Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 January 2017*

(Appeal — Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Coordination of selling prices and exchange of sensitive business information — Obligation to state reasons)

In Case C-613/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 26 November 2013,

European Commission, represented by F. Castillo de la Torre, F. Ronkes Agerbeek and J. Norris-Usher, acting as Agents, with an address for service in Luxembourg,

appellant,

the other parties to the proceedings being:

Keramag Keramische Werke GmbH, formerly Keramag Keramische Werke AG, established in Ratingen (Germany),

Koralle Sanitärprodukte GmbH, established in Vlotho (Germany),

Koninklijke Sphinx BV, established in Maastricht (Netherlands),

Allia SAS, established in Avon (France),

Produits Céramiques de Touraine SA, established in Selles-sur-Cher (France),

Pozzi Ginori SpA, established in Milan (Italy),

Sanitec Europe Oy, established in Helsinki (Finland),

represented by J. Killick, Barrister, P. Lindfelt, advokat, and K. Struckmann, Rechtsanwalt,

applicants at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, M. Berger, E. Levits, S. Rodin (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Wathelet,

* Language of the case: English.

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2015,

after hearing the Opinion of the Advocate General at the sitting on 26 November 2015,

gives the following

Judgment

1 By its appeal, the European Commission asks the Court of Justice to set aside the judgment of the General Court of the European Union of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, 'the judgment under appeal', EU:T:2013:457) in so far as, by that judgment, the General Court annulled in part 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) ('the decision at issue').

2 By a cross-appeal, Keramag Keramische Werke GmbH, formerly Keramag Keramische Werke AG, Koralle Sanitärprodukte GmbH, Koninklijke Sphinx BV, Allia SAS, Produits Céramiques de Touraine SA, Pozzi Ginori SpA and Sanitec Europe Oy (together 'the applicants at first instance') ask the Court to set aside the judgment under appeal in so far as, by that judgment, the General Court dismissed their application for annulment of the decision at issue as regards their participation in an infringement of competition rules on the Italian market for bathroom fittings and fixtures.

Background to the dispute and the decision at issue

3 The background to the dispute was set out in paragraphs 1 to 26 of the judgment under appeal and may be summarised as follows.

4 By the decision at issue, the Commission found that there had been an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) in the bathroom fittings and fixtures sector. That infringement, in which 17 undertakings had allegedly participated, was said to have taken place over various periods between 16 October 1992 and 9 November 2004 and to have taken the form of anticompetitive agreements or concerted practices covering the territory of Belgium, Germany, France, Italy, the Netherlands and Austria.

5 On 15 July 2004, Masco Corp. and its subsidiaries, including Hansgrohe AG, which manufactures taps and fittings, and Hüppe GmbH, which manufactures shower enclosures, informed the Commission of the existence of a cartel in the bathroom fittings and fixtures sector and submitted an application for immunity from fines under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3), or, in the alternative, for a reduction of any fines that might be imposed on them. On 2 March 2005, the Commission adopted a decision granting Masco Corp. conditional immunity from fines.

6 On 9 and 10 November 2004, the Commission conducted unannounced inspections at the premises of various companies and national industry associations operating in the bathroom fittings and fixtures sector. Between 15 November 2005 and 16 May 2006, the Commission sent requests for information to those companies and associations, including some of the applicants in Case T-379/10. It then, on 26 March 2007, adopted a statement of objections, which was also notified to those applicants. In the period from 15 November 2004 to 20 January 2006, a number of undertakings, not including the applicants at first instance, applied for immunity from fines or a reduction in fines.

7 Following a hearing from 12 to 14 November 2007, in which the applicant in Case T-381/10 took part, the sending, on 9 July 2009, to several companies, including some of the applicants in Case T-379/10 and the applicant in Case T-381/10, of a letter of facts, drawing their attention to certain evidence on which the Commission was minded to rely when adopting a final decision, and the sending, between 19 June 2009 and 8 March 2010, to several companies, including some of the applicants in Case T-379/10 and the applicant in Case T-381/10, of further requests for information, the Commission, on 23 June 2010, adopted the decision at issue.

8 In the decision at issue, the Commission found that the infringement identified consisted, first and foremost, in 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; secondly, in the fixing 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, thirdly, in the disclosure and exchange of sensitive business information. Those practices had followed a recurring pattern which was consistent in each of the six Member States covered by the Commission's investigation. Price setting in the bathroom fittings and fixtures industry had followed an annual cycle; specifically, the manufacturers had set price lists, which generally remained in force for a year and formed the basis for commercial relations with wholesalers.

9 The Commission also found that the practices described above formed part of an overall plan to restrict competition among the addressees of the decision at issue and had the characteristics of a single and continuous infringement, which covered three product sub-groups — taps and fittings, shower enclosures and accessories and ceramics ('the three product sub-groups') — and extended to the territory of Belgium, Germany, France, Italy, the Netherlands and Austria. As regards the organisation of the cartel, the Commission pointed to the existence of national industry associations with members active in all three product sub-groups, which it termed 'umbrella associations', national industry associations with members active in at least two of the three product sub-groups, which it termed 'cross-product associations', as well as product-specific associations with members active in only one of those product sub-groups. Lastly, it found that a central group of undertakings participated in the cartel in several Member States and in umbrella associations and cross-product associations.

10 The applicants in Case T-379/10, Keramag Keramische Werke, Koninklijke Sphinx, Allia, Produits Céramiques de Touraine and Pozzi Ginori, produced ceramic ware ('ceramics'), and Koralle Sanitärprodukte produced shower enclosures. At the material time, the applicants in Case T-379/10 were all subsidiaries of Sanitec Europe, the applicant in Case T-381/10 and also an addressee of the decision at issue. In that decision, Sanitec Europe, Allia and its subsidiaries, Keramag Keramische Werke and its subsidiaries, Koninklijke Sphinx and Pozzi Ginori were collectively referred to by the Commission as 'Sanitec'. Throughout their participation in the infringement alleged against them, the subsidiaries of Sanitec Europe were members of the following national industry associations of bathroom fittings and fixtures manufacturers: in Belgium, the Vitreous China-group; in Germany, the IndustrieForum Sanitär, formerly Freundeskreis der deutschen Sanitärindustrie, the Arbeitskreis Baden und Duschen and the Fachverband Sanitärkeramische Industrie; in France, the Association française des industries de céramique sanitaire ('AFICS'); in Italy, the Michelangelo association; in the Netherlands, the Sanitair Fabrikanten Platform and the Stichting Verwarming en Sanitair; and, in Austria, the Arbeitskreis Sanitärindustrie.

11 As regards the participation of the applicants at first instance in the infringement identified, the Commission found that, since Sanitec Europe had participated, through its national subsidiaries, throughout the infringement period alleged against them, in cartel meetings of the IndustrieForum Sanitär, the Arbeitskreis Sanitärindustrie, the Sanitair Fabrikanten Platform and the Stichting Verwarming en Sanitair and in meetings of the Michelangelo association — associations whose other members were active in several Member States concerned by the decision at issue — the applicants at

first instance belonged to a central group of undertakings and were aware, or ought reasonably to have been aware, that the infringement found concerned at least the three product sub-groups and had an extensive geographic scope as it covered the territory of six Member States.

12 For the purpose of setting the fines imposed on each undertaking, the Commission took as a 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). It determined the basic amount of the fine, explaining that this calculation was based, for each undertaking, on its sales by Member State concerned, multiplied by the number of years of participation in the infringement found in the Member State in question for the relevant product sub-group, so that account had been taken of the fact that certain undertakings were active only in certain Member States or in only one of the three product sub-groups.

13 As regards the gravity of the infringement, the Commission set the multiplier at 15%, taking into account the four criteria for assessing the infringement: the nature of the conduct, the combined market shares, the geographic scope of the infringement and its implementation. In addition, it set the multiplier to be applied, to take account of the duration of the infringement, at 4.33 for Keramag Keramische Werke and Germany, reflecting 4 years and 4 months' participation in the infringement, at 10 for Keramag Keramische Werke and Austria, reflecting 10 years' participation in the infringement, at 3 for Keramag Keramische Werke and Belgium, reflecting 3 years' participation in the infringement, at 8.75 for Koralle Sanitärprodukte, reflecting 8 years and 10 months' participation in the infringement, at 3 for Koninklijke Sphinx and Belgium, reflecting 3 years' participation in the infringement, at 0.66 for Allia and France, reflecting 8 months' participation in the infringement, at 0.66 for Produits Céramiques de Touraine and France, reflecting 8 months' participation in the infringement, and at 5.33 for Pozzi Ginori, reflecting 5 years and 4 months' participation in the infringement. Finally, in order to deter the undertakings in question from participating in the unlawful practices with which the decision at issue was concerned, the Commission decided to increase the basic amount of the fine by an additional amount set at 15%.

14 After having determined the basic amount, the Commission considered whether there were any aggravating or mitigating circumstances capable of justifying adjustments to the basic amount. It did not find that any aggravating or mitigating circumstances applied in the case of the applicants at first instance, and, after the ceiling of 10% of turnover was applied, the amount of the fine imposed on the applicants at first instance in Article 2 of the decision at issue was EUR 57 690 000.

Proceedings before the General Court and the judgment under appeal

15 By applications lodged at the General Court Registry on 8 September 2010, the applicants at first instance brought two actions for annulment of the decision at issue, relying, in Case T-379/10, on seven pleas in law and, in Case T-381/10, on nine.

16 The General Court decided on 16 December 2010 to join those cases for the purposes of the written procedure and, on 23 March 2012, to join them for the purposes of the oral procedure and of the judgment.

17 By the judgment under appeal, the General Court rejected the majority of the pleas put forward by the applicants at first instance, but, the seven pleas relied on in Case T-379/10 being, in essence, identical to the first five pleas and the eighth and ninth pleas relied on in Case T-381/10 and the General Court having adopted the numbering used in Case T-381/10, it upheld the first and third parts of the third plea in law put forward by the applicants at first instance. It found that the Commission had erred in concluding that Allia and Produits Céramiques de Touraine had participated in the infringement at issue and in concluding that Pozzi Ginori had participated in that infringement between 10 March

1996 and 14 September 2001 when its participation had been established to the requisite legal standard only in respect of the period between 14 May 1996 and 9 March 2001. Consequently, the General Court annulled the relevant part of point 6 of Article 1(1) of the decision at issue.

18 As regards the reduction of fines, the General Court took into account the fact that it had partially upheld the third plea put forward by the applicants at first instance, and annulled Article 2(7) of the decision at issue setting the amount of the fine imposed on the applicants at first instance, in so far as it exceeded EUR 50 580 701.

The forms of order sought

The appeal

19 The Commission claims that the Court should:

— set aside point 1 of the operative part of the judgment under appeal in so far as it annulled Article 1 of the decision at issue as regards the events in AFICS and the liability of Allia, Produits Céramiques de Touraine and Sanitec Europe for them;

— set aside in full point 2 of the operative part of the judgment under appeal;

— if the Court of Justice gives final judgment, dismiss the action for annulment also in so far as it concerns the events in AFICS and reinstate the fines imposed on Allia, Produits Céramiques de Touraine and Sanitec Europe; and

— order the applicants at first instance to pay the costs of the present appeal, and, if the Court of Justice gives final judgment on the action for annulment, order them also to pay the costs of the proceedings at first instance.

20 The applicants at first instance contend that the Court should:

— dismiss the appeal as inadmissible or unfounded; and

— order the Commission to pay the costs.

The cross-appeal

21 The applicants at first instance claim that the Court should:

— set aside points 1 and 3 of the operative part of the judgment under appeal in so far as, by that judgment, the General Court rejected the second part of the fifth plea in law relied on at first instance, relating to the failure of the statement of objections of 26 March 2007 to properly set forth the allegations made against Pozzi Ginori and Sanitec Europe in relation to Italy;

— annul point 6 of Article 1(1) of the decision at issue in so far as the Commission thereby found that Sanitec Europe and Pozzi Ginori participated in an infringement in the Italian market, or, in the alternative, set it aside in so far as the Commission thereby found that Sanitec Europe and Pozzi Ginori participated in such an infringement for a period other than that from 12 May 2000 to 9 March 2001;

— annul Article 2(7)(a) and (f) of the decision at issue or, in the alternative, reduce the amount of the fines imposed under that provision on Sanitec Europe alone or on Sanitec Europe jointly and severally with Pozzi Ginori;

— in the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice; and

— order the Commission to bear its own costs and to pay those incurred by the applicants at first instance before the Court of Justice and to pay an appropriate proportion of the costs incurred by the applicants at first instance before the General Court.

22 The Commission contends that the Court should:

— dismiss the cross-appeal as inadmissible and/or unfounded; and

— order the applicants at first instance to pay the costs.

The main appeal

The first ground of appeal

23 By its first ground of appeal, which is in five parts and concerns paragraphs 112 to 121 of the judgment under appeal, the Commission submits that the General Court infringed its obligation to state reasons and made several errors of law in examining the evidence relating to the infringement at issue.

The first part of the first ground of appeal

– Arguments of the parties

24 By the first part of the first ground of appeal, the Commission claims that the General Court made an error of law when it held that the corroboration of a piece of evidence, in this case the statement made by American Standard Inc. (‘Ideal Standard’) in connection with the leniency application, required a piece of evidence that would confirm the coordination of prices at the AFICS meeting on 25 February 2004. According to the Commission, the requirement of corroboration is one that tries to test the credibility of a piece of evidence. By requiring a piece of evidence necessarily to be proved by a second document and by failing to determine whether a single item of evidence may be reliable, the General Court had interpreted the requirement of corroboration too narrowly and breached the principle of unfettered evaluation of evidence.

25 The applicants at first instance contend that the first part of the first ground of appeal is inadmissible in so far as, first, the Commission is asking the Court to review the General Court’s findings concerning the corroboration and reliability of Ideal Standard’s leniency statement, and, secondly, the arguments relating to the reliability of a statement made in connection with a leniency application even if not corroborated by a second piece of evidence were not raised before the General Court. In any event, they maintain that it does not follow from the case-law that a leniency statement can be so reliable that there is no need for corroboration as regards all its elements.

– Findings of the Court

26 It must be noted that the appraisal by the General Court of the probative value of the documents before it cannot, save where the rules on the burden of proof and the taking of evidence have not been observed or the evidence has been distorted, be challenged before the Court of Justice (judgment of 19 December 2013, *Siemens* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 129 and the case-law cited).

27 By contrast, the question whether the General Court observed the rules relating to the burden of proof and the taking of evidence in its examination of the rules relied on by the Commission to support the existence of an infringement of the competition rules of the European Union constitutes a question of law which is amenable to judicial review on appeal (judgment of 19 December 2013, *Siemens* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 130 and the case-law cited).

28 As the General Court recalled in paragraph 105 of the judgment under appeal, an admission by one undertaking accused of having participated in a cartel, the accuracy of which is contested by several other undertakings similarly accused, cannot be regarded as constituting adequate proof of an infringement committed by the latter undertakings unless it is supported by other evidence, given that the degree of corroboration required may be lesser in view of the reliability of the statements at issue (see, again, judgment of 19 December 2013, *Siemens* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 135).

29 In paragraphs 117 and 118 of the judgment under appeal, the General Court merely applied the rule derived from that case-law when, having noted that the statements made by Ideal Standard in connection with its leniency application were contested, it held that those statements, on their own, were not therefore sufficient proof of the anticompetitive nature of the discussions that took place at the AFICS meeting on 25 February 2004.

30 The Commission’s arguments concerning the overly narrow interpretation of the requirement of corroboration are accordingly unfounded.

31 As regards the arguments put forward by the Commission to challenge the outcome of the General Court’s examination of evidence, namely the reliability and probative value attributed by the General Court to the statements made by Ideal Standard in connection with its leniency application, these are, in accordance with the case-law recalled in paragraph 26 of the present judgment, inadmissible at the stage of the appeal, since the Commission has neither claimed nor demonstrated that the facts or the evidence have clearly been distorted.

32 The first part of the first ground of appeal must therefore be rejected as partly inadmissible and partly unfounded.

The second part of the first ground of appeal

– Arguments of the parties

33 By the second part of the first ground of appeal, the Commission submits that, having erroneously found that Ideal Standard’s statement needed to be corroborated by other evidence, the General Court wrongly failed to examine the probative value of the statement made by Roca SARL (‘Roca’) that accompanied its leniency application, referring to the passage in the decision at issue summarising Roca’s reply to the statement of objections of 26 March 2007. However, according to the Commission, that reply is not even part of the case file and, moreover, the General Court came to a diametrically opposed conclusion in the case giving rise to the judgment of 16 September 2013, *Roca* v *Commission*

(T-412/10, not published, EU:T:2013:444), in which that reply was part of the case file. In addition, in the parallel cases that gave rise to the judgments of 16 September 2013, *Villeroy & Boch Austria and Others* v *Commission* (T-373/10, T-374/10, T-382/10 and T-402/10, not published, EU:T:2013:455), and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477), the General Court rightly held that one leniency statement can be corroborated by another, and concluded that the statements made by Ideal Standard and Roca each confirmed the other, at least with regard to 'low-end' products.

34 Consequently, in the Commission's submission, in the first place, the judgment under appeal is vitiated by an inadequate statement of reasons inasmuch as the General Court failed to examine the probative value of the leniency statement made by Roca, while at the same time mentioning instead, out of context, Roca's reply to the statement of objections of 26 March 2007, as summarised in the decision at issue. In the second place, the General Court annulled part of the decision at issue in reliance on a document that was not before the Court. In the third place, the interpretation of Roca's reply constitutes a distortion of evidence, as the interpretation of that evidence in the three parallel cases cited above demonstrates. In the fourth place, the General Court's statement, in paragraph 120 of the judgment under appeal, that one leniency statement cannot corroborate another, is vitiated by an error of law.

35 The applicants at first instance contend that the second part of the first ground of appeal is inadmissible and, in any event, unfounded. Since the statements made by Roca in the context of the leniency procedure were not among the documents before the General Court, the General Court cannot be criticised for having relied solely on the relevant recitals of the decision at issue. As regards Roca's reply to the statement of objections of 26 March 2007, the General Court did not err in relying on the relevant passages in the decision at issue invoked by the applicants at first instance. Lastly, they maintain that there was no distortion of the evidence, since the evidence is different and was debated differently in different cases.

– Findings of the Court

36 As a preliminary point, it must be noted that, in the present case, the Commission relies on (i) an inadequate statement of reasons for the judgment under appeal; (ii) the fact that it is impossible for the General Court partly to annul the decision at issue in reliance on a document that is not in the case file; (iii) distortion of the evidence; and (iv) an error in applying the rules of evidence. Thus, contrary to what is maintained by the applicants at first instance, the Commission is not merely challenging the General Court's assessment of the facts or reiterating the arguments relied on before the General Court. Accordingly, the second part of the first ground of appeal is admissible.

37 As to whether it is well founded, first of all, as has already been pointed out in paragraph 26 of the present judgment, the General Court has sole jurisdiction to find and appraise the relevant facts and to assess the evidence, except where those facts and that evidence have been distorted.

38 Next, it is settled case-law that it is for the Courts of the European Union to decide, in the light of the circumstances of the case and in accordance with the provisions of the rules of procedure on measures of inquiry, whether it is necessary for a document to be produced. So far as concerns the General Court, it is apparent from the provisions of Article 49 in conjunction with Article 65(b) of its Rules of Procedure, in the version applicable at the date of the judgment under appeal, that a request for production of any document relating to the case is a measure of inquiry which the Court may order at any stage of the proceedings (see, to that effect, judgments of 2 October 2003, *Salzgitter* v *Commission*, C-182/99 P, EU:C:2003:526, paragraph 41 and the case-law cited; of 2 October 2003, *Aristrain* v *Commission*, C-196/99 P, EU:C:2003:529, paragraph 67 and the case-law cited; of

2 October 2003, *Ensidesa* v *Commission*, C-198/99 P, EU:C:2003:530, paragraph 28 and the case-law cited; and of 2 October 2003, *Corus UK* v *Commission*, C-199/99 P, EU:C:2003:531, paragraph 67 and the case-law cited).

39 Lastly, it follows from the settled case-law of the Court of Justice that, while the General Court cannot be required to give express reasons for its assessment of the value of each piece of evidence presented to it, in particular where it considers that that evidence is unimportant or irrelevant to the outcome of the dispute, that is subject to its obligation to observe general principles and the rules of procedure relating to the burden of proof and the adducing of evidence and not to distort the true sense of the evidence (see, to that effect, judgment of 15 June 2000, *Dorsch Consult* v *Council and Commission*, C-237/98 P, EU:C:2000:321, paragraph 51).

40 In that respect, it is apparent from paragraph 120 of the judgment under appeal that, for the purpose of considering the probative value of the statements made by Roca in its leniency application, the General Court relied exclusively on recital 586 of the decision at issue, which summarises Roca's reply to the statement of objections of 26 March 2007. It concluded that the Commission could not rely on those statements, in the absence of evidence corroborating them, in order to prove that coordination of minimum prices had been put in place at the AFICS meeting on 25 February 2004.

41 However, the General Court could not deny that the statements made by Roca in the context of its leniency application had any probative value whatsoever by relying only on recital 586 of the decision at issue, which summarises another document, without considering recital 556 of that decision, which relates to those statements, or indeed the content of those statements.

42 In so doing, the General Court infringed the obligation to state reasons and the rules applicable to the taking and appraisal of evidence.

43 It must also be noted that the Commission's argument that the General Court erred in law when it held, in paragraph 120 of the judgment under appeal, that one leniency statement cannot corroborate another is not unfounded.

44 The concept of corroboration means that one piece of evidence can be reinforced by another. There is no rule in the EU legal order that corroborating evidence cannot be of the same nature as the evidence corroborated, that is to say, that a statement made in connection with a leniency application may not corroborate another.

45 Therefore, by finding, in paragraph 120 of the judgment under appeal, that the Commission was required to adduce additional proof because one leniency statement cannot corroborate another, the General Court made an error of law.

46 It follows from all of the foregoing that the second part of the first ground of appeal is well founded, and there is no need to adjudicate on the other arguments put forward by the Commission in support of that second part.

The third part of the first ground of appeal

– Arguments of the parties

47 By the third part of the first ground of appeal, the Commission maintains that the General Court failed to have regard to settled case-law and interpreted the requirement for the corroboration of evidence too narrowly with regard to the chart relating to the AFICS meeting on 25 February 2004. According to the Commission, by requiring, in paragraph 119 of the judgment under appeal, that that chart should by itself prove the existence of the infringement at issue, without taking into account the other

evidence and additional explanations, notably those contained in Ideal Standard's leniency application, the General Court made an error of law. It also infringed its obligation to state reasons by failing to consider the probative value of the explanations given in that application. The Commission adds that this part of the ground of appeal is reinforced by the fact that the assessment of the same piece of evidence in the judgment of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477) led to a different conclusion, namely confirmation that that chart did have probative value.

48 According to the applicants at first instance, this part of the ground of appeal is inadmissible in so far as the Commission is asking the Court to re-examine the assessment of the facts and of the admissibility of the evidence carried out by the General Court. In any event, the applicants at first instance are of the view that the General Court examined the chart relating to the AFICS meeting on 25 February 2004 correctly. They share the General Court's view that the Commission did not provide any explanation that might support the conclusion that the purpose of that meeting was to have anticompetitive discussions.

– Findings of the Court

49 As has been recalled in paragraph 27 of the present judgment, the question whether the General Court observed the rules relating to the burden of proof and the taking of evidence in its examination of the rules relied on by the Commission to support the existence of an infringement of the competition rules of the European Union constitutes a question of law which is amenable to judicial review on appeal. It follows from this that, contrary to the contention of the applicants at first instance, the third part of the first ground of appeal is admissible.

50 As to whether it is well founded, it is common ground that, since the prohibition on participating in anticompetitive practices and agreements and the penalties which offenders may incur are well known, it is normal for the activities which those practices and those agreements entail to take place in a clandestine fashion, for meetings to be held in secret, most frequently in a non-member State, and for the associated documentation to be reduced to a minimum. Even if the Commission discovers evidence explicitly showing unlawful contact between traders, such as the minutes of a meeting, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction (see judgment of 7 January 2004, *Aalborg Portland and Others* v *Commission*, 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, EU:C:2004:6, paragraphs 55 and 56).

51 Moreover, the existence of anticompetitive practices or agreements must, in most cases, be inferred from a number of coincidences or indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (see judgment of 17 September 2015, *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614, paragraph 26 and the case-law cited).

52 In addition, it must be borne in mind that, in order to establish that there has been an infringement of Article 101(1) TFEU, the Commission must produce firm, precise and consistent evidence. However, 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 that institution, viewed as a whole, meets that requirement (see, to that effect, judgment of 1 July 2010, *Knauf Gips* v *Commission*, C-407/08 P, EU:C:2010:389, paragraph 47).

53 In paragraph 119 of the judgment under appeal, the General Court found that, since the chart provided by Ideal Standard as an annex to its leniency application is undated, contains nothing that might link it to the AFICS meeting on 25 February 2004 and does not mention the names of competitors or any minimum or maximum prices which those competitors should apply, it cannot corroborate the allegation that prices were fixed at that meeting.

54 It must be held that, in so doing, the General Court imposed requirements in respect of that chart which, had they been fulfilled, would have meant that that chart would by itself have constituted sufficient evidence to show that prices had been fixed.

55 However, that chart was put forward by the Commission only as a piece of corroborating evidence. By requiring such evidence to contain all the information needed to show that prices were fixed at the AFICS meeting on 25 February 2004, the General Court failed to consider whether the evidence, viewed as a whole, could be mutually supporting, and failed to have regard to the case-law set out in paragraphs 50 to 52 of the present judgment (see, to that effect, judgment of 25 January 2007, *Salzgitter Mannesmann* v *Commission*, C-411/04 P, EU:C:2007:54, paragraphs 44 to 48).

56 Consequently, without there being any need to adjudicate on the other arguments put forward by the Commission in support of the third part of the first ground of appeal, that part must be held to be well founded.

The fourth part of the first ground of appeal

– Arguments of the parties

57 By the fourth part of the first ground of appeal, the Commission submits that the General Court infringed the obligation to state reasons for the judgment under appeal, in so far as it failed to examine some of the evidence referred to in the decision at issue, corroborating the statements of Ideal Standard and Roca, notably the monthly tables containing confidential sales figures mentioned in recitals 572 to 574 of the decision at issue and included in the General Court's case file, as well as the statement of Mr Laligné. According to the Commission, that material had at least corroborative value, as it demonstrated that there had been anticompetitive contacts in 2004, thus reinforcing the reliability of Ideal Standard's and Roca's statements.

58 The applicants at first instance contend that the fourth part of the first ground of appeal is inadmissible since the Commission is thereby challenging the General Court's assessments of the facts. They submit, moreover, that they referred to Mr Laligné's statement before the General Court only in order to demonstrate the inconsistency of Ideal Standard's leniency submissions, and that that statement is, in any event, irrelevant to the outcome of the dispute.

– Findings of the Court

59 As a preliminary point, for the reasons set out in paragraph 49 of the present judgment, the Court must reject the plea of inadmissibility raised by the applicants at first instance.

60 With regard to the assessment as to whether the fourth part of the first ground of appeal is well founded, it must be borne in mind that, according to the case-law recalled in paragraph 39 of the present judgment, the General Court cannot — subject to its obligation to observe general principles and the rules of procedure relating to the burden of proof and the adducing of evidence and not to distort the true sense of the evidence — be required to give express reasons for its assessment of the value of each piece of evidence presented to it, in particular where it considers that that evidence is unimportant or irrelevant to the outcome of the dispute.

61 Furthermore, whether or not the evidence before it is sufficient is a matter to be appraised by the General Court alone and is not subject to review by the Court of Justice on appeal, except where that evidence has been distorted or the substantive inaccuracy of the findings of the General Court is apparent from the documents in the case (see, to that effect, judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 58 and the case-law cited).

62 In the present case, the General Court considered, in paragraphs 110 to 121 of the judgment under appeal, whether the Commission had established that Allia and Produits Céramiques de Touraine had participated in discussions concerning the coordination of minimum prices for low-end products at the AFICS meeting on 25 February 2004.

63 In paragraph 90 of its defence at first instance, the Commission emphasised that Mr Laligné's statement had concerned conduct that occurred in the context of an industry association other than AFICS. The Commission is not claiming in this appeal to have argued before the General Court that that piece of evidence had to be taken into account as corroborating the statements of Ideal Standard and Roca concerning the AFICS meeting on 25 February 2004. In those circumstances, the General Court cannot be criticised for having failed to analyse that evidence in its examination of the discussions that took place at that meeting.

64 On the other hand, the General Court, which found, in paragraphs 117 to 120 of the judgment under appeal, that there was no evidence to corroborate the statements of Ideal Standard and Roca, and thus that these could not be sufficient proof of the anticompetitive nature of those discussions, erred in failing to consider whether those statements could, as the Commission expressly argued in paragraphs 97 and 99 of its defence at first instance, be corroborated by the tables mentioned in recitals 572 to 574 of the decision at issue and included in the case file.

65 Accordingly, the fourth part of the first ground of appeal is well founded inasmuch as it complains that the General Court failed to examine the probative value of those tables.

The fifth part of the first ground of appeal

– Arguments of the parties

66 By the fifth part of the first ground of appeal, the Commission submits that, by failing to examine several pieces of evidence and by applying overly stringent evidentiary requirements to the evidence which it did examine, the General Court did not carry out an overall assessment of the evidence, as it is required to do according to settled case-law.

67 According to the applicants at first instance, the fifth part of the first ground of appeal is inadmissible, since the Commission is thereby challenging the General Court's assessments of the facts. Moreover, a failure to examine each piece of evidence, and especially evidence that is irrelevant, does not mean that the General Court failed to carry out an overall assessment.

– Findings of the Court

68 First, for the reasons set out in paragraph 49 of the present judgment, the Court must reject the plea of inadmissibility raised by the applicants at first instance.

69 Secondly, in the light of paragraphs 43 to 45, 49 to 56, 64 and 65 of the present judgment, from which it is apparent that the General Court infringed the applicable rules on evidence, failed to examine the probative value of certain documents in the case file and failed to ascertain whether the evidence, viewed as a whole, could be mutually supporting, it must be held that the fifth part of the first ground of appeal is well founded.

70 It follows from all of the above considerations that the first ground of appeal must be upheld in part.

The second ground of appeal

Arguments of the parties

71 By its second ground of appeal, the Commission claims that the General Court adopted contradictory findings and applied contradictory reasoning in, on the one hand, the judgment under appeal and, on the other, the judgments of 16 September 2013, *Roca* v *Commission* (T-412/10, not published, EU:T:2013:444, paragraphs 198 and 239), of 16 September 2013, *Villeroy & Boch Austria and Others* v *Commission* (T-373/10, T-374/10, T-382/10 and T-402/10, not published, EU:T:2013:455, paragraphs 289 and 290), and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477, paragraph 324).

72 Although, according to the case-law of the Court of Justice, the General Court's obligation to state the reasons for its judgments does not in principle extend to requiring it to justify the approach taken in one case as against that taken in another case, even if the latter concerns the same decision, in the Commission's view the circumstances of the present case justify, exceptionally, the judgment under appeal being set aside. The Commission argues that the four related cases concern the same decision, the same recitals of that decision and the same evidence. In its view, those cases could have been joined for the purposes of the judgment of the General Court. In those circumstances, according to the Commission, given the failure to state the reasons for doing so, the General Court made an error of law by partially annulling the decision at issue only as regards one of the applicants at first instance.

73 The applicants at first instance contend that the Commission's second ground of appeal is too general and imprecise to be admissible. In any event, they submit, there is no inconsistency in the judgment under appeal. Furthermore, should the Commission's arguments be accepted, that would mean that they could be found guilty on the basis of evidence that is inadmissible and evidence that was not part of the body of evidence pleaded, in breach of the rights of the defence and, in particular, of the right to a fair trial.

Findings of the Court

74 Given the findings in paragraphs 41 and 42 of the present judgment, from which it is apparent, in essence, that the General Court could not deny that the statements made by Roca in the context of its leniency application had any probative value whatsoever by relying solely on recital 586 of the decision at issue, it is not necessary to rule on the second ground of appeal, which essentially alleges that the reasoning in the judgment under appeal and in the judgments of 16 September 2013, *Roca* v *Commission* (T-412/10, not published, EU:T:2013:444), of 16 September 2013, *Villeroy & Boch Austria and Others* v *Commission* (T-373/10, T-374/10, T-382/10 and T-402/10, not published, EU:T:2013:455), and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477) is contradictory in that, in the judgment under appeal, the General Court is said not to have considered that those statements could corroborate the statements of Ideal Standard and thus prove that Allia and Produits Céramiques de Touraine participated in discussions on pricing at the AFICS meeting on 25 February 2004.

75 Since the second to fifth parts of the first ground of appeal have, wholly or partly, been upheld, points 1 and 2 of the operative part of the judgment under appeal must be set aside in so far as, first, the General Court annulled the decision at issue in part following an incomplete examination of that decision and of the evidence; secondly, the General Court concluded that a piece of corroborating evidence could not corroborate price-fixing at the AFICS meeting on 25 February 2004; thirdly, the General Court failed to examine the probative value of certain evidence mentioned in the decision at issue and contained in the case file; and, fourthly, it failed to ascertain whether the evidence, viewed as a whole, could be mutually supporting. The appeal must be dismissed as to the remainder.

The cross-appeal

76 In support of their cross-appeal, the applicants at first instance put forward two grounds of appeal, directed against paragraphs 284 to 291 of the judgment under appeal.

The first ground of appeal

The first part of the first ground of appeal

– Arguments of the parties

77 The applicants at first instance submit that the General Court made an error of law by failing to apply correctly the applicable legal rules on admissibility of pleas and arguments. In particular, according to the applicants at first instance, the General Court erroneously found that the argument relating to the inadequacy of the statement of objections of 26 March 2007 was inadmissible.

78 They maintain in that regard that the inadmissibility of a plea is found very rarely in the case-law and that such a conclusion must not be reached unless the plea concerned is not supported by any arguments at all. They claim that the reasons given for that argument were sufficient to enable the Commission to respond to it and, moreover, to engage in debate on that point at the hearing without asserting that it was too vague or imprecise.

79 Further and in the alternative, the applicants at first instance claim that the General Court failed to give reasons for its decision not to examine that argument, which it found to be couched in abstract terms and lacking the necessary precision to be admissible.

80 For its part, the Commission contends that the first part of the first ground of appeal is based on a partial reading of the judgment under appeal and on a misconception as to the scope of the General Court’s finding of inadmissibility.

81 The Commission submits in that regard that that finding relates only to paragraph 158 of the application of the applicants at first instance, which contained general statements regarding the presentation of the allegations against the applicants at first instance in the statement of objections of 26 March 2007, whereas the General Court considered the substance of the allegations against Pozzi Ginori on account of its participation in the meetings of the Michelangelo association in Italy in paragraphs 288 to 290 of the judgment under appeal. Even if the inadmissibility did extend to the plank of the plea relating to Italy, the Commission argues that, to the extent that the General Court dealt with the merits of the plea as regards the relevant infringement in that Member State, any such inadmissibility is in any event ineffective. It follows from this, according to the Commission, that the reasoning of the judgment under appeal is sufficient on this point.

– Findings of the Court

82 It should be noted that, in paragraph 286 of the judgment under appeal, the General Court recalled the case-law according to which pleas couched in abstract terms do not satisfy the requirements of the Statute of the Court of Justice of the European Union or the Rules of Procedure of the General Court in relation to admissibility.

83 The General Court concluded, in paragraph 287 of the judgment under appeal, that the argument of the applicants at first instance in relation to the Commission's alleged infringement of its obligation properly to explain the allegations against those applicants in the statement of objections of 26 March 2007 was inadmissible because it was couched in abstract terms and lacked precision.

84 However, in paragraphs 288 to 290 of the judgment under appeal, the General Court went on to review the merits of the argument relating to the Commission's alleged infringement of its obligation properly to explain the allegations made in the statement of objections of 26 March 2007 against Pozzi Ginori on account of its participation in the meetings of the cross-product association Michelangelo.

85 It should be noted that, in order to substantiate their argument relating to the misapplication of the applicable legal rules on the admissibility of pleas, the applicants at first instance are essentially concerned with demonstrating that the argument they put forward before the General Court in relation to the inadequate description of the infringement committed in Italy is sufficiently precise. However, as has been noted in the preceding paragraph, the merits of that argument had been examined by the General Court.

86 It is apparent from all of the above considerations that the first part of the first ground of appeal must be rejected as ineffective.

The second part of the first ground of appeal

– Arguments of the parties

87 In the second part of the first ground of appeal, the applicants at first instance submit that the General Court made a clear error of law or, alternatively, distorted the facts, in concluding that the statement of objections of 26 March 2007 was sufficient.

88 They argue that the General Court applied an erroneous legal standard when assessing the sufficiency of the information that must be contained in a statement of objections in order to safeguard the rights of the defence. In particular, they submit that the General Court wrongly held that it was sufficient to state that 'anticompetitive behaviour' took place at the meetings listed in the statement of objections of 26 March 2007, without specifying the nature of the behaviour or giving any other details. If the General Court had followed the case-law of the Court of Justice, in particular the judgment of 9 July 2009, *Archer Daniels Midland* v *Commission* (C-511/06 P, EU:C:2009:433), it would have annulled the decision at issue with regard to the infringement in the ceramics sector in Italy, as the statement of objections of 26 March 2007 did not set out details relating to that part of the infringement clearly enough to safeguard the rights of the defence of the applicants at first instance. According to them, the judgment under appeal sets a standard in respect of the minimum acceptable content of a statement of objections that does not meet the requirements relating to intelligible notification of charges under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

89 In the alternative, the applicants at first instance maintain that the General Court's finding regarding the adequacy of the statement of objections of 26 March 2007, in paragraph 289 of the judgment under appeal, constitutes in any event a clear distortion of the contents of the case file, and that that finding is, moreover, at odds with the General Court's finding in the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449) in respect of the adequacy of the very same passage of that statement of objections.

90 The Commission claims that the second part of the first ground of appeal is inadmissible because it amounts to a new plea which was not put forward at first instance. In particular, in its view, the applicants at first instance claimed before the General Court that the statement of objections of 26 March 2007 provided no facts about the Michelangelo association. In contrast, at the appeal stage, they assert that the information provided by the Commission as to the 'nature' of the anticompetitive behaviour was not included in the statement of objections, which constitutes a new plea.

91 The Commission contends that, in any event, this part of the ground of appeal is unfounded. According to the Commission, the decision taken at the end of a proceeding for infringement of Article 101(1) TFEU is not required to be a replica of the statement of objections notified in the context of that proceeding, and the obligation to observe the rights of the defence is satisfied if that decision does not allege that the persons concerned have committed infringements other than those referred to in the statement of objections and only takes into consideration facts on which the persons concerned have had the opportunity of making their views known.

92 As regards the argument of the applicants at first instance that the General Court did not apply the legal standard set out in the judgment of 9 July 2009, *Archer Daniels Midland* v *Commission* (C-511/06 P, EU:C:2009:433) for assessing their ability to defend themselves effectively, the Commission contends that that argument cannot succeed. According to the Commission, that judgment is not applicable to the present case, since it is not contested by the applicants at first instance that the fact of their presence at meetings, the dates of the meetings concerned and the evidence relied on were known to them; they claim only to have been unaware of the 'nature of the anticompetitive behaviour', a very vague term which does not show why the statement of objections of 26 March 2007 was insufficient. The Commission observes that the anticompetitive behaviour was described in paragraphs 256 and 393 to 400 of that statement of objections and that the applicants at first instance showed, by their response to that statement, that they understood the 'nature' of the anticompetitive behaviour, and, therefore, the alleged inadequacy of the statement of objections of 26 March 2007 did not have any impact on the procedure.

93 In so far as the argument of the applicants at first instance relating to infringement of Article 6 of the ECHR is based on the premiss that the statement of objections of 26 March 2007 was not sufficient, the Commission submits that there is no fundamental divergence between that statement of objections and the decision at issue that could infringe that article.

– Findings of the Court

94 It should be noted that the General Court considered, in paragraphs 288 to 291 of the judgment under appeal, whether the information in the statement of objections of 26 March 2007 concerning the participation of Pozzi Ginori in the meetings of the Michelangelo association enabled the applicants at first instance to exercise their rights of defence, those applicants having asserted before the General Court that that statement of objections did not give any details of the alleged anticompetitive behaviour at the meetings of the Michelangelo association.

95 Specifically, the General Court noted, first of all, in paragraph 288 of the judgment under appeal, that a table relating to the meetings of the cross-product association Michelangelo, contained in point 277 of the statement of objections of 26 March 2007, showed that Pozzi Ginori had participated in meetings

of that association at which anticompetitive behaviour had taken place and that written evidence of such behaviour was contained in the footnotes included in that table. Next, the General Court noted, in paragraph 289 of the judgment under appeal, that the explanations advanced by the Commission with regard to Pozzi Ginori's participation in the meetings of the cross-product association Michelangelo, albeit brief, enabled the applicants at first instance to identify, precisely, the conduct alleged against Pozzi Ginori. Lastly, the General Court noted, also in paragraph 289 of the judgment under appeal, that the Commission had, in point 277 of the statement of objections of 26 March 2007, stated the nature of the activities alleged, their frequency, the precise date on which they occurred and the evidence available to the Commission. The General Court concluded, in paragraph 290 of the judgment under appeal, that the information in that statement of objections was sufficient to enable the applicants at first instance to exercise their rights of defence.

96 It must be noted that the applicants at first instance are merely reiterating the arguments already raised before the General Court and are in fact seeking a reassessment by the Court of Justice of the nature of the statement of objections of 26 March 2007. Such an argument must be rejected as inadmissible at the appeal stage (see, by analogy, judgment of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraph 50 and the case-law cited).

97 As regards the admissibility of the argument as to infringement of Article 6 of the ECHR, it must be pointed out that that is based on a presumption that the argument relating to the inadequacy of the statement of objections of 26 March 2007 is admissible.

98 However, in so far as, first, it is apparent from paragraph 96 of the present judgment that that argument is inadmissible and, secondly, the applicants at first instance do not say how the General Court allegedly infringed Article 6 of the ECHR, but merely reiterate, in general terms, their claim that the content of the statement of objections of 26 March 2007 does not satisfy the requirements of that article, the applicants at first instance are seeking, in essence, the substitution of the Court's assessment of the adequacy of that statement of objections for that of the General Court, without demonstrating any distortion of the facts or of the evidence. Such an argument is not admissible at the appeal stage.

99 The second part of the first ground of appeal must therefore be rejected as inadmissible.

100 It is apparent from all of the above considerations that the first ground of the cross-appeal must be rejected as in part inadmissible and in part ineffective.

The second ground of appeal

– Arguments of the parties

101 By their second ground of appeal, the applicants at first instance claim that the General Court concluded that the statement of objections of 26 March 2007 was adequate with regard to the infringement in the ceramics sector in Italy on the basis of reasoning that contradicted that applied in the judgments delivered in the related cases, and that it failed to give adequate reasons for the judgment under appeal in that respect. They submit that the assessment of that statement of objections with respect to the meetings of the Michelangelo association in the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449) contradicts the General Court's assessment in the judgment under appeal. According to the applicants at first instance, a statement of objections should be interpreted identically for all addressees.

102 In any event, the General Court's finding is vitiated by insufficient reasoning since it is not possible to ascertain the reasons why the assessment in the judgment under appeal of the level of detail included in the statement of objections of 26 March 2007 differs from that in the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T‑380/10, EU:T:2013:449).

103 According to the Commission, the alleged inadequacy of the statement of objections of 26 March 2007, assuming it is established, amounts to a distortion of the content of the case file and, since the applicants at first instance have not demonstrated a clear distortion but are seeking to have the Court of Justice re-examine paragraph 288 of the judgment under appeal, that argument is inadmissible at the stage of the appeal.

104 Furthermore, with regard to the argument of the applicants at first instance that there is an inconsistency between the judgment under appeal and the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T‑380/10, EU:T:2013:449), the Commission contends that the General Court is not in principle obliged to justify the approach taken in one case as against that taken in another case, even if the latter concerns the same decision.

105 In any event, the Commission submits that the issues in the two cases are different for two reasons. First, the case giving rise to the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T‑380/10, EU:T:2013:449) concerned the question whether silence could be treated as an admission of anticompetitive conduct, not the adequacy of the statement of objections of 26 March 2007. Secondly, Pozzi Ginori did not remain silent about the allegations concerning the meetings of the Michelangelo association in Italy, whereas Wabco Europe did remain silent and the General Court had to interpret the effect of such silence. In any event, the Commission adds that any error which the General Court may have made in the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T‑380/10, EU:T:2013:449) is no reason to extend such error to the present case.

106 According to the Commission, the applicants at first instance have not identified any additional evidence that they would have produced if the 'nature of the [anticompetitive] conduct' in the meetings of the Michelangelo association had been specified. In those circumstances, the arguments of the applicants at first instance are speculative and unfounded and, should any error of law be identified, this should not result in the annulment of the decision at issue in so far as it concerns the Italian market.

– Findings of the Court

107 It is evident from the case-law of the Court of Justice that the General Court's obligation to state the reasons for its judgments does not in principle extend to requiring it to justify the approach taken in one case as against that taken in another case, even if the latter concerns the same decision. The Court has also held that, if an addressee of a decision decides to bring an action for annulment, the matter to be tried by the EU judicature relates only to those aspects of the decision which concern that addressee. Unchallenged aspects concerning other addressees, on the other hand, do not, save in special circumstances, form part of the matter to be tried by the EU judicature (see judgment of 11 July 2013, *Team Relocations and Others* v *Commission*, C‑444/11 P, not published, EU:C:2013:464, paragraph 66 and the case-law cited).

108 Accordingly, the argument of the applicants at first instance concerning the alleged contradiction between the judgment under appeal and the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T‑380/10, EU:T:2013:449) must be rejected.

109 It follows from this that the second ground of the cross-appeal must be rejected as unfounded.

110 Consequently, the cross-appeal must be dismissed in its entirety.

The action before the General Court

111 Under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court is to quash the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

112 Given, in particular, that the General Court has not carried out a full examination of the evidence, the state of the proceedings does not permit judgment to be given.

113 Consequently, the case must be referred back to the General Court.

Costs

114 Since the case is to be referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

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

1. **Sets aside points 1 and 2 of the operative part of the judgment of the General Court of the European Union of 16 September 2013,** *Keramag Keramische Werke and Others* **v** *Commission* **(T-379/10 and T-381/10, EU:T:2013:457);**

2. **Dismisses the appeal as to the remainder;**

3. **Dismisses the cross-appeal;**

4. **Refers the case back to the General Court of the European Union as regards the part of the judgment of the General Court of the European Union of 16 September 2013,** *Keramag Keramische Werke and Others* **v** *Commission* **(T-379/10 and T-381/10, EU:T:2013:457) set aside by the present judgment;**

5. **Reserves the costs.**

Tizzano Berger Levits

Rodin Biltgen

Delivered in open court in Luxembourg on 26 January 2017.

A. Calot Escobar
Registrar

K. Lenaerts
President