Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

9 November 2022*

(Competition – Agreements, decisions and concerted practices – Market for concrete reinforcing bars – Decision finding an infringement of Article 65 CS, after expiry of the ECSC Treaty, on the basis of Regulation (EC) No 1/2003 – Price fixing – Limiting and controlling output and sales – Decision taken following the annulment of earlier decisions – New hearing held in the presence of the competition authorities of the Member States – Rights of the defence – Principle of sound administration – Reasonable time – Obligation to state reasons – Proportionality – *Ne bis in idem* principle – Plea of illegality – Single, complex and continuous infringement – Evidence of involvement in the cartel – Public distancing – Unlimited jurisdiction)

In Case T-657/19,

Feralpi Holding SpA, established in Brescia (Italy), represented by G. Roberti and I. Perego, lawyers,

applicant,

v

European Commission, represented by P. Rossi, G. Conte and C. Sjödin, acting as Agents, and by P. Manzini, lawyer,

defendant,

APPLICATION under Article 263 TFEU for annulment of Commission Decision C(2019) 4969 final of 4 July 2019 relating to a breach of Article 65 of the ECSC Treaty (Case AT.37956 – Reinforcing bars) and/or for cancellation or reduction of the fine imposed on the applicant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed, at the time of deliberation, of S. Gervasoni, President, L. Madise, P. Nihoul (Rapporteur), R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 3 June 2021,

gives the following

* Language of the case: Italian.

Judgment [1]

I. Background to the dispute

1 The applicant, Feralpi Holding SpA (formerly Feralpi Siderurgica SpA and Federalpi Siderurgica SRL), is a manufacturer of concrete reinforcing bars based in Italy.

A. The Commission's first decision (2002)

2 From October to December 2000, the Commission of the European Communities carried out a number of checks pursuant to Article 47 CS at the premises of certain Italian undertakings engaged in the manufacture of concrete reinforcing bars, including the applicant, and at the premises of an association of undertakings, the Federazione Imprese Siderurgiche Italiane (Federation of Italian Steel Undertakings; 'Federacciai'). It also requested them to supply information under that provision.

3 On 26 March 2002, the Commission initiated a proceeding under Article 65 CS and formulated objections under Article 36 CS ('the statement of objections'), which were notified to the applicant, among others. The applicant replied to that statement of objections on 31 May 2002.

4 A hearing of the parties to the administrative procedure took place on 13 June 2002.

5 On 12 August 2002, the Commission sent the same addressees further objections ('the supplementary statement of objections') under Article 19(1) of Council Regulation No 17 of 6 February 1962: first regulation implementing Articles [81] and [82 EC] (OJ, English Special Edition: Series I, Volume 1959-1962, p. 87). In that supplementary statement of objections, the Commission explained its position regarding continuation of the procedure following the expiry of the ECSC Treaty on 23 July 2002. The applicant replied to the supplementary statement of objections on 20 September 2002.

6 A new hearing of the parties to the administrative procedure was held on 30 September 2002 in the presence of the competition authorities of the Member States. It concerned the subject matter of the supplementary statement of objections, namely the legal consequences of the expiry of the ECSC Treaty for the continuation of the procedure.

7 At the end of the administrative procedure, the Commission adopted Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 of the ECSC Treaty (COMP/37.956 – Reinforcing bars) ('the 2002 decision'), addressed to Federacciai and eight undertakings, including the applicant. In that decision, the Commission found that, between December 1989 and July 2000, those entities had engaged in a single, complex and continuous restrictive practice on the Italian market for concrete reinforcing bars and coils ('concrete reinforcing bars') which had as its object or effect price fixing and limiting or controlling output or sales, contrary to Article 65(1) CS. On that basis, the Commission imposed a fine of EUR 10.25 million on the applicant.

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

8 On 4 March 2003, the applicant brought an action before the Court challenging the 2002 decision. The Court annulled that decision with regard to the applicant (judgment of 25 October 2007, *Feralpi Siderurgica* v *Commission*, T-77/03, not published, EU:T:2007:319) and the other addressee undertakings, on the ground that the legal basis used, namely Article 65(4) and (5) CS, was no longer in force when the decision was adopted. Accordingly, the Commission did not have the power under those provisions to establish and penalise an infringement of Article 65(1) CS following the expiry of the ECSC Treaty. The Court did not examine the other aspects of that decision.

9 The 2002 decision became final with regard to Federacciai, which did not bring an action before the Court.

B. The Commission's second decision (2009)

10 By letter of 30 June 2008, the Commission informed the applicant and the other undertakings concerned of its intention to adopt a new decision, with a corrected legal basis. It also stated that that decision would be based on the evidence set out in the statement of objections and the supplementary statement of objections. At the Commission's request, the applicant submitted written observations on 31 July 2008.

11 By faxes of 24 July and 25 September 2008 and of 13 March, 30 June and 15 July 2009, the Commission requested information from the applicant concerning the changes in its structure and its turnover. The applicant replied to those requests for information by letters dated 4 September and 17 October 2008 and 3 April, 6 July and 22 July 2009 respectively.

12 On 30 September 2009, the Commission adopted Decision C(2009) 7492 final relating to a proceeding under Article 65 of the ECSC Treaty (Case COMP/37.956 – Reinforcing bars, re-adoption), addressed to the same undertakings as the 2002 decision, including the applicant. That decision was adopted under the procedural rules of the EC Treaty and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1). It was based on the evidence referred to in the statement of objections and the supplementary statement of objections and reproduced, in essence, the content and findings of the 2002 decision. In particular, the amount of the fine imposed on the applicant, totalling EUR 10.25 million, was unchanged.

13 On 8 December 2009, the Commission adopted an amending decision which included, in the annex thereto, tables illustrating price variations omitted from its decision of 30 September 2009 and correcting the numbered references to those tables in eight footnotes.

14 On 19 February 2010, the applicant brought an action before the Court challenging the Commission's decision of 30 September 2009, as amended ('the 2009 decision'). On 9 December 2014, the Court dismissed that action (judgment of 9 December 2014, *Feralpi* v *Commission*, T-70/10, not published, EU:T:2014:1031). The Court annulled the 2009 decision in part with regard to another of its addressees, reduced the fine imposed on two other addressees and dismissed the other actions brought.

15 On 19 February 2015, the applicant brought an appeal against the judgment of 9 December 2014, *Feralpi* v *Commission* (T-70/10, not published, EU:T:2014:1031). By judgment of 21 September 2017, *Feralpi* v *Commission* (C-85/15 P, EU:C:2017:709), the Court of Justice set aside the judgment of the General Court and annulled the 2009 decision with regard to, inter alia, the applicant.

16 In its judgment of 21 September 2017, *Feralpi* v *Commission* (C-85/15 P, EU:C:2017:709), the Court of Justice held that, when a decision is adopted on the basis of Regulation No 1/2003, the procedure resulting in that decision must conform to the procedural rules laid down by that regulation and by Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101] and [102 TFEU] (OJ 2004 L 123, p. 18), even if the procedure began before those regulations came into force.

17 The Court of Justice found that, in the present case, the hearing of 13 June 2002, which was the only hearing concerning the substance of the procedure, could not be regarded as fulfilling the procedural requirements in relation to the adoption of a decision on the basis of Regulation No 1/2003 in the absence of participation by the competition authorities of the Member States.

18 The Court of Justice concluded that the General Court had erred in law in holding that the Commission was not obligated to organise a new hearing before adopting the 2009 decision, on the ground that the undertakings had already had the opportunity to be heard orally at the hearings of 13 June and 30 September 2002.

19 In its judgment of 21 September 2017, *Feralpi* v *Commission* (C-85/15 P, EU:C:2017:709), the Court of Justice recalled the importance of holding a hearing, at the request of the parties concerned, to which the competition authorities of the Member States are invited, as failure to hold such a hearing constitutes infringement of an essential procedural requirement.

20 The Court of Justice found that, in so far as that right, as made explicit in Regulation No 773/2004, had not been respected, it was not necessary for the undertaking whose right had been infringed in that way to demonstrate that such infringement might have influenced the course of the proceedings and the content of the decision at issue to its detriment.

21 The Court of Justice also set aside a number of other judgments of the General Court of 9 December 2014 adjudicating on the legality of the 2009 decision and set aside that decision, with regard to four other undertakings, on the same grounds. However, the 2009 decision became final for the addressee undertakings which did not appeal against those judgments.

C. The Commission's third decision (2019)

22 By letter of 15 December 2017, the Commission informed the applicant of its intention to resume the administrative procedure and to organise, in that context, a new hearing of the parties to that procedure in the presence of the competition authorities of the Member States.

23 On 20 December 2017 and 16 January 2018, the applicant informed the Commission that it wished to take part in that hearing. By letter of 1 February 2018, it submitted observations in which it challenged the Commission's power to resume the administrative procedure and thus called upon the Commission to refrain from doing so.

24 On 23 April 2018, the Commission held a new hearing concerning the substance of the procedure, in which the applicant and three other addressee undertakings of the 2009 decision participated in the presence of the competition authorities of the Member States and the hearing officer.

25 On 7 May 2018, the applicant submitted additional written observations on the case. By letters of 19 November 2018 and of 18 January and 6 May 2019, the Commission sent three requests for information to the applicant concerning the changes in its structure and its turnover. The applicant replied to those requests for information by letters dated 7 December 2018 and 30 January and 9 May 2019 respectively.

26 On 4 July 2019, the Commission adopted Decision C(2019) 4969 final relating to a proceeding under Article 65 of the ECSC Treaty (Case AT.37956 – Reinforcing bars) ('the contested decision'), addressed to the five undertakings in respect of which the 2009 decision had been annulled, namely, in addition to the applicant, Alfa Acciai SpA, Partecipazioni Industriali SpA (formerly Riva Acciaio SpA and subsequently Riva Fire SpA; 'Riva'), Valsabbia Investimenti SpA and Ferriera Valsabbia SpA, and Ferriere Nord SpA.

27 In Article 1 of the contested decision, the Commission found that an infringement of Article 65(1) CS had been committed in the concrete reinforcing bar sector in Italy between 6 December 1989 and 4 July 2000 and that the applicant and those other four undertakings had participated in it. The infringement consisted in a continuous agreement and/or concerted practices with the object or effect of price fixing and limiting or controlling output or sales on the Italian market for concrete reinforcing bars.

28 The Commission found the applicant liable on the basis of its participation in the cartel from 6 December 1989 to 27 June 2000. In Article 2 of the contested decision, the Commission thus imposed a fine on it of EUR 5.125 million, after applying a 50% reduction on account of the duration of the procedure.

29 On 18 July 2019, the contested decision was notified to the applicant.

II. Procedure and forms of order sought by the parties

30 By application lodged at the Court Registry on 28 September 2019, the applicant brought the present action.

31 On a proposal from the Fourth Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

32 On a proposal from the Judge-Rapporteur, the General Court (Fourth Chamber, Extended Composition) decided to open the oral part of the procedure and, by way of measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, put written questions to the parties and requested them to produce documents. The parties replied to those questions and requests for the production of documents within the prescribed period.

33 The parties presented oral argument and answered the written and oral questions put by the Court at the hearing on 3 June 2021. During the hearing, following a question from the Court, the applicant agreed that the pleas in law raised in the application in support of the present action should be renumbered for the purposes of drafting the judgment, formal note of which was taken in the minutes of the hearing.

34 The applicant claims that the Court should:

– annul the contested decision in whole or in part in so far as it concerns the applicant;

– and/or cancel or, at least, reduce the fine imposed on it in that decision;

– where appropriate, 'declare Article 25(3) to (6) of Regulation No 1/2003 to be unlawful and inapplicable';

– order the Commission to pay the costs.

35 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

III. Law

36 As a preliminary point, it must be observed that the applicant asks the Court, in its third head of claim, to 'declare Article 25(3) to (6) of Regulation No 1/2003 to be unlawful and inapplicable'.

37 It is apparent from the application that, by that claim, the applicant alleges, by way of an objection, the illegality of Article 25(3) to (6) of Regulation No 1/2003 in support of the application for annulment of the contested decision or for cancellation or reduction of the fine.

38 Therefore, the plea of illegality will be examined, as a plea in law, with those put forward in support of the application for annulment of the contested decision or for cancellation or reduction of the fine.

39 In support of the application for annulment of the contested decision or for cancellation or reduction of the fine, the applicant raises eight pleas in law:

– the first alleges infringement of the rights of the defence and of procedural rules at the hearing of 23 April 2018;

– the second alleges that the Commission unlawfully refused to ascertain, before adopting the contested decision, whether that decision was compatible with the reasonable time principle;

– the third alleges failure to observe the reasonable time principle;

– the fourth alleges infringement of the obligation to state reasons, errors of assessment and failure to observe the principle of proportionality;

– the fifth alleges failure to observe the *ne bis in idem* principle and the principle of legal certainty;

– the sixth alleges that the rules on limitation laid down in Article 25(3) to (6) of Regulation No 1/2003 are unlawful;

– the seventh alleges that there is no evidence of its participation in the cartel between 1989 and 1995;

– the eighth alleges that the statement of reasons for the contested decision was inadequate as regards the finding of a single, complex and continuous infringement with regard to the applicant between 6 December 1989 and 27 June 2000, and that there is no evidence of the single and continuous nature of that infringement.

…

B. Second plea in law, alleging that the Commission unlawfully refused to ascertain, before adopting the contested decision, whether that decision was compatible with the reasonable time principle

…

1. First complaint, alleging error of law

156 The applicant submits that the Commission infringed Article 41 of the Charter by refusing to assess, before adopting the contested decision, whether its adoption was compatible with the reasonable time principle.

157 In that regard, it should be noted that, as the applicant points out, the Commission is required to observe the reasonable time principle laid down in Article 41 of the Charter (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 179, and of 5 June 2012, *Imperial Chemical Industries* v *Commission*, T-214/06, EU:T:2012:275, paragraph 285).

158 Thus, the time elapsed must be taken into account where, in exercising the discretion conferred on it by EU law, the Commission assesses whether, within the framework of the application of the competition rules, proceedings must be initiated and a decision adopted.

159 It follows from the contested decision that, contrary to what the applicant claims, the obligation to take account of the time elapsed when assessing whether such proceedings must be initiated and a penalty decision adopted was not infringed by the Commission. The contested decision states that, before taking a view, the Commission examined whether, in the present case, the procedure could be resumed and whether it could lead to the adoption of such a decision imposing a fine.

…

170 Thus, it is apparent from the contested decision that, contrary to what the applicant claims, the Commission ascertained, before adopting that decision, whether the reasonable time principle had been observed, by analysing the length of the administrative procedure, including the administrative stages and interruptions due to judicial review, the possible reasons for the duration of the procedure and the inferences that might be drawn from it.

171 The applicant disputes that conclusion, arguing that, in the contested decision, the Commission refused to take a view on the unreasonable length of the procedure on the ground that responsibility for that assessment lies with the EU Courts and it is unable to make any determination on that matter.

172 In that regard, it should be noted that questions relating to the length of procedures may be referred to the EU Courts. In actions for liability, the EU Courts must find against the institutions, bodies, offices or agencies of the European Union where they have caused damage by failing to observe the reasonable time principle (judgments of 26 November 2013, *Kendrion* v *Commission*, C-50/12 P, EU:C:2013:771, paragraph 94, and of 11 July 2019, *Italmobiliare and Others* v *Commission*, T-523/15, not published, EU:T:2019:499, paragraph 159). In actions for annulment, the length of a procedure may result in the annulment of a contested decision if two cumulative conditions are met: first, the length must appear to have been unreasonable and, second, the excessive time taken must have interfered with the exercise of the rights of the defence (judgments of 21 September 2006, *Technische Unie* v *Commission*, C-113/04 P, EU:C:2006:593, paragraphs 47 and 48; of 8 May 2014, *Bolloré* v *Commission*, C-414/12 P, not published, EU:C:2014:301, paragraphs 84 and 85; and of 9 June 2016, *PROAS* v *Commission*, C-616/13 P, EU:C:2016:415, paragraphs 74 to 76).

173 As the applicant points out, the jurisdiction thus conferred on the EU Courts cannot relieve the Commission of the assessment it must carry out when determining the action to be taken in response to an annulling judgment pursuant to Article 266 TFEU.

174 As stated above, when it carries out that assessment, the Commission is required to take into account all the aspects of the case, including the appropriateness of adopting a new decision, of imposing a penalty and, where relevant, of reducing the envisaged penalty if it appears, in particular, that without itself constituting a culpable breach of obligations, the duration of the procedure, inasmuch as it involved administrative stages and also, as the case may be, interruptions due to judicial review, may have had an effect on the factors to be taken into account in setting the amount of the fine and, especially, on the potential for the fine to act as a deterrent when it is imposed long after the events constituting the infringement took place.

175 That assessment, which covers inter alia the overall duration of the procedure, including the judicial stages, was mainly carried out in recital 528 of the contested decision.

176 It follows that, contrary to the applicant's claims, the Commission did ascertain, in the contested decision, whether the length of the procedure could prevent its resumption, while acknowledging that such an assessment could be reviewed by the EU Courts in actions concerning lawfulness and, where appropriate, actions for liability.

…

180 The complaint must therefore be dismissed.

…

C. Third plea in law, alleging failure to observe the reasonable time principle

185 The applicant submits that the contested decision must be annulled because it was adopted at the end of a procedure which exceeded a reasonable time. According to the applicant, the excessive duration of the procedure means that the Commission no longer had the power to impose penalties. The arguments put forward in support of the third plea comprise, in essence, four complaints, all of which are disputed by the Commission.

186 Before examining those complaints, it should be recalled that, according to the Court, the length of a procedure may result in the annulment of a contested decision if two cumulative conditions are met: first, the length must appear to have been unreasonable and, second, the excessive time taken must have interfered with the exercise of the rights of the defence (see paragraph 172 above).

187 It follows that a Commission decision cannot be annulled solely because of the excessive time taken if the time taken did not affect the applicant's rights of the defence.

…

1. First complaint, concerning the duration of the administrative stages

189 The applicant submits that the Commission's assertion that the administrative stages of the procedure were always conducted 'swiftly and without unjustified interruptions' does not reflect the true position and can be regarded as accurate, at most, only for the stage of adoption of the 2002 decision, which lasted two years and two months in total.

190 The other administrative procedural stages leading to the adoption of the 2009 decision and the contested decision were marked by manifestly unreasonable periods of inactivity on the part of the Commission.

191 The applicant states that the duration of the administrative phase as a whole was also in itself unreasonable, particularly in the light of the case giving rise to the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582).

192 In that regard, it must be observed that EU law requires the institutions to deal with cases within a reasonable time in administrative procedures conducted by them (see, to that effect, judgment of 5 June 2012, *Imperial Chemical Industries* v *Commission*, T-214/06, EU:T:2012:275, paragraph 284).

193 The obligation to conduct administrative procedures within a reasonable time is a general principle of law set forth, in particular, in Article 41(1) of the Charter (judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 167; of 11 April 2006, *Angeletti* v *Commission*, T-394/03, EU:T:2006:111, paragraph 162; and of 7 June 2013, *Italy* v *Commission*, T-267/07, EU:T:2013:305, paragraph 61).

194 In the present case, it is apparent from the documents before the Court that four stages, lasting a total of six years and one month, took place before the Commission in the course of its handling of the case:

– the first stage, lasting one year and five months, covered the period between the initial investigative measures and the notification of the statement of objections to Federacciai and the undertakings concerned;

– the following three stages culminated in the adoption of the 2002 decision, the 2009 decision and the contested decision respectively, and lasted nine months, two years and one month, and one year and nine months respectively.

195 According to the case-law, the reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 187 and 188).

196 Thus, even if, in other cases, the administrative stage following the annulment of a Commission decision by the EU Courts, in the context of a procedure that was resumed in order to adopt a new decision, was shorter than the one in this case, that would not, in itself, support a finding of failure to observe the reasonable time principle.

197 It is necessary to examine the reasonableness of the period by reference to the specific circumstances of each case in the light, in particular, of the criteria mentioned in paragraph 195 above.

198 In the first place, concerning the importance of the case for the person concerned, it should be recalled that, in the case of a dispute involving an infringement of competition law, the fundamental requirement of legal certainty on which economic operators must be able to rely and the aim of ensuring that competition is not distorted in the internal market are of considerable importance not only for an applicant and his or her competitors but also for third parties, in view of the large number of persons concerned and the financial interests involved (see judgment of 1 February 2017, *Aalberts Industries* v *European Union*, T-725/14, EU:T:2017:47, paragraph 40 and the case-law cited).

199 In the present case, the Commission found in the contested decision that the applicant had infringed Article 65(1) CS by taking part, from 6 December 1989 to 27 June 2000, in a continuous agreement or concerted practices in respect of concrete reinforcing bars, with the object or effect of price fixing and limiting or controlling output or sales in the internal market.

200 Based on that finding, the Commission imposed a fine of EUR 5.125 million on the applicant.

201 In the light of those factors, it is legitimate to consider that the case was important for the applicant.

202 In the second place, as regards the complexity of the case, it must be observed that the errors made by the Commission concern the inferences to be drawn, for the procedure, from the expiry of the ECSC Treaty.

203 It must be borne in mind that the questions relating to the rules applicable to the facts of the case, as regards both the substance and the procedure, arising from the expiry of the ECSC Treaty, involved some complexity, as the Commission pointed out.

204 Moreover, the cartel covered a relatively long period (10 years and 7 months), involved a significant number of operators (8 undertakings comprising a total of 11 companies and 1 trade association) and generated a large volume of documents provided or obtained during inspections (approximately 20 000 pages).

205 In the light of those factors, the case must be regarded as a complex one.

206 In the third place, concerning the conduct of the parties, it must be observed that the Commission was continuously active due to the large number of requests it received from the parties to the administrative procedure.

207 Thus, in the context of the adoption of the contested decision, the Commission was required to deal with numerous letters and, at the same time, had to prepare for the hearing of 23 April 2018 and examine a settlement submission filed by some of the parties to the administrative procedure on 4 December 2018.

208 Taken as a whole, it follows that the duration of the administrative stages of the procedure does not appear to have been unreasonable in the light of the circumstances specific to the case and, in particular, its complexity, in a context in which no unexplained period of inactivity can be attributed to the Commission at any point in the course of those administrative stages.

209 The complaint must therefore be dismissed.

2. Second complaint, concerning the duration of the judicial stages

210 The applicant argues that the duration of the judicial proceedings was unreasonable. First, those proceedings lasted a total of 12 years. Second, each set of proceedings before the General Court (Cases T-77/03 and T-70/10) lasted almost five years.

211 In that regard, it should be borne in mind that the obligation to conduct administrative procedures within a reasonable time is a general principle of law set forth, inter alia, in Article 41(1) of the Charter.

212 Similarly, failure to adjudicate within a reasonable time constitutes a procedural irregularity (judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 191).

213 In the determination of their civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in accordance with Article 47 of the Charter and Article 6 of the ECHR (see, to that effect, judgments of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraphs 177 to 179, and of 5 June 2012, *Imperial Chemical Industries* v *Commission*, T-214/06, EU:T:2012:275, paragraphs 282 and 283).

214 According to the case-law, the sanction for a breach, by an EU Court, of its obligation to adjudicate within a reasonable time must be an action for damages, not an action for annulment and for cancellation or reduction of the fine, since the former constitutes an effective remedy (see, to that effect and by analogy, judgments of 26 November 2013, *Gascogne Sack Deutschland* v *Commission*, C-40/12 P, EU:C:2013:768, paragraph 89, and of 21 September 2017, *Feralpi* v *Commission*, C-85/15 P, EU:C:2017:709, paragraph 54).

215 That case-law can be explained by the concern, on the part of the EU Courts, that the legality of a decision adopted by the Commission should not be made to depend on the conditions under which they have conducted judicial proceedings (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 203).

216 The complaint must therefore be dismissed as ineffective.

3. Third complaint, concerning the overall duration of the procedure

217 The applicant challenges the overall length of time required to deal with the case, from the initial investigative measures to the adoption of the contested decision. It claims that since, when that decision was adopted, the duration of the procedure stood at 19 years and concerned conduct some of which had taken place more than 30 years previously, that duration was contrary to the reasonable time principle.

218 In that regard, it must be observed that the duty to act within a reasonable time applies to each stage of a procedure and to the procedure taken as a whole (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 230 and 231, and Opinion of Advocate General Kokott in *Solvay* v *Commission*, C-109/10 P, EU:C:2011:256, point 239).

219 In the present case, it must be held that the administrative procedure as a whole took an exceptionally long time to complete, which, moreover, resulted in the Commission reducing the fine ultimately imposed on the applicant (see paragraph 169 above).

220 Nonetheless, the overall length of the administrative procedure may be explained, in the present case, by its complexity, given that, in some respects, the length of the procedure was due to factors relating to the case itself, while, in others, it was linked to the background to the case, namely the expiry of the ECSC Treaty (see paragraphs 202 to 205 above).

221 It is true that the Commission made errors in assessing the inferences to be drawn from the expiry of the ECSC Treaty and those errors gave rise to a series of annulments ordered by the General Court and then the Court of Justice.

222 However, those errors and the impact they may have had on the duration of the administrative procedure must be appraised having regard to the complexity of the questions which arose.

223 Furthermore, the overall duration of the administrative procedure was attributable in part to the interruptions due to judicial review and is therefore linked to the number of actions brought before the EU Courts on the various aspects of the case.

224 In that regard, it must be observed that the possibility for undertakings, in a situation such as that of the applicant, to have their matters examined more than once by the EU administrative authorities and, where appropriate, by the EU Courts is an integral part of the system put in place by the drafters of the Treaties to scrutinise competition-related conduct and transactions.

225 Thus, the obligation on the administrative authority to complete a number of procedural formalities and steps before it is able to adopt a final decision in the field of competition and the possibility that those procedural formalities and steps might give rise to legal action cannot be used by an undertaking to argue at the end of the process that a reasonable period was exceeded (see, to that effect, Opinion of Advocate General Wahl in *Feralpi and Others* v *Commission*, C-85/15 P, C-86/15 P and C-87/15 P, C-88/15 P and C-89/15 P, EU:C:2016:940, point 70).

226 In those circumstances, it cannot be considered that, viewed as a whole, the length of the administrative procedure was excessive and, therefore, that it could prevent the Commission from adopting a new decision imposing a fine.

227 The complaint must therefore be dismissed.

4. Fourth complaint, concerning the effect of the length of the procedure on the rights of the defence

228 The applicant submits that the unreasonable length of the administrative procedure affected the exercise of its rights of the defence during the third stage of that procedure, covering the period between the judgment of 21 September 2017, *Feralpi* v *Commission* (C-85/15 P, EU:C:2017:709) and the adoption of the contested decision.

229 In that regard, it must be recalled that, as stated in paragraph 186 above, two conditions must be satisfied for a decision adopted by the Commission to be annulled on the ground of failure to observe the reasonable time principle. Since the first condition (unreasonable length of the procedure) is not satisfied, it is not necessary, in principle, to ascertain, in response to the fourth complaint, whether the length of the administrative procedure interfered with the exercise of the rights of the defence. Nevertheless, that examination should be carried out for the sake of completeness in order to address fully the concerns raised by the applicant.

230 First, it must be observed that, in the course of the procedure viewed as a whole, the applicant had, on at least seven occasions, the opportunity to express its views and put forward its arguments (see paragraphs 3 to 6, 10, 23 and 24 above).

231 In particular, the applicant was able to express its views, during the third administrative stage, in its observations of 1 February 2018, at the hearing of 23 April 2018 and in its observations of 7 May 2018 (see paragraphs 23 to 25 above).

232 Second, the examination of the first plea has established that the applicant's rights of the defence were not affected either by the fact that some of the operators that participated in the earlier hearings were not present at the hearing of 23 April 2018, or by the fact that the representatives of the Member States' competition authorities knew, when they gave their opinion in the Advisory Committee, that two decisions, one of which had been confirmed by the Court, had previously been adopted against the undertakings concerned (see paragraphs 55 to 149 above).

233 It follows from those considerations that, even if the duration of the administrative procedure could be regarded as contrary to the reasonable time principle, the conditions to be satisfied in order to secure the annulment of the contested decision would not be met, since the applicant has not been able to establish that the procedure's duration interfered in any way with its rights of the defence.

234 In those circumstances, it must be held that none of the requirements for the Court to be able to annul the contested decision on the ground of failure to observe the reasonable time principle has been fulfilled.

235 The complaint must therefore be dismissed, as must the third plea in law in its entirety.

D. Fourth plea in law, alleging infringement of the obligation to state reasons, errors of assessment and failure to observe the principle of proportionality

…

1. First complaint, concerning the Commission's erroneous decision to adopt a new decision imposing a fine

237 The applicant submits that the Commission exercised its discretion incorrectly by putting the effective application and deterrent effect of the competition rules before the reasonable time principle. It argues that the contested decision is also vitiated by insufficient reasoning on that point.

238 It must be observed that Article 105(1) TFEU entrusts the Commission with the task of ensuring the application of Articles 101 and 102 TFEU.

239 In that regard, the Commission is responsible for defining and implementing, in accordance with the case-law, the competition policy of the European Union (see, to that effect, judgment of 16 October 2013, *Vivendi* v *Commission*, T-432/10, not published, EU:T:2013:538, paragraph 22 and the case-law cited).

240 In that context, the Commission enjoys a broad discretion, as evidenced by Regulation No 1/2003, according to which, if it finds the existence of an infringement, it 'may' require the undertakings concerned to bring the infringement to an end (Article 7(1)) and impose fines on the infringing undertakings (Article 23(2)).

241 In competition matters, the Commission has been thus entrusted, irrespective of how the case was brought to its attention, namely following a complaint or acting on its own initiative, with the power to decide whether conduct should be the subject of proceedings, a decision and a fine, depending on the priorities it defines within the framework of its competition policy.

242 However, the existence of that power does not relieve the Commission of its obligation to state reasons (see, to that effect, judgment of 12 March 2020, *LL-Carpenter* v *Commission*, T-531/18, not published, EU:T:2020:91, paragraph 90 and the case-law cited).

243 In circumstances where, as in the present case, first, a decision taken by the Commission has twice been annulled and, second, the lapse of time between the initial investigative measures and the adoption of the decision was exceptionally long, it is for that institution, in accordance with the principle of sound administration, to take account of the procedure's duration and its possible consequences for the Commission's decision to initiate proceedings against the undertakings concerned, and that assessment must then be reflected in the statement of reasons for the decision.

244 In the first place, it must be observed that, as is apparent from the reply given to the third plea, there was no failure to observe the reasonable time principle in the present case.

245 It follows that the applicant's argument that the Commission exercised its discretion incorrectly because it failed to take account of the fact that the duration of the procedure had exceeded a reasonable time must be dismissed from the outset.

246 In the second place, it must in any event be observed, as regards the statement of reasons provided by the Commission in the contested decision, that the Commission gave a detailed explanation, in recitals 526 to 529 and 536 to 573 of the contested decision, of the reasons why it considered it necessary to adopt a new decision finding the existence of the infringement and imposing a fine on the undertakings concerned.

247 Thus, the Commission stated, first of all, that the duration of the procedure did not, in its view, entail any failure to observe the reasonable time principle (recitals 528 and 555 of the contested decision) and that there had been no infringement of the undertakings' rights of the defence, since they had been able to submit their observations on the resumption of the procedure and had also set out their arguments at the hearing of 23 April 2018. In that regard, the Commission explained that the applicant had not provided any concrete evidence in support of its claim that it was not in a position to exercise its rights of the defence to the full (recitals 556 and 557 of the contested decision).

248 However, the Commission admitted that it had made procedural errors and acknowledged that those errors might have contributed to extending the duration of the procedure.

249 It was at that juncture that, in the contested decision, the Commission weighed the public interest in ensuring the effective application of the competition rules against the need to mitigate the possible consequences of the procedural errors made (recital 559 of the contested decision).

250 In that regard, the Commission found that the undertakings at issue had participated, over an 11-year period, in an infringement considered to be one of the most serious restrictions of competition. It stated that, against that backdrop, failure to re-adopt the decision finding that the undertakings had participated in that infringement would be contrary to the public interest in ensuring the effective application of EU competition law and would go beyond the interest in mitigating the consequences of any breach of the fundamental rights of the addressee undertakings (recitals 560 and 561 of the contested decision).

251 Following that balancing exercise, the Commission reached the conclusion that, since an infringement had been committed, it was only by adopting the contested decision that it could ensure that the infringers would not be left unpunished and would actually be deterred from engaging in similar conduct in the future (recitals 563 to 569 of the contested decision).

252 At the end of the analysis, the Commission stated that, in order to mitigate the possible adverse effects arising from the length of the procedure, which was intended to correct the procedural defects that had occurred during the investigation which were not attributable to the undertakings at issue, it had decided to reduce the fines imposed by 50% (recitals 570 to 573 of the contested decision).

253 It is thus apparent that, in the contested decision, the Commission provided a detailed statement of reasons setting out clearly and unequivocally the reasoning it had followed to justify the adoption of a new decision despite the two previous annulments.

254 The complaint must therefore be dismissed.

…

4. Fourth complaint, concerning failure to observe the principle of proportionality

268 The applicant claimed, in its written pleadings and at the hearing, that because of the unreasonable duration of the procedure, the adoption of the contested decision was contrary to the principle of proportionality. It puts forward three arguments in that regard. First, the administrative procedure should not have been resumed. Second, that procedure having been resumed, the Commission could have adopted a decision without imposing a penalty. Third, since the Commission was wrong to impose a fine, the Court should vary the amount of that fine.

269 In that connection, it should be borne in mind that the principle of proportionality, which is among the general principles of EU law, requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the desired objective. However, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgments of 13 November 1990, *Fédesa and Others*, C-331/88, EU:C:1990:391, paragraph 13, and of 14 July 2005, *Netherlands* v *Commission*, C-180/00, EU:C:2005:451, paragraph 103).

270 Concerning the applicant's first argument, it should be recalled that, in the present case, the Commission resumed the administrative procedure, as it is permitted to do under the case-law in the event of annulment of a measure emanating from it (see paragraphs 49 and 51 above).

271 As is clear from the analysis of the first and third pleas, the resumption of the administrative procedure cannot give rise to the annulment of the contested decision, since the applicant has not established that the duration of that procedure was excessive or that its rights of the defence were affected in accordance with the case-law referred to in paragraph 172 above. In the present case, it follows from the analysis of the first and third pleas that the applicant cannot rely on such infringements.

272 Nonetheless, the Commission was careful to state in the contested decision the reasons why the resumption of the administrative procedure as well as the adoption of a new decision and the imposition of a penalty appeared to it to be justified, namely:

– to ensure the effective application of competition law and to avoid leaving the undertakings at issue unpunished;

– to deter the undertakings involved from committing further infringements of competition law;

– to facilitate claims for compensation brought by potential victims of the cartel.

273 Accordingly, the applicant's first argument should be dismissed.

274 Concerning the applicant's second argument, it must be recalled that the Commission ensured that the consequences of the length of the administrative procedure for the undertakings to which the contested decision was addressed were mitigated, by reducing the fine by 50%.

275 According to the applicant, the principle of proportionality required, however, that if a third decision were adopted in the present case, no fine should be imposed on it.

276 In that regard, as the Court has pointed out in paragraph 172 above, a failure to act within a reasonable time, assuming it to be established, is not in itself sufficient to lead to the annulment of the contested decision, since annulment is reserved for situations in which such a failure has interfered with the exercise of the rights of the defence.

277 Furthermore, as the Court has also made clear in paragraph 172 above, where the failure to act within a reasonable time has not interfered with the exercise of the rights of the defence, compensation for the damage caused may be sought in an action for damages before the EU Courts.

278 That position is criticised by the applicant, for whom the bringing of an action for damages is not an 'effective remedy' because it would further delay a finding of infringement of the right to have its case dealt with within a reasonable time.

279 In that regard, it should be recalled that the right to an effective remedy is enshrined in Article 47(1) of the Charter and is a right which the EU Courts must ensure is respected. That right must be exercised within the system of remedies provided for in the Treaty, since an action for annulment serves to review the legality of acts of the European Union, whereas an action for damages seeks compensation for damage caused by unlawful conduct on the part of its institutions, bodies, offices or agencies. Under that system, if the applicant is to obtain the annulment of an act adversely affecting it, it must show that the validity of that act was vitiated by the unlawful conduct of the entity which adopted the act.

280 In the present case, the applicant has not demonstrated that the contested decision was vitiated by any illegality as a result of an infringement of the right to have its case dealt with within a reasonable time or an infringement of the rights of the defence capable of leading to the annulment of that decision.

281 The applicant's second argument must therefore be dismissed.

282 By its third argument, the applicant requests the Court, in essence, to exercise its unlimited jurisdiction by varying the amount of the fine imposed on it in order to take account of the circumstances of the case, in accordance with the principle of proportionality.

283 In that regard, it must be recalled that the EU Courts are empowered to exercise their unlimited jurisdiction under Article 261 TFEU and Article 31 of Regulation No 1/2003 where the question of the amount of the fine is before them (judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 126).

284 In the present case, the applicant submitted such a request to the Court, as is apparent, in particular, from paragraph 158 of the application, in which, summarising its claims, it states that it seeks, at least, a reduction of the fine under, inter alia, Article 261 TFEU.

285 When exercising their unlimited jurisdiction, the EU Courts are empowered, in addition to the mere review of legality, which only permits dismissal of the action for annulment or the annulment (in whole or in part) of the contested measure, to take account of all the factual circumstances in order, where appropriate, to amend the amount of the penalty (see, to that effect, judgments of 3 September 2009, *Prym and Prym Consumer* v *Commission*, C-534/07 P, EU:C:2009:505, paragraph 86 and the case-law cited, and of 10 November 2021, *Google and Alphabet* v *Commission (Google Shopping)*, T-612/17, under appeal, EU:T:2021:763, paragraph 605).

286 In the exercise of their unlimited jurisdiction, the EU Courts may cancel, reduce or increase the fine imposed (see judgment of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 334 and the case-law cited).

287 Accordingly, the EU Courts may also, if necessary, make different findings from those made by the Commission to determine the amount of the fine imposed (see judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 75).

288 In the contested decision, the Commission, without making a finding of failure to act within a reasonable time or infringement of the rights of the defence, granted the applicant a reduction in the amount of the fine, which it justified as follows:

– ‘in view of … the uncertainty created by the transition between the two treaties, an exceptional circumstance which, at the time, was not expressly governed by the case-law, … the Commission considers it appropriate that the addressees of this Decision should receive a reduction of the fine’ (recital 570);

– that reduction was granted ‘in order to mitigate the adverse consequences for those parties which might have arisen on account of the long duration of the procedure needed to remedy certain procedural defects that occurred in the course of the procedure and are not attributable to the addressees of this Decision’ (recital 570);

– ‘the spontaneous grant by the Commission of a reduction in the amount of the fine … must be regarded as sufficient … to mitigate any adverse effects suffered by the addressees as a result of the long duration of the procedure’ (recital 572);

– ‘the addressees will … be entitled to an appropriate reduction of the fines … in order to mitigate any adverse effects caused by the procedural errors committed by the Commission’ (recital 573);

– ‘the Commission … considers that the procedural errors it committed during the transition between the ECSC Treaty and the EC Treaty and the longer duration which may have resulted from those errors warrant appropriate compensation for the addressees of this Decision’ (recital 991);

– ‘in view of the discretion enjoyed by the Commission in setting fines, it may … [grant] the addressees of this Decision a reduction of the fine which should be calculated so as not to penalise the addressee undertakings for procedural errors not committed by them but which, at the same time, are not so serious as to undermine the principle that cartels are very serious infringements of competition law’ (recital 992);

– ‘in order to take due account of those factors, the Commission concludes that a 50% reduction of the fine for extraordinary mitigating circumstances should be applied to all the addressees of this Decision’ (recital 994).

289 It follows that the Commission relied, in essence, on the following considerations in order to grant the reduction of the fine imposed on the applicant:

– the case was dealt with when the ECSC Treaty was in the process of expiring;

– that situation gave rise to difficulties as regards the identification of the applicable rules;

– those difficulties led to the annulment of the 2002 and 2009 decisions by the EU Courts;

– those annulments prolonged the length of the procedure to an extent capable of having an adverse effect on the situation of the undertakings concerned;

– those circumstances could be taken into account in determining the amount of the fine.

290 In that regard, it must be observed that the Commission stated on several occasions in the recitals referred to in paragraph 288 above that, by reducing the amount of the fine at issue, it sought to ‘mitigate’ or ‘compensate for’ ‘adverse effects’, namely damage which may have been caused by ‘errors’ attributable to it.

291 Although such terms are generally associated with proceedings for damages, it is not apparent from the contested decision that, by granting the reduction in the amount of the fine at issue, the Commission’s intention was to award compensation for damage caused by unlawful conduct. Nowhere in that decision does the Commission admit that it acted unlawfully, for example by failing to observe the reasonable time principle or by infringing the applicant’s rights of the defence. On the contrary, in several passages of that decision it refers to the case-law according to which, where a complaint is made concerning the duration of the procedure, the remedy must be an action for damages (recitals 568 and 578).

292 Thus, in the light of those different considerations, it must be held that the reduction in the amount of the fine at issue granted by the Commission was not intended to compensate for any unlawful conduct on its part; it simply sought to take account of the circumstances of the case in the context of the broad discretion which the Commission enjoys when imposing penalties, as recognised, in particular, by the judgment of 19 March 2009, *Archer Daniels Midland* v *Commission* (C-510/06 P, EU:C:2009:166, paragraph 82) (see paragraph 288 above).

293 In the exercise of its unlimited jurisdiction, the Court considers that, in the present case, the fine cannot be cancelled owing to, inter alia, the need to ensure the full application of competition law to the particularly serious and significantly lengthy infringement found to have been committed by the applicant, since the statement of reasons, the evidence of that infringement and the applicant's involvement in it have not been validly challenged (see seventh and eighth pleas in law below).

294 That being so, it must be borne in mind that the fine was imposed on the applicant not in the years immediately following the commission of the last instances of anticompetitive conduct established by the Commission, but almost 20 years later.

295 In that regard, in determining the amount of the fine, it is necessary in the present case to take into account, among all the relevant circumstances, the deterrent effect of the fine.

296 The deterrent effect of the fine is taken into account in order to ensure that the amount of the fine will act as a sufficient incentive to the undertaking concerned and, generally, to all economic operators to comply with the EU competition rules (see judgment of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 102).

297 In the present case, the objective of deterrence has already been implemented in respect of the applicant, in part in any event, first, by the penalty imposed on it in the 2002 decision and then in the 2009 decision, and, second, by the prospect that that penalty could be maintained at the end of the procedure if the legal actions brought by the applicant against those decisions were dismissed or if, in the event of annulment of those decisions, a new decision again imposing a penalty were adopted (see paragraph 257 above).

298 Accordingly, the Court must hold, in the exercise of its unlimited jurisdiction, that in view of the time elapsed between the last instances of anticompetitive conduct and the adoption of the contested decision, the setting of the amount of the fine at a level below the basic amount of EUR 10.25 million determined by the Commission in the contested decision, in accordance with its Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) [CS] (OJ 1998 C 9, p. 3), which are capable of guiding the EU Courts in their exercise of that jurisdiction (see, to that effect, judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, EU:C:2012:778, paragraph 80), is sufficient, in the present case, to ensure the desired deterrent effect.

299 In the light of the foregoing, a reduction of 50% of the amount of the fine on account of the time elapsed between the last instances of anticompetitive conduct and the adoption of the contested decision is appropriate.

300 To conclude, the Court must:

– dismiss the complaint and, with it, the fourth plea in law in so far as they seek the annulment in whole or in part of the contested decision;

– dismiss the complaint and, with it, the fourth plea in law in so far as they seek the cancellation or reduction of the fine imposed on the applicant, on the ground that the 50% reduction of the fine granted by the Commission in the contested decision was appropriate in view of the lessening of the necessary deterrent effect of the penalty on account of the time elapsed between the end of the infringement and the imposition of the fine.

E. Fifth plea in law, alleging failure to observe the ne bis in idem principle and the principle of legal certainty

301 The applicant submits that the *ne bis in idem* principle and the principle of legal certainty underlying it precluded the adoption of the contested decision.

302 The Commission disputes the applicant's arguments.

303 In that regard, the *ne bis in idem* principle is enshrined:

– in Article 50 of the Charter, which provides that 'no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law';

– in Article 4(1) of Protocol No 7 to the ECHR.

304 As a corollary to the *res judicata* principle, the *ne bis in idem* principle ensures legal certainty and fairness; in ensuring that once the person concerned has been tried and, as the case may be, punished, that person has the certainty that he or she will not be tried again for the same offence (judgment of 3 April 2019, *Powszechny Zakład Ubezpieczeń na Życie*, C-617/17, EU:C:2019:283, paragraph 33).

305 In competition matters, in particular, the *ne bis in idem* principle precludes, as a rule, an undertaking from being found guilty or from having proceedings brought against it a second time on the grounds of anticompetitive conduct in respect of which it has been penalised or declared not liable by an earlier decision that can no longer be challenged (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 59, and of 1 July 2009, *ThyssenKrupp Stainless* v *Commission*, T-24/07, EU:T:2009:236, paragraph 178).

306 The application of the *ne bis in idem* principle presupposes in particular that a ruling has been given on the question whether an offence has in fact been committed or that the legality of the assessment thereof has been reviewed (judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 60).

307 If that requirement is met, the *ne bis in idem* principle prohibits a fresh assessment in depth of the alleged commission of an offence where that assessment would result in the imposition of either:

– a second penalty, in addition to the first, in the event that liability is established a second time; or

– a first penalty in the event that liability not established by the first decision is established by the second (judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 61).

308 On the other hand, the *ne bis in idem* principle does not preclude the resumption of proceedings in respect of the same anticompetitive conduct where the first decision was annulled for procedural reasons without any ruling having been given on the substance of the facts alleged, since the annulment decision cannot in such circumstances be regarded as an 'acquittal' within the meaning given to that expression in penal matters (judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 62, and of 1 July 2009, *ThyssenKrupp Stainless* v *Commission*, T-24/07, EU:T:2009:236, paragraph 190).

309 In such a case, the penalties imposed by the new decision are not added to those imposed by the annulled decision but replace them (judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 62, and of 1 July 2009, *ThyssenKrupp Stainless* v *Commission*, T-24/07, EU:T:2009:236, paragraph 190).

310 In the present case, it must be observed that, to date, no decision has yet given a definitive ruling on the substance of the case as regards the applicant's involvement in the infringements of which it is accused. The 2002 decision was annulled by the General Court on account of the legal basis used by the Commission and the 2009 decision was annulled for infringement of essential procedural requirements, without, in either case, a definitive position having been adopted on the substantive pleas raised by the applicant in connection with its involvement in the conduct complained of. The judgment of 9 December 2014, *Feralpi* v *Commission* (T-70/10, not published, EU:T:2014:1031), is the only judgment to have ruled on those pleas, but it was set aside in its entirety by the Court of Justice. Accordingly, the view cannot be taken that, by adopting the contested decision, the Commission penalised the applicant twice or initiated a second procedure against it on the basis of the same facts (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 63).

311 For its part, the penalty imposed on the applicant in the contested decision replaces that imposed in the 2009 decision, which had itself replaced the penalty imposed in the 2002 decision. The amounts paid by the applicant in respect of the fine imposed in the 2002 decision and then in the 2009 decision were repaid to it following the annulment of those two decisions.

312 In those circumstances, there was no failure to observe the *ne bis in idem* principle.

313 The claim of failure to observe the principle of legal certainty resulting from a failure to observe the *ne bis in idem* principle must therefore also be rejected, as must, in consequence, the fifth plea in law.

F. Sixth plea in law, alleging that the rules on limitation laid down in Article 25(3) to (6) of Regulation No 1/2003 are unlawful

314 The applicant raises a plea of illegality in respect of the rules governing interruption and suspension of the limitation period laid down in Article 25(3) and (6) of Regulation No 1/2003. It claims that those rules should be declared to be inapplicable in the present procedure. According to the applicant, they result in situations in which, as here, the Commission is able to adopt new

decisions after annulment, without that possibility being subject to any time limit. The applicant argues that such an outcome is contrary to Articles 41 and 47 of the Charter and Article 6 of the ECHR, all of which enshrine the duty to act within a reasonable time in the conduct of procedures.

315 The Commission disputes the applicant's arguments.

316 In that regard, it should be recalled that, in competition matters, the limitation period is governed by Article 25 of Regulation No 1/2003 as follows:

– that period is 5 years (Article 25(1)(b), read together with Article 23(2)(a) of that regulation);

– it may be interrupted by any action taken by the Commission for the purpose of the investigation or proceedings in respect of the infringement (Article 25(3)); in that case, the interruption retroactively erases the time that has already elapsed and marks the starting point of a fresh period; in the event of interruption, the limitation period expires at the latest upon the expiry of a period of 10 years without the Commission having imposed a fine or periodic penalty payment (Article 25(5));

– the limitation period is suspended for the duration of review proceedings brought before the Court against the Commission's decision, in which case that period is extended by the time for which the suspension lasted (Article 25(6)).

317 As for the reasonable time principle, the concept of 'reasonable time' is not fixed or determined in advance in an abstract manner for all procedures to which it might apply, but must be appraised in the light of the circumstances specific to each case, in particular the importance of the case, its complexity and the conduct of the applicant and of the competent authorities (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 187 and 188).

318 The applicant complains that, in Article 25 of Regulation No 1/2003, the EU legislature did not lay down a maximum period beyond which any action by the Commission would be precluded even if the limitation period was suspended.

319 In that regard, it must be observed that, as drafted, Article 25 of Regulation No 1/2003 is the result of the reconciliation by the EU legislature, in the exercise of the powers conferred on it, of two objectives potentially requiring conflicting measures, namely, first, the need to ensure legal certainty by preventing situations which arose a long time previously from being indefinitely brought into question and, second, the requirement to ensure observance of the law by pursuing, establishing and penalising infringements of EU law (see, to that effect, judgment of 6 October 2005, *Sumitomo Chemical and Sumika Fine Chemicals* v *Commission*, T-22/02 and T-23/02, EU:T:2005:349, paragraph 82).

320 The applicant has not shown, in the present case, that the EU legislature, in its reconciliation of those objectives, exceeded the leeway which it must be allowed in that context. The power to conduct inspections and impose penalties is subject to strict limits. It is true that the limitation period is suspended when an action is brought before the EU Courts. However, if that option is to be used, it requires a step to be taken by the undertakings themselves. The EU legislature cannot be criticised if, after the bringing of several actions by the undertakings concerned, the decision taken at the end of the procedure is adopted after a certain period of time.

321 The reconciliation thus carried out by the EU legislature seems all the more appropriate since individuals who complain that a procedure was unreasonably long may challenge its length by seeking annulment of the decision adopted at the end of that procedure, such annulment being reserved for situations in which the excessive time taken has interfered with the exercise of the rights of the defence, or, where no such interference has occurred, by bringing an action for damages before the EU Courts (see paragraph 172 above).

322 Accordingly, the sixth plea in law must be dismissed.

…

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Feralpi Holding SpA to pay the costs.

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 9 November 2022.

[Signatures]