Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 26 November 2015 [1]

Cases C-613/13 P, C-609/13 P, C-625/13 P, C-636/13 P and C-644/13 P

European Commission
v
Keramag Keramische Werke GmbH and Others (C-613/13 P)
and
Duravit AG and Others
v
European Commission (C-609/13 P)
and
Villeroy & Boch AG
v
European Commission (C-625/13 P)
and
Roca Sanitario
v
European Commission (C-636/13 P)
and
Villeroy & Boch SAS
v

European Commission (C-644/13 P)

(Appeals — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Coordination of price increases and exchange of sensitive business information — Inconsistencies between parallel judgments of the General Court — Fines — Gravity of the infringement — Non-discrimination)

1. In this Opinion I shall examine together a number of appeals, [2] first, the European Commission's appeal [3] against the judgment of the General Court in *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, EU:T:2013:457, 'the *Keramag* judgment'), secondly, the appeal brought by Duravit AG, Duravit SA and Duravit BeLux SPRL/BVBA [4] against the judgment in *Duravit and Others* v *Commission* (T-364/10, EU:T:2013:477, 'the *Duravit* judgment'), thirdly, the appeal brought by Villeroy & Boch AG [5] and, fourthly, the appeal brought by Villeroy & Boch SAS, [6] each

1 — Original language: French.
2 — See point 5 of this Opinion.
3 — *Commission* v *Keramag Keramische Werke and Others* (C-613/13 P).
4 — *Duravit and Others* v *Commission* (C-609/13 P).
5 — *Villeroy & Boch AG* v *Commission* (C-625/13 P).
6 — *Villeroy & Boch SAS* v *Commission* (C-644/13 P).

against the judgment in *Villeroy & Boch Austria and Others* v *Commission* (T-373/10, T-374/10, T-382/10 and T-402/10, EU:T:2013:455, 'the *Villeroy & Boch Austria* judgment') and, fifthly, the appeal brought by Roca Sanitario, SA[7] against the judgment in *Roca Sanitario* v *Commission* (T-408/10, EU:T:2013:440, 'the *Roca Sanitario* judgment').

2. The judgments in question concern 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[8] (Case COMP/39092 — Bathroom Fittings and Fixtures, 'the decision at issue').

3. By the decision at issue, the Commission imposed fines totalling more than EUR 622 million on 17 manufacturers of bathroom fittings and fixtures on account of their participation in a single and continuous infringement of competition law in the bathroom fittings and fixtures sector. According to the Commission, the undertakings in question had, over various periods of time between 16 October 1992 and 9 November 2004, regularly participated in anti-competitive meetings in Germany, Austria, Belgium, France, Italy and the Netherlands. The Commission concluded that the coordination of annual price increases and other pricing elements and the disclosure of sensitive commercial information in which the undertakings had engaged constituted a cartel. The products covered by the infringement were, according to the Commission, taps and fittings, shower enclosures and accessories, and ceramic sanitary ware ('the three product sub-groups').

4. The various judgments of the General Court relating to the decision at issue have given rise to no less than 14 appeals before the Court of Justice.[9]

5. In accordance with the Court's request and as I indicated in point 1, I shall focus in this Opinion on two pleas in law which are central to five of those fourteen appeals. These two pleas raise certain contradictory findings appearing in some of the General Court's judgments[10] and question whether the General Court exercised its unlimited jurisdiction properly.[11] Having said that, it seems clear that the present Opinion may also assist the Court in dealing with the other appeals that raise similar issues.

I – Background to the disputes and the decision at issue

6. The background to the disputes is set out in paragraphs 1 to 26 of the *Keramag* judgment, paragraphs 1 to 25 of the *Duravit* judgment, paragraphs 1 to 19 of the *Villeroy & Boch Austria* judgment and paragraphs 1 to 28 of the *Roca Sanitario* judgment. It may be summarised as follows.

7. In the decision at issue, the Commission found that there had been an infringement of Article 101(1) TFEU in the bathroom fittings and fixtures sector.

7 — *Roca Sanitario* v *Commission* (C-636/13 P).

8 — For the purposes of this Opinion I shall hereafter refer only to Article 101 TFEU.

9 — Cases C-604/13 P, C-609/13 P, C-611/13 P, C-613/13 P, C-614/13 P, C-618/13 P, C-619/13 P, C-625/13 P, C-626/13 P, C-636/13 P, C-637/13 P, C-638/13 P, C-642/13 P and C-644/13 P.

10 — The second, third and fifth parts of the Commission's first plea in law in *Commission* v *Keramag and Others* and the second plea raised by *Keramag Keramische Werke and Others* (C-613/13 P) in their cross-appeal, the third plea in law in *Duravit and Others* v *Commission* (C-609/13 P), the first plea in law and the second part of the second plea in law in *Villeroy & Boch AG* v *Commission* (C-625/13 P) and lastly, the first and second pleas in law in *Villeroy & Boch SAS* v *Commission* (C-644/13 P).

11 — The first part of the second plea in law *Roca Sanitario* v *Commission* (C-636/13 P).

8. On 15 July 2004, Masco Corp. and its subsidiaries, including Hansgrohe AG, which manufactures taps and fittings, and Hüppe GmbH, which manufactures shower enclosures, had informed the Commission of the existence of a cartel in the bathroom fittings and fixtures sector and submitted an application for immunity from fines [12] or, failing that, a reduction in fines. On 2 March 2005, the Commission adopted a conditional decision granting Masco Corp. immunity from fines.

9. 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 several of those companies and associations. Between 15 November 2004 and 20 January 2006, a certain number of companies applied for immunity from fines or a reduction in fines.

10. On 26 March 2007, the Commission adopted a statement of objections ('the statement of objections'), which was notified to several companies, including the appellants in the present appeals.

11. A hearing took place from 12 to 14 November 2007, in which the appellants participated.

12. On 9 July 2009, the Commission sent several companies, including some of the appellants in the present appeals, a letter of facts, drawing their attention to certain evidence on which the Commission was minded to rely when adopting a final decision. Between 19 June 2009 and 8 March 2010, the Commission sent further requests for information to several companies.

13. On 23 June 2010, the Commission adopted the decision at issue.

14. For the purposes of setting the fines imposed on each undertaking, the Commission relied on the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2, 'the 2006 Guidelines'). It explained that it had calculated the basic amount of the fine for each undertaking on the basis of its sales per Member State, multiplied by the number of years that it had participated in the infringement found in each Member State for the product sub-group in question, such that account was taken of the fact that certain undertakings were active only in certain Member States or in only one (or two) of the three product sub-groups.

A – The fine imposed on Keramag and Others

15. As regards the gravity of the infringement, the Commission set the multiplier at 15%, taking account of four criteria, that is to say, the combined market shares, the nature of the infringement, its geographic scope and its implementation.

16. In addition to the multiplier applied on account of the duration of the infringement, the Commission decided, in order to deter the undertakings in question from engaging in collusive practices of the kind addressed by the decision at issue, to increase the basic amount of the fine by 15%.

17. 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 found there to be no aggravating or mitigating circumstances and, after applying the 10% ceiling, fixed the fine imposed on Keramag Keramische Werke GmbH and Others ('Keramag and Others') at EUR 57 690 000 (Article 2(7) of the decision at issue).

12 — Under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3; 'the 2002 Leniency Notice').

B – The fine imposed on Duravit and Others

18. As regards the gravity of the infringement, the Commission set the multiplier at 15%, taking account of four criteria, that is to say, the combined market shares, the nature of the infringement, its geographic scope and its implementation. In addition to the multiplier applied on account of the duration of the infringement, the Commission decided to increase the basic amount of the fine by 15%, in order to deter the undertakings in question from engaging in collusive practices of the kind addressed by the decision at issue.

19. After having determined the basic amount, the Commission found there to be no aggravating or mitigating circumstances and, after applying the 10% ceiling, fixed the fine imposed on Duravit and Others at EUR 29 266 325 (Article 2 of the decision at issue).

C – The fines imposed on Villeroy & Boch AG and Villeroy & Boch France

20. In Article 1(1) of the decision at issue, the Commission found that Villeroy & Boch AG had participated in a single infringement from 28 September 1994 to 9 November 2004 and that its subsidiaries Villeroy & Boch Austria GmbH ('Villeroy & Boch Austria'), Villeroy & Boch Belgium and Villeroy & Boch SAS ('Villeroy & Boch France') had participated in the same infringement over various periods from 12 October 1994 at the earliest to 9 November 2004.

21. In Article 2(8) of the decision at issue, the Commission imposed a fine of EUR 54 436 347 on Villeroy & Boch, a fine of EUR 6 083 604 on Villeroy & Boch and Villeroy & Boch Austria jointly and severally, a fine of EUR 2 942 608 on Villeroy & Boch and Villeroy & Boch Belgium jointly and severally and a fine of EUR 8 068 441 on Villeroy & Boch and Villeroy & Boch France jointly and severally. The total amount of the fines imposed on Villeroy & Boch AG and its subsidiaries was therefore EUR 71 531 000.

D – The fine imposed on Roca Sanitario

22. In Article 1(3) of the decision at issue, the Commission found that Roca Sanitario and its two relevant subsidiaries had infringed Article 101(1) TFEU by participating, in France and Austria, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector.

23. In Article 2(4) of the decision at issue, the Commission imposed a fine of EUR 17 700 000 on Roca Sanitario jointly and severally with Laufen Austria and a fine of EUR 6 700 000 on Roca Sanitario jointly and severally with Roca France. It also imposed a fine of EUR 14 300 000 individually on Laufen Austria on account of its participation in the infringement during the period prior to Roca Sanitario's acquisition of the Laufen group.

II – Procedure before the General Court and the judgments under appeal

A – Keramag and Others

24. On 8 September 2010, Keramag and Others brought actions for the annulment of the decision at issue (Cases T-379/10 and T-381/10). In Case T-379/10, seven pleas in law were put forward and, in Case T-381/10, nine pleas were put forward.

25. The General Court dismissed the majority of those pleas, but upheld the first and third parts of the third plea put forward by Keramag and Others in Case T-381/10.[13] It found that the Commission had erred in concluding that the companies Allia SAS and Produits Céramiques de Touraine SA (PCT) had participated in the infringement and in concluding that the company Pozzi Ginori had participated in the 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.

26. In so far as concerns the reduction of fines, the General Court took into account the fact that it had partially upheld the third plea put forward by Keramag and Others and annulled Article 2(7) of the decision at issue 'in so far as the total amount of the fine imposed … [exceeded] EUR 50 580 701' (paragraph 2 of the operative part), thereby reducing the fine by EUR 7 109 299.

B – Duravit and Others

27. On 2 September 2010, Duravit and Others brought an action for the annulment of the decision at issue in which they put forward nine pleas in law. By the first six pleas they sought the annulment of the decision at issue. Those pleas alleged, first, a failure to meet the standard of proof required to establish an infringement of Article 101(1) TFEU, secondly, infringement of the applicants' rights of defence and an error of assessment regarding their participation in a multi-product cartel in the bathroom fittings and fixtures sector, thirdly, an error of assessment regarding the applicants' alleged participation in an infringement of the competition rules in the German sanitary ceramics sector, fourthly, an error of assessment regarding the applicants' alleged participation in price concertation in Belgium and France, fifthly, an error of assessment regarding the characterisation of the practices at issue as a single and continuous infringement and, sixthly, infringement of the right to be heard, on account of the length of time that had elapsed in the administrative proceedings between the time when Duravit and Others were heard and the time when the decision at issue was adopted.

28. The seventh plea in law alleged the unlawful nature of the provisions of Article 23(2) and (3) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1) and of the 2006 Guidelines and contained two objections of illegality.

29. The eighth and ninth pleas in law were aimed at obtaining a reduction in the fine and alleged, respectively, a failure to have regard, when determining the basic amount of the fine, to the low level of the applicants' involvement in the infringement compared with that of the other participants and the disproportionate nature of the amount of the fine ultimately imposed on the applicants after application of the 10% ceiling.

30. In paragraph 339 of the *Duravit* judgment, the General Court held that the Commission had made an error of assessment in concluding that Duravit and Others had participated in the infringement established in Italy, Austria and the Netherlands. Consequently, in paragraphs 352 to 357 of its judgment, the General Court partly upheld the claim for partial annulment of the decision at issue.

13 — The seven pleas in law put forward in Case T-379/10 were substantially the same as the first to fifth, eighth and ninth pleas put forward in Case T-381/10, and so the General Court adopted the numbering of the pleas given in the latter case.

31. As regards the claims, put forward in the alternative, for a reduction in the fine imposed on Duravit and Others, the General Court first of all rejected, in paragraphs 376 and 384 of the judgment, the pleas by which Duravit and Others argued that the method used to calculate the basic amount of the fine breached the principle of equal treatment and the principle that penalties should be applied solely to the offender and that the final amount of the fine imposed on them was disproportionate and unfair.

32. Secondly, the General Court held, in paragraphs 385 and 386 of the *Duravit* judgment, that there was no justification for it to exercise its unlimited jurisdiction and reduce the fine of EUR 29 266 325 imposed on Duravit and Others and that that sum represented an appropriate penalty in view of the duration and gravity of the infringement at issue.

C – Villeroy & Boch AG

33. On 8 September 2010, Villeroy & Boch AG brought before the General Court an action for the annulment of the decision at issue, in so far as it concerned it or, in the alternative, a reduction in the fines that had been imposed on it (Case T-374/10).

34. It argued that the Commission had erred in characterising the infringement found as a single, complex and continuous infringement and, in the alternative, that in so doing it had breached its duty to state reasons in that it had not defined with sufficient precision the relevant markets. Villeroy & Boch AG also argued that it had committed no infringement in Germany with regard to the three sub-groups of products.

35. Villeroy & Boch AG also maintained that liability for the anti-competitive conduct of Ucosan BV, one of its subsidiaries, could not be imputed to it, since that company had acted independently on the market. In this connection, it observed that the director and founder of Ucosan had contractually accepted ultimate responsibility for operations and was alone responsible for marketing and sales.

36. According to Villeroy & Boch AG, the Commission had erred in concluding that it had participated in a cartel on the Austrian market. As a parent company it could not be held liable for the infringement committed by Villeroy & Boch Austria, since EU case-law on imputing the anti-competitive conduct of a wholly-owned subsidiary to its parent company was contrary, in particular, to the principle that offences and penalties must be strictly defined by law and the presumption of innocence. Villeroy & Boch AG also alleged that there was no proof of any infringement in Austria.

37. Lastly, Villeroy & Boch AG disputed that there had been any infringement in France, Belgium or Italy and took issue with the joint and several imposition of the fines.

38. According to the General Court, the Commission had failed to establish that Villeroy & Boch AG had participated in the single infringement prior to 12 October 1994 (see paragraph 321 of the *Villeroy & Boch Austria* judgment). Nevertheless, the partial annulment of Article (1) of the decision at issue resulting from that finding did not alter the calculation of the fine imposed on Villeroy & Boch AG in Article 2(8) of the decision at issue. According to the General Court, the Commission had in any event taken no account, in its calculation of the fine, of Villeroy & Boch AG's participation in the infringement prior to 12 October 1994.

D – Villeroy & Boch France

39. On 8 September 2010, Villeroy & Boch France brought an action before the General Court for the annulment of the decision at issue in so far as it concerned it and, in the alternative, for a reduction in the fines imposed on it (Case T-382/10). The General Court dismissed Villeroy & Boch France's action in its entirety.

E – Roca Sanitario

40. On 8 September 2010, Roca Sanitario brought an action before the General Court for the annulment of the decision at issue in so far as it concerned it and, in the alternative, for a reduction in the fines imposed on it.

41. In support of its claim for the partial annulment of the decision at issue, Roca Sanitario put forward, in substance, six pleas in law. The first, second and fifth pleas in law concerned the imputing to Roca Sanitario of liability for the anti-competitive conduct alleged against its subsidiaries. In particular, the fifth plea in law addressed the determination of the period for which Roca Sanitario could be held responsible for the actions of Laufen Austria. The third plea in law alleged breach of the rights of the defence. The fourth plea concerned the calculation of the fine imposed jointly and severally on Roca Sanitario and Laufen Austria. The sixth plea alleged breach of the principle of equal treatment in the determination of the basic amount of the fines.

42. In addition, Roca Sanitario raised two arguments in support of its claim, put forward in the alternative, for a reduction in the fines. By the first of these arguments it alleged that the infringement for which liability had been imputed to it was of lesser gravity than the infringement committed by other cartel participants. By its second argument, Roca Sanitario requested that it be allowed the benefit of any reduction in the fine that might be granted by the General Court to its subsidiaries in parallel actions.

43. In its judgment in the action brought by Roca France, the General Court reduced the fine imposed jointly and severally on that company and on Roca Sanitario because of an error made by the Commission in its assessment of the evidence submitted by Roca France in its leniency application. Consequently, the General Court upheld the second argument put forward by Roca Sanitario in support of its alternative claim. The General Court therefore reduced the fine imposed jointly and severally on Roca Sanitario and Roca France by 6%, which amounted to EUR 402 000. It dismissed the action as to the remainder.

III – The appeals

44. All the parties presented oral argument at the hearing on 10 September 2015.

A – Commission v Keramag Keramische Werke and Others

1. The appeal: the second, third and fifth parts of the first plea in law only

(a) The second part of the first plea in law (the General Court failed to examine Roca France's leniency application)

i) Brief summary of the arguments of the parties

45. The *Commission* maintains that, after incorrectly holding that the statement made by American Standard Inc. ('Ideal Standard') in the context of its application under the 2002 Leniency Notice had to be corroborated by other evidence, wrongly refrained from examining the statement made by Roca France in the context of its leniency application and — even though Roca France's statement was examined in other judgments delivered the same day, by the same judges and in relation to the same cartel — refused to accept that that statement had any probative value in corroborating Ideal Standard's statement, without giving any explanation and instead merely referring to the passage in the decision at issue which summarised Roca France's reply to the statement of objections.

46. *Keramag and Others*, on the other hand, maintain generally that (i) to the extent that the arguments put forward and the evidence adduced are different, the Commission is misconstruing the nature of judicial review by taking the view that the General Court must not arrive at different conclusions in different cases, (ii) the Commission is referring to evidence that is inadmissible, since it was not placed on the file in their case, and cannot therefore be used against them, (iii) the Commission is distorting the evidence on the file by maintaining that the judgments in the parallel cases addressed the same items of evidence, whereas the item of evidence to which the Commission is referring was not on the file in their case and (iv) by requesting the Court of Justice to set aside the judgment of the General Court on the basis of evidence put forward in other cases, the Commission is in fact asking the Court to infringe the rights of defence of Keramag and Others.

47. Next, in so far as concerns the second part of the plea specifically, Keramag and Others maintain that the General Court was not required to examine the statement made by Roca France in the context of the leniency procedure because the Commission had not placed that document on the file. As regards Roca France's reply to the statement of objections, the General Court did not err in relying on the relevant passages in the decision at issue. Lastly, there was no distortion of the evidence in this case, since the evidence was different evidence and was debated differently in different cases.

ii) Assessment

48. As a preliminary point, I would observe, as does the Commission, that there is fundamental contradiction between the *Keramag* judgment and three other judgments concerning the same decision handed down the same day and by the same judges with regard to the same facts and the same evidence.

49. Whereas, in the *Keramag* judgment, the General Court refrained from examining the statement which Roca France made in the context of its leniency application and therefore denied that statement any probative value in corroborating Ideal Standard's statement, it gave a different ruling in the *Villeroy & Boch Austria*, *Duravit* and *Roca* judgments:

— indeed, in the *Villeroy & Boch Austria* judgment, the General Court held that anti-competitive discussions at the meeting of the Association française des industries de céramique sanitaire (the French association of ceramic sanitary ware industries, 'AFICS') of 25 February 2004 had been proven to the requisite legal standard. It relied, in this connection, on the two leniency

applications made by Ideal Standard and Roca France, which corroborated each other, and applied its case-law according to which one leniency application may be corroborated by another; [14]

— the General Court reached the same conclusion in the *Duravit* judgment, and

— in the *Roca* judgment, the General Court granted Roca France a reduction in its fine of 6% because it had provided significant added value by demonstrating that anti-competitive discussions had taken place at the AFICS meeting on 25 February 2004, that being precisely the same element of the infringement as is at issue in the present appeal. [15]

50. I shall now analyse the two arguments put forward by the Commission.

– First argument: the General Court failed to take account of the statement made by Roca France in the context of its leniency application Review of the case-law

51. It should be borne in mind in this context that an appellant is entitled to argue on appeal that the General Court has failed to observe legal rules and general principles relating to the burden of proof or procedural rules relating to evidence. [16]

52. Next, judgments of the General Court must be sufficiently reasoned to enable the Court of Justice to review them. [17]

53. Moreover, 'the question whether the grounds of a judgment of the [General Court] are contradictory or insufficient is a question of law which is amenable, as such, to judicial review on appeal'. [18]

14 — Corroboration need not necessarily arise from documents contemporaneous with the facts. Several statements may be taken as credible if they corroborate one another. See, in this connection, the judgments in *Lögstör Rör* v *Commission* (T-16/99, EU:T:2002:72, paragraphs 45 to 47); *Bolloré and Others* v *Commission* (T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, EU:T:2007:115, paragraph 168); and *Polimeri Europa* v *Commission* (T-59/07, EU:T:2011:361, paragraph 55). Corroboration by another statement made in a leniency application may suffice if the second statement is made independently and if the two statements agree 'in broad terms'. See, in this connection, the judgment in *Total Raffinage Marketing* v *Commission*, T-566/08, EU:T:2013:423, paragraph 74 (the appeal against that judgment having been dismissed in *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614).

15 — Judgment in *Roca* v *Commission* (T-412/10, EU:T:2013:444, paragraphs 198 and 239, 'the *Roca* judgment'). The same day, the General Court handed down a judgment which extended the benefit of that reduction to Roca France's parent company (*Roca Sanitario* v *Commission*, T-408/10, EU:T:2013:440, paragraph 213).

16 — See, in particular, in the field of competition law, the judgments in *Hüls* v *Commission* (C-199/92 P, EU:C:1999:358, paragraphs 64 and 65) and *Technische Unie* v *Commission* (C-113/04 P, EU:C:2006:593, paragraphs 111 to 113 and 161). See, generally, the judgment in *Commission* v *Brazzelli Lualdi and Others* (C-136/92 P, EU:C:1994:211, paragraphs 66 and 81), the Orders in *San Marco* v *Commission* (C-19/95 P, EU:C:1996:331, paragraph 39) and *AIUFFASS and AKT* v *Commission* (C-55/97 P, EU:C:1997:465, paragraph 25), the judgments in *Somaco* v *Commission* (C-401/96 P, EU:C:1998:208, paragraph 54) and *Schröder and Others* v *Commission* (C-221/97 P, EU:C:1998:597, paragraphs 22 to 24).

17 — Judgment in *Council* v *de Nil and Impens* (C-259/96 P, EU:C:1998:224, paragraph 32).

18 — Judgment in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission* (C-105/04 P, EU:C:2006:592, paragraph 71). See also the judgments in *Baustahlgewebe* v *Commission* (C-185/95 P, EU:C:1998:608, paragraph 25); *Somaco* v *Commission* (C-401/96 P, EU:C:1998:208, paragraph 53); *Cubero Vermurie* v *Commission* (C-446/00 P, EU:C:2001:703, paragraph 20); *BEI Hautem* (C-449/99 P, EU:C:2001:502, paragraph 45); *Aristrain* v *Commission* (C-196/99 P, EU:C:2003:529, paragraphs 40 and 41); and *Technische Glaswerke Ilmenau* v *Commission* (C-404/04 P, EU:C:2007:6, paragraph 90). For cases where the judgment at first instance was set aside because of an inadequate statement of reasons, see, for example, the judgments in *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 428); *Belgium* v *Commission* (C-197/99 P, EU:C:2003:444, paragraph 130); and *International Power and Others* v *NALOO* (C-172/01 P, C-175/01 P, C-176/01 P and C-180/01 P, EU:C:2003:534, paragraph 121).

54. A plea alleging an incomplete examination of the facts is also regarded as admissible on appeal [19] and the question whether the General Court has misread the act at issue, finding in it something that does not exist or quoting from it incorrectly, is also a question of law. In such a case, the General Court errs in law by substituting its own reasoning for that set out in the act in question. [20]

55. For example, in its judgment in *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 381 to 385), the Court held that 'the [General Court] excluded from the calculation of the fines imposed on Ciments français the turnover of its Spanish and Greek subsidiaries because it had been established that Ciments français did not yet control them at the time when it became guilty of the conduct constituting the infringement. The [General Court] accepted, moreover, that in 1990 Ciments français had ceased any unlawful conduct. … It follows from the Cement Decision itself that Ciments français had assumed control of CCB during 1990, or the same year as it had acquired control of its Spanish and Greek subsidiaries. *… the Court of First Instance therefore made a manifest error which could be detected upon reading a document such as the Cement Decision, which was clearly at the centre of the discussion from the outset*' (my emphasis).

56. Moreover, in its judgment in *PKK and KNK* v *Council* (C-229/05 P, EU:C:2007:32, paragraphs 37 to 54), the Court held that '[i]t follows that the finding in paragraph 35 of the contested order that, "according to Mr [Osman] Ocalan's evidence annexed to the application, the PKK's Congress … pronounced [the PKK's] dissolution" is incorrect and contrary to the wording of his statement to which the finding refers. … Likewise, the statement in paragraph 37 of the contested order that, "far from demonstrating Mr [Osman] Ocalan's legal capacity to represent the PKK, the applicants state, on the contrary, that the PKK no longer exists" *is not consistent with the evidence available to the [General Court]*. *… The findings of fact in paragraphs 35 and 37 of the contested order are therefore incorrect and distort the clear sense of the evidence available to the [General Court]*. It follows that the fourth ground of appeal is well founded' (my emphasis).

57. Similarly, in its judgment in *Industrias Químicas del Vallés* v *Commission* (C-326/05 P, EU:C:2007:443, paragraphs 60 to 69), the Court concluded that 'it must be held that the findings of fact set out in paragraphs 94 and 104 of the judgment under appeal, to the effect that the Commission had in no way changed its position on the need for the applicant to produce a "complete dossier" in support of its application for registration of metalaxyl, are incorrect and amount to a distortion of the clear sense of the evidence submitted to the [General Court]'.

58. Lastly, as Advocate General Mischo has pointed out, [21] '[a]ccording to settled case-law, a finding of fact by the [General Court] cannot, prima facie, be reopened on appeal. There is, however, an exception to this principle where the finding is vitiated by a manifest error of assessment. *This occurs, in particular, where a finding of fact by the [General Court] is contradicted by the case documents*' (my emphasis).

Analysis

19 — See, to that effect, and by analogy, the judgment in *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 392 to 405); the judgment of the General Court in *Chassagne* v *Commission*, (T-253/06 P, EU:T:2008:386, paragraph 57); and the judgment in *Michail* v *Commission*, T-50/08 P, EU:T:2009:457, paragraph 50.

20 — See, in this connection, the judgment in *DIR International Film and Others* v *Commission* (C-164/98 P, EU:C:2000:48, paragraphs 43 to 48). For cases where the General Court misread the act at issue, see also the judgments in *Belgium* v *Commission* (C-197/99 P, EU:C:2003:444, paragraphs 58 to 67) and *International Power and Others* v *Commission* (C-172/01 P, C-175/01 P, C-176/01 P and C-180/01 P, EU:C:2003:534, paragraph 156).

21 — See the Opinion in *IPK* v *Commission* (C-433/97 P, EU:C:1999:133, point 36. The Advocate General was referring here to the judgment in *Commission* v *Brazzelli Lualdi and Others* (C-136/92 P, EU:C:1994:211).

59. I think it important for me to begin my analysis by setting out in full paragraphs 112 to 121 of the *Keramag* judgment, which contain the General Court's findings in relation to the infringement committed in the context of AFICS:

'112 In that regard, the Court notes that it is apparent from Table D in recital 1223 to the [decision at issue] that, on the basis of their presence at the AFICS meeting on 25 February 2004, the Commission held that PCT and Allia had actually participated in the infringement on the French market for eight months, corresponding to the period from 25 February to 9 November 2004

113 It is also apparent from recitals 556 and 590 to the [decision at issue] that the Commission's conclusion that, at the AFICS meeting on 25 February 2004, the ceramics manufacturers coordinated their minimum prices for low-end products is based on four items of evidence: (i) Duravit's reply to the statement of objections (recital 584 to the [decision at issue]), (ii) Ideal Standard's application under the 2002 Leniency Notice (recital 583 to the [decision at issue]), (iii) a chart provided by Ideal Standard in an annex to its leniency application (recital 588 to the [decision at issue]) and (iv) Roca's application under the 2002 Leniency Notice (recital 556 to the [decision at issue]).

114 Those various items of evidence must be considered in turn in the light of the case-law cited in paragraphs 95 to 108 above in order to determine, inter alia, their probative value.

115 In the first place, concerning Duravit's statement in its reply to the statement of objections, which confirms that discussions concerning minimum prices took place at the AFICS meeting on 25 February 2004, it should be noted that — as the Commission confirmed in answer to a question put by the Court at the hearing — that statement was not disclosed to the applicants during the administrative proceedings. Nor was mention made of that statement in the letter of facts of 9 June 2009 sent to the applicants.

116 According to the case-law, where a document was not disclosed to the undertaking concerned whilst the Commission drew conclusions from it, the information contained in that document cannot be used in the proceedings (see, to that effect, [the judgment in *AKZO* v *Commission*, Case C-62/86, EU:C:1991:286,] paragraph 21). Accordingly, that document cannot be regarded as admissible evidence in that regard (see, to that effect, [the judgment in *AEG-Telefunken* v *Commission*, Case 107/82, EU:C:1983:293,] paragraph 27). Duravit [and Others]'s statement therefore cannot be considered to be evidence which may be relied on as against the applicants.

117 In the second place, as regards the statements made by Ideal Standard in its application under the 2002 Leniency Notice, it must be borne in mind that, by virtue of the case-law cited in paragraph 105 above, 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.

118 In the present case, it is clear from the [decision at issue] that Ideal Standard's statements relating to the AFICS meeting on 25 February 2004 were contested. Thus, in recital 585 to the [decision at issue] the Commission refers to the fact that Villeroy & Boch and Allia considered that the coordination of minimum prices, in particular in the context of that meeting, was not proved. Consequently, Ideal Standard's statements, on their own, are not sufficient proof of the anti-competitive nature of the discussions that took place at that meeting.

119 In the third place, with regard to the chart provided by Ideal Standard as an annex to its application under the 2002 Leniency Notice, the Court notes that it comprises four columns entitled respectively "mini", "maxi", "IS" and "Porcher", "IS" standing for Ideal Standard and the sign Porcher being registered as a trade mark whose proprietor is Ideal Standard. That chart is

undated and contains nothing that might link it to the AFICS meeting of 25 February 2004 or to any anti-competitive discussions. In particular, the chart does not mention the names of competitors or any minimum or maximum prices which those competitors should apply. There are therefore no grounds for asserting, as the Commission does in the defence, that that chart amounts to documentary evidence corroborating the allegation that prices were fixed at that meeting, as described by Ideal Standard in the statements made in the context of its leniency application.

120 In the fourth place, with regard to Roca [France]'s application under the 2002 Leniency Notice, it is noteworthy that the Commission itself states, in recital 586 to the [decision at issue], that, although, in that application, Roca [France] confirms the exchanges on minimum prices within AFICS between 2002 and 2004 in general, Roca [France] claims, with regard in particular to the AFICS meeting on 25 February 2004, that Ideal Standard's description of the coordination of minimum prices at that meeting has not been confirmed by other leniency applicants. Accordingly, it must be stated that the Commission could not rely, in the absence of evidence corroborating them, on Roca [France]'s statements in its leniency application, in order to prove that coordination of minimum prices had been put in place at the meeting on 25 February 2004.

121 In view of all the foregoing considerations, the applicants are correct in taking issue with the Commission for having found that Allia and PCT participated in anti-competitive conduct at the AFICS meeting on 25 February 2004. Consequently, the first part of the third plea must be accepted as well founded.'

60. In paragraph 1 of the operative part of the *Keramag* judgment, the General Court annulled point (6) of Article 1(1) of the decision at issue in so far as the Commission found that Allia SAS and PCT had participated in an infringement relating to a cartel on the French market for a period from 25 February 2004 to 9 November 2004. Even though paragraph 2 of the operative part does not explicitly mention Allia SAS and PCT, the fine was nevertheless reduced in such a way as to reflect paragraph 326 of the *Keramag* judgment. [22]

61. The paragraphs of the *Keramag* judgment set out above do not clearly explain the reasons for which the General Court refrained from taking account of the statement which Roca France made in its leniency application.

62. I think (like the Commission) that the General Court probably regarded it as sufficient for it to refer to recital 586 to the decision at issue, which summarises Roca France's reply to the statement of objections, [23] in order for it to disregard the statement made by Roca France in its leniency application.

63. However, Roca France's reply to the statement of objections was not included in the case file. The question is therefore whether the General Court was entitled to annul part of the decision at issue in reliance on a document that was not before the Court.

22 — 'In the second place, so far as Article 2(7) of the [decision at issue] is concerned, first, taking account of the conclusion reached in paragraph 325 [of the judgment] points (d) and (e) of Article 2(7) should be annulled in so far as they impose a fine of EUR 4 579 610 jointly and severally on *Allia and Sanitec Europe* and a fine of EUR 2 529 689 jointly and severally on PCT, Allia and Sanitec Europe. As a consequence, the total amount of the fine imposed on the applicants of EUR 57 690 000, as set in Article 2(7) of the [decision at issue], must be annulled in so far as it exceeds EUR 50 580 701 (EUR 57 690 000 — EUR 4 579 610 — EUR 2 529 689).'

23 — Recital 586 also states that Roca France confirmed 'the exchanges on minimum prices within AFICS' and adds that Roca France 'attempts to discredit Ideal Standard's corroborative submission' (footnote 20 to the Commission's appeal).

64. In accordance with settled case-law, '[t]he Court of Justice … has no jurisdiction to find the facts or, as a rule, to examine the evidence which the [General Court] accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the [General Court] alone to assess the value which should be attached to the evidence submitted to it'.[24] That appraisal does not therefore constitute, 'save where the clear sense of the evidence has been distorted, a point of law which is subject as such to review by the Court of Justice'.[25]

65. It is also true that, according to the case-law, 'it is for the [European Union judicature] 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. As regards the [General Court], [under] its Rules of Procedure … a request for production of documents is a measure of inquiry which the Court may order at any stage of the proceedings'.[26]

66. Similarly, in accordance with the case-law,[27] '[i]n that connection, the [General Court] is the sole judge of any need for the information available to it concerning the cases before it to be supplemented. Whether or not the evidence before it is convincing is a matter to be appraised by it alone and is not subject to review by the Court of Justice on appeal, *except where the clear sense of that evidence has been distorted or the substantive inaccuracy of the [General Court's] findings is apparent from the documents in the case-file*' (my emphasis).

67. Furthermore, as has been pointed out in the case-law on numerous occasions, 'the [General Court's] appraisal of the evidence submitted to it does not, except where the clear sense of the evidence has been distorted, constitute a point of law which is subject to review by the Court of Justice on appeal'[28] and '[t]he Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the [General Court] has accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the [General Court] alone to assess the value which should be attached to the evidence produced to it. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice'.[29]

68. The jurisdiction of the Court of Justice to review the findings of fact by the General Court extends solely to 'the substantive inaccuracy of those findings as apparent from the documents in the file, the distortion of the evidence, the legal characterisation of that evidence and the question whether the rules relating to the burden of proof and the taking of evidence have been observed'.[30]

24 — See, in particular, the judgment in *Baustahlgewebe* v *Commission* (C-185/95 P, EU:C:1998:608, paragraph 24). See also the judgment in *Commission* v *Brazzelli Lualdi and Others* (C-136/92 P, EU:C:1994:211, paragraph 66), the Order in *San Marco* v *Commission* (C-19/95 P, EU:C:1996:331, paragraph 40), the judgment in *Blackspur DIY and Others* v *Council and Commission* (C-362/95 P, EU:C:1997:401, paragraph 29) and the Opinion of Advocate General Léger in *Baustahlgewebe* v *Commission* (C-185/95 P, EU:C:1998:37, point 105).

25 — See, in particular, the judgments in *New Holland Ford* v *Commission* (C-8/95 P, EU:C:1998:257, paragraph 26) and *Glencore and Compagnie Continentale* v *Commission* (C-24/01 P and C-25/01 P, EU:C:2002:642, paragraph 65).

26 — Judgment in *Corus UK* v *Commission* (C-199/99 P, EU:C:2003:531, paragraph 67). See also the judgments in *Commission* v *ICI* (C-286/95 P, EU:C:2000:188, paragraphs 49 and 50); *Salzgitter* v *Commission* (C-182/99 P, EU:C:2003:526, paragraph 41); *Aristrain* v *Commission* (C-196/99 P, EU:C:2003:529, paragraph 67); and *Ensidesa* v *Commission* (C-198/99 P, EU:C:2003:530, paragraph 28).

27 — Judgment in *Ismeri Europa* v *Court of Auditors* (C-315/99 P, EU:C:2001:391, paragraph 19). See also the judgment in *Glencore and Compagnie Continentale* v *Commission* (C-24/01 P and C-25/01 P, EU:C:2002:642, paragraphs 77 and 78) and the Order in *L* v *Commission* (C-230/05 P, EU:C:2006:270, paragraphs 45 to 49).

28 — Order in *NDC Health* v *IMS Health and Commission* (C-481/01 P(R), EU:C:2002:223, paragraph 88).

29 — Judgment in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission* (C-105/04 P, EU:C:2006:592, paragraphs 69 and 70).

30 — Judgment in *Sumitomo Metal Industries and Nippon Steel* v *Commission* (C-403/04 P and C-405/04 P, EU:2007:52, paragraph 39).

69. Lastly, to give an example of review by the Court of Justice in such a context, according to the judgment in *Activision Blizzard Germany* v *Commission* (C-260/09 P, EU:C:2011:62, paragraph 57), 'the review carried out by the Court in order to assess the present ground of appeal — that the evidence produced in the form of [the] faxes [at issue] was distorted — is restricted to ascertaining that, in finding on the basis of those faxes that CD-Contact Data had participated in an illegal agreement intended to limit parallel trade in general, the General Court *had not manifestly exceeded the limits of a reasonable assessment of those faxes*. The task of the Court of Justice in the present case is not, therefore, to assess independently whether the Commission has established such participation to the requisite legal standard and thus discharged the burden of proof necessary to show that the rules of competition law were infringed, *but to determine whether, in finding that that was actually so, the General Court construed those faxes in a manner manifestly at odds with their wording*, which is not the case' (my emphasis).

70. A useful parallel may be drawn here between the present case and the judgment in *UFEX and Others* v *Commission* (C-119/97 P, EU:C:1999:116). In that judgment, the Court held that, 'since [the applicants] had expressly asked the [General Court] to order the letter to be produced, it committed an error of law in its application of the concept of misuse of powers by holding, without giving itself an opportunity to examine the letter, that it did not constitute sufficient proof' (paragraph 109), that '[i]t [had to be] stated that the [General Court] could not reject the appellants' request to order production of a document which was apparently material to the outcome of the case on the ground that the document had not been produced and there was nothing to confirm its existence' (paragraph 110) and that '[a]s [appeared] from paragraph 113 of the contested judgment, the appellants had stated the author, the addressee and the date of the letter they wished to be produced. Given such details, the [General Court] could not simply reject the parties' allegations on the ground of insufficient evidence, when it was up to the Court, by granting the appellants' request to order production of documents, to remove any uncertainty there might be as to the correctness of those allegations, or to explain the reasons for which such a document could not in any event, whatever its content, be material to the outcome of the case' (paragraph 111).

71. In my opinion, the case-law which I have cited in the preceding points cannot mean that the General Court may annul a decision in reliance on a statement recorded in one document and summarised in another document without being in possession of, and examining that statement, the statement in question in the present case being Roca France's reply to the Commission's statement of objections.

72. Moreover, Roca France's reply to the statement of objections was not included in the case file and was not communicated to the applicants at first instance.[31]

73. On this point the Court of Justice has already held that 'the principle that the parties should be heard means, as a rule, that the parties have a right to a process of inspecting and commenting on the evidence and observations submitted to the court [[32]] and, moreover, that that basic principle of law is infringed where a judicial decision is founded on facts and documents which the parties, or one of them, have not had an opportunity to examine and on which they have therefore been unable to comment'.[33]

31 — See paragraph 11(b) of *Keramag and Others*' reply.

32 — Judgment in *Varec* (C-450/06, EU:C:2008:91, paragraph 47).

33 — Judgments in *SNUPAT* v *High Authority* (42/59 and 49/59, EU:C:1961:5, 53, 84); *Plant and Others* v *Commission and South Wales Small Mines* (C-480/99 P, EU:C:2002:8, paragraph 24); *Corus UK* v *Commission* (C-199/99 P, EU:C:2003:531, paragraph 19). See also *Commission* v *Ireland and Others* (C-89/08 P, EU:C:2009:742, paragraph 52).

74. Indeed, '[i]n order to satisfy the requirements associated with the right to a fair hearing, it is important for the parties to be apprised of, and to be able to debate and be heard on, the matters of fact and of law which will determine the outcome of the proceedings'. [34]

75. The rights of the defence are fundamental rights forming an integral part of the general principles of law whose observance the Court ensures. [35] Observance of the rights of the defence in a proceeding before the Commission, the aim of which is to impose a fine on an undertaking for infringement of the competition rules, requires that the undertaking concerned must have been afforded the opportunity to make known its views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim that there has been an infringement of the Treaty. [36] Those rights are referred to in Article 41(2)(a) and (b) of the Charter of Fundamental Rights of the European Union (the Charter).

76. Therefore, the fact that, in paragraph 120 of the *Keramag* judgment, the General Court drew conclusions from a summary given in the decision at issue of the arguments put forward by Roca France in its reply to the statement of objections without examining those arguments directly and through the medium of Roca France's statement in its leniency application was contrary to the principle that the rights of the defence must be observed and amounted to a breach of the duty to state reasons. Moreover, as the Commission has pointed out, if Roca France had indeed not assisted the Commission, as the General Court found in paragraph 120 of the *Keramag* judgment, it would not have been entitled to the reduction in the fine granted in the *Roca Sanitario* judgment.

77. Contrary to the opinion of the General Court (which suggested that Roca France had altered its position), I think that Roca France was attempting to play down the probative value of Ideal Standard's statements, so as to increase the added value provided by its own statements.

78. That is not only my interpretation and the Commission's interpretation in the present case. It also accords with the conclusion drawn by the General Court in its judgment in the *Roca* judgment, in which the Court did examine Roca France's reply to the statement of objections, since that document was before the Court in that case (unlike in the present case), as well as the statements which that undertaking made in connection with its application for leniency.

79. That interpretation is all the more compelling if greater weight is to be attached to a judgment that was handed down in a case in which the documents in question, being in the case file, were actually examined than to a judgment that was delivered in a case in which those documents were either not examined by the Court or not even included in the case file.

80. On closer consideration of the *Roca* judgment it becomes clear that, in that case, the General Court concluded, in paragraphs 197 to 202, that the evidence provided by Ideal Standard was not sufficient to establish the infringement, whereas Roca France had provided 'significant added value' with the statements which it made in the context of its leniency application. In the paragraphs that follow (paragraph 203 et seq.), the Court considered the question whether there was any contradiction between the statements which Roca made in the context of its leniency application and its reply to the statement of objections and held, in paragraph 210 of the judgment, that 'the matters referred to in recital 586 to the [decision at issue], as elaborated upon by the Commission in its written pleadings, do not support the conclusion that the applicant discredited the information that it had itself submitted. It is apparent from both the [decision at issue] and the Commission's written pleadings

34 — Judgment in *Commission* v *Ireland and Others* (C-89/08 P, EU:C:2009:742, paragraph 56).

35 — Judgment in *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, paragraph 64). See also the judgments in *Bertelsmann and Sony Corporation of America* v *Impala* (C-413/06 P, EU:C:2008:392, paragraph 61), and *Solvay* v *Commission* (C-109/10 P, EU:C:2011:686, paragraph 51 et seq.).

36 — Judgment in *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, paragraph 66).

that the applicant confirmed that discussions on minimum prices for ceramics at the lower end of the market had taken place within AFICS, in particular in 2004, a fact which is not disputed. It is true that the applicant questioned the probative value of Ideal Standard's statement relating to the AFICS meeting of 25 February 2004 and the document submitted by Ideal Standard in support of that statement. Nevertheless, it must be observed that, in so doing, the applicant merely submitted arguments to the Commission that were intended to prove that the evidence put forward by Ideal Standard was not sufficient to establish the existence of a ceramics-related infringement in France in 2004, in order to demonstrate that the information that the applicant had itself submitted in its application for a reduction of the fine was necessary for the Commission to prove that infringement and, therefore, of significant added value'.

81. Thus, the conclusions regarding the statements made by Roca France that are set out in the *Keramag* judgment and those set out in the *Roca* judgment are clearly contradictory.

82. The General Court thus erred in law by annulling part of the decision at issue in reliance on a document that was not included in the case file and in relation to which, moreover, it drew different conclusions in a parallel case in which it was included in the case file and in which it was the subject of detailed discussion.

83. It remains to be seen whether the General Court erred in holding, in paragraph 120 of the *Keramag* judgment, that, '[a]ccordingly, it must be stated that the Commission could not rely, in the absence of evidence corroborating them, on Roca [France]'s statements in its leniency application, in order to prove that coordination of minimum prices had been put in place at the meeting on 25 February 2004'.

84. First of all, I confess that, despite the word 'accordingly', I fail to see the connection between the reference to recital 586 of the decision at issue and the impossibility of the Commission's relying on Roca France's statements in its leniency application.

85. Next, in paragraph 197 of the *Roca* judgment, the General Court found that, '*without the information provided by [Roca France], the Commission would not have been able to prove*, on the sole basis of the evidence submitted by Ideal Standard with its application for a reduction of the fine, the ceramics-related infringement committed in France in 2004' (my emphasis).

86. Furthermore, in paragraph 324 of the *Duravit* judgment and paragraphs 289 and 290 of the *Villeroy & Boch Austria* judgment, the General Court expressly mentioned Roca France's leniency statement as part of the body of evidence which had *enabled it to conclude that the infringement relating to ceramic ware in France had been established*. The Court's conclusion in those two judgments was that Ideal Standard and Roca France each confirmed the other's statements.[37]

87. Indeed, the notion of corroboration is not necessarily confined to the situation where the same item of evidence appears two or three times. It is more a question of having two or three different pieces of a puzzle which fit together and thus create an overall picture.

88. It is therefore not surprising that, in the *Villeroy & Boch Austria*, *Duravit* and *Roca* judgments, the General Court held that one leniency statement was capable of corroborating another. In the *Keramag* judgment, on the other hand, the General Court did not even consider the probative value of Roca France's statement or the extent to which it might corroborate Ideal Standard's statement, but instead merely referred to a passage in the summary of Roca France's reply to the statement of objections (a document which was not even in the case file).

37 — At least in so far as 'low-end' products are concerned, those being the products to which the Commission's conclusion related: see the last sentence in recital 590 to the decision at issue.

89. I draw two conclusions from that.

90. First of all, I think (as does the Commission) that the judgment under appeal is vitiated by an inadequate statement of reasons inasmuch as the General Court failed to consider the probative value of Roca France's statement, which, significantly, was treated as decisive evidence in the *Villeroy & Boch Austria*, *Duravit* and *Roca* judgments, and, instead of considering that evidence, merely mentioned, quite out of context, a summary (given in the decision at issue) of Roca France's reply to the statement of objections (which, moreover, was interpreted differently in the *Roca* judgment).

91. In my opinion, the General Court was not entitled to rely, without explanation, on the case-law according to which it may refrain from examining irrelevant evidence,[38] since, in three parallel judgments, the General Court regarded that evidence as entirely relevant.

92. Secondly, I agree with the Commission that the General Court's position, expressed in paragraph 120 of the *Keramag* judgment, that one leniency statement cannot corroborate another is equally vitiated by an error of law inasmuch as, in three parallel cases, it rightly held that one leniency statement could be corroborated by another and reached the conclusion that the statements of Ideal Standard and Roca France confirmed each other (at least is so far as concerns 'low-end' products).

– Second argument: The statement of reasons given in the Keramag judgment is contradicted by that in the Villeroy & Boch Austria, Duravit and Roca judgments Review of the case-law

93. Admittedly, according to the case-law,[39] '[t]he obligation on the General Court to state the reasons for its judgments cannot *in principle* extend to imposing on it an obligation to justify the solution arrived at in one case in the light of that found in another, even if it concerned 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 European Union judicature relates only to those aspects of the decision which concern that addressee. Unchallenged aspects concerning other addressees, on the other hand, do not form part of the matter to be tried by the Union judicature' (my emphasis).

94. It is also case-law[40] that 'the review carried out by the Court in order to assess a ground of appeal alleging the distortion of evidence is restricted to ascertaining that, in relying on that evidence to make a finding that an undertaking participated in a cartel, the General Court did not *manifestly* exceed the limits of a reasonable assessment of that evidence. The task of the Court of Justice is not, therefore, to assess independently whether the Commission has established such participation to the requisite legal standard and thus discharged the burden of proof necessary to show that the rules of competition law were infringed, but to determine whether, in finding that that was actually so, the General Court misconstrued the evidence in a manner *manifestly* at odds with its wording' (my emphasis).

Analysis

95. I am of the opinion that the General Court did '*manifestly* exceed the limits of a reasonable assessment' of an item of evidence by treating it in a radically different fashion in parallel cases relating to the same infringement and the same Commission decision.

38 — Judgment in *Dorsch Consult* v *Council and Commission* (C-237/98 P, EU:C:2000:321, paragraphs 50 and 51).

39 — Judgment in *Team Relocations and Others* v *Commission* (C-444/11 P, EU:C:2013:464, paragraph 66 and the case-law cited).

40 — Judgment in *Siemens and Others* v *Commission* (C-239/11 P, C-489/11 P and C-498/11 P, EU:C:2013:866, paragraph 44 and the case-law cited).

96. Moreover, I would emphasise that, according to the Court of Justice, it is only 'in principle' that '[t]he obligation on the General Court to state the reasons for its judgments cannot … extend to imposing on it an obligation to justify the solution arrived at in one case in the light of that found in another, even if it concerned the same decision' and that this presupposes the possibility of exceptional situations in which the case-law on inconsistent reasoning, which generally applies to the reasoning set out in *any individual judgment*, must also apply to contradictory reasoning set out in parallel judgments. I believe that the present case presents one such exceptional situation.

97. Indeed, the appeals which I address in this Opinion relate to a very unusual situation. The Commission established a single, continuous and complex infringement [41] covering a number of Member States and three ranges of products (ceramic ware, shower enclosures and taps and fittings). In four of the judgments under appeal, with regard to the same recitals of the decision at issue and exactly the same facts and the same body of evidence, the General Court arrived at two diametrically opposed solutions. In three of the judgments (the *Villeroy & Boch Austria*, *Duravit* and *Roca* judgments), the General Court found the infringement in the context of the AFICS to be proven, whereas it took the opposite view in the *Keramag* judgment, on the basis of the same piece of evidence, which it admitted in the first three judgments and disallowed in the fourth, and all without giving any explanation for the discrepancy.

98. That leads me to the conclusion that the General Court's interpretation of Roca France's reply and its reference in the *Keramag* judgment to Roca France's reply to the statement of objections is a distortion of the clear sense of the evidence on the case file.

99. That error of law is compounded by other errors of law which had a decisive influence on the outcome of the case: the General Court failed to give reasons for not examining Roca France's leniency application, annulled the decision at issue in reliance on a document that was not on the case file and held that one leniency statement was not capable of corroborating another.

100. The second part of the Commission's first plea should therefore be upheld.

(b) The third part of the first plea in law (the General Court was mistaken in finding that it was necessary for the chart provided by Ideal Standard as an annexure to its leniency application itself to prove the existence of anti-competitive contacts, without examining the explanations concerning that table)

101. 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 in so far as concerned Ideal Standard's chart relating to the AFICS meeting on 25 February 2004.

102. For their part, *Keramag and Others* submit that the General Court's examination of the chart was correct and that the Commission failed to offer any explanations capable of supporting its conclusion that the object of the AFICS meeting on 25 February 2004 was to hold anti-competitive discussions.

103. I would observe, first of all, that the General Court refused to accept the chart as documentary evidence corroborating Ideal Standard's assertion in its statements made in the context of its leniency application that price fixing took place at the AFICS meeting on 25 February 2004 (see paragraph 119 of the *Keramag* judgment) because it was 'undated' and '[contained] nothing that might link it to the AFICS meeting of 25 February 2004 or to any anti-competitive discussions' and did 'not mention the names of competitors or any minimum or maximum prices which those competitors should apply'.

41 — See, in this connection, Riley, D., 'Revisiting the Single and Continuous Infringement of Article 101: The Significance of *Anic* in a New Era of Cartel Detection and Analysis', *World Competition Law and Economics Review*, Kluwer, 2014, vol. 37, No 3, pp. 293 to 318.

104. In its judgment in *Salzgitter Mannesmann* v *Commission* (C-411/04 P, EU:C:2007:54, paragraph 47), the Court confirmed the approach taken by the General Court in the judgment which was the subject of that appeal, which was that 'evidence of anonymous origin, such as the sharing key document, [could not] in itself establish the existence of an infringement of Community competition law', but that '[the evidence could] be regarded as mutually supporting'.

105. Indeed, evidence which, although not itself proving the existence of an infringement, can help support other evidence, such as a leniency application, may constitute corroborating evidence.

106. In its judgment in *Salzgitter Mannesmann* v *Commission* (C-411/04 P, EU:C:2007:54, paragraphs 44 to 50), the Court held that even the anonymous origins of the document could not deprive it of all probative value if its origins, the likely date on which it was drawn up and its content could be established with sufficient certainty.[42] Moreover, even if the document has not been signed, explanations offered by the undertaking whose employee drafted the document must be taken into account.[43]

107. In the present case, the General Court paid no attention to the explanations offered by Ideal Standard concerning the circumstances in which the chart had been drawn up, its author, its date and so on, even though the chart had been drawn up by a witness of the events in question, with which he had been closely connected, those being factors that, in principle, increase the document's reliability.[44]

108. I therefore think (as does the Commission) that, by imposing unreasonable, overly rigorous requirements concerning the items of evidence taken individually, and in any event, their overall assessment, the General Court rendered meaningless the existing case-law on the possibility of the reciprocal corroboration of evidence and the overall assessment of the evidence.

109. I therefore take the view that, by demanding that the chart should itself prove the existence of the infringement, without taking into account other, complementary evidence and explanations (those contained in Ideal Standard's leniency application), the General Court breached its duty to state reasons.

110. That conclusion is supported by the fact that the General Court's assessment of that same item of evidence in the parallel action brought by Duravit led to an entirely different finding, namely that the chart did have probative value. Therefore, had the General Court examined the explanations at issue — as it did in the *Duravit* judgment — the outcome of the case would have been different.

111. It follows that the third part of the Commission's first plea should be upheld.

42 — Judgment in *Shell* v *Commission* (T-11/89, EU:T:1992:33, paragraph 86). See also the judgments in *Cimenteries CBR and Others* v *Commission* (T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77, paragraph 901); *Groupe Danone* v *Commission* (T-38/02, EU:T:2005:367, paragraph 288); *FNCBV and Others* v *Commission* (T-217/03 and T-245/03, EU:T:2006:391, paragraph 124 (the appeal against that judgment having been dismissed in *Coop de France bétail et viande and Others* v *Commission*, C-101/07 P and C-110/07 P, EU:C:2008:741)); and *Total Raffinage Marketing* v *Commission*, T-566/08, EU:T:2013:423, paragraph 81 (see footnote 14 to this Opinion).

43 — See, for example, the judgment in *Lafarge* v *Commission* (T-54/03, EU:T:2008:255, paragraphs 369 and 373), in which Lafarge disputed the probative value of an anonymous note with no addressee. The General Court took into account explanations offered by Gyproc concerning the note's author and the circumstances in which it had been drafted.

44 — See, inter alia, the judgments in *Ensidesa* v *Commission* (C-198/99 P, EU:C:2003:530, paragraph 312); *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission* (T-5/00 and T-6/00, EU:T:2003:342, paragraph 181); and *JFE Engineering and Others* v *Commission* (T-67/00, T-68/00, T-71/00 and T-78/00, EU:T:2004:221, paragraph 207).

(c) The fifth part of the first plea in law (the General Court failed to make a global assessment)

112. The *Commission* argues that, by failing to examine several pieces of evidence (in particular, the monthly tables of confidential sales figures and Mr Laligné's statement) and by applying overly strict evidential requirements to the evidence that it did examine, the General Court failed to carry out a global assessment of the evidence, as is required in accordance with settled case-law.

113. *Keramag and Others* observe that they referred to Mr Laligné's statement in order to demonstrate the inconsistency between Ideal Standard's leniency application and that statement, which, in any event, was irrelevant of the decision at issue. They maintain that a failure to examine particular items of evidence, especially evidence that is irrelevant, does not mean that the General Court failed to carry out a global assessment of the evidence.

114. In my view, the General Court failed to consider whether the existence of anti-competitive conduct could be inferred from a number of coincidences and indicia which, taken together, could constitute evidence of an infringement. [45]

115. By failing to examine several items of relevant evidence and by demanding, in paragraph 119 of the *Keramag* judgment, that a chart relating to an anti-competitive meeting, put forward as corroborating evidence, should be dated and should contain the names of the competitors along with minimum and maximum prices, the General Court was in effect demanding that evidence of that kind should in itself constitute sufficient evidence to demonstrate the existence of an infringement.

116. However, the Court of Justice has very clearly acknowledged that the various pieces of evidence of a cartel are normally fragmentary and sparse.

117. The Court has pointed out that, 'in order to establish that there has been an infringement of Article 81(1) EC, 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 … Therefore, even if … none of the different elements of the infringement in question constitutes, considered separately, an agreement or concerted practice prohibited by Article 81(1) EC, such a conclusion does not prevent those elements, considered together, from constituting such an agreement or practice … since the prohibition on participating in anti-competitive practices and agreements and the penalties which infringers may incur are well known, it is normal [for] the activities which those practices and agreements involve [to] take place in a clandestine fashion, for meetings to be held in secret, frequently in a non-member country, 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. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules'. [46]

118. The effect of that mistake on the outcome of the case is borne out by the fact that, in three parallel judgments, the General Court reached a different ruling.

119. By failing to consider whether items of evidence, viewed as a whole, could be mutually supporting, [47] the General Court breached its duty to state reasons.

45 — Judgment in *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 to 57).

46 — Judgment in *Knauf Gips* v *Commission* (C-407/08 P, EU:C:2010:389, paragraphs 47 to 49).

47 — Judgment in *Salzgitter Mannesmann* v *Commission* (C-411/04 P, EU:C:2007:54), paragraph 47.

120. It follows that, for the same reasons as justify the Court's upholding the third part of the first plea, the fifth part of that plea should also be upheld.

121. I therefore propose that the Court of Justice should set aside the *Keramag* judgment.[48]

(d) The consequences of the Court's setting aside the Keramag judgment

122. The foregoing demonstrates that the body of evidence relied on in the *Keramag* judgment was relatively limited. However, since the Court has the advantage of having at its disposal several other judgments in which the General Court examined that evidence in detail, I think that the principle of procedural economy requires the Court itself to rule on the actions for annulment brought by Keramag and Others at first instance.

123. In substance, Keramag and Others argued that the conclusion expressed by the Commission is recitals 556 and 590 of the decision at issue, according to which Allia and PCT had coordinated their minimum prices for products at the lower end of the market at a meeting held on 25 February 2004 under the aegis of AFICS, was based on evidence that is either inadmissible or unreliable, uncorroborated and insufficient.

124. As we have seen, by contrast with the *Keramag* judgment, in which the General Court made several errors of law in its analysis of events that took place within AFICS, in paragraph 286 of the *Villeroy & Boch Austria* judgment, it rightly held that, 'in recital 556 of the [decision at issue], the Commission indicated that it was in possession of evidence that established the involvement of AFICS members in price coordination discussions only from the 25 February 2004 meeting onwards. In recital 572 of the [decision at issue], the Commission mentioned that, according to Ideal Standard, the participants at that meeting agreed that their minimum prices were too low and that they should be increased, in particular by applying a 3% increase to their catalogue prices. In recital 573 of the [decision at issue], the Commission stated that that information had been confirmed by Roca [France]. In recital 574 of the [decision at issue], the Commission stated that the participants had exchanged confidential information on prices and sales after the meeting'.

125. First of all, the General Court held, in paragraph 287 of the *Villeroy & Boch Austria* judgment 'in so far as concerns the argument of Villeroy & Boch and Villeroy & Boch France that the Commission adduced no evidence to prove Villeroy & Boch France's attendance at three AFICS meetings held in 2004 (see annex 11 to the [decision at issue]), that argument must be rejected as unfounded. Indeed, as is clear from recitals 572 and 573 to the [decision at issue], the Commission relied on the statements provided by Ideal Standard and Roca [France] to establish Villeroy & Boch France's attendance at those meetings'.

126. Secondly, according to paragraph 288 of the *Villeroy & Boch Austria* judgment, 'the Court must reject as unfounded the arguments of Villeroy & Boch and Villeroy & Boch France that the Commission failed to prove to the requisite legal standard that unlawful discussions had taken place at the AFICS meeting on 25 February 2004, in that it relied on vague, contradictory oral statements made after the event, and that the Commission had acknowledged as much in the [decision at issue]'.

48 — I would draw the Court's attention to the fact that, in its appeal, the Commission does not challenge the conclusions in the *Keramag* judgment according to which the duration of Pozzi Ginori's participation in the infringement on the Italian market was slightly briefer than asserted (paragraph 245 of the *Keramag* judgment), conclusions which, moreover, had no effect on the amount of the fine (paragraphs 337 and 338 of the judgment).

127. Next, the General Court pointed out in paragraph 289 of that judgment that, '[w]hilst it is clear from the case-law that a statement made by a party that had benefitted from the annulment of, or a reduction in its fine that is disputed by another party must be corroborated, [49] there is nothing to prevent such corroboration being provided by evidence proffered by another undertaking that has participated in the cartel, even if that other party has also benefitted from a reduction in its fine. Such corroboration may also confirm that discussions on minimum prices did take place, those discussions being mentioned in the minutes of the AFICS meeting of 25 February 2004'.

128. Furthermore, in paragraph 290 of the *Villeroy & Boch Austria* judgment, after analysing the statements made by Roca France and Ideal Standard (and finding the former to be vaguer and more circumspect than the latter), the General Court concluded that, '[n]evertheless, that does not call into question the finding that the evidence provided by Roca [France] substantially confirms the time and place when the unlawful discussions at issue took place, what they were about and who participated in them, as is recorded in a point on the agenda. That being so, it must be held that Ideal Standard's statement, corroborated by Roca [France]'s statement, proves to the requisite legal standard that the unlawful discussions at issue did take place'.

129. In paragraph 293 of that judgment, the General Court added that 'even though the Commission did not rely in the [decision at issue] on [the statement made by Duravit in the context of its application for a reduction in its fine under the 2002 Leniency Notice], the fact remains that, contrary to the assertion of Villeroy & Boch and Villeroy & Boch France, Duravit also confirmed Ideal Standard's statement regarding the content of unlawful discussions that were held, "probably" on 25 February 2004'.

130. Lastly, in paragraph 295, the General Court confirmed that 'the statements made by Ideal Standard and Roca [France] provide a sufficient basis for establishing the existence of an infringement of Article 101(1) TFEU … resulting from attendance at the AFICS meeting of 25 February 2004'.

131. Therefore, for the purposes of the present appeal, the foregoing considerations apply *mutatis mutandis* to Keramag and Others and provide sufficient basis for rejecting — in the same way as the General Court did in the *Villeroy & Boch Austria* and *Duravit* judgments — Keramag and Others' action for annulment in so far as concerns the events that took place within AFICS.

2. The cross-appeal (the second plea in law)

132. By their second plea in law in the cross-appeal, Keramag and Others make, in substance, two connected allegations: distortion of the facts and inconsistency with the judgment in *Wabco and Others* v *Commission* (T-380/10, EU:T:2013:449, also known as 'the *Ideal Standard* judgment', hereinafter 'the *Wabco* judgment').

(a) Distortion of the facts

133. Keramag and Others submit, in the alternative, that the finding, made in paragraph 289 of the *Keramag* judgment, that the statement of objections contained sufficient information to enable them to 'identify, precisely, the conduct alleged against Pozzi Ginori' clearly amounts to a distortion of the content of the statement of objections against which they are entitled to appeal.

49 — Judgment in *JFE Engineering and Others* v *Commission* (T-67/00, T-68/00, T-71/00 and T-78/00, EU:T:2004:221, paragraph 219).

134. They argue that, since the statement of objections merely indicated, in point 277, that Pozzi Ginori had been present at certain meetings at which 'anti-competitive behaviour' had taken place, without indicating the *nature* of that behaviour, the General Court was not entitled to hold that it was sufficiently precise. The finding made in paragraph 289 of the *Keramag* judgment (that, 'in point 277 of the statement of objections, the Commission informed the applicants of the nature of the activities [engaged in during meetings of the Michelangelo group] identified by it, their frequency, the precise date on which they occurred and the evidence available to it', such that the statement of objections enabled Keramag and Others to 'identify, precisely, the conduct alleged against Pozzi Ginori') is in direct contradiction with the finding regarding the adequacy of that part of the statement of objections reached in the *Wabco* judgment, and that in itself shows that there has been distortion of the facts.

135. I would observe (as does the Commission) that Keramag and Others have not cited any item of evidence the sense of which has supposedly been distorted and acknowledge that, in paragraph 288 of the *Keramag* judgment, the General Court correctly summarised the content of point 277 of the statement of objections. They therefore are asking the Court, purely and simply, to re-examine this point.

136. However much Keramag and Others might seek to find support in the judgment in *Archer Daniels Midland* v *Commission* (C-511/06 P, EU:C:2009:433), arguing that the General Court failed to apply the legal test developed in that judgment to determine whether Keramag and Others had been put in a position to defend themselves properly, their argument cannot succeed. Indeed, the anti-competitive behaviour was described in points 256 and 393 to 400 of the statement of objections and Keramag and Others have shown, by their reply to that statement of objections, that they understood perfectly the 'nature' of the anti-competitive behaviour in question. Any alleged inadequacy of the statement of objections can therefore have had not the slightest effect on the administrative procedure.

(b) Inconsistency between the Keramag judgment and the Wabco judgment

137. Keramag and Others maintain that the General Court's conclusion that the statement of objections was adequate in so far as concerned the infringement in the ceramics sector in Italy was based on contradictory reasoning and that the General Court failed to give an adequate statement of reasons in that regard. They maintain that its assessment of the statement of objections, in so far as concerns the meetings of the Michelangelo group, in the parallel case involving Wabco contradicts its assessment in the present case. According to Keramag and Others, the statement of objections should be interpreted identically for all addressees.

138. In any event, they argue, the General Court's conclusion is vitiated by an inadequate statement of reasons, since it is impossible to ascertain the reasons for which the assessment of the level of detail of the information given in the same point of the same statement of objections should be different in the case involving Keramag and Others from the assessment in the case involving Wabco.

139. Keramag and Others submit that that difference in the Court's assessment of the statement of objections infringed their rights of defence, inasmuch as they would probably have chosen a different defence strategy had they been properly informed of the accusations made against them. They maintain that the fact that the statement of objections did not set out the accusations levelled against Sanitec Europe Oy and Pozzi Ginori had an effect on their own defence and on the decision at issue. It follows, according to Keramag and Others, that the decision at issue should be annulled, in whole or in part, in so far as the Commission concluded therein that Sanitec Europe Oy and Pozzi Ginori had

committed an infringement in the ceramics sector in Italy, and that the fine should be annulled or reduced accordingly. They add that the decision at issue would have been different had their rights of defence not been infringed and that that in itself warrants the annulment of the decision at issue, regardless of anything else.

140. As we saw when considering the Commission's appeal (in points 93 and 96 of this Opinion), according to the case-law,[50] '[t]he obligation on the General Court to state the reasons for its judgments cannot *in principle* extend to imposing on it an obligation to justify the solution arrived at in one case in the light of that found in another, even if it concerned the same decision' (my emphasis). I also stated that the Court's use of the expression 'in principle' justified the application — *in exceptional cases* — of the case-law on inconsistent reasoning, which generally applies to the reasoning set out in any individual judgment, to the statement of reasons set out in two or more judgments handed down in parallel cases concerning the same infringement and the same decision.

141. However, by contrast with the Commission's appeal, I believe that there are no such exceptional circumstances in the case of the cross-appeal.

142. Leaving aside the fact that the argument which Keramag and Others make in relation to the *Wabco* judgment lacks precision, in that there is no indication of the passage in the *Wabco* judgment on which that argument rests, it need only be observed that there is no inconsistency between the conclusions drawn by the General Court in those two judgments. Indeed, the context in which the General Court considered whether point 277 of the statement of objections was adequate and examined the issues raised was fundamentally different in the two cases. First of all, as the Commission has pointed out, in the case involving Wabco, the question was whether silence could be interpreted as an admission of anti-competitive conduct, not whether the statement was sufficiently complete to enable Keramag and Others to exercise their rights of defence. Secondly, by contrast with Wabco, Pozzi Ginori did not remain silent on the matter of the allegations concerning the meetings of the Michelangelo group in Italy.

143. In any event, I would observe that Keramag and Others have failed to indicate any other evidence that they might have adduced had the 'nature of the anti-competitive conduct' that took place at the Michelangelo meetings been further particularised. That being so, the arguments of Keramag and Others are purely conjectural and unfounded.

144. The second plea in law put forward in the cross-appeal should therefore be rejected as inadmissible or, in any event, unfounded.

B – Duravit and Others v Commission (the third plea in law), Villeroy & Boch AG v Commission (the first and second pleas in law), Villeroy & Boch SAS v Commission (the first and second pleas in law)

145. I believe that, in these cases, it will not take the Court long to draw its conclusions from the setting aside of the *Keramag* judgment and from my suggestion that the Court should itself give a ruling in the action brought by Keramag and Others.

146. Indeed, the arguments put forward by Duravit and Others, Villeroy & Boch AG and Villeroy & Boch SAS are, in principle, merely the reverse of the arguments which the Commission put forward in its appeal against the *Keramag* judgment. As I have explained, it is in the *Keramag* judgment that there was an error in the assessment of evidence. Contrary to the appellants' claims, there is, in the *Duravit* and *Villeroy & Boch Austria* judgments, no distortion of the sense of that same evidence or

50 — Judgment in *Team Relocations and Others* v *Commission* (C-444/11 P, EU:C:2013:464, paragraph 66 and the case-law cited).

lack of reasoning in relation thereto. The pleas relating to that evidence are therefore inadmissible and, following on from my conclusions regarding the appeal in *Commission* v *Keramag Keramische Werke and Others*, any suggestion of unequal treatment in the various judgments falls away *ipso facto*, regardless of whether or not the appellants' arguments are admissible.

147. It is therefore only in the alternative (which, as Advocate General, I must address) that I shall proceed to analyse those cases in greater detail.

1. Duravit and Others v Commission (the third plea in law)

148. *Duravit and Others* argue that, time and again, the General Court manifestly and decisively distorted the sense of the content of the file and consequently erred in law and breached recognised principles relating to the taking of evidence.

149. Of the 14 instances of distortion of the evidence to which Duravit and Others refer, the seventh and twelfth (which relate to paragraphs 213 and 312 et seq. of the General Court's judgment) are instances where the General Court's assessment of the evidence differed from its assessment of that same evidence in parallel cases.

150. According to the *Commission*, each of the allegations of distortion of the evidence should be rejected, either because the allegation is based on a misreading of the *Duravit* judgment or because Duravit and Others are in fact partly seeking, by means of this plea, to have the facts re-examined, without having demonstrated that the General Court manifestly distorted the sense of the evidence constituted by those facts.

151. In accordance with the Court's request, I shall restrict my analysis of this plea to the question whether the conclusions drawn by the General Court in relation to certain items of evidence which it assessed differently in other cases may be upheld in the present case (which solely concerns the seventh and twelfth instances alleged by Duravit and Others).

152. In that plea Duravit and Others allege that the General Court's assessment of the evidence differed from its assessment of that same evidence in the parallel cases (judgments in *Keramag* and *Villeroy & Boch Austria*) so far as concerns, in particular, the content and the inclusion, for the purposes of establishing the existence of anti-competitive practices, of certain meetings which Duravit allegedly attended.

153. I am of the opinion that, in this case, the General Court did not exceed the limits of a reasonable assessment of the evidence.

(a) The seventh alleged instance of distortion of the evidence

154. Duravit and Others maintain that, in paragraph 213 of the *Duravit* judgment, the General Court distorted the sense of the evidence and breached the principles of the taking of evidence in so far as concerns the content of the notes which the Hansgrohe employee, Mr Schinle, made of the DSI (Freundeskreis der deutschen Sanitärindustrie (Friends of the German Sanitary Industry)) IFS (Industrie Forum Sanitär (Sanitary Industry Forum)) meeting of 5 October 2000, which the General Court allegedly interpreted differently in the *Keramag* judgment.

155. I take the view that that argument is no more than a pretext for calling into question the General Court's assessment of the evidence set out in paragraph 213 of the judgment, which is not, as such, amenable to appeal.

156. According to settled case-law, a distortion of the evidence must be obvious from the documents before the Court, without there being any need to carry out a new assessment of the facts and the evidence.[51]

157. In any event, as the Commission has pointed out, it is clear from paragraph 213 of the *Duravit* judgment that, referring to the case-law cited in paragraphs 210 to 212 of that judgment, the General Court made the same points in that paragraph as it did in paragraph 133 of the *Keramag* judgment, to which Duravit and Others refer.

158. Indeed, in paragraph 133 of the *Keramag* judgment, the General Court unambiguously stated that it regarded the anti-competitive object as being proven by the notes of the meeting of 5 October 2000: 'The extract from Hansgrohe's notes, cited in paragraph 132 above, *shows unambiguously the anti-competitive object of the meeting in question*. The price increases for 2001 that were, on that occasion, disclosed between the participants constitute sensitive information within the meaning of the case-law set out in paragraphs 54 to 57 above' (my emphasis).

(b) The twelfth alleged instance of distortion of the evidence

159. Duravit and Others maintain that, in paragraph 312 et seq. of the *Duravit* judgment, the General Court distorted the sense of the decision at issue in so far as concerns the probative value of the evidence concerning the IFS meeting of 24 April 2001 and the Fachverband Sanitärkeramische Industrie (Trade Association of the Sanitary Ceramics Industry; 'the FSKI') meetings of 23 January and 5 July 2002.

160. As I noted with regard to the seventh alleged instance of distortion of the evidence, that argument is another attempt to call into question the General Court's assessment of the evidence, which is not, as such, amenable to appeal.

161. In the *Keramag* judgment, the General Court indeed found that the two FSKI meetings were not mentioned in the grounds of the decision at issue as having given rise to any anti-competitive conduct as between the participants. The General Court reached the same finding with regard to the IFS meeting of 23 January 2002 (in paragraph 129 of the *Keramag* judgment).

162. However, I do not think that the *Duravit* judgment states the contrary. At no point does it examine the three meetings. The reference in paragraph 313 of the *Duravit* judgment to the high probative value of 'almost all' the evidence relating to the IFS and FSKI meetings can only relate to the meetings that the General Court did examine. The three meetings mentioned above are therefore excluded from that assessment. The same conclusion applies to the IFS meeting of 14 November 2001.

(c) Conclusion

163. Duravit and Others' allegations concerning the seventh and twelfth instances of distortion of the evidence should be rejected, either as inadmissible or as unfounded.

51 — Judgment in *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, EU:C:2013:866, paragraph 42, which refers to the judgment in *Activision Blizzard Germany* v *Commission* (C-260/09 P, EU:C:2011:62, paragraph 53 and the case-law cited).

2. Villeroy & Boch AG v Commission

(a) The first plea in law (the General Court's assessment of the alleged infringement in France is contradictory, contrary to the principle of equal treatment, the principle in dubio pro reo and the rules of logic)

i) Brief summary of Villeroy & Boch AG's arguments

164. Villeroy & Boch AG takes issue with the assessment of the evidence relating to the series of acts committed in France. It alleges that there are significant contradictions in the analysis of that evidence. An analysis of the evidence so vitiated by contradictions infringes, in its view, the principle of equal treatment, and the General Court made several errors of law that affected it adversely. First, the General Court gave an interpretation of two items of evidence (Ideal Standard's leniency statement and that of Roca France) that was diametrically opposed to its analysis in the *Keramag* judgment, and that was to its detriment and contrary to the principles of equal treatment and the benefit of the doubt. Secondly, the General Court analysed a piece of evidence that should not have been used (Duravit and Others' statement) and that was also to its detriment. By so doing it departed from its own case-law and acted contrary to the principles of equal treatment and the benefit of the doubt as well as Article 263 TFEU and the second paragraph of Article 296 TFEU, at the same time thereby unlawfully replacing the reasoning for the decision at issue.

165. In addition, according to Villeroy & Boch AG, a statement provided by an undertaking that has applied for leniency may, in accordance with the principle *testis unus, testis nullus* which emerges from the case-law, also be supported by statements from other cartel participants. That occurred in the present case, inasmuch as the statement provided by Ideal Standard in its leniency application was confirmed by Roca France's statement. The assessment of the evidence against them, for the purpose of establishing their participation in the cartel in France, is wholly contradicted by the assessment in the *Keramag* judgment.

166. It argues that, since no other item of evidence was lawfully relied on, in so far as concerns any infringement in France that might purportedly be imputed to Villeroy & Boch AG, the findings against it are based on an error of law of the type described above, in so far as concerns acts committed in France. The General Court's finding of a single infringement should therefore be set aside, since the requirements for establishing a complex and continuous infringement were not met with regard to France. At very least, the findings set out in Articles 1 and 2 of the decision at issue concerning France should be set aside.

167. According to the Commission, those arguments are unfounded.

ii) Assessment

168. As I pointed out in my analysis of the appeal in *Commission* v *Keramag Keramische Werke and Others* (in points 45 to 131 of this Opinion), some of the findings in the *Keramag* judgment wholly contradict the corresponding findings in three parallel judgments (the *Roca Sanitario*, *Duravit* and *Villeroy & Boch Austria* judgments) handed down the same day by the same judges in respect of the same Commission decision. All these judgments address the same facts and, in each case, the Commission relied on the same evidence.

169. Contrary to what Villeroy & Boch AG claims, the General Court was right to hold in its judgment in *Villeroy & Boch Austria* that anti-competitive discussions at the AFICS meeting on 25 February 2004 had been proven to the requisite legal standard, the General Court having relied, in this connection, on the consistent applications brought by Ideal Standard and Roca France under the

Leniency Notice. In so doing, the General Court followed consistent case-law, according to which the content of an application under the Leniency Notice may be confirmed by another application under the Leniency Notice.[52] The General Court reached the same conclusion in the *Duravit* judgment (in paragraph 324). Lastly, in the *Roca* judgment (in paragraphs 198 and 239), as I mentioned in the third indent under point 49 of this Opinion, the General Court granted a reduction in the fine of 6% because the information provided had offered significant added value in that it attested to the fact that anti-competitive discussions had taken place at the AFICS meeting on 25 February 2004. The *Roca* judgment thus addressed the same aspect of the infringement as is at issue in the present case.

170. As we have seen, whereas, in three judgments (the *Roca*, *Duravit* and *Villeroy & Boch Austria* judgments), the General Court held that an infringement had been committed within AFICS, it reached the opposite conclusion in the *Keramag* judgment. As I stated in point 99 of this Opinion, the error in the assessment of the evidence is to be found in the *Keramag* judgment, which I have suggested should be annulled.

171. In any event, even if the Court chooses not to follow my suggestion regarding *Commission* v *Keramag and Others*, I would point out that Villeroy & Boch AG does not maintain that the *Villeroy & Boch Austria* judgment is vitiated by an inadequate statement of reasons or that the General Court distorted the sense of the evidence. As the Commission points out, had the General Court not annulled the *Keramag* judgment, Villeroy & Boch AG would not now be challenging that part of the judgment.

172. In *Koninklijke Wegenbouw Stevin* v *Commission*,[53] the applicant had also alleged infringement of the principle of equal treatment and breach of the requirement for fundamental consistency among judicial decisions, but the Court dismissed its plea as inadmissible because it had not alleged any distortion of the sense of the evidence at issue. The same reasoning would have to apply to any argument that the statement of reasons for the *Villeroy & Boch Austria* judgment is inadequate (paragraph 18 of the appeal).

173. As regards the alleged infringement of the principles *testis unus, testis nullus* and *in dubio pro reo* and of the presumption of innocence, and as regards, more specifically, the allegation that the evidence examined was insufficient to establish that Villeroy & Boch AG committed an infringement in France, I would recall (as in point 169 of this Opinion) that, according to the case-law,[54] one application under the Leniency Notice may be confirmed by another. In the *Keramag* judgment, the General Court simply omitted to assess the probative value of the statements which Roca France annexed to its leniency application (see, in this connection, point 77 et seq. of this Opinion).

174. In the present case, namely in the *Villeroy & Boch Austria* judgment, but also, as I have mentioned, in the *Duravit* judgment, the General Court expressly asserted that the statements made by Roca France in the context of its leniency application were part of the body of evidence that enabled it to hold that an infringement had been committed in relation to ceramic sanitary ware in France. The General Court stated in those two judgments that Ideal Standard and Roca France had each confirmed the other's statements, at least in so far as concerned 'low-end' goods, which represented the category of goods to which the Commission's findings related.

52 — The confirmation need not necessarily be given by documents dating from the time when the acts were committed. Several statements may be regarded as reliable, if they corroborate one another. See, on this point, the judgment in *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, EU:C:2013:866, paragraphs 190 and 191. See also the judgments in *Lögstör Rör* v *Commission* (T-16/99, EU:T:2002:72, paragraphs 45 to 47); *Bolloré and Others* v *Commission* (T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, EU:T:2007:115, paragraph 168); and *Polimeri Europa* v *Commission* (T-59/07, EU:T:2011:361, paragraph 55). Confirmation by another statement made in a leniency application may suffice if the second statement is made independently and if the two statements agree in broad terms on the description of the infringement. See, on this point, the judgment in *Total Raffinage Marketing* v *Commission*, T-566/08, EU:T:2013:423, paragraph 74.

53 — C-586/12 P, EU:C:2013:863, paragraphs 22 to 29.

54 — See footnote 52 to this Opinion.

175. The General Court regarded it as unnecessary for it to examine any other evidence [55] because it considered Ideal Standard's and Roca France's statements to be sufficient. Only if the General Court had considered that those two statements provided an insufficient basis for it to hold that an infringement had been committed in France would it have been obliged (or would the Court be obliged, if it considered that the state of the proceedings permitted it to give judgment in the matter) to assess the probative value of such additional items of evidence.

176. Therefore, the first plea put forward by Villeroy & Boch AG should be rejected, either as inadmissible or as unfounded.

(b) The second part of the second plea in law (violation of the rules of logic and breach of the principle of equal treatment in so far as concerns the substantive assessment and the imputing of liability in connection with Italy)

177. *Villeroy & Boch AG* takes issue with the General Court for having imputed to it, as a manufacturer of ceramic sanitary ware, infringements committed in Italy by operators (manufacturers of taps and fittings) that were not its competitors, even though it conducted no business in that country and was not present at the meetings which allegedly infringed anti-trust law. Also, the General Court formed the view, in the parallel cases, that the undertakings present on that market should be exonerated. In addition to a manifestly discriminatory unequal treatment to the appellant's detriment, that constitutes a breach of the principle of the presumption of innocence and a violation of the rules of logic.

178. The *Commission* disputes the admissibility of the plea alleging breach of the principle of equal treatment in so far as concerns the findings made by the General Court in three parallel sets of proceedings concerning other manufacturers of ceramic sanitary ware. Even if findings that could equally apply to Villeroy & Boch AG were made in other judgments, the fact remains that the appellant put forward no corresponding plea at first instance.

179. Be that as it may, suffice it to observe that, according to the case-law, Villeroy & Boch AG 'is in fact entitled to lodge an appeal relying, before the Court of Justice, on pleas arising from the judgment under appeal itself' [56] (in this case, the difference in treatment by comparison with the other parties).

180. As to the substance, without it being necessary to rule on the relevance of the argument concerning possibly unequal treatment by comparison with the other undertakings concerned by the parallel judgments of the General Court, it should be noted that the partial annulment decided upon by the General Court in relation to the infringement established in Italy resulted solely from the shorter duration of the involvement of certain undertakings and has no bearing on the question whether Villeroy & Boch AG might have been aware of the infringement in that country or might reasonably have been able to foresee it. In order to impute liability for a cartel as a whole, it is necessary to establish that the undertaking in question could not have been unaware of the general scope and essential characteristics of the cartel as a whole, and ignorance of specific details is in no way decisive. [57]

181. More specifically, I would mention the following aspects.

55 — See the General Court's conclusions in paragraph 295 of the *Villeroy & Boch Austria* judgment, which address the table resulting from the meeting of 25 February 2004 and Ideal Standard's explanations concerning the circumstances in which that document had been drawn up, its author, its date, the monthly overview of confidential sales figures and the statements made by Mr Laligné.

56 — Judgments in *Stadtwerke Schwäbisch Hall and Others* v *Commission* (C-176/06 P, EU:C:2007:730, paragraph 17) and *Commission and Others* v *Siemens Österreich and Others* (C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 102).

57 — Judgment in *Raiffeisen Zentralbank Österreich and Others* v *Commission* (T-259/02 to T-264/02 and T-271/02, EU:T:2006:396, paragraph 193). See also the judgment in *Team Relocations and Others* v *Commission* (C-444/11 P, EU:C:2013:464, paragraph 54).

182. First of all, as the Commission has pointed out, the General Court found, in the *Duravit* judgment (see paragraphs 37 to 41 of the appeal), that the evidence was not sufficient to support the conclusion that Duravit and Others had been aware of the infringement committed in Italy, a point which Duravit and Others had clearly and precisely disputed.

183. Moreover, Villeroy & Boch AG and Duravit were not in the same position: whereas Duravit had participated in the infringement in three Member States, in the case of Villeroy & Boch AG it was five and Villeroy & Boch AG's involvement in the infringement spanned a considerably longer period of time, and these are factors which normally lead to a better grasp of the actual scope of infringing conduct.

184. Secondly, in so far as concerns the *Wabco* judgment (see paragraphs 42 and 43 of the appeal), the partial annulment was the result of a specific issue: a large proportion of the fine related to an infringement in connection with ceramic sanitary ware sold in Italy, such that part of the fine was calculated on the basis of the value of sales of those goods in Italy, whereas, in the case of Villeroy & Boch AG, the fine was, by contrast, calculated without any account being taken of the value of sales in Italy.

185. Thirdly, in the case involving Ideal Standard, the General Court held that that undertaking's involvement in the infringement relating to ceramic sanitary ware had been established in relation to the Italian market for only a certain period of time, and it therefore reduced the fine accordingly. The General Court nevertheless clearly stated that Ideal Standard had also participated in the cartel by exchanging information with manufacturers of taps and fittings.[58] Ideal Standard did not take issue with the part of the fine that was based on the value of sales of taps and fittings on that market, nor did the General Court annul that part of the fine. Since the General Court did not find that Ideal Standard had been unaware of a part of the infringement, I fail to see (as does the Commission) how Villeroy & Boch AG's position with regard to Italy is comparable to Ideal Standard's position.

186. Fourthly, in so far as concerns the *Keramag* judgment (see paragraphs 44 to 47 of the appeal), the annulment decided on by the General Court relates to a limited part of the infringement and was the result of a lack of evidence of Pozzi Ginori's involvement over a period of a few months. It did not lead to any reduction in the fine, which was also calculated on the basis of the value of sales of ceramic sanitary ware in Italy.[59]

187. Since the General Court did not find that Keramag and Others had been unaware of the infringing conduct in Italy, I fail to see how Villeroy & Boch AG's position with regard to Italy is comparable to that of Keramag and Others.

188. The second part of the second plea should therefore be rejected.

58 — Paragraphs 91 and 99 of the judgment.

59 — By contrast with the fine that was decided upon for Villeroy & Boch AG.

3. Villeroy & Boch SAS vCommission

(a) The first plea in law (contradiction in the assessment of the evidence relating to France, in breach of the principle of equal treatment and the principle in dubio pro reo and undermining the logical and legal coherence of the judgment)

189. Villeroy & Boch France states that the General Court's assessment of the statements made by Ideal Standard, Roca France and Duravit concerning the series of acts committed in France does not correspond to its assessment of that same evidence in the *Keramag* and *Wabco* judgments and that the General Court thereby breached the principle of equal treatment and the principle *in dubio pro reo*.

190. According to Villeroy & Boch France, the General Court based the *Villeroy & Boch Austria* judgment on the statements made by Ideal Standard and Roca France, while in the *Keramag* judgment it concluded that Ideal Standard's statement alone could not provide sufficient proof and that the Commission had not been entitled to rely on Roca France's statements in the absence of other evidence corroborating the fact that the coordination of minimum prices had been put in place.

191. In so far as concerns Duravit and Others' statement, Villeroy & Boch SAS argues that, in the *Keramag* judgment, the General Court noted that that statement had not been communicated to it in the course of the administrative procedure and that, consequently, it could not be used against it. The fact that the General Court relied on Duravit and Others' statement as corroboration of Ideal Standard's statement means that the grounds for the decision at issue are vitiated.

192. Villeroy & Boch SAS submits that, by so doing, the General Court infringed Article 263 TFEU and the second paragraph of Article 296 TFEU and breached the principle of the presumption of innocence laid down in Article 48(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and in Article 6(2) of the European Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

193. Regarding any contradiction with the *Keramag* judgment, I would refer to point 45 et seq. of this Opinion in so far as that judgment is concerned, point 148 et seq. (Duravit and Others) and point 168 et seq. (Villeroy & Boch AG), where I gave my reasons for suggesting that the pleas put forward by Duravit and Others and Villeroy & Boch AG on the basis of that contradiction should be dismissed.

194. Moreover, I agree with Villeroy & Boch SAS that Duravit and Others' reply to the statement of objections cannot be used as evidence. However, the argument which Villeroy & Boch SAS puts forward is ineffective because, in the *Villeroy & Boch Austria* judgment, the General Court clearly did not rely on that reply (see paragraph 295 of that judgment). The Commission itself does not dispute the fact that the reply was referred to merely for the sake of completeness and that it could not be taken into account, since it was not mentioned either in the statement of objections or in the letter of facts.

195. The first plea should therefore be dismissed.

(b) The second plea in law (alleged error of law in the characterisation of the infringement as a single, complex and continuous infringement — contradictions between the various judgments)

196. Villeroy & Boch SAS maintains, in substance, that the General Court reached the same findings with regard to it only in the *Keramag*, *Duravit* and *Wabco* judgments. Had the General Court adhered to those findings, it would not have found that a single, complex and continuous infringement had been committed. With this complaint, Villeroy & Boch SAS submits, in the alternative, that there is a lack of evidence to establish liability on its part: (a) in France, because of

the findings in the *Keramag* judgment; (b) in Italy, because of the setting aside, in whole or in part, of the findings concerning involvement in the infringement in the *Duravit*, *Wabco* and *Keramag* judgments; (c) in Germany, and (d) in the Netherlands, because of the partial annulment of the decision at issue in so far as concerns the conduct of the parent company.

197. Leaving aside the reasons for which I propose the dismissal of Villeroy & Boch SAS's first plea, concerning contradictions between the various parallel judgments of the General Court (see point 189 et seq. of this Opinion), the allegation (made in paragraph 52 of the appeal) that 'a significant proportion of the findings' was set aside by the General Court must be refuted.

198. As regards France, the annulment arose from the fact that one undertaking was involved in the infringement to a lesser degree and that the scope of the infringement was less extensive.

199. As regards Germany and Italy, the General Court restricted itself to finding that the duration of the involvement of two other undertakings was shorter, and that was because of the circumstances of their involvement.

200. As regards the Netherlands, the annulment was based on a finding that the parent company's involvement was marginally less.

201. Moreover, as the Commission has emphasised, the mere fact that certain undertakings might have been unaware of the whole of the infringement is not incompatible with the existence of a single infringement. In the case-law, a distinction has been drawn between the finding of a single infringement and the liability of each undertaking. The fact that certain undertakings might not have known of the overall scope of the infringement is explained by the fact that those undertakings were focussing their activities on certain markets and were only marginally present on other markets.

202. The second plea should therefore be dismissed as unfounded.

C – Roca Sanitario v Commission (first part of the second plea in law only)

1. Brief summary of the parties' arguments

203. By the first part of its second plea, *Roca Sanitario* maintains that, while the General Court acknowledged that the scope of the infringement which it was found to have committed was less extensive than that of the infringements imputed to the undertakings making up the 'hard core' (or 'central group') of the cartel,[60] it did not draw the necessary inferences from that finding, inasmuch as it did not, in the exercise of its unlimited jurisdiction, reduce the fines imposed either by altering the multipliers for the 'gravity of the infringement' and the 'additional amount' or by acknowledging the existence of mitigating circumstances. The General Court thereby breached its duty to state reasons and breached the principle that penalties must be tailored to the individual and the principles of personal liability and proportionality (as enshrined in Article 49(3) of the Charter) as well as the principles of equal treatment and of the protection of legitimate expectations.

204. The *Commission* argues, first of all, that the limited geographic scope of the infringements committed by Roca Sanitario and its subsidiaries was already reflected in the basic amounts of the fines, which were calculated by reference to sales in France and Austria only.

60 — Those undertakings being the eight groups of companies which the Commission described, in recital 797 to the decision at issue, as forming the hard core of the cartel because of their involvement in the cartel arrangements in all or several of the Member States investigated and their participation in at least one umbrella association.

205. Next, although geographic scope is mentioned in the 2006 Guidelines as one factor to be taken into account when deciding what multipliers to apply, it plays only a marginal role, inasmuch as the value of sales already gives sufficient indication in that regard and the nature of the infringement is the most important factor to be taken into account. Accordingly, the Commission has developed the practice of applying a slight uplift, generally 1%, where the geographic scope extends to the whole of the European Union or the European Economic Area. It is nevertheless justified in not doing so where the geographic scope of the infringement is less extensive, otherwise it would have to use decimals to reflect the number of Member States covered by the infringement. The Commission's decision to apply a multiplier of 15% was not a departure from the methodology set out in the 2006 Guidelines.

206. The Commission also observes that there is nothing to oblige the General Court to reduce a fine which it regards as proportionate merely because it considers that the fines imposed on other cartel participants ought to have been heavier. On the contrary, the General Court has repeatedly refused to reduce fines in those circumstances in the name of the principle that 'no person may, in support of his claim, rely on an unlawful act committed in favour of another'. It is clear from the case-law and from the Commission's decision-making practice that differences in the degree of involvement in an infringement need not necessarily translate into a reduction in the fine, provided that the fine properly reflects the individual involvement of the undertaking in question.

207. The Commission also argues that the Court does not require detailed explanations where the multipliers (applied to the basic amount of a fine) are in the region of 15%.[61] In any event, the General Court did explain in the *Roca Sanitario* judgment in what way the multipliers were appropriate.

208. The Commission submits that the complaint that the *Roca Sanitario* judgment is inconsistent with the judgments handed down in parallel actions is inadmissible, since, in order to examine that complaint, it would be necessary to conduct a comparative analysis of the relevant factual circumstances. In any event, the General Court applied the same rate of 15% in the case of other undertakings that were not held liable for the whole of the infringement, such as Duravit and Dornbracht.

2. Assessment

(a) Summary of the case-law

209. First of all, I would refer to my Opinion in *Telefónica and Telefónica de España* v *Commission* (C-295/12 P, EU:C:2013:619), in which I analysed in detail the issue of the General Court's unlimited jurisdiction.[62]

61 — Judgment in *Team Relocations and Others* v *Commission*, C-444/11 P, EU:C:2013:464, paragraphs 118 to 126.

62 — See also, inter alia, the Opinions of Advocate General Fennelly (*Compagnie maritime belge transports and Others* v *Commission*, C-395/96 P and C-396/96 P, EU:C:1998:518, point 184), Advocate General Mischo (*Weig* v *Commission*, C-280/98 P, EU:C:2000:260, points 43 to 45), Advocate General Kokott (*Technische Unie* v *Commission*, C-113/04 P, EU:C:2005:752, point 132), Advocate General Poiares Maduro (*Groupe Danone* v *Commission*, C-3/06 P, EU:C:2006:720, points 41 to 59), Advocate General Bot (*E.ON Energie* v *Commission*, C-89/11 P, EU:C:2012:375, point 115) and Advocate General Mengozzi (*Commission and Others* v *Siemens Österreich and Others*, C-231/11 P to C-233/11 P, EU:C:2013:578, point 94).

210. For the purposes of the present appeal, it should be borne in mind that, in so far as concerns the extent of any review by the Court of Justice in this regard, while the General Court alone has jurisdiction to examine how in each particular case the Commission appraised the gravity of unlawful conduct, it is for the Court of Justice to examine to what extent the General Court took into consideration, in a legally correct manner, all the essential factors to assess the gravity of particular conduct in the light of Article 101 TFEU and Article 23 of Regulation No 1/2003. [63]

211. Next, when the General Court, in the exercise of its unlimited jurisdiction, rules on the amounts of fines it is bound by the same legal obligations as the Commission is when it imposes a penalty and thus, in particular, by the principle of equal treatment among the undertakings that have participated in an agreement contrary to Article 101 TFEU. [64]

212. I would point out that the principle that it is not for the Court of Justice to substitute, on grounds of fairness, its own appraisal for that of the General Court adjudicating in the exercise of its unlimited jurisdiction [65] does not prevent the Court of Justice from verifying whether that obligation has been fulfilled.

213. Indeed, the Court has in the past reduced a fine where, without justification, the General Court had treated one undertaking more harshly than other undertakings involved in the same cartel, [66] since the exercise of the General Court's unlimited jurisdiction cannot result in discrimination between undertakings which have participated in the same agreement. [67]

(b) The General Court found that there had been unequal treatment, but failed to draw any inferences from that finding

214. In this case, the General Court found (in paragraph 187 of the *Roca Sanitario* judgment) that, because of its more extensive geographic scope, amongst other things, the infringement committed by the undertakings forming the hard core of the cartel 'should' have received a fine calculated on the basis of multipliers for the 'gravity of the infringement' and the 'additional amount' set at a higher percentage rate. It thereby *acknowledged that different situations* (those of the hard core undertakings and of the other undertakings) *had wrongly been treated in the same fashion*.

63 — Judgments in *Baustahlgewebe* v *Commission* (C-185/95 P, EU:C:1998:608, paragraph 128) and *Dansk Rørindustri and Others* v *Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 244).

64 — See, to that effect, the judgments in *Sarrió* v *Commission* (C-291/98 P, EU:C:2000:631, paragraphs 96 and 97), *Commission and Others* v *Siemens Österreich and Others* (C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 105) and the Opinion of Advocate General Poiares Maduro in *Groupe Danone* v *Commission* (C-3/06 P, EU:C:2006:720, point 53).

65 — See, inter alia, the judgment in *Finsider* v *Commission* (C-320/92 P, EU:C:1994:414, paragraph 46).

66 — See, to that effect, the judgment in *Weig* v *Commission* (C-280/98 P, EU:C:2000:627, paragraphs 67 and 68). In paragraph 68 of its judgment in *Salzgitter Mannesmann* v *Commission* (C-411/04 P, EU:C:2007:54), the Court held that, 'although, in the context of an appeal, it is not open to the Court of Justice to substitute, on grounds of fairness, its own assessment for that of the [General Court] exercising its unlimited jurisdiction to rule on the amount of fines imposed on undertakings for infringements of [EU] law, the exercise of that jurisdiction in respect of the determination of those fines cannot result in discrimination between undertakings which have participated in an agreement or concerted practice contrary to [Article 101(1) TFEU] ([judgments in *Sarrió* v *Commission*, Case C-291/98 P EU:C:2000:631, paragraphs 96 and 97, and *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 617])'. See also the judgments in *Dalmine*, C-407/04 P, EU:C:2007:53 (paragraph 152 et seq.), and *Evonik Degussa* v *Commission*, C-266/06 P, EU:C:2008:295 (paragraphs 95 and 114).

67 — Judgment in *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 337: 'if the [General Court] intended, in the case of one of those undertakings, to depart specifically from the method followed by the Commission, which it had not called in question, it should have given reasons for doing so in the judgment under appeal'. The Court held in paragraph 78 of its judgment in *Guardian Industries and Guardian Europe* v *Commission* (C-580/12 P, EU:C:2014:2363) that, '[i]n this regard, suffice it to note that, having found that the decision … is unlawful, the Court may, in the exercise of its unlimited jurisdiction, substitute its own appraisal for the Commission's and, consequently, cancel, reduce or increase the fine imposed … That power is exercised by taking into account all of the factual circumstances … Consequently, the abovementioned argument of the Commission must be rejected'. Accordingly, in paragraph 80 of the judgment, the Court held that the fine imposed on Guardian in Article 2 of the decision in question had to be reduced by 30% and set it at EUR 103 600 000 (the original fine being EUR 148 000 000).

215. However, the General Court made no upward or downward adjustment to the basic amount of the fine and kept the multipliers on account of gravity and deterrence[68] at 15% for all the undertakings.

216. To justify that conclusion, the General Court stated, in paragraph 169 of the *Roca Sanitario* judgment, in the context of its examination of the pleas put forward in support of the claim for annulment, that, '[h]owever, even if the Commission ought, when setting those multipliers, to have treated the undertakings which participated in the single infringement covering six Member States and relating to three product sub-groups differently from the undertakings which participated in the single infringement covering only one Member State, the fact remains that any such different treatment would have been of no benefit to the applicant. As was pointed in in paragraph 155 [of the judgment], as regards the multiplier for the "additional amount", the Commission was entitled to incorporate into its calculation of the fine, in accordance with point 25 of the 2006 Guidelines, an "additional amount" multiplier of 15%, which was proportionate to the gravity of the anti-competitive conduct which the applicant was found to have engaged in. For the same reasons as were stated in paragraph 155 [of the judgment], the Commission was entitled to incorporate, in accordance with points 21 to 23 of the guidelines, a multiplier for the "gravity of the infringement" of 15%, and it did not thereby breach the principle of proportionality. The lack of differential treatment between the undertakings to which the [decision at issue] was addressed has therefore not been to the detriment of the applicant'.

217. Thus, having found, in paragraph 168 of its judgment, that the infringement imputed to Roca Sanitario was of lesser gravity, the General Court dodged the question whether there had in fact been discrimination, simply decreeing that it was not, in any event, to the detriment of the Roca Sanitario, and held that Roca Sanitario would not in any case have benefited from any different treatment because the fine imposed on it was not disproportionate.

218. In paragraph 185 of the Roca Sanitario judgment, the General Court recalled, in response to the pleas put forward in support of the claim for a reduction in the fine, that it had 'held, in paragraphs 168 to 170 [of the judgment], that the Commission had not breached the principle of equal treatment by applying in the applicant's case multipliers for the "gravity of the infringement" and for the "additional amount" of 15%. It [also had to be] recalled that, as was held in paragraph 155 [of the judgment], the Commission was entitled, in accordance with points 21 to 23 and 25 of the 2006 Guidelines, to conclude that multipliers for the "gravity of the infringement" and for the "additional amount" of 15% were not disproportionate to the gravity of the infringement'.

219. The General Court added, in paragraph 187 of the judgment, that '[t]he fact that the undertakings which participated in the single infringement covering six Member States and relating to three product sub-groups should have received a fine calculated on the basis of multipliers for the "gravity of the infringement" and the "additional amount" higher than the multipliers of 15% adopted to penalise the applicant cannot however justify the Court's imposing, in the exercise of its unlimited jurisdiction, a fine on the applicant which is not a sufficient deterrent in the light of the gravity of the infringement in which it participated'.

220. The treatment was not the same, therefore, but, according to the General Court, the principle of equal treatment had not been breached because the fine remained proportionate!

221. It must be borne in mind in this connection that Article 49(3) of the Charter provides that '[t]he severity of penalties must not be disproportionate to the criminal offence'. Applying that rule, it is illogical to find that an infringement is of lesser gravity and at the same time to uphold a penalty of the same severity as for the more serious infringements established in parallel judgments.

68 — The General Court referred to this as the 'additional amount'.

222. Yet, after finding that the infringement which Roca Sanitario was alleged to have committed was of lesser gravity, the General Court did not reduce its fine but continued to apply the same multipliers for gravity and deterrence as it applied to the fines imposed on the hard core of undertakings, in relation to which it found that the Commission should have applied multipliers fixed at a higher rate.

223. Against that background, the question is whether the General Court was entitled to deny Roca Sanitario the application of multipliers fixed at a lower rate, such as would re-establish equal treatment between it and the other cartel participants, on the ground that that would be contrary to the principle of proportionality, which requires that fines have a sufficiently deterrent effect.

224. I do not think that it was.

225. Indeed, following the reasoning of the General Court, which distinguished between the infringements committed by Roca Sanitario and the other cartel participants in terms of their respective gravity, the necessary conclusion would be that the deterrent nature of a fine is not in fact linked to the gravity of the infringement, even though, in paragraph 187 of the judgment, the General Court spoke of a fine which was sufficiently deterrent *in the light of* the gravity of the infringement.

226. It must be either one or the other: if the fine imposed is the same for two infringements of different gravity, it is either insufficiently dissuasive with respect to one of the infringements or disproportionate with respect to the other. Given that the calculation of the fine was not revised in the case of the parties which committed the more serious infringement, the same fine imposed on the party that committed the less serious infringement is necessarily disproportionate.

227. The General Court could not correct the geographic scope of the single, complex and continuous infringement in which one applicant had participated, from six Member States to just two, for example (as it did in *Dornbracht* v *Commission*, T-386/10, EU:T:2013:450), or, acknowledging that the infringement committed by the hard core of undertakings 'should', because of its more extensive geographic scope, have attracted a fine calculated on the basis of higher multipliers for the 'gravity of the infringement' and for the 'additional amount' (as it did in paragraph 187 of the *Roca Sanitario* judgment), thus recognising that different situations had wrongly been treated in similar fashion (as it did in the present case), *and at the same time decide, on the one hand, not to increase the fines for the hard core of undertakings and, on the other, not to reduce the fine imposed, for example, on Roca Sanitario (or the multipliers applied), without giving a sufficient statement of reasons in that regard*.

228. Indeed, as the General Court held in its judgment in *Mamoli Robinetteria* v *Commission* (T-376/10, EU:T:2013:442, paragraph 174), '[a]n infringement covering six Member States and relating to three product sub-groups cannot properly be regarded as being of comparable gravity to an infringement committed in one Member State and relating to two product sub-groups. Having regard to the scope of the effects of the infringement on competition within the European Union, that former infringement must be considered to be more serious than the latter'.

229. Moreover, I think that the General Court failed to follow its own case-law precedents in the matter of the gradation of fines according to the relative gravity of the infringements imputed to each undertaking that has participated in a single, complex and continuous infringement. Indeed, in accordance with the principle that penalties must be tailored to the individual and the principles of personal liability and non-discrimination, a lesser degree of liability should, in principle be reflected in the level of the fine.

230. So that the concepts of proportionality and deterrent effect may remain objective, the General Court regards it as necessary to draw on the 2006 Guidelines. I would recall in this connection that those guidelines 'form rules of practice from which the administration may not depart … without giving reasons compatible with the principle of equal treatment'.[69] Applying them blindly and automatically is therefore not permissible, even for the General Court, where that would lead to unequal treatment.[70]

231. Moreover, the General Court has in the past held that the principle of equal treatment had been breached and drawn the necessary inferences, reducing the fine. That occurred in *Bolloré and Others* v *Commission* (T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, EU:T:2007:115, paragraph 694 et seq.)[71] and *Chalkor* v *Commission* (T-21/05, EU:T:2010:205, paragraphs 104 to 113). In the latter judgment, the General Court rightly held that 'an undertaking may never be fined an amount which is calculated to reflect its participation in a collusion for which it is not held liable' (paragraph 93).[72]

232. It is also clear from the case-law of the Court of Justice that there is a positive obligation (and not merely a power, as the General Court appears to believe) to reflect any lesser degree of gravity in the amount of a fine: 'The fact that an undertaking has not taken part in all aspects of an anti-competitive scheme or that it played only a minor role in the aspects in which it did participate *must be taken into consideration when the gravity of the infringement is assessed and if and when it comes to determining the fine*' (my emphasis).[73]

(c) The statement of reasons

233. It is important to point out that the General Court gave no explanation as to why a reduction, even a slight reduction, in the basic amount of the fine imposed on Roca Sanitario would have resulted in a fine of an insufficiently deterrent amount. (Nor did it give sufficient reasons to explain in what way the rate of 15% was appropriate.) It merely stated that the multipliers applied in Roca Sanitario's case were 'appropriate'. That is clearly not an appropriate statement of reasons! Moreover, the *Roca Sanitario* judgment addresses only (the multiplier for) the 'additional amount' and fails to mention the rate of the multiplier for the 'gravity of the infringement'.

69 — Judgment in *KME Germany and Others* v *Commission* (C-389/10 P, EU:C:2011:816, paragraph 127).

70 — As I explained in my Opinion in *Telefónica and Telefónica de España* v *Commission* (C-295/12 P, EU:C:2013:619), the General Court cannot refer to the rules laid down in the guidelines and apply them in an automatic fashion, as seems to be suggested by paragraph 185 of the *Roca Sanitario* judgment, especially if applying them in that way fails to ensure that the principle of equal treatment is observed.

71 — The judgment was set aside in so far as it concerned Bolloré, but for other reasons (judgment in *Papierfabrik August Koehler and Others* v *Commission*, C-322/07 P, C-327/07 P and C-338/07 P, EU:C:2009:500).

72 — See also the judgment in *Sigma Tecnologie* v *Commission* (T-28/99, EU:T:2002:76, paragraphs 79 to 82), in which the General Court partially annulled the decision because Sigma had not been liable for the whole of the cartel and reduced the fine by 10%. In *IMI and Others* v *Commission* (T-18/05, EU:T:2010:202, paragraph 157), the fine was again reduced by 10% to reflect the fact that IMI had not participated in a series of anti-competitive practices. See also the judgment in *Adriatica di Navigazione* v *Commission* (T-61/99, EU:T:2003:335, paragraphs 190 and 191).

73 — Judgment in *Commission* v *Anic Partecipazioni* (C-49/92 P, EU:C:1999:356, paragraph 90). See, to the same effect, the judgments in *Archer Daniels Midland* v *Commission* (T-59/02, EU:T:2006:272, paragraph 296); *AC-Treuhand* v *Commission* (T-99/04, EU:T:2008:256, paragraph 131); *IMI and Others* v *Commission* (T-18/05, EU:T:2010:202, paragraph 164); and *Chalkor* v *Commission* (T-21/05, EU:T:2010:205, paragraph 92).

(d) Must every difference in the respective situations of the undertakings concerned be reflected in the amount of the fine?

234. The case-law also requires that account be taken, in the calculation of fines, of the relative gravity of the participation of each of several participants in the same infringement.[74] The purpose of that requirement is to ensure observance of the principle that penalties must be tailored to the individual.

235. Admittedly, the Court has held that that principle does not go as far as requiring that every difference in the participants' turnover be reflected in the fine.[75]

236. In my opinion, that limitation — which amounts to an admission of the impossibility of ensuring absolute equality between multiple participants — must logically, and by analogy, cover differences relating to geographic scope and thus to the gravity of the infringements found.

237. That is all the more so inasmuch as such differences, like those relating to turnover, are already reflected in the value of sales taken into account when calculating the basic amount of the fine.

238. It thus becomes necessary to assess whether the failure to take into account, when determining the multipliers for the 'gravity of the infringement' and the 'additional amount', the lesser degree of gravity of the infringement imputed to Roca Sanitario resulted in different treatment that goes beyond the threshold after which discrimination must be corrected.

239. First of all, I think that, other than in terms of geographic scope, the General Court drew no distinction in its judgment between the gravity of the conduct of the Roca Sanitario subsidiaries for which Roca Sanitario was held liable and the gravity of the conduct of the undertakings forming the hard core (which were the instigators of the cartel and, according to Roca Sanitario, took steps to ensure that the cartel would be coordinated and implemented throughout Europe[76]). Suffice it to observe that the General Court made no reference in its judgment to the fact that Roca Sanitario was not part of the hard core of the cartel and that one of its subsidiaries had participated in the cartel in respect of just two of the sub-groups of products rather than all three.

74 — Judgments in *Suiker Unie and Others* v *Commission*, 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, EU:C:1975:174, paragraph 623; *Commission* v *Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 150; and *Hercules Chemicals* v *Commission*, C-51/92 P, EU:C:1999:357, paragraph 110.

75 — Judgment in *Dansk Rørindustri and Others* v *Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 312).

76 — See paragraphs 97 to 102 of, and footnote 71 to the application at first instance.

240. In its judgment in *Deutsche Telekom* v *Commission* (C-280/08 P, EU:C:2010:603, paragraph 274), the Court stated that, '[t]he factors capable of affecting the assessment of the gravity of infringements include *the conduct of the undertaking* concerned, *the role it played in the establishment of the practice in question*, [77] the profit which it was able to derive from that practice, its size, the value of the goods concerned and the threat that infringements of that type pose to the objectives of the European Union' (my emphasis). [78]

241. It is also clear from the case-law that the fact that an undertaking has not taken part in all aspects of an anti-competitive scheme or that it played only a minor role in the aspects in which it did participate must be taken into consideration when the gravity of the infringement is assessed and if and when it comes to determining the fine. [79]

242. In the case of a single infringement, in the sense of a complex and continuous infringement, which involves a whole body of agreements and concerted practices on different markets on which not all the offenders are present, or of whose overall design the offenders may have only a partial understanding, the penalties must be individual in the sense that they must relate to the individual conduct and specific characteristics of the undertakings concerned. [80]

243. In that context, the principle of proportionality requires that the fine be fixed proportionately to the factors that must be taken into account both to assess the objective gravity of the infringement as such and to assess the relative gravity of the participation in the infringement of the particular undertaking being fined. [81]

244. Next, it should be recalled that, in paragraph 186 of the *Roca Sanitario* judgment, the General Court rightly corrected the approach taken in the decision at issue and stated that the lesser involvement of the Roca Sanitario subsidiaries, which extended to only two of the six national components of the overall infringement sanctioned, was necessarily a less serious infringement than that of the undertakings which had participated in a greater number of components of the cartel. [82]

77 — Judgment in *Cimenteries CBR and Others* v *Commission* (T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95, EU:T:2000:77, paragraph 4949 and the case-law cited). See also the judgment in *voestalpine and voestalpine Wire Rod Austria* v *Commission* (T-418/10, EU:T:2015:516, paragraph 408 et seq.). In that latter judgment, the General Court stated, with regard to the fine imposed jointly and severally on voestalpine and voestalpine Austria Draht, that the Commission had not established that voestalpine Austria Draht had directly participated in 'Club Zurich', 'Club Europe' or 'Club España', that is to say, in the essential aspects of the cartel. On the other hand, the General Court stated that the participation of voestalpine Austria Draht in 'Club Italia' had been rightly established, because of the anti-competitive conduct of its commercial agent in Italy, even though there was no evidence to show that voestalpine Austria Draht had been aware of the agent's infringing conduct. Since the agent had been acting within the framework of its mandate, which covered Italy alone, it had to be regarded as forming part of the company. However, the General Court considered that voestalpine Austria Draht could not be held liable for the agent's anti-competitive conduct outside the Italian market. In view of those facts, the General Court decided to reduce the fine imposed jointly and severally on the two companies from EUR 22 million to EUR 7.5 million.

78 — See, by analogy, the judgments in *Musique Diffusion française and Others* v *Commission* (100/80 to 103/80, EU:C:1983:158, paragraph 129) and *Dansk Rørindustri and Others* v *Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 242). Where an infringement has been committed by several undertakings, the relative gravity of the participation of each undertaking must be examined (judgment in *Hercules Chemicals* v *Commission*, C-51/92 P, EU:C:1999:357, paragraph 110 and the case-law cited).

79 — Judgments in *Commission* v *Anic Partecipazioni*, C-49/92 P, EU:C:1999:356, paragraph 90, and *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, paragraph 86).

80 — See to that effect, the judgment in *Britannia Alloys & Chemicals* v *Commission* (C-76/06 P, EU:C:2007:326, paragraph 44).

81 — See, to that effect and in connection with the distinction drawn between the objective gravity of the infringement, within the meaning of points 22 and 23 of the 2006 Guidelines, and the relative gravity of the participation in the infringement of the particular undertaking being fined, assessed in the light of the particular circumstances of that undertaking, within the meaning of point 27 et seq. of the guidelines, the judgment in *Jungbunzlauer* v *Commission* (T-43/02, EU:T:2006:270, paragraphs 226 to 228 and the case-law cited).

82 — 'Admittedly, the multipliers for the "gravity of the infringement" and the "additional amount" of 15% are the multipliers which the Commission chose (as is clear from recital 1211 to the [decision at issue]) in order to calculate the fines which it imposed on the undertakings that participated in the single infringement relating to the three product sub-groups in the six Member States. *However, that was a more serious infringement, on account of its geographic scope, than the infringement in which the applicant participated*' (my emphasis).

245. Nevertheless, it held in paragraph 187 that '[t]he fact that the undertakings which participated in the single infringement covering six Member States and relating to three product sub-groups should have received a fine calculated on the basis of multipliers for the "gravity of the infringement" and the "additional amount" higher than the multipliers of 15% adopted to penalise the applicant cannot justify the Court's imposing, in the exercise of its unlimited jurisdiction, a fine on the applicant which is not a sufficient deterrent in the light of the gravity of the infringement in which it participated'.

246. It is clear from that that the principle that penalties must be tailored to the individual was not observed and, once again, that no reasons were given for not making a link between the finding of a lesser degree of gravity and the amount of the fine.

247. Admittedly, according to the Commission, the less serious nature of the conduct of the undertakings was already sufficiently reflected in the value of sales to which the multipliers for gravity and deterrence were applied. However, that argument was rejected by the General Court both in the *Roca Sanitario* judgment (see point 186) and in several other parallel judgments concerning the same cartel. Moreover, it is clear from those judgments that the lesser gravity of the infringements found ought to have led the Commission to apply different multipliers for the 'gravity of the infringement' and the 'additional amount'.

248. In its judgment in *Zucchetti Rubinetteria* v *Commission* (T-396/10, EU:T:2013:446, paragraphs 114 to 119), the General Court held, rightly in my view, as follows: 'as regards the error which the applicant alleges the Commission made in the assessment of the facts, the Commission must be found to have erred in holding that the application of multipliers for the "gravity of the infringement" and the "additional amount" of 15% was justified by the fact that the undertakings covered by the [decision at issue] had participated in a single infringement in respect of three product sub-groups and covering six Member States. In fact, as the Commission itself observed in recital 879 of the [decision at issue], the applicant was involved in an infringement relating to the coordination of price increases in Italy alone, and not in the five other Member States referred to in paragraph 1 [of the judgment], owing to the fact that the unlawful discussions that had taken place concerned taps and fittings and ceramics but not shower enclosures. In that regard, the Court observes that the applicant does not dispute, in that context, the Commission's finding that it had participated in an infringement relating to both taps and fittings and ceramics' (paragraph 114).

249. Thus, '[i]t … follows from the Commission's finding in recital 879 of the [decision at issue] that the Commission could not properly justify the application [of] multipliers for the "gravity of the infringement" and the "additional amount" of 15% to the applicant on the ground that it had participated in a single infringement relating to three product sub-groups and covering six Member States. It must therefore be found that the Commission made an error in the assessment of the facts in that regard' (paragraph 115).

250. First of all, 'the [General] Court finds ineffective the Commission's arguments that the fine imposed on the applicant reflects its participation only in the Italian aspect of the infringement found, that the value of sales of each undertaking taken into account reflects their individual, actual and specific involvement in the infringement, and that the multipliers for the "gravity of the infringement" and the "additional amount" of 15% are modest in the light of the gravity of the infringement in which the applicant participated. None of those arguments invalidates the finding that the Commission could not rely on the ground set out in paragraph 115 [of the judgment] to justify the application of multipliers for the "gravity of the infringement" and the "additional amount" of 15%' (paragraph 116).

251. Next, 'the Court also finds ineffective the Commission's arguments that it followed the various stages of the methodology for calculating fines as provided for by the 2006 Guidelines, that it used the turnover figures provided by the undertakings covered by the [decision at issue], that it had a margin of discretion in calculating the fines, and that the gravity of the infringement in which the applicant participated is reflected in the proportion of the value of the sales that was taken into account. Those arguments do not affect the finding that the Commission was not entitled to rely on the ground set out in paragraph 115 above' (paragraph 117).

252. Lastly, 'the Court rejects the argument put forward by the Commission in response to questions from the Court at the hearing that the difference in geographic scope resulting from the participation of undertakings in the single infringement in its entirety, on the one hand, and only in Italy, on the other, does not justify the application of different multipliers for the "gravity of the infringement" and the "additional amount". An infringement covering six Member States and relating to three product sub-groups cannot properly be regarded as being of the same gravity as an infringement committed in one Member State alone and relating to two product sub-groups. Having regard to the scope of the effects of the infringement on competition within the European Union, that former infringement must be considered to be more serious than the latter' (paragraph 118).

253. The General Court concluded, in paragraph 119, that 'the Commission must be found to have made two errors of assessment in basing the application of multipliers for the "gravity of the infringement" and the "additional amount" of 15% on the fact that the applicant had participated in a single infringement covering six Member States and relating to three product sub-groups. The applicant's argument in that regard must therefore be upheld'.

254. The General Court reached a similar conclusion in the parallel judgment in *Dornbracht* v *Commission* (T-386/10, EU:T:2013:450, paragraphs 163 to 168). In four other parallel cases, the *Duravit* judgment (paragraph 366 et seq.); the *Villeroy & Boch Austria* judgment (paragraphs 384 and 385); *Hansa Metallwerke and Others* v *Commission* (T-375/10, EU:T:2013:475, paragraph 180 et seq.); and *Mamoli Robinetteria* v *Commission* (T-376/10, EU:T:2013:442, paragraph 170 et seq.[83]) the General Court did not, in principle, reject the allegations that the multipliers at issue should have been tailored to the individual undertaking.

255. I would add that the Commission has taken that approach in numerous cases, that is to say, in order to ensure non-discriminatory treatment, it has applied different multipliers for gravity and deterrence and has thus varied the basic amounts of the fines by reference to the gravity of the infringement imputed to each of the undertakings involved in a single and continuous infringement.[84]

256. As regards Roca Sanitario's complaint that, in the absence of any reduction in the rate of the multipliers for the 'gravity of the infringement' and the 'additional amount', the mitigating circumstance of the lesser gravity of the infringement imputed to it should have been recognised and was not, the General Court was right, in my view, to declare that complaint inadmissible for having been put forward late.

83 — Paragraph 176: 'the argument that the fundamental mechanisms of the cartel, consisting in the coordination of annual pricing policies, were the same for all the undertakings are to no avail. The fact that all the undertakings participated in the coordination of price increases does not alter the finding that the Commission was not entitled to apply a multiplier for the "additional amount" of 15% to all the addressees of the [decision at issue] on the ground that they had participated in a single infringement when some of them had not participated in the single infringement covering six territories and relating to the three product sub-groups' (my emphasis).

84 — See Case COMP/F/38.344 — Prestressing Steel, recital 953, and the decisions referred to in footnote 86 to this Opinion.

257. Indeed, although a complaint to that effect was raised in a footnote to the application (not, as the General Court stated, at the hearing), it was not, in my view, formulated in sufficiently clear and precise terms, as is required by the case-law of the Court. [85] As the Commission has pointed out, a general reference to point 29 of the 2006 Guidelines, made in a footnote to an application, does not provide a sufficiently clear basis for such a complaint.

258. Lastly, in so far as Roca Sanitario argues that, independently of any possible discrimination, the fine was disproportionate, suffice it to observe that it has failed to show that that is true in this case.

(e) Conclusion

259. I therefore conclude that, since the General Court on the one hand acknowledged the lesser gravity of the conduct adopted by the Roca Sanitario subsidiaries and, on the other, decided not to increase the fines imposed on the undertakings forming the hard core of the cartel, without stating any appropriate reasons for so doing, it should, in the exercise of its unlimited jurisdiction, have adjusted downwards the multipliers for the 'gravity of the infringement' and the 'additional amount' that were applied in Roca Sanitario's case in order to ensure the observance of the principle of equal treatment and the principle that penalties must be tailored to the individual. [86]

260. It was clearly incorrect to hold that 'any … different treatment [as between the two groups of undertakings] would have been of no benefit to the applicant' (paragraph 169 of the *Roca Sanitario* judgment).

261. It follows from the foregoing that the first part of the second plea put forward by Roca Sanitario should be upheld and that the *Roca Sanitario* judgment should be partially set aside in that regard.

(f) The consequences of the Court's setting aside the Roca Sanitario judgment

262. I am of the opinion that it would be appropriate to refer the case back to the General Court so that it may give its ruling on the fine, in particular, drawing the necessary inferences from the considerations I have set out in relation to the first part of the second plea put forward by Roca Sanitario.

IV – Conclusion

263. For those reasons and without prejudging the Court's assessment of the other pleas put forward in these appeals, I propose that the Court give a ruling in the terms set out below.

85 — See, to that effect, the judgment in *Belgium* v *Commission* (C-197/99 P, EU:C:2003:444, paragraph 81).

86 — The Commission acknowledged at the hearing before the General Court in the actions brought by Roca (France) and Laufen Austria that the conduct adopted by those undertakings had been of lesser gravity than that adopted by the undertakings forming the hard core of the overall infringement sanctioned, and that it could have applied a lower rate (14%) in their case in order to ensure the observance of the principle of equal treatment and to reflect the lesser relative gravity of their conduct (see the minutes of the hearings of 6 March 2013 in *Laufen Austria* v *Commission*, T-411/10, EU:T:2013:443 and *Roca*). The Commission expressed the same view in the action brought by Zucchetti against the decision at issue, *Zucchetti Rubinetteria* v *Commission* (T-396/10, EU:T:2013:446); see paragraph 42 of the report for the hearing, appended as Annex 11 to Roca Sanitario's appeal. See also the judgment in *Team Relocations and Others* v *Commission* (T-204/08 and T-212/08, EU:T:2011:286, paragraph 91), which cites the 'Candle waxes' decision, C(2008) 5476 of 1 October 2008 relating to a proceedings under Article 81 EC and Article 53 EEA (Case COMP/C.39.181 — Candle waxes) and the 'Heat stabilisers' decision, C(2009) 8682 of 11 November 2009 relating to a proceedings under Article 81 EC and Article 53 EEA (Case COMP/38.589 — Heat stabilisers), in which the Commission applied different rates to different categories of cartel participants by reference to the relative gravity of their participation in the infringement at issue.

264. In *Commission* v *Keramag Keramische Werke and Others* (C-613/13 P):

1. Set aside point 1 of the operative part of the judgment in *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, EU:T:2013:457) in so far as it annulled Article 1 of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 [EEA] (Case COMP/39092 — Bathroom Fittings and Fixtures) with regard to events within the Association française des industries de céramique sanitaire (AFICS) and to the liability of Allia SAS, Produits Céramiques de Touraine SA and Sanitec in connection with those events;

2. Set aside point 2 of the operative part of that judgment in its entirety;

3. Dismiss the action for annulment in so far as it concerns the events that took place within AFICS and reinstate the fines imposed on Allia SAS, Produits Céramiques de Touraine SA and Sanitec;

4. Dismiss the second plea in the cross-appeal brought by Keramag and Others as inadmissible and/or unfounded.

265. In *Duravit and Others* v *Commission* (C-609/13 P): dismiss the allegations concerning the seventh and twelfth instances of distortion of the evidence, either as inadmissible or as unfounded.

266. In *Villeroy & Boch AG* v *Commission* (C-625/13 P): dismiss the first plea either as inadmissible or as unfounded and dismiss the second part of the second plea as unfounded.

267. In *Villeroy & Boch SAS* v *Commission* (C-644/13 P): dismiss the first plea as unfounded and dismiss the second plea, according to which the General Court failed to follow the findings made in the judgments in *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, EU:T:2013:457), *Duravit and Others* v *Commission* (T-364/10, EU:T:2013:477) and *Wabco Europe and Others* v *Commission* (T-380/10, EU:T: 2013:449) as unfounded.

268. In *Roca Sanitario* v *Commission* (C-636/13 P): uphold the first part of the second plea put forward by Roca Sanitario; partially annul the judgment in *Roca Sanitario* v *Commission* (T-408/10, EU:T:2013:440) and refer the case back to the General Court so that it may give its ruling on the fine, in particular, drawing the necessary inferences from the considerations I have set out in this Opinion in relation to the first part of the second plea put forward by Roca Sanitario.

269. Reserve the costs.