooperation with the Commission, although that company neither contributed itself to the detection of the infringement in question nor exercised decisive influence at the time of the cooperation on its former subsidiary.

87 Consequently, in the light of the objective pursued by the Leniency Notice, consisting in promoting the detection of conduct contrary to Article 101 TFEU, and in order to ensure effective application of that provision, there is nothing to justify extending a fine reduction granted to an undertaking in respect of its cooperation with the Commission to an undertaking which, whilst having controlled, in the past, the subsidiary involved in the infringement in question, did not itself contribute to detection of the infringement.

88 In the case in point, it is to be recalled that, when Trioplast Wittenheim cooperated with the Commission, namely from December 2002, it no longer formed an economic entity with FLS Plast. It follows that FLS Plast cannot obtain, by way of extension, a 30% reduction of the basic amount of the fine, like that granted to Trioplast Industrier in the light of the fact that it formed an economic entity with Trioplast Wittenheim as the latter's parent company.

89 In those circumstances, it is, moreover, irrelevant whether the 30% reduction of the basic amount of the fine granted to Trioplast Industrier was rightly granted since, in any event, that reduction could not have been extended to FLS Plast by virtue of equal treatment given that it was not in a situation comparable to that of Trioplast Industrier.

90 In the light of the foregoing considerations, it must be held that this part of the plea put forward by FLS Plast is directed against grounds of the judgment under appeal for which the Court has, as set out in paragraphs 84 to 88 of the present judgment, substituted its own grounds, which justify in law the determination that the 30% reduction of the fine from which Trioplast Industrier benefited could not be extended to FLS Plast.

91 It follows that the third part of the plea raised in support of its appeal by FLS Plast, directed against these substituted grounds, is, therefore, unfounded.

92 As all the parts of the third plea have been dismissed, FLS Plast's third plea must be dismissed as a whole.

The fourth plea: Breach of the principle of proportionality and of the General Court's obligation to state reasons concerning the determination of the fine

Arguments of the parties

93 As regards the first part of the fourth plea, alleging breach of the principle of proportionality when determining the amount of the fine imposed on FLS Plast, the latter points out that three different companies participated in the infringement at issue as the parent company of Trioplast Wittenheim over three successive periods of time. Trioplast Wittenheim is the only addressee of the decision at issue which belonged to each of the three infringing undertakings for the entire duration of the infringement. Since the limitation period for the imposition of fines had expired in respect of Saint-Gobain, only Trioplast Wittenheim could be declared liable for the infringement in respect of the period prior to 1992.

94 Following delivery of the judgment under appeal, the fine imposed on FLS Plast amounts to EUR 14.45 million, a sum which corresponds to more than 80% of the total fine imposed on Trioplast Wittenheim for 20 years of involvement in the infringement. However, FLS Plast was involved in the infringement, indirectly, for only seven years, that is to say, for 35% of the total duration of the infringement. This approach is manifestly disproportionate. The joint and several liability imposed on a parent company should at least bear a reasonable relationship with the period during which it formed an economic entity with its subsidiary.

95 In FLS Plast's submission, the parent company is to be regarded not as a separate offender but rather as a guarantor for the actual fine imposed on the subsidiary that participated in the cartel. The Commission may not retrieve from the parent companies an amount exceeding the primary fine imposed on the subsidiary. The Commission ignored this principle when imposing on FLS Plast an amount corresponding to 80% of the fine imposed on Trioplast Wittenheim for the whole duration of the infringement.

96 According to FLS Plast, since Trioplast Wittenheim was involved in the infringement for a total of 20 years and FLS Plast formed part of the same economic entity as that company for seven years, the fine imposed on FLS Plast should in principle not exceed seven twentieths of the fine imposed on Trioplast Wittenheim, that is to say, EUR 6.25 million.

97 By the second part of this plea, FLS Plast contends that the judgment under appeal is vitiated by a failure to state adequate reasons in this context.

98 In FLS Plast's submission, the General Court's response to its arguments is limited to just paragraph 100 of the judgment under appeal. The General Court solely verified whether the Commission complied with 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 Guidelines'). However, a mechanical application of the Guidelines cannot ensure the proportionality of the resulting fine in each individual case.

99 The Commission's principal submission is that both parts of this plea are inadmissible. They amount merely to a request that the amount of the fine be reduced and FLS Plast has not pointed out any error of law committed by the General Court in this context. According to the Commission, FLS Plast's arguments seek a re-examination of the decision at issue itself and are not set out as sound grounds of complaint against the judgment under appeal. They must therefore be declared inadmissible.

100 In the alternative, as regards the first part of the fourth plea, the Commission disputes that the allocation of liability between companies forming part of the same economic entity at different times ought to be proportionate to the temporal extent of each such company's participation in the infringement or ownership of a subsidiary that committed the infringement in question. Since the starting amount for calculation of a fine is fixed and does not depend on the duration of the infringement, but reflects only its gravity, the 10% increase for duration in the basic amount of the fine per year of participation by an undertaking in the infringement results in fines being imposed that are not strictly proportionate to the infringement's duration.

101 So far as concerns the second part of this plea, alleging that adequate reasons are not stated in the judgment under appeal, the Commission submits that, in paragraphs 92 to 105 of the judgment under appeal, the General Court, on the contrary, provided a specific response to FLS Plast's argument relating to the lack of proportionality of the fine that was imposed upon it.

102 In its reply, FLS Plast responds that, in submitting that the General Court should have concluded that the amount imposed on it in the decision at issue was disproportionate compared to the duration of its direct involvement in the infringement, it clearly identified sound grounds of complaint based on errors of law committed by the General Court in the judgment under appeal.

103 As to the second part of this plea, FLS Plast states that the fact that it does not wish to address in its appeal all the shortcomings of the judgment under appeal does not in any way affect the soundness of the fourth plea raised by it in support of the appeal.

104 In its rejoinder, the Commission repeats the argument that FLS Plast, having failed to identify any shortcomings in the judgment under appeal, seeks to obtain a general re-examination of the decision at issue itself.

Findings of the Court

– Admissibility

105 So far as concerns the admissibility of FLS Plast's fourth plea, it need merely be stated that the complaints set out by FLS Plast against the judgment under appeal — to the effect, in the case of the first part of the plea, that the General Court approved the Commission's calculation of the fine, resulting in the imposition of a fine that is disproportionate, and, as regards the second part of the plea, that the General Court stated grounds for this determination merely by means of reference to the Guidelines, which amounts to a defective statement of reasons — are sufficiently clear from paragraphs 99 to 123 of its appeal and enable the Court of Justice to conduct its review. Accordingly, both parts of the fourth plea raised by FLS Plast in support of its appeal are admissible.

– Substance

106 So far as concerns the first part of the fourth plea, alleging breach of the principle of proportionality in connection with determination of the fine, it is necessary to reject the argument put forward by FLS Plast that, first, it should be regarded as a guarantor for the actual fine imposed on its subsidiary that participated in the cartel and, second, the Commission may not retrieve from the parent companies an amount exceeding the 'primary' fine imposed on their subsidiary.

107 The Court has already held that, as regards payment of a fine imposed for breach of the competition rules, the joint and several liability between two companies constituting an economic entity cannot be reduced to a type of security provided by the parent company in order to guarantee payment of the fine imposed on the subsidiary and that an argument that that parent company could not be ordered to pay a fine higher than the fine imposed on its subsidiary is therefore unfounded (see, to this effect, Case C-50/12 P *Kendrion* v *Commission* EU:C:2013:771, paragraphs 56 and 58). This case-law takes account of the fact that the principle that penalties must be specific to the offender and the offence requires, in accordance with Article 23(3) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [81 EC] and [82 EC] (OJ 2003 L 1, p. 1), that the amount of the fine to be paid jointly and severally must be determined by reference to the gravity of the infringement for which the undertaking concerned is considered individually responsible and the duration of the infringement (Joined Cases C-247/11 P and C-253/11 P *Areva and Others* v *Commission* EU:C:2014:257, paragraph 127 and the case-law cited).

108 As regards, furthermore, the argument alleging that the fine is disproportionate to the duration of the infringement, it must be held that FLS Plast has failed to demonstrate this.

109 It is true that the General Court is required to ensure that the calculation of the amount of a fine imposed on an undertaking for its involvement in an infringement of the European Union competition rules takes due account of the duration of the infringement and of that undertaking's participation in it. However, the duration of an infringement is neither the only factor nor necessarily the most important factor that the Commission or the General Court must take into account for the purpose of calculating the fine.

110 In this instance, it is apparent from the documents before the Court that the fines imposed on FLS Plast and the other companies involved in the cartel at issue were not calculated solely on the basis of the respective duration of the involvement of those companies. As regards FLS Plast, the amount of the fine that was imposed upon it did not necessarily have to be strictly proportional, or even 'reasonably' proportional, to the duration of its participation in the infringement at issue, but had to reflect appropriately the gravity of the infringement committed.

111 As to the gravity of that infringement, it should be recalled that the infringement consisted in participating in a complex of agreements and concerted practices concerning six Member States and that it related to the fixing of prices and the establishment of common price calculation models, the sharing of markets and the allocation of sales quotas, the assignment of customers, deals and orders, concerted bidding in response to certain invitations to tender, and the exchange of individualised information. It is in that sense that the Commission, correctly, classified the infringement as 'very serious' in recital 765 of the decision at issue. That classification has not been called into question by FLS Plast in its appeal.

112 In those circumstances, it does not appear that, when the General Court set the fine for which FLS Plast was held jointly and severally liable, under Article 2(f) of the decision at issue, at EUR 14.45 million, namely at an amount markedly lower than the minimum amount of EUR 20 million — laid down in the third indent of point 1.A of the Guidelines — that is generally envisaged by the Commission as the starting amount for calculating fines for 'very serious infringements', it set the fine imposed, in the exercise of its unlimited jurisdiction, at a disproportionate amount.

113 Consequently, the first part of the fourth plea must be dismissed as unfounded.

114 Nor can the Court uphold the second part of this plea, alleging that adequate reasons are not stated in the judgment under appeal in so far as it rejected the argument that when the Commission set the fine imposed on FLS Plast it infringed the principle of proportionality in relation to the duration of the latter's participation in the infringement.

115 The General Court examined that argument in paragraph 100 of the judgment under appeal, in which it held that 'the complaint that [FLS Plast]'s liability is manifestly disproportionate to the period during which it held shares in Trioplast Wittenheim is unfounded. No rule or principle of law provides that it is for the Commission to ensure such proportionality. It is true that the Commission must, under the Guidelines, take account of the duration of the infringement. In the present case, it has, however, been established … that, in [FLS Plast]'s case, the Commission had increased the starting amount ascribed to [FLS Plast] by 10% for each year of [its] involvement'.

116 That, admittedly succinct, reasoning enables the reason for which the General Court rejected the line of argument set out by FLS Plast in this context to be understood. Furthermore, that reasoning must be read in conjunction with the General Court's findings in paragraphs 92 to 105 of the judgment under appeal which also concern the calculation of the fine in the light of the duration of FLS Plast's participation in the infringement, in particular in relation to the duration of the participation of Trioplast Industrier and Saint-Gobain.

117 In this regard, the General Court stated in particular, in paragraph 101 of the judgment under appeal, that '[it could not] cannot accept the contention that the Commission should have divided up the starting amount before varying it by reference to other factors on the ground that Trioplast Wittenheim had belonged in turn to the Saint-Gobain group, to [FLS Plast] and to Trioplast Industrier. First, [FLS Plast did] not [advance] any rule or principle of law that imposes such an obligation. Second, the approach of ascribing to a parent company the same starting amount as that set for a subsidiary participating directly in a cartel, without dividing up that starting amount where there are several successive parent companies, is not in and of itself inappropriate'.

118 Having regard, in particular, to the findings set out in paragraph 101 of the judgment under appeal, the reasoning provided by the General Court in paragraph 100 of that judgment is clearly sufficient to enable FLS Plast to ascertain the reason why the General Court rejected its line of argument in this context, and for the Court of Justice to conduct its review. Consequently, it cannot be found that the judgment under appeal failed to state adequate reasons in this regard.

119 Since both parts of the fourth plea have been dismissed, the latter must be declared unfounded in its entirety.

The fifth plea: excessive duration of the proceedings before the General Court

–Arguments of the parties

120 By the fifth plea, FLS Plast complains that the judgment under appeal was delivered by the General Court at the conclusion of proceedings whose duration was excessive, as six years elapsed between the lodging of the application and delivery of the judgment under appeal. The General Court, in FLS Plast's submission, consequently infringed the rights that it can invoke under Article 47 of the Charter and Article 6(1) of the ECHR.

121 FLS Plast observes that the General Court remained inactive for a period of four years and four months between the end of the written procedure on 20 February 2007 and the date of the hearing, 22 June 2011, without that prolonged inertia being capable of being justified by measures of organisation of procedure or investigative measures. The sole action undertaken by the General Court during that period was the sending before the hearing of a questionnaire comprising four questions.

122 According to FLS Plast, the decision at issue and the arguments which FLS Plast raised did not present a degree of complexity preventing the General Court from preparing for the oral procedure within a period of less than four years and four months.

123 FLS Plast points out that the General Court was able to deliver its first judgments involving the decision at issue on 13 September 2010. Thus, in September 2010 the General Court was already in a position to rule in the context of those other judgments, having carried out all the economic assessments and factual investigations necessary for that purpose. Moreover, those judgments concerned Trioplast Industrier (Case T-40/06 *Trioplast Industrier* v *Commission* EU:T:2010:388) and Trioplast Wittenheim (Case T-26/06 *Trioplast Wittenheim* v *Commission* EU:T:2010:387). All the facts relevant in the context of the present case are identical to those before the Court in connection with the judgment in *Trioplast Wittenheim* v *Commission* EU:T:2010:387. There is accordingly no justification for the period of one year and five months that elapsed between delivery by the General Court of that judgment and its delivery of the judgment under appeal.

124 Finally, FLS Plast's conduct before the General Court did not cause the proceedings before the General Court to be protracted.

125 The Commission's principal submission is that this plea is inadmissible. It contends that where a party considers that the duration of proceedings before the General Court was excessive, the proper remedy to compensate for the injury which it claims to have sustained on this basis is an action for damages. Nor can an excessive duration of that kind lead in itself to a reduction of the fine, as sought by FLS Plast, because that would amount to a variation of the decision at issue.

126 Furthermore, having regard to the circumstances of the case — including what is at stake for the undertaking, complexity and conduct — the duration of the proceedings before the General Court is reasonable. The Commission states in this regard that almost all of the facts on which the decision at issue was based were contested by FLS Plast and therefore had to be verified. Since some of the cases concerned parent companies and their subsidiaries, certain measures of organisation were taken so that those proceedings could be heard and adjudicated upon together. Regard should also be had to the fact that FLS Plast had lodged a very complex application with a multiplicity of pleas and sub-pleas. The other 14 applicants produced similarly detailed pleadings.

127 In the alternative, the Commission submits that, should the Court find a breach of the obligation to adjudicate within a reasonable time and consider it necessary to reduce the fine, any such reduction must be extremely limited or nominal only.

128 In its reply, FLS Plast submits that the Commission does not give any legal basis for the plea of inadmissibility raised by it.

129 The Commission, in its rejoinder, states that pleas on appeal may only be raised as regards errors of law committed by the General Court. The fifth plea raised by the General Court in support of its appeal does not relate to such an error.

Findings of the Court

130 As is apparent from the first paragraph of Article 58 of the Statute of the Court of Justice and from its case-law, the Court has jurisdiction, in an appeal, to verify whether a breach of procedure adversely affecting the appellant's interests was committed by the General Court (see, inter alia, Case C-385/07 P *Der Grüne Punkt — Duales System Deutschland* v *Commission* EU:C:2009:456, paragraph 176).

131 So far as concerns infringement of Article 47 of the Charter, pleaded by FLS Plast, it should be pointed out that, under the second paragraph of that provision, '[e]veryone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law'. As the Court has repeatedly held, that article relates to the principle of effective judicial protection (see, inter alia, *Der Grüne Punkt — Duales System Deutschland* v *Commission* EU:C:2009:456, paragraph 179 and the case-law cited).

132 On that basis, such a right, which was affirmed as a general principle of European Union law before the Charter entered into force, is applicable in the context of proceedings brought against a Commission decision (see inter alia, to this effect, *Der Grüne Punkt — Duales System Deutschland* v *Commission* EU:C:2009:456, paragraph 178 and the case-law cited).

133 It should also be pointed out that, according to the European Court of Human Rights, a failure to adjudicate within a reasonable time must, as a procedural irregularity constituting the breach of a fundamental right, give rise to an entitlement of the party concerned to an effective remedy granting him appropriate relief (see, to this effect, *Kudła v. Poland* [GC], no. 30210/96, §§ 156 and 157, ECHR 2000-XI).

134 According to the Court of Justice's case-law, however, having regard to the need to ensure that the competition rules of European Union law are complied with, the Court cannot allow an appellant to reopen the question of the amount of a fine which has been imposed upon it, on the sole ground that there was a failure to adjudicate within a reasonable time, where all of its pleas directed against the findings made by the General Court concerning the amount of that fine and the conduct that it penalises have been dismissed (see, inter alia, Case C-58/12 P *Groupe Gascogne* v *Commission* EU:C:2013:770, paragraph 78 and the case-law cited).

135 Indeed, the Court has also held that the sanction for a breach, by a Court of the European Union, of its obligation under the second paragraph of Article 47 of the Charter to adjudicate on the cases before it within a reasonable time must be an action for damages brought before the General Court, since such an action constitutes an effective remedy. It follows that a claim for compensation for the damage caused by the failure by the General Court to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself (see, inter alia, *Groupe Gascogne* v *Commission* EU:C:2013:770, paragraphs 83 and 84).

136 It is consequently for the General Court, sitting in a different composition from that which heard the dispute giving rise to the proceedings whose duration is criticised, to assess both the actual existence of the harm alleged and the causal connection between that harm and the excessive length of the legal proceedings at issue by examining the evidence submitted for that purpose (see inter alia, to this effect, *Groupe Gascogne* v *Commission* EU:C:2013:770, paragraphs 88 and 90).

137 Whilst that is so, it must be stated that the duration of the proceedings before the General Court that gave rise to the judgment under appeal, which amounted to more than six years, cannot be justified by any of the particular circumstances of that case.

138 It is apparent, in particular, that a period of approximately four years and four months elapsed between the end of the written procedure, when the Commission's rejoinder was lodged in February 2007, and the opening, in June 2011, of the oral procedure. The length of that period cannot be explained by just the circumstances of the case, whether it be the complexity of the dispute, the conduct of the parties or supervening procedural matters.

139 As regards the complexity of the dispute, it is apparent from examining the action brought by FLS Plast, as summarised in paragraphs 9 and 10 of the present judgment, that, whilst the pleas relied on required a detailed examination, they were not of particular difficulty. Although it is true that around 15 addressees of the decision at issue brought actions for its annulment before the General Court, that fact could not have prevented it from scrutinising the documents in the case and preparing for the oral procedure within a period of less than four years and four months.

140 So far as concerns the conduct of the parties, there is nothing in the file before the Court to indicate that FLS Plast contributed by its conduct to a slowing of the handling of the case.

141 Nor, finally, is it apparent from that file that the proceedings were interrupted or delayed by the supervening of procedural matters capable of justifying their length.

142 In the light of the foregoing, it must be found that the procedure in the General Court infringed the second paragraph of Article 47 of the Charter in that it did not comply with the requirement to adjudicate within a reasonable time, which constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals (see, to this effect, Case C-352/98 P *Bergaderm and Goupil* v *Commission* EU:C:2000:361, paragraph 42).

143 It is clear, however, from the considerations set out in paragraphs 134 to 136 of the present judgment that the fifth plea put forward by FLS Plast in support of its appeal must be dismissed.

144 It follows that, as none of the pleas put forward by FLS Plast in support of its appeal has been upheld, the appeal must be dismissed in its entirety.

Costs

145 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

146 Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and FLS Plast has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Commission.

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

1. Dismisses the appeal;

2. Orders FLS Plast A/S to pay the costs.

[Signatures]