



Reports of Cases

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

9 November 2022 *

(Competition – Agreements, decisions and concerted practices – Market for concrete reinforcing bars – Decision finding an infringement of Article 65 CS after expiry of the ECSC Treaty on the basis of Regulation (EC) No 1/2003 – Fixing of prices – Limiting and controlling output and sales – Decision adopted following the annulment of earlier decisions – Holding of a new hearing attended by the competition authorities of the Member States – Rights of the defence – Principle of sound administration – Reasonable time – Obligation to state reasons)

In Case T-655/19,

Ferriera Valsabbia SpA, established in Odolo (Italy),

Valsabbia Investimenti SpA, established in Odolo,

represented by D. Fosselard, D. Slater and G. Carnazza, lawyers,

applicants,

v

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

defendant,

APPLICATION based on Article 263 TFEU seeking the annulment of Commission Decision C(2019) 4969 final of 4 July 2019 relating to an infringement of Article 65 of the ECSC Treaty (Case AT.37956 – Reinforcing bars), in so far as it finds that the applicants infringed that provision and in so far as it imposes a fine of EUR 5.125 million upon them jointly and severally,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

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

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 2 June 2021,

* Language of the case: Italian.

gives the following

Judgment

Background to the dispute

- 1 The applicants, Ferriera Valsabbia SpA and Valsabbia Investimenti SpA, are companies governed by Italian law, resulting from the splitting up, on 1 March 2000, of Ferriera Valsabbia SpA, a company governed by Italian law operating in the concrete reinforcing bar sector since 1954. The operational arm of the latter was transferred to Enifer Srl, which took the name Ferriera Valsabbia. Valsabbia Investimenti controls 100% of the capital of Ferriera Valsabbia in its current form.

First Commission decision (2002)

- 2 From October to December 2000, the Commission of the European Communities carried out a number of verifications pursuant to Article 47 CS at the premises of certain Italian undertakings engaged in the manufacture of reinforcing bars, including the applicants, and at the premises of an association of undertakings, the Federazione imprese siderurgiche italiane (Federation of Italian Steel Undertakings; ‘the Federacciai’). It also sent to them requests to supply information pursuant to that provision.
- 3 On 26 March 2002, the Commission initiated proceedings under Article 65 CS and adopted its objections under Article 36 CS (‘the statement of objections’), which were notified inter alia to the applicants. The applicants replied to the statement of objections on 14 May 2002.
- 4 A hearing of the parties to the administrative procedure took place on 13 June 2002.
- 5 On 12 August 2002, the Commission addressed additional objections to the same addressees (‘the supplementary statement of objections’) on the basis of Article 19(1) of Council Regulation No 17 of 6 February 1962: First Regulation Implementing Articles [81] and [82 EC] (OJ, English Special Edition: Series I Chapter 1959-1962, p. 87). In that statement, it explained its position concerning the further proceedings following the expiry of the ECSC Treaty, on 23 July 2002. The applicants replied to the supplementary statement of objections on 20 September 2002.
- 6 A new hearing of the parties to the administrative procedure, attended by the competition authorities of the Member States, took place on 30 September 2002. That hearing concerned the subject matter of the supplementary statement of objections, namely the legal consequences of the expiry of the ECSC Treaty for the continuation of the proceedings.
- 7 At the end of the administrative procedure, the Commission adopted Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 of the ECSC Treaty (COMP/37.956 – Reinforcing bars) (‘the 2002 decision’), addressed to the Federacciai and to eight undertakings, including the applicants. In that decision, the Commission found that those addressees had, between December 1989 and July 2000, implemented a single, complex and continuous restrictive practice on the Italian market for concrete reinforcing bars in bars and coils (‘concrete reinforcing bars’) having as its object or effect the fixing of prices and the limiting or controlling of output or sales, contrary to Article 65(1) CS. On that basis, it imposed, jointly and severally, a fine totalling EUR 10.25 million on the applicants.

- 8 On 5 March 2003, the applicants brought an action before the Court challenging the 2002 decision. The Court annulled that decision with regard to the applicants (judgment of 25 October 2007, *SP and Others v Commission*, T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317) and to the other addressee undertakings, on the ground that the legal basis used, that is to say, Article 65(4) and (5) CS, was no longer in force when the decision was adopted. Accordingly, the Commission did not have competence, on the basis of those provisions, to establish and sanction an infringement of Article 65(1) CS after the expiry of the ECSC Treaty. The Court did not examine the other aspects of that decision.
- 9 The 2002 decision became final in respect of the Federacciai, which did not bring an action before the Court.

Second Commission decision (2009)

- 10 By letter of 30 June 2008, the Commission informed the applicants and the other undertakings concerned of its intention to adopt a new decision, correcting the legal basis used. In addition, it also explained that that decision would be based on the evidence presented in the statement of objections and the supplementary statement of objections. At the invitation of the Commission, the applicants submitted written observations on 4 September 2008.
- 11 On 30 September 2009, the Commission adopted a new decision, Decision C(2009) 7492 final relating to a proceeding under Article 65 of the ECSC Treaty (Case COMP/37.956 – Reinforcing bars, re-adoption), addressed to the same undertakings as the 2002 decision, including the applicants. That decision was adopted on the basis of the procedural rules of the EC Treaty and of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1). It was based on the information referred to in the statement of objections and the supplementary statement of objections and reproduced, in essence, the content and the conclusions of the 2002 decision. In particular, the amount of the fine imposed, jointly and severally, on the applicants, that is to say, EUR 10.25 million, remained unchanged.
- 12 On 8 December 2009, the Commission adopted an amending decision including, in the annex thereto, the tables showing the price variations omitted from its decision of 30 September 2009 and correcting the numbered references to those tables in eight footnotes.
- 13 On 17 February 2010, the applicants brought an action before the Court against the Commission's decision of 30 September 2009, as amended ('the 2009 decision'). On 9 December 2014, the Court dismissed that action (judgment of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti v Commission*, T-92/10, not published, EU:T:2014:1032). The Court annulled the 2009 decision in part with regard to another of its addressees, reduced the amount of the fine imposed on two of its other addressees and dismissed the other actions brought.
- 14 On 20 February 2015, the applicants lodged an appeal against the judgment of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti v Commission* (T-92/10, not published, EU:T:2014:1032). By judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717), the Court of Justice set aside that judgment of the General Court and annulled the 2009 decision with regard, inter alia, to the applicants.

- 15 In the judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717), the Court of Justice held that, when a decision was adopted on the basis of Regulation No 1/2003, the procedure resulting in that decision had to conform to the procedural rules laid down by that regulation and by Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101] and [102 TFEU] (OJ 2004 L 123, p. 18), even if the procedure had begun before those regulations had come into force.
- 16 The Court of Justice found that, in the present case, the hearing of 13 June 2002, the only hearing that concerned the substance of the procedure, could not be regarded as consistent with the procedural requirements in relation to the adoption of a decision on the basis of Regulation No 1/2003, given the non-participation of the competition authorities of the Member States.
- 17 The Court of Justice concluded that the General Court had erred in law in holding that the Commission was not obligated to organise a new hearing before adopting the 2009 decision, on the ground that the undertakings had already had the opportunity to be heard orally at the hearings on 13 June and 30 September 2002.
- 18 In its judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717), the Court of Justice pointed to the importance of holding, at the request of the parties concerned, an oral hearing to which the competition authorities of the Member States are invited, with the failure to hold such a hearing constituting infringement of an essential procedural requirement.
- 19 The Court of Justice held that, since that right set out in Regulation No 773/2004 had not been respected, it was not necessary for the undertaking, the right of which had been infringed in this way, to demonstrate that such infringement might have influenced the course of the proceedings and the content of the decision at issue to its detriment.
- 20 The Court of Justice also set aside other judgments of the General Court of 9 December 2014 ruling on the legality of the 2009 decision, and annulled that decision, in respect of four other undertakings, on the same grounds. However, the 2009 decision became final for the addressee undertakings which did not lodge an appeal against those judgments.

Third Commission decision (2019)

- 21 By letter of 15 December 2017, the Commission informed the applicants of its intention to resume the administrative procedure and to organise, in that context, a new hearing of the parties to that procedure in the presence of the competition authorities of the Member States.
- 22 By letter of 1 February 2018, the applicants submitted comments in which they contested the Commission's power to resume the administrative procedure and thus called upon the Commission not to do so.
- 23 On 23 April 2018, the Commission held a new hearing concerning the substance of the proceedings, which was attended, in the presence of the competition authorities of the Member States and the Hearing Officer, by the applicants and three other undertakings to which the 2009 decision was addressed.

- 24 By letters of 19 November 2018 and of 18 January and 6 May 2019, the Commission sent three requests for information to the applicants concerning their turnover.
- 25 On 4 July 2019, the Commission adopted Decision C(2019) 4969 final relating to a proceeding under Article 65 of the ECSC Treaty (Case AT.37956 – Reinforcing bars) ('the contested decision'), addressed to the five undertakings in respect of which the 2009 decision had been annulled, that is to say, in addition to the applicants, Alfa Acciai SpA, Feralpi Holding SpA (formerly Feralpi Siderurgica SpA and Federalpi Siderurgica SRL), Partecipazioni Industriali SpA (formerly Riva Acciaio SpA and then Riva Fire SpA; 'Riva') and Ferriere Nord SpA.
- 26 By the contested decision, the Commission established the same infringement as that forming the subject of the 2009 decision, but reduced the fines imposed on the addressee undertakings by 50% on account of the duration of the procedure. By Article 2 of the contested decision, it thus imposed on the applicants, jointly and severally, a fine totalling EUR 5.125 million.
- 27 On 8 July 2019, an incomplete copy of the contested decision containing only the odd-numbered pages was notified to the applicants.
- 28 On 18 July 2019, a complete version of the contested decision was notified to the applicants.

Procedure and forms of order sought by the parties

- 29 By application lodged at the Court Registry on 27 September 2019, the applicants brought the present action.
- 30 On a proposal from the Fourth Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to refer the case to a chamber sitting in extended composition.
- 31 Acting on a proposal from the Judge-Rapporteur, the Court (Fourth Chamber, Extended Composition) decided to open the oral phase of the procedure and, under the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, put written questions to the parties and asked them to produce documents. The parties replied to those questions and to those requests to produce documents within the period prescribed.
- 32 By decision of the President of the Fourth Chamber of the Court of 16 April 2021, Cases T-655/19 and T-656/19 were joined for the purposes of the oral procedure, in accordance with Article 68 of the Rules of Procedure.
- 33 The parties presented oral argument and answered the written and oral questions put by the Court at the hearing on 2 June 2021.
- 34 The applicants claim that the Court should:
- annul the contested decision, in so far as it concerns them;
 - order the Commission to pay the costs.

35 The Commission contends that the Court should:

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

Law

36 In support of the action, the applicants raise four pleas in law, alleging:

- firstly, infringement of procedural rules at the hearing of 23 April 2018, which entailed an infringement of the rights of the defence;
- secondly, the unlawful refusal by the Commission to determine, before adopting the contested decision, the compatibility of its adoption with the principle that the duration of the procedure must be reasonable;
- thirdly, and in part fourthly, infringement of the principle that the duration of the procedure must be reasonable;
- fourthly, infringement of the obligation to state reasons and manifest errors of assessment.

The first plea in law, alleging infringement of the rights of the defence and of the procedural rules at the hearing of 23 April 2018

37 The applicants submit that the contested decision was adopted at the end of a procedure marked by the presence of irregularities committed in the organisation of the hearing further to the judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717).

38 Specifically, the applicants put forward three complaints concerning the necessary impartiality of the Advisory Committee, the absence of relevant persons from the hearing of 23 April 2018 and the impossibility of the Commission making good the procedural defect censured by the Court of Justice; all three complaints are contested by the Commission.

The hearing organised following the resumption of the administrative procedure

39 It must be recalled, as a preliminary point, that, in its judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717, paragraphs 42 to 47), the Court of Justice criticised the Commission for failing to give the applicants the opportunity to develop their arguments during a hearing which concerned the substance of the case in the presence of the competition authorities of the Member States.

40 The Court of Justice went on to find that the defect thus identified had to be regarded as an infringement of an essential procedural requirement vitiating the procedure, regardless of any detrimental consequences for the applicants that could result from that infringement (judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission*, C-86/15 P and C-87/15 P, EU:C:2017:717, paragraphs 48 to 50).

- 41 In analysing the judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717), the Commission took the view that, if that defect were remedied, the administrative procedure could be resumed against the undertakings still concerned (recital 15 of the contested decision).
- 42 By letter of 15 December 2017, the Commission informed the relevant undertakings that it wished to resume the administrative procedure from the point at which the defect identified by the Court of Justice had arisen, that is to say, from the oral hearing.
- 43 In its letter of 15 December 2017, the Commission asked the undertakings concerned to state in writing, if they so wished, their interest in participating in a new hearing concerning the substance of the case which would be organised in the presence of the competition authorities of the Member States in accordance with the applicable legislation.
- 44 After receiving the responses provided by the undertakings in question, the Commission organised a new hearing on 23 April 2018 in the presence of the competition authorities of the Member States.

Compliance with the annulment judgments

- 45 It must be observed that, pursuant to the first paragraph of Article 266 TFEU, the institution whose act has been annulled is required to take the necessary measures to comply with the judgment of the Court of Justice.
- 46 In order to comply with an annulment judgment and to implement it fully, the institutions are required to have regard not only to the operative part of the judgment but also to the grounds which constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part (see, to that effect, judgment of 6 July 2017, *France v Commission*, T-74/14, not published, EU:T:2017:471, paragraph 45 and the case-law cited).
- 47 The annulment of an act concluding an administrative procedure does not affect all the stages prior to its adoption, rather only those concerned by the grounds, whether substantive or procedural, which justified the annulment (see, to that effect, judgment of 6 July 2017, *France v Commission*, T-74/14, not published, EU:T:2017:471, paragraph 47 and the case-law cited).
- 48 Accordingly, the procedure for replacing an annulled measure may, in principle, be resumed from the stage affected by the illegality (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others v Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 73, and of 6 July 2017, *France v Commission*, T-74/14, not published, EU:T:2017:471, paragraph 46 and the case-law cited).
- 49 In the present case, since the act was annulled further to a breach of an essential procedural requirement that occurred in the organisation of the hearing (judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission*, C-86/15 P and C-87/15 P, EU:C:2017:717), the Commission was allowed to resume the procedure, as it did, from that stage.
- 50 It is in that context that the complaints put forward by the applicants in support of the first plea in law must be examined.

The first complaint, concerning the necessary impartiality of the Advisory Committee

- 51 The applicants claim that the Advisory Committee was not properly consulted because the arrangements established for organising the hearing to which the competition authorities of the Member States ought to have been invited, representatives of which make up that committee, prevented their impartiality from being guaranteed when the Committee had to deliver its opinion pursuant to the legislation.
- 52 In that regard, it must be borne in mind that the procedure for the adoption of decisions based on Articles 101 and 102 TFEU is governed, as far as concerns the relevant aspects in these proceedings, by Regulation No 1/2003:
- under Article 14(1) and (2) of that regulation, before taking its decision the Commission is to consult a committee composed of representatives of the competition authorities of the Member States;
 - Article 14(3) of the Regulation states that that committee is to deliver a written opinion on the preliminary draft decision submitted by the Commission;
 - Article 14(5) of the same regulation sets out that the Commission is to take the utmost account of the opinion delivered by that committee, informing the Committee of the manner in which it has complied with that obligation.
- 53 As for the organisation of oral hearings, Regulation No 773/2004 lays down the following rules:
- Article 12 of that regulation requires the Commission to give the parties to whom it addresses a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written observations;
 - Article 14(3) of the Regulation provides that the competition authorities of the Member States are to be invited to take part in the oral hearing.
- 54 According to case-law, consultation of the Advisory Committee is an essential procedural requirement, breach of which affects the legality of the contested decision and entails its annulment if it is proved that the failure to comply with rules prevented that committee from delivering its opinion in full knowledge of the facts (see, to that effect, judgment of 12 December 2018, *Servier and Others v Commission*, T-691/14, under appeal, EU:T:2018:922, paragraph 148 and the case-law cited).
- 55 The applicants do not claim that the rules set out in paragraphs 52 and 53 above have not been observed as such. They do, however, consider that, when the competition authorities of the Member States participated in the hearing of 23 April 2018 and, subsequently, delivered their opinion, they were not in a situation that guaranteed their impartiality. According to the applicants, those authorities were in fact aware, when that opinion was delivered, of the position that had been adopted by the Commission and the Courts of the European Union in the decisions and judgments which punctuated the procedure. They point out that, first, before taking the contested decision, the Commission had already adopted, on two occasions (in 2002 and 2009), a decision imposing a penalty without consulting the authorities as regards the substance of the case and that, second, in 2014, the Court had given a judgment confirming the position taken by the

Commission. In the applicants' view, the context, marked as it was by the existence of those decisions and that judgment, inevitably influenced those same authorities in a manner that made it impossible for an opinion to be given impartially.

- 56 In that regard, it must be recalled that, when an act is annulled, it disappears from the legal order and is deemed never to have existed (see, to that effect, judgment of 13 December 2017, *Crédit mutuel Arkéa v ECB*, T-712/15, EU:T:2017:900, paragraph 42 and the case-law cited), even if, where it is individual in scope, the annulment benefits, subject to certain caveats, only the parties to the proceedings (see judgment of 8 May 2019, *Lucchini v Commission*, T-185/18, not published, EU:T:2019:298, paragraphs 33 to 37 and the case-law cited).
- 57 Thus, the judgments of the Court, which are acts adopted by one of the institutions of the European Union, disappear retroactively from the legal order if they are set aside on appeal.
- 58 Accordingly, in the present case, although the Advisory Committee delivered its opinion, firstly, after the Commission adopted the 2002 decision and then the 2009 decision and, secondly, after the Court gave its ruling in the judgment of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti v Commission* (T-92/10, not published, EU:T:2014:1032), the fact remains that, having been annulled or set aside, those decisions and that judgment had disappeared from the legal order of the European Union and were deemed, in line with that case-law, never to have existed.
- 59 As regards the alleged lack of impartiality of the competition authorities of the Members State that made it impossible for the Advisory Committee to give an opinion impartially, it must be observed that, under Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), every person has the right, inter alia, to have his or her affairs treated impartially by the institutions of the European Union.
- 60 The requirement of impartiality provided for in Article 41 of the Charter encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned (see judgment of 11 July 2013, *Ziegler v Commission*, C-439/11 P, EU:C:2013:513, paragraph 155 and the case-law cited).
- 61 In the present case, the impartiality of the Advisory Committee when it delivered its opinion is called into question because, according to the applicants, the attitude of the representatives of the authorities who make up that committee could have been influenced by the fact that those authorities had been aware of the position adopted to the case, on the one hand, by the Commission in its 2002 and 2009 decisions and, on the other hand, by the Court in its judgment of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti v Commission* (T-92/10, not published, EU:T:2014:1032).
- 62 However, even assuming it were established, a lack of impartiality capable of affecting the legality of the contested decision cannot be inferred from such knowledge without calling into question the provisions of the Treaty under which acts declared unlawful may be replaced, there being no need to determine whether it is subjective or objective impartiality which is called into question here by the applicants.

- 63 Indeed, potential knowledge of a solution adopted previously and, as the case may be, confirmed in a judgment of the General Court subsequently set aside by the Court of Justice on appeal is inherent in the obligation to give due effect to an annulment. Deciding that knowledge of such a situation could hinder, in itself, the resumption of a procedure would affect per se the annulment mechanism, suggesting that that mechanism not only entails the retroactive disappearance of the act annulled but also precludes the resumption of the procedure. Such a scenario would be incompatible with Article 266 TFEU, which, in case of annulment on the basis of Article 263 TFEU, requires the institutions, bodies, offices and agencies of the European Union to take the necessary measures to comply with the judgments given in their regard without, however, freeing them from the task of ensuring, in their fields of competence, the implementation of EU law.
- 64 The complaint must therefore be rejected.

The second complaint, concerning the absence of relevant persons from the hearing of 23 April 2018

- 65 The applicants submit that the Commission, first, infringed various rules relating to the organisation of hearings and, second, erred in failing to invite a number of entities to the hearing of 23 April 2018, even though, given the significant role played by them in the matter, those entities could have provided the competition authorities of the Member States with information that would have allowed those authorities to adopt their position in full knowledge of the facts. According to the applicants, since they were unable to benefit from an opinion delivered in full knowledge of the facts by those authorities, their rights of defence were infringed for the following reasons:
- the Federacciai should have participated in that hearing, as should Leali SpA, which has in the meantime gone bankrupt, in view of the central role played by them in all the facts concerned by the investigation;
 - Lucchini SpA, which has also gone bankrupt, and Riva, which has been placed under extraordinary administrative arrangements, which were the market leaders, should also have participated in the hearing;
 - Industrie Riunite Odolesi SpA ('IRO'), which had not challenged the judgment of 9 December 2014, *IRO v Commission* (T-69/10, not published, EU:T:2014:1030), should likewise have participated in the hearing;
 - the Associazione Nazionale Sagomatori Ferro (National Association of Iron Millers, 'Ansfer') should have been invited, since that association, which represents customers of the undertakings concerned, intervened as a third party at the hearing of 13 June 2002 and stated, at that hearing, that the existence of agreements, decisions or concerted practices restrictive of competition had never been felt on the market.
- 66 It is therefore necessary to examine whether, in organising the hearing, the Commission infringed a rule that it was obliged to observe and whether it thereby, or in some other way, impeded the applicants' rights of defence at the hearing of 23 April 2018.
- 67 In the first place, it must be observed that participation at the hearing is one of the procedural rights, the breach of which, on account of their subjective nature, must be relied on by the undertaking or the third party which holds that right (see, to that effect, judgments of 1 July 2010, *ThyssenKrupp Acciai Speciali Terni v Commission*, T-62/08, EU:T:2010:268,

paragraph 186; of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis v Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 77; and of 19 September 2019, *Zhejiang India Pipeline Industry v Commission*, T-228/17, EU:T:2019:619, paragraph 36).

- 68 Thus, the applicants cannot successfully request that a decision is annulled solely because, in the present case, procedural rights enjoyed by third parties or other parties were infringed.
- 69 Moreover, it must be noted that, even though it is the Commission's practice for hearings in the context of procedures relating to agreements, decisions or concerted practices to be most often held collectively, the relevant legislation does not afford a right to a collective hearing for the undertakings to which a statement of objections has been addressed.
- 70 On the contrary, Article 14(6) of Regulation No 773/2004 states that each person may be heard separately or in the presence of other persons invited to attend, having regard to the legitimate interest of the undertakings in the protection of their business secrets and other confidential information (see, to that effect, judgment of 15 March 2000, *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 697).
- 71 In the second place, it is necessary to examine whether, beyond the respect owed to the rights enjoyed by other persons or entities, the Commission infringed rules concerning the organisation of hearings in a way which could have hindered the applicants' defence.
- 72 In that regard, it must be observed that the rights of the defence are fundamental rights forming an integral part of the general principles of law, observance of which is ensured by the EU judicature. Such observance 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 under investigation must have been afforded the opportunity to make known its views on the truth and relevance of the facts alleged and on the documents used by the Commission to support its claim that there has been an infringement of the Treaty. Those rights are referred to in Article 41(2)(a) and (b) of the Charter (see judgment of 25 October 2011, *Solvay v Commission*, C-109/10 P, EU:C:2011:686, paragraphs 52 and 53 and the case-law cited).
- 73 In the present case, the applicants insisted that the absence of certain entities meant that the Advisory Committee had been unable to deliver its opinion in full knowledge of the facts. In the applicants' view, if those entities had been heard, the content of that committee's opinion and, as a result, that of the contested decision, could thus have been different. This issue was the subject of a lively exchange of views between the parties, both in writing and at the hearing.
- 74 In that regard, a distinction must be drawn between the situation of the undertakings who were addressees of the statement of objections and of the contested decision, the situation of third parties showing a sufficient interest and the situation of other third parties.

– *The situation of the undertakings who were addressees of the statement of objections and of the contested decision*

- 75 Under Article 27(1) of Regulation No 1/2003, the undertakings or associations of undertakings which are the subject of the proceedings conducted must have the opportunity of being heard on matters to which objections have been raised before a decision implementing Article 101 or 102 TFEU is taken in their regard. The Commission may base its decisions in relation to them only on objections on which the parties concerned have been able to comment.
- 76 Article 12 of Regulation No 773/2004 provides that the Commission is to give the parties to whom it has addressed a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written submissions.
- 77 In the present case, Article 27(1) of Regulation No 1/2003 and Article 12 of Regulation No 773/2004 were therefore applicable to all the undertakings which participated in the cartel and in respect of which the 2002 decision or the 2009 decision had not become final, including Riva.
- 78 According to the applicants, Riva's absence from the hearing of 23 April 2018 could have contributed to vitiating the procedure by affecting the circumstances in which they were able to defend themselves.
- 79 In that regard, it must be noted, as stated in recitals 45 and 46 of the contested decision, without this being contested by the parties, that:
- Riva was informed by the Commission, by letter of 15 December 2017, of the resumption of the procedure;
 - in response to that letter, Riva lodged written observations without, however, requesting to participate in an oral hearing;
 - since Riva had not made a request to that effect, the Commission did not invite it to take part in the oral hearing of 23 April 2018.
- 80 In the light of those facts, the view cannot be taken that, by failing to invite Riva to participate in the oral hearing of 23 April 2018, the Commission infringed Article 27(1) of Regulation No 1/2003 and Article 12 of Regulation No 773/2004. Since Riva had not requested to participate in the oral hearing, the Commission was not obliged to invite it to the hearing. The applicants cannot therefore reasonably invoke an infringement of the abovementioned provisions that could have affected their defence.

– *The situation of third parties showing a sufficient interest*

- 81 The hearing of interested third parties is governed by Article 27(3) of Regulation No 1/2003. That provision states that, if natural or legal persons showing a sufficient interest request to be heard, their request is to be granted.

- 82 Article 13(1) and (2) of Regulation No 773/2004 provides:
- if natural or legal persons apply to be heard and show a sufficient interest, the Commission is to inform them in writing of the nature and subject matter of the procedure;
 - it is to give those persons the opportunity to make known their views in writing within a time limit set by it;
 - it may invite them to develop their arguments at the oral hearing if those persons so request in their written observations.
- 83 In the present case, Article 27(3) of Regulation No 1/2003 and Article 13(1) and (2) of Regulation No 773/2004 were therefore applicable *inter alia* to five entities whose presence was necessary, according to the applicants, in order for the oral hearing of 23 April 2018 to be properly organised: on the one hand, the Federacciai, Leali, IRO and Lucchini and, on the other hand, Anser.
- 84 In the first place, with regard to the first four entities mentioned in paragraph 83 above, it must be observed that, at an earlier stage in the procedure, they waived the right to challenge the decision which had been addressed to them:
- the Federacciai did not bring an action for annulment against the 2002 decision;
 - Leali, IRO and Lucchini did not lodge an appeal against the judgments of 9 December 2014, *Leali and Acciaierie e Ferriere Leali Luigi v Commission* (T-489/09, T-490/09 and T-56/10, not published, EU:T:2014:1039); of 9 December 2014, *IRO v Commission* (T-69/10, not published, EU:T:2014:1030); and of 9 December 2014 *Lucchini v Commission* (T-91/10, EU:T:2014:1033), which had dismissed their actions for annulment against the 2009 decision.
- 85 Therefore, in accordance with case-law, the decision adopted by the Commission in respect of those entities has become final as far as they are concerned and, consequently, since the procedure is closed in their regard, they were no longer parties to the procedure which resumed on 15 December 2017 (see, to that effect, judgment of 14 September 1999, *Commission v AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 63).
- 86 In those circumstances, the first four entities mentioned in paragraph 83 above did not have a right to participate in the hearing of 23 April 2018 as parties to the proceedings.
- 87 It is true that the first four entities mentioned in paragraph 83 above had the opportunity to apply to the Commission for leave to take part in the oral hearing of 23 April 2018 as interested third parties by demonstrating that they had a sufficient interest, in accordance with the provisions set out in paragraphs 81 and 82 above.
- 88 However, the Federacciai, Leali and IRO did not take such a step and, therefore, it cannot be alleged that the Commission could have, in that context, infringed any rule whatsoever, with the result that the applicants' exercise of their rights of defence could have been affected.
- 89 By contrast, it must be noted that, for its part, Lucchini took the view that it stood to benefit from the annulment ordered by the Court of Justice in its judgments of 21 September 2017, *Feralpi v Commission* (C-85/15 P, EU:C:2017:709); of 21 September 2017, *Ferriera Valsabbia and Others v*

Commission (C-86/15 P and C-87/15 P, EU:C:2017:717); of 21 September 2017, *Ferriere Nord v Commission* (C-88/15 P, EU:C:2017:716); and of 21 September 2017, *Riva Fire v Commission* (C-89/15 P, EU:C:2017:713), even though it did not lodge an appeal against the judgment of 9 December 2014, *Lucchini v Commission* (T-91/10, EU:T:2014:1033). On the basis of that argument, it asked the Commission for leave to participate in the hearing of 23 April 2018. However, that request was made by Lucchini as a party to the procedure which resumed on 15 December 2017, on the same basis, inter alia, as the applicants, and not as an interested third party. That request was rightly rejected by the Commission for the reasons stated in paragraphs 84 and 85 above (judgment of 8 May 2019, *Lucchini v Commission*, T-185/18, not published, EU:T:2019:298, paragraphs 41 and 42). Having been denied that opportunity as a party to the proceedings, Lucchini did not subsequently claim that it was entitled to be invited to the oral hearing as a third party with a sufficient interest.

- 90 In those circumstances, the view cannot be taken that, by failing to invite, on the one hand, the Federacciai and, on the other hand, Leali, IRO and Lucchini to participate in the oral hearing, the Commission infringed a procedural rule capable of having an impact on the applicants' exercise of their rights of defence.
- 91 In the second place, with regard to the fifth entity mentioned in paragraph 83 above, namely Ansfer, the applicants take the view that that entity should have been invited to the hearing of 23 April 2018, in view of the information held by it which was capable of influencing the competition authorities of the Member States vis-à-vis their knowledge of the matter.
- 92 In support of their view, the applicants put forward three arguments.
- 93 Firstly, the applicants submit that, in all likelihood, if Ansfer had been informed by the Commission of the resumption of the procedure, it would have participated in the oral hearing of 23 April 2018, as it had done in the oral hearing of 13 June 2002.
- 94 In that regard, it must be recalled how the procedure was initiated in 2002 against the applicants and against the other undertakings then concerned.
- 95 As the Commission stated in its reply to the questions put by the General Court and at the hearing, without being contradicted by the applicants, the procedure in question was initiated on 26 March 2002, followed by the notification to the parties concerned of the statement of objections pursuant to Article 36 CS.
- 96 Thus, the initiation of the relevant procedure was not accompanied by a publication because the legislation did not require the Commission to make public the decision to open an administrative procedure, the adoption of a statement of objections or, as in the present case, the adoption of a supplementary statement of objections.
- 97 The approach was no different after the General Court gave the judgment of 25 October 2007, *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317), and the Court of Justice gave the judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717).
- 98 Having analysed the judgments referred to in paragraph 97 above, the Commission informed the applicants, for the first time by letter of 30 June 2008 and the second by letter of 15 December 2017, of its intention to 'resume' the procedure.

- 99 In particular, the second letter was notified to the undertakings which were addressees of the contested decision, but was not communicated to any other person or entity, and nor was it published.
- 100 According to the applicants, the Commission was obliged to inform the public of the resumption of the procedure following the annulment of the 2009 decision and, if that obligation had been observed in the present case, Ansfer would have been informed and could have requested to participate in the new hearing.
- 101 In that regard, it must be noted that no rule requires the Commission to make public the resumption of a procedure following the annulment of one of its decisions by a judgment of the Court of Justice or the General Court.
- 102 Such resumption of a procedure occurs in the context of complying with an annulment judgment.
- 103 Article 266 TFEU requires the institution whose act has been annulled only to take the necessary measures to comply with the judgment annulling that act. Accordingly, that article requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in that judgment. However, the institutions have broad discretion to decide the measures to put into effect in order to give due effect to an annulling judgment or declaration of invalidity, it being understood that the measures must be compatible with the operative part of the judgment in question and the grounds constituting its essential basis. Except where the irregularity found rendered the entire procedure null and void, the institutions concerned may, in order to adopt an act intended to replace a preceding act annulled or declared invalid, reopen the procedure at the stage at which that irregularity was committed (see judgment of 11 December 2017, *Léon Van Parys v Commission*, T-125/16, EU:T:2017:884, paragraphs 49 and 52 and the case-law cited).
- 104 On completion of the assessment made by the Commission in that context, it may thus decide to resume the procedure as it has done in the present case, just as it may abandon the procedure if it considers that the matter may be closed or, if in its view investigative measures are required, open a new procedure which may, in that case, lead to the notification of a new statement of objections to the addressee undertakings in accordance with Article 27(1) of Regulation No 1/2003.
- 105 In the present case, the Commission, having made that assessment, decided to resume the procedure at the point at which it had been interrupted, as permitted by the case-law referred to in paragraphs 47 and 48 above.
- 106 At the hearing, the parties discussed the Commission Notice of 20 October 2011 on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ 2011 C 308, p. 6) (see, in particular, paragraph 20 thereof), in which the Commission undertook, first, to publish the opening of all proceedings concerning those provisions on the website of its Directorate-General for Competition and, second, to publish a related press release, unless such publication may harm the conduct of the investigation.
- 107 However, the notice concerned did not, in the present case, require the Commission to give effect to the commitments set out in paragraph 106 above. In the absence of any express provision to that effect, there is no need to extend the scope of those commitments when the Commission resumes a procedure at the stage of an earlier unlawfully held oral hearing, which is the stage at

which that procedure was interrupted, as the Commission has decided here as part of complying with the annulment judgment of the Court of Justice. That situation differs from that of the opening of the procedure referred to in that notice.

108 The argument must therefore be rejected.

109 Secondly, the applicants claim that, as for the determination of the third parties to be invited to the oral hearing, Ansfer could not be regarded as mere member of the public, but rather had the status of a ‘third party showing a sufficient interest’ for the purposes of Article 27(3) of Regulation No 1/2003 and Article 13(1) and (2) of Regulation No 773/2004.

110 In support of their view, the applicants point out that, in 2002, the Hearing Officer had recognised Ansfer as a ‘third party showing a sufficient interest’, which had allowed that association to participate in the oral hearing of 13 June 2002.

111 Since it was a ‘third party showing a sufficient interest’ then, Ansfer cannot have lost that status in the meantime and should have been invited to participate, on that basis, in the oral hearing of 23 April 2018.

112 In that regard, it must be observed that the applicants’ argument regarding the retention of the status of a ‘third party showing a sufficient interest’ is consistent with the view taken by the Commission vis-à-vis the continuity that exists between the stages of the administrative procedure even if that procedure has been interrupted by judicial proceedings that have given rise to judgments ordering annulment.

113 From that perspective, it would be legitimate to consider that an entity that has been recognised as a ‘third party showing a sufficient interest’ at an earlier stage of the procedure could retain that status throughout the procedure, even if that procedure may have been interrupted by judicial proceedings that have given rise to an annulment ordered by the EU judicature.

114 It is therefore necessary to determine whether, in the present case, having been recognised as a ‘third party showing a sufficient interest’ at one point in the procedure, Ansfer could retain that status throughout that procedure and should have been invited to the oral hearing of 23 April 2018 or, at the very least, been informed of the resumption of the procedure so as to allow it to declare its interest and, therefore, be invited, as the case may be, to participate in that hearing.

115 In that regard, it must be stated that, as is clear from the case file, and without this being contested by the applicants, Ansfer’s declared interest in participating in the procedure was not maintained throughout that procedure.

116 Indeed, in its summary of the successive stages, the Commission made clear at the hearing, without being contradicted by the applicants, in answer to the questions put by the Court, that:

- in 2002, Ansfer had learned of the opening of the procedure through information that appeared in the Italian press;
- on the basis of that information, Ansfer had asked the Commission for leave to participate in the oral hearing of 13 June 2002, claiming that it could show, in that regard, the existence of a sufficient interest as far as it was concerned;

- having been invited to participate, Ansfer had attended the hearing, at which, without its representative speaking, it had lodged written observations;
- on that basis, it had been invited to participate in the second oral hearing of 30 September 2002 concerning the consequences of the expiry of the ECSC Treaty for the procedure;
- it did not, however, respond to that invitation and nor did it attend that hearing;
- since Ansfer failed to respond to the invitation to the new hearing addressed to it and did not attend that hearing, the Commission had taken the view that Ansfer no longer sought to participate in the continuation of the procedure and ought not therefore to be invited to the oral hearing of 23 April 2018;
- in that context, the Commission had taken account of the fact that, first, Ansfer’s participation at the oral hearing of 13 June 2002 had been confined to the submission of written observations, without its representative speaking, and that, second, those observations had been included in the file.

- 117 Under the legislation, third parties may take part in an oral hearing organised in a procedure relating to the implementation of competition rules, but, in order to do so, they must declare to the Commission and prove to it that they have a sufficient interest in order to be allowed to participate in that hearing (see paragraphs 81 and 82 above).
- 118 In addition, the view must be taken that, where a third party has been recognised as a ‘third party showing a sufficient interest’ in the course of an administrative procedure which has been interrupted by a judicial review, on completion of which an annulment is ordered by the EU judicature, the Commission enjoys a discretion to decide whether that third party retains a sufficient interest in making its views known. The guarantee of the rights of the defence does not require the Commission, where it resumes that procedure, to hear third parties who no longer have such a sufficient interest (see, by analogy, judgments of 16 June 2015, *FSL and Others v Commission*, T-655/11, EU:T:2015:383, paragraph 406, and of 11 July 2019, *Silver Plastics and Johannes Reifenhäuser v Commission*, T-582/15, not published, EU:T:2019:497, paragraph 202 and the case-law cited).
- 119 In the interest of good administration, a large number of interveners must be avoided whilst guaranteeing the participation of those who can make a genuine contribution, of an inculpatory or exculpatory nature, to the analysis of the case and to respect for the rights of the defence, so as to ensure that the opinion is delivered by the Advisory Committee and the decision is taken by the Commission in full knowledge of the facts and in accordance with the procedural safeguards.
- 120 In the present case, on completion of such an assessment, Ansfer was invited as a ‘third party showing a sufficient interest’ to participate in the oral hearing of 13 June 2002 and that of 30 September 2002.
- 121 Subsequently, given Ansfer’s failure to respond to the invitation to participate in the second hearing of 30 September 2002 and its non-participation in that hearing, the Commission did not err in taking the view that Ansfer had waived its right to intervene in the continuation of the procedure or, at the very least, did not wish to develop its arguments further at the oral hearing of 23 April 2018 and that its contribution, which had already been included in the file and been

subsequently reproduced in the draft of the contested decision, did not justify informing it of the resumption of the procedure in order to allow it to declare its interest once more and, accordingly, to be invited, as the case might have been, to participate in that hearing.

- 122 The argument must therefore be rejected.
- 123 Thirdly, the applicants submit that, in their letter of 1 February 2018, they drew the Commission's attention to the fact that the procedure could not be properly resumed, since not all the relevant persons present in 2002 could be present at the new oral hearing, with the result that only a partial view of the case would be given to the competition authorities of the Member States, whose representatives are tasked with expressing a position in order to allow the Advisory Committee to deliver its opinion in accordance with the legislation.
- 124 In that regard, it must be pointed out that such a comment, worded thus, cannot be viewed as a request addressed to the Commission for it to invite Ansfer or other third parties to the oral hearing pursuant to Article 10(3) of Regulation No 773/2004, which allows the parties to propose in their written submissions 'that the Commission hear persons who may corroborate the facts set out in their submission'.
- 125 As the Commission points out, it was for the applicants, if they considered that Ansfer's intervention was necessary, or simply useful, for the defence of their arguments, to inform that association of the resumption of the procedure so as to allow Ansfer to declare its interest to the Commission or to request, specifically, that the Commission invite that entity.
- 126 However, in their written replies to the questions put by the Court, the applicants acknowledged that they had not taken any steps in that regard vis-à-vis the Commission or Ansfer.
- 127 It must be added that, pursuant to Article 27(3) of Regulation No 1/2003, the competition authorities of the Member States may ask the Commission to hear third parties if they consider that to be appropriate.
- 128 There was nothing to prevent the applicants from suggesting to the competition authorities of the Member States, at the hearing of 23 April 2018 or before then, that they ask the Commission to hear Ansfer.
- 129 However, the applicants made no such approach to the competition authorities of the Member States, and nor did those authorities ask the Commission to hear Ansfer.
- 130 Accordingly, since Ansfer no longer had a sufficient interest in making its views known when the procedure was resumed (see paragraphs 112 to 122 above) and a request for it to be heard was not made to the Commission, the Commission cannot reasonably be criticised for having failed to invite Ansfer to participate in the oral hearing of 23 April 2018.
- 131 The argument must therefore be rejected.

– *The situation of other third parties*

- 132 In so far as the argument put forward by the applicants may be interpreted as referring to them, it must be pointed out that the relevant legislation provides, in relation to the organisation of oral hearings, for a third situation, which concerns third parties without a sufficient interest within the meaning defined in paragraphs 81 and 82 above.
- 133 Article 13(3) of Regulation No 773/2004 provides for the possibility of inviting any natural or legal person, other than the undertakings concerned by the procedure or third parties showing such an interest, to express its views in writing and, as appropriate, to attend the oral hearing. In addition to being granted leave to attend that hearing, such persons may be invited to express their views at the hearing.
- 134 Ansfer, amongst others, fell within that category, since, as has been established, the Commission was able to take the view that that association no longer had a sufficient interest in making its views known when the procedure was resumed (see paragraphs 112 to 122 above).
- 135 However, the Commission enjoys discretion to determine whether the participation of non-interested third parties may be useful to the discussions, it being understood that the guarantee of the applicants' rights of defence does not in all circumstances require that the Commission hear the persons requested (see, to that effect, case-law cited in paragraph 118 above).
- 136 Thus, in the present case, the Commission did not err in taking the view, for the reasons set out in paragraphs 112 to 122 above, that inviting Ansfer to the oral hearing of 23 April 2018 would not contribute anything new to the discussions.
- 137 In those circumstances, the Commission cannot reasonably be alleged to have infringed a procedural rule which could have had an impact on the applicants' exercise of their rights of defence by failing to invite other third parties to the hearing of 23 April 2018.
- 138 The argument must therefore be rejected.
- 139 In the light of the foregoing, it may be concluded that the Commission did not infringe procedural rules concerning the hearing of other persons or entities and, therefore, that the exercise of the rights of the defence upon which the applicants rely cannot have been impeded in any way by the infringement of such rules.
- 140 It must be observed, in so far as necessary, that the applicants have not established that they were hindered in the exercise of their rights of defence regardless of the infringement of a rule, by virtue of the absence of an undertaking or a third party from the oral hearing organised with a view to adopting the contested decision.
- 141 The complaint must therefore be rejected.

The third complaint, concerning the impossibility of the Commission making good the procedural defect censured by the Court of Justice

- 142 The applicants essentially claim that it was impossible to make good the procedural defect censured by the Court of Justice. Given the period of time that had passed, the changes in the identity of the relevant persons on the market and that market's structure were such, in the applicants' view, that a hearing could still not be organised in conditions identical or, at the very least, equivalent to those which prevailed in 2002.
- 143 In that regard, it must be pointed out that, in view of the scale of the tasks which they involve, the context in which competition procedures are organised is inevitably altered by the passage of time.
- 144 In such a context in which competition constantly brings about changes in market players, products and shares, the possibility of such changes making it impossible, in and of themselves, for a new decision to be adopted would affect, by very definition, the possibility of the Commission resuming a procedure with a view to implementing competition rules in performance of the role assigned to it by the Treaties.
- 145 When the Commission decides to resume a procedure following the annulment of one of its decisions by a judgment of the Court of Justice or the General Court, it must however undertake an assessment intended to determine, in the light of the circumstances at the time of its resumption, and in particular the effects which may have resulted from the passage of time, whether the continuation of the procedure still appears to be an appropriate solution. The Commission did so in the present case, as explained in response to the first complaint of the second plea in law raised by the applicants in support of the action (see paragraphs 149 to 173 below).
- 146 The complaint must be rejected, as must, therefore, the first plea in law in its entirety.

The second plea in law, alleging the unlawful refusal by the Commission to determine, before adopting the contested decision, the compatibility of that decision with the principle that the duration of the procedure must be reasonable

- 147 The applicants submit that the Commission failed to determine, to the requisite legal standard, whether the contested decision could be adopted, whereas, in their view, the reasonable time principle enshrined in Article 41 of the Charter precluded its adoption. First, they allege that the Commission erred in law in that regard. Second, they claim that the Commission failed to comply with its obligation to state reasons.
- 148 The Commission contests the applicants' arguments.

The first complaint, alleging an error in law

- 149 The applicants claim that the Commission infringed Article 41 of the Charter by refusing to assess, before adopting the contested decision, the compatibility of adopting that decision with the reasonable time principle.

- 150 In that regard, it must be observed that, as the applicants point out, the Commission is obliged to comply with the reasonable time principle reproduced in Article 41 of the Charter (see, to that effect, judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others v Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 179, and of 5 June 2012, *Imperial Chemical Industries v Commission*, T-214/06, EU:T:2012:275, paragraph 285).
- 151 Thus, the passage of time must be taken into account when, availing itself of the discretion afforded to it by EU law, the Commission assesses whether, in the implementation of competition rules, proceedings must be initiated and a decision adopted.
- 152 It follows from the contested decision that, contrary to the applicants' claim, the obligation to take into account the passage of time when it assesses whether such proceedings must be initiated and a decision imposing penalties adopted was not infringed by the Commission. The contested decision in fact states that that institution examined, before making its decision, whether, in the present case, the procedure could be resumed and whether it could culminate in the adoption of such a decision imposing a fine.
- 153 Thus, in several passages of the contested decision, the Commission analysed, first, whether the procedure that led to the adoption of that decision had been conducted in a satisfactory manner in terms of the time taken and, second, whether conclusions had to be drawn from the duration of the stages that led up to its adoption.
- 154 For example, the Commission stated that, according to the analysis that it had conducted, first, the investigative activities had been carried out diligently and, second, the interruptions which occurred in the course of the administrative procedure were the result of the judicial review (recitals 528 and 555 of the contested decision).
- 155 In that context, the Commission acknowledged that, as had been found by the General Court and the Court of Justice in the judgments of 25 October 2007, *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317), and of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717), it had made procedural errors. However, it argued that those errors, which could have extended the duration of the procedure, were due to the legal uncertainty in which it had found itself following the expiry of the ECSC Treaty (recital 555 of the contested decision).
- 156 The Commission likewise accepted that, further to the procedural errors committed, the various stages that followed could have, viewed from the perspective of the procedure as a whole, including the administrative stages and the interruptions due to the judicial review, resulted in an 'objectively' lengthy procedure (recital 528 of the contested decision).
- 157 The Commission added in the context of that assessment that, in its view, that length of time did not exceed the periods deemed to be acceptable in the light of case-law (recital 528 of the contested decision).
- 158 Furthermore, the Commission pointed out that, in accordance with case-law, a duration incompatible with the reasonable time principle could not, on its own, entail the annulment of a decision. According to the Court of Justice, such an outcome could eventuate only if the unreasonable time had affected the rights of the defence by jeopardising the ability of the

undertakings concerned to gather evidence and present their arguments. In the Commission's view, the applicants had not demonstrated that that was the case here (recitals 556 and 557 of the contested decision).

- 159 Moreover, in recital 536 of the contested decision, the Commission stated that, having regard to the applicable legislation and in accordance with the relevant case-law developed, it had the power to adopt a new decision.
- 160 The Commission acknowledged that the adoption of a new decision had to be preceded by an examination, in the context of the discretion afforded to it in prosecuting infringements of competition law, intended to balance the public interest in ensuring the effective implementation of the competition rules against the interest of the parties in obtaining a decision in a reasonable time and in the mitigation of the possible consequences of errors that might have been made during the procedure (recitals 536 and 559 of the contested decision).
- 161 In the present case, the Commission struck such a balance by finding, given the serious nature of the infringement established, first, that a new decision had to be adopted and, second, that a penalty had to be imposed on the addressee undertakings (recitals 560 to 568 of the contested decision).
- 162 Lastly, the Commission reduced the amount of the fine in line with the suggestion made by the Hearing Officer, so as to mitigate, to some degree (50%), the negative consequences that might have resulted for the undertakings concerned from the length of the procedure and the procedural errors made (recitals 570 to 573 of the contested decision).
- 163 Thus, it is apparent from the contested decision that, contrary to the applicants' claim, the Commission did determine, before adopting that decision, whether the reasonable time principle had been observed, by analysing the length of the administrative procedure (including the administrative stages and the interruptions caused by the judicial review), the reasons for the duration of the procedure and the conclusions that may be drawn.
- 164 That conclusion is contested by the applicants, which consider that the Commission, in the contested decision, refused to take a position on the unreasonable length of the procedure on the ground that that assessment had to be left to the EU judicature, without it being able to adopt a position on that matter.
- 165 In that regard, it must be observed that questions relating to the duration of procedures may be brought before the EU judicature. In disputes relating to liability, an order must be made against the institutions, bodies, offices and agencies of the European Union if they have caused damage by infringing the reasonable time principle (judgments of 26 November 2013, *Kendrion v Commission*, C-50/12 P, EU:C:2013:771, paragraph 94, and of 11 July 2019, *Italmobiliare and Others v Commission*, T-523/15, not published, EU:T:2019:499, paragraph 159). In disputes relating to annulment, the duration of the procedure may result in a contested decision being annulled if two cumulative conditions are met: first, the length of that procedure appears to have been unreasonable and, second, the fact that a reasonable time was exceeded impeded the exercise of the rights of the defence (judgments of 21 September 2006, *Technische Unie v Commission*, C-113/04 P, EU:C:2006:593, paragraphs 47 and 48; of 8 May 2014, *Bolloré v Commission*, C-414/12 P, not published, EU:C:2014:301, paragraphs 84 and 85; and of 9 June 2016, *PROAS v Commission*, C-616/13 P, EU:C:2016:415, paragraphs 74 to 76).

- 166 As the applicants point out, the jurisdiction thus entrusted to the EU judicature cannot free the Commission from the assessment that it is required to make when determining what action it should take further to a judgment ordering annulment pursuant to Article 266 TFEU.
- 167 As has been stated, when carrying out such an assessment, the Commission must take into account all the facts of the case, in particular whether or not it is appropriate to adopt a new decision, to impose a penalty and, if appropriate, to reduce the penalty envisaged if it appears, inter alia, that, without this constituting a breach of duty in itself, the duration of the procedure, in so far as it included administrative stages as well as, as the case may be, interruptions caused by a judicial review, could have had an impact on the factors to be taken into account in determining the amount of the fine, and in particular on its potential deterrent effect when that fine comes long after the acts which constituted the infringement.
- 168 That assessment, which specifically covers the entire duration of the procedure, including the judicial stages, was primarily made in recital 528 of the contested decision.
- 169 It follows that, contrary to the applicants' claim, the Commission did determine, in the contested decision, whether the duration of the procedure could have been a barrier to the resumption of the procedure, whilst acknowledging that such an assessment was subject to the review of the Courts of the European Union in disputes relating to legality and, where appropriate, liability.
- 170 In the application, the applicants invoke Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), regarding the obligation on the Commission to determine, before adopting a new decision, whether its adoption would be consistent with the reasonable time principle.
- 171 In that regard, it must be observed that, just like Article 47 of the Charter, upon which the applicants also rely, Article 6 ECHR includes the obligation to comply with the reasonable time principle in judicial proceedings.
- 172 In the present case, neither Article 6 ECHR nor Article 47 of the Charter can in any event affect the proper resolution of the dispute as far as concerns the plea in law examined here, since, contrary to the applicants' claim, the Commission did in fact, as is clear from the contested decision, carry out the determination at issue in the arguments developed by them.
- 173 The complaint must therefore be rejected.

The second complaint, alleging infringement of the obligation to state reasons

- 174 The applicants allege that the Commission infringed the obligation to state reasons by failing to explain to the requisite legal standard why it considered that it was not obliged to assess compliance with the reasonable time principle.
- 175 In that regard, the complaint must be regarded as being factually inaccurate.
- 176 As has been found in response to the first complaint of this plea in law, the Commission did not refuse to determine, in the contested decision, the compatibility of that decision's adoption with the reasonable time principle.

- 177 On the contrary, it is clear from the response to the first complaint that the Commission made that determination to the requisite legal standard by finding that there was no consideration capable of barring the resumption of the procedure, the adoption of a new decision or the imposition of a fine.
- 178 The second complaint must therefore be rejected, as must, consequently, the second plea in law in its entirety.

The third and, in part, fourth pleas in law, both alleging infringement of the principle that the duration of the procedure must be reasonable

- 179 In support of the third plea in law, the applicants submit that the contested decision must be annulled because it was adopted at the end of a procedure which exceeded a reasonable time. In their view, the excessive duration of the procedure means that the Commission no longer had the power to impose penalties and that that decision is, therefore, also unlawful by reason of a misuse of powers. Some of the arguments developed in support of the third plea in law also appear in the fourth plea in law. The applicants essentially put forward three complaints concerning, respectively, the duration of the administrative stages, the overall duration of the procedure and the effect of the length of the procedure on the rights of the defence; all three complaints are contested by the Commission.
- 180 Before examining those complaints, it must be recalled that, according to the Court of Justice, the duration of a procedure may result in a contested decision being annulled if two cumulative conditions are met: first, the length of that procedure appears to have been unreasonable and, second, the fact that a reasonable time was exceeded impeded the exercise of the rights of the defence (see paragraph 165 above).
- 181 It follows therefrom that a Commission decision could not be annulled solely because a reasonable time has been exceeded if the applicants' rights of defence have not been affected by it being exceeded. Accordingly, the applicants' argument that the mere fact that a reasonable time was exceeded should have led the Commission to decide not to adopt the contested decision must be rejected from the outset.
- 182 In analysing this plea in law, the Court will examine the first condition, considering in turn the duration of the administrative stages (first complaint) and the overall duration of the administrative procedure, including interruptions caused by the judicial review (second complaint). It will then consider, in relation to the second condition, whether the exercise of the applicants' rights of defence were hindered (third complaint).

The first complaint, concerning the duration of the administrative stages

- 183 The applicants submit that, since it extends over more than six years, the duration of the administrative stages has proven to be contrary to the reasonable time principle. They criticise, in particular, the sluggishness with which the Commission responded to the annulments ordered successively by the General Court and the Court of Justice:
- between the delivery of the judgment of 25 October 2007, *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317), and the adoption of the 2009 decision, that is to say, a period of more than two years, the Commission

merely sent the letter of 30 June 2008 mentioned in paragraph 10 above, announcing the resumption of the procedure, and requests for information and, during that period, there was no new statement of objections or new oral hearing, even though it was simple for the Commission to rectify the defect that had invalidated the contested decision, since that defect had been clearly identified by the General Court;

- similarly, between the judgment of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717), and the adoption of the contested decision, that is to say, a period of one year and nine months, the Commission's activities were confined to sending the letter of 15 December 2017 announcing the resumption of the procedure, the letters announcing and providing explanations pertaining to the oral hearing of 23 April 2018 and limited requests for information about the applicants' turnover.

184 In the applicants' view, the length of those stages is unjustifiable in the light of the case-law:

- in the case which gave rise to the judgment of 16 June 2011, *Bavaria v Commission* (T-235/07, EU:T:2011:283, paragraph 323), in which the second stage of the administrative procedure lasting 20 months, from receipt of the statement of objections to the adoption of the contested decision in that case, was deemed unreasonable;
- in the case which gave rise to the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others v Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), in which the re-adoption procedure lasted only ten months;
- furthermore, the re-adoption procedure lasted less than eight months in the case of *Solvay v Commission* (Opinion of Advocate General Kokott in *Solvay v Commission*, C-109/10 P, EU:C:2011:256, point 242), nine months in the case which gave rise to the judgment of 8 May 2014, *Bolloré v Commission* (C-414/12 P, EU:C:2014:301), three months in the case which gave rise to the judgment of 12 February 2019, *Printeos v Commission* (T-201/17, EU:T:2019:81), and four months in the case which gave rise to the judgment of 18 October 2018, *GEA Group v Commission* (T-640/16, EU:T:2018:700).

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

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

- 187 In the present case, it is clear from the file that four successive stages, which lasted for a total of six years and one month, occurred before the Commission in the handling of the case:
- a first stage, of a duration of one year and five months, separated the initial investigate measures from the sending of the statement of objections to the Federacciai and the undertakings concerned;
 - the following three stages are those which concluded, respectively, with the adoption of the 2002 decision, the 2009 decision and the contested decision, which lasted for nine months, two years and one month and one year and nine months respectively.
- 188 According to case-law, the reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others v Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 187 and 188).
- 189 Thus, even if, in other cases, the administrative stage which followed the annulment of a Commission decision by the EU judicature, in the context of a procedure resumed in order to adopt a new decision, was shorter than in the circumstances of the present case, as the applicants claim, this would not, in itself, support the conclusion that the reasonable time principle has been infringed.
- 190 It is necessary to examine the reasonableness of the period in the light of the circumstances specific to each case, having regard in particular to the criteria set out in paragraph 188 above.
- 191 In the first place, with regard to the importance of the case for the person concerned, it should be recalled that, in the case of a dispute relating to an infringement of competition law, the fundamental requirement of legal certainty on which economic operators must be able to rely and the aim of ensuring that competition is not distorted in the internal market are of considerable importance not only for the applicants and their competitors but also for third parties, in view of the large number of persons concerned and the financial interests involved (see judgment of 1 February 2017, *Aalberts Industries v European Union*, T-725/14, EU:T:2017:47, paragraph 40 and the case-law cited).
- 192 In the present case, the Commission found in the contested decision that the applicants had infringed Article 65(1) CS by participating, from 6 December 1989 to 27 June 2000, in a continuous agreement or in concerted practices concerning concrete reinforcing bars, which had as its object or effect the fixing of prices and the limitation or control of output or sales on the internal market.
- 193 On the basis of that finding, the Commission imposed on the applicants, jointly and severally, a fine of EUR 5.125 million.
- 194 Given those facts, the view may be taken that the case was important to the applicants.
- 195 In the second place, as regards the complexity of the case, it must be observed that the errors made by the Commission relate to the conclusions that should have been drawn, with respect to the procedure, from the expiry of the ECSC Treaty.

- 196 It must be recalled that questions related to the rules applicable to the facts of the case, both as regards the substance and vis-à-vis the procedure, presented a certain complexity, as the Commission stated, on account of the expiry of the ECSC Treaty.
- 197 Furthermore, the cartel covered a relatively long period of time (10 years and 7 months), concerned a significant number of relevant parties (8 undertakings, comprising a total of 11 companies, and a professional association) and involved a considerable volume of documents provided or obtained in the course of the inspections (approximately 20 000 pages).
- 198 In view of those factors, the case must be regarded as complex.
- 199 In the third place, with regard to the conduct of the parties, it must be observed that the Commission was constantly engaged in activities given the wealth of requests made to it by the parties to the administrative procedure.
- 200 Thus, in connection with the adoption of the contested decision, the Commission had to deal with a large volume of correspondence, and at the same time had to prepare for the oral hearing of 23 April 2018 and examine a settlement proposal submitted by some of the parties to the administrative procedure on 4 December 2018.
- 201 Taking all those factors into account, it is clear that the duration of the administrative stages of the procedure do not appear to have been unreasonable in the light of the circumstances specific to the case and, in particular, its complexity, in a situation in which the Commission cannot be criticised for any unexplained period of inactivity in the course of the steps that made up those administrative stages.
- 202 The complaint must therefore be rejected.

The second complaint, concerning the overall duration of the procedure

- 203 The applicants contest the overall length of time that was required to deal with the matter, from the initial investigative measures to the adoption of the contested decision. In their view, the fact that the period taken to adopt that decision amounted to almost 19 years and concerned conduct which, in some cases, had taken place more than 30 years ago means that that period is contrary to the reasonable time principle.
- 204 In that regard, it must be recalled that the obligation to conduct administrative procedures within a reasonable time is a general principle of law set forth, inter alia, in Article 41(1) of the Charter. Moreover, the failure to adjudicate within a reasonable time constitutes a procedural irregularity (judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland v Commission*, C-385/07 P, EU:C:2009:456, paragraph 191). In the determination of his civil rights and obligations and of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in accordance with Article 47 of the Charter and Article 6 ECHR (see, to that effect, judgments of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland v Commission*, C-385/07 P, EU:C:2009:456, paragraphs 177 to 179, and of 5 June 2012, *Imperial Chemical Industries v Commission*, T-214/06, EU:T:2012:275, paragraphs 282 and 283).

- 205 Indeed, EU law requires the institutions, bodies, offices and agencies of the European Union to deal with cases within a reasonable time in the context of the administrative procedures which they carry out (see, to that effect, judgment of 5 June 2012, *Imperial Chemical Industries v Commission*, T-214/06, EU:T:2012:275, paragraph 284).
- 206 The obligation to observe the reasonable time requirement applies at every stage of a procedure and to the procedure as a whole (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others v Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 230 and 231, and Opinion of Advocate General Kokott in *Solvay v Commission*, C-109/10 P, EU:C:2011:256, point 239).
- 207 In the present case, it must be observed that the period over which the administrative procedure as a whole took place was exceptionally long, which, moreover, led the Commission to reduce the fine ultimately imposed on the applicants (see paragraph 162 above).
- 208 However, the overall length of the administrative procedure can be explained, in this case, by the complexity of the case which, in some respects, is due to matters related to the case strictly speaking whereas, in other respects, is linked to the context of the case, namely the expiry of the ECSC Treaty (see paragraphs 195 to 198 above).
- 209 It is true that errors were made by the Commission in assessing the conclusions to be drawn from the expiry of the ECSC Treaty and that those errors resulted in successive annulments ordered by the General Court and the Court of Justice.
- 210 However, those errors and the impact which they could have had on the duration of the administrative procedure must be assessed taking into consideration the complexity of the issues raised.
- 211 Furthermore, the overall duration of the administrative procedure is partly attributable to the interruptions caused by the judicial review and is therefore linked to the number of actions brought before the EU judicature concerning different aspects of the case.
- 212 In that regard, it must be observed that the possibility for undertakings, in a situation such as that of the applicants, to have their cases examined more than once by the EU administrative authorities and, as the case may be, by the EU Courts is inherent in the system established by the drafters of the Treaties for the review of conduct and transactions in competition matters. Thus, the requirement on the administrative authority to complete various formalities and steps before being able to adopt a final decision in the field of competition and the possibility that such formalities or steps may give rise to an action cannot be used by an undertaking, as an argument at the end of the process, to claim that a reasonable period of time has been exceeded (see, to that effect, Opinion of Advocate General Wahl in *Feralpi and Others v Commission*, C-85/15 P, C-86/15 P and C-87/15 P, C-88/15 P and C-89/15 P, EU:C:2016:940, point 70).
- 213 In those circumstances, the view cannot be taken that the length of the administrative procedure, considered as a whole, was excessive and, therefore, that it could have been a barrier to the Commission's adoption of a new decision imposing a fine.
- 214 The complaint must therefore be rejected.

The third complaint, concerning the effect of the length of the procedure on the rights of the defence

- 215 The applicants claim that the length of the administrative procedure affected their rights of defence. According to them, on account of that length, the oral hearing of 23 April 2018 did not allow the competition authorities of the Member States to hear all the persons concerned, whose opinions could have influenced the applicants' capacity to defend themselves.
- 216 In that regard, it must be recalled that, as stated in paragraph 180 above, two conditions have to be met for the courts to order the annulment of the decision adopted by the Commission by reason of infringement of the reasonable time principle. Since the first (unreasonable length of the procedure) is not satisfied, there is no need, in principle, to ascertain, in response to the third complaint, whether the length of the administrative procedure impeded the exercise of the rights of the defence. However, for the sake of completeness, that examination should be carried out in order to provide a full response to the concerns raised by the applicants.
- 217 First, it must be observed that, during the course of the procedure regarded as a whole, the applicants had, on at least seven occasions, the opportunity to express their views and put forward their arguments (see paragraphs 3 to 6, 10, 22 and 23 above).
- 218 In particular, the applicants were able to express their views, during the third administrative stage, in their written observations of 1 February 2018 and at the oral hearing of 23 April 2018 (see paragraphs 22 and 23 above).
- 219 Second, it has been established, by examining the first plea in law, that the applicants' rights of defence had not been affected by the fact that all the persons who participated in the earlier hearings were not present at the oral hearing of 23 April 2018 or by the fact that the representatives of the competition authorities of the Member States knew, when they gave their opinion within the Advisory Committee, that two decisions, one of which had been upheld by the General Court, had been adopted previously against the undertakings concerned (see paragraphs 66 to 146 above).
- 220 It is clear from those factors that, even assuming that the duration of the administrative procedure could be regarded as contrary to the reasonable time principle, the conditions that must be satisfied in order to obtain the annulment of the contested decision are not met, since the applicants have been unable to establish any prejudice to the rights of the defence stemming from the duration of that procedure.
- 221 In those circumstances, the view must be taken that none of the necessary requirements for the Court to be able to order the annulment of the contested decision by virtue of infringement of the reasonable time principle is satisfied.
- 222 The complaint must therefore be rejected, as must the plea in law taken as a whole.

The fourth plea in law, alleging infringement of the obligation to state reasons and manifest errors of assessment

- 223 In the fourth plea in law, the applicants put forward three complaints concerning, first, the insufficient explanation of the reasons which led the Commission to adopt a new decision imposing a fine, second, a manifest error of assessment made by the Commission regarding the deterrent effect capable of being produced by the adoption of such a decision and, third, an error

committed by the Commission in the assessment of the possibility of third parties bringing an action to establish liability before the national courts and tribunals, as well as other arguments, all of which are contested by the Commission.

The first complaint, concerning the insufficient explanation of the reasons which led the Commission to adopt a new decision imposing a fine

- 224 The applicants claim that the Commission has not sufficiently explained the reasons which led it to resume the procedure:
- first, the statement of reasons does not justify the adoption of a decision imposing a fine in addition to finding there to be an infringement;
 - second, the Commission failed to substantiate its claim that a fine is necessary in order to guarantee a deterrent effect on the market at issue, even though that market has seen dramatic changes.
- 225 In the first place, it must be recalled that Article 105(1) TFEU entrusts the Commission with the task of ensuring the application of Articles 101 and 102 TFEU.
- 226 On that basis, and in accordance with case-law, the Commission is called upon to define and implement EU competition policy (see, to that effect, judgment of 16 October 2013, *Vivendi v Commission*, T-432/10, not published, EU:T:2013:538, paragraph 22 and the case-law cited).
- 227 In that context, the Commission enjoys broad discretion, as attested by Regulation No 1/2003, under which, where it finds that there is an infringement, it ‘may’, first, require the undertakings concerned to bring that infringement to an end (Article 7(1)) and, second, impose fines on the contravening undertakings (Article 23(2)).
- 228 In competition matters, the Commission has thus been entrusted, regardless of the route by which the case was brought to its attention, that is to say, inter alia, in the context of a complaint or on its own initiative, with the power to decide whether conduct must be prosecuted and must form the subject of a decision and a fine, according to the priorities defined by it in the context of its competition policy.
- 229 However, the existence of that power does not exempt the Commission from its duty to state reasons (see, to that effect, judgment of 12 March 2020, *LL-Carpenter v Commission*, T-531/18, not published, EU:T:2020:91, paragraph 90 and the case-law cited).
- 230 In circumstances in which, as in the present case, first, a decision adopted by the Commission has been twice annulled and, second, an exceptionally long time has elapsed between the initial investigative measures and the adoption of the decision, it is for that institution, under the principle of good administration, to take account of the duration of the procedure and the consequences that that duration may have had for its decision to prosecute the undertakings concerned; that assessment must thus appear in the statement of reasons for the decision.
- 231 This is indeed what the Commission did by setting out in detail, first, in recitals 526 to 529 of the contested decision and, second, in recitals 536 to 573 of that decision, the reasons for its view that a new decision had to be adopted establishing the existence of the infringement and imposing a fine on the undertakings concerned. In particular, it stated that the imposition of a fine would

ensure that the addressee undertakings, which participated in a lengthy restrictive practice, do not go unpunished, adding that, in its view, only the imposition of a fine would guarantee the consistent application of the competition rules and have a deterrent effect vis-à-vis the undertakings (recital 565 of the decision).

232 The first argument must therefore be rejected.

233 In the second place, it must be pointed out that, in recital 505 of the contested decision, the Commission stated that it informed the addressee undertakings, on completion of its assessment that it intended to resume the procedure to establish, further to a hearing on the substance and held in accordance with Regulations Nos 1/2003 and 773/2004, whether or not the participation of those undertakings in the infringement of which they were accused in the statement of objections and the supplementary statement of objections was sufficiently clear.

234 As for the penalty, as has been observed in paragraph 231 above, the Commission stated, in recital 565 of the contested decision, that the imposition of a fine would prevent the undertakings concerned from going entirely unpunished and that only imposing a fine would guarantee the consistent application of the EU competition rules and a deterrent effect.

235 With regard, finally, to the changes seen on the market, which, according to the applicants, should justify greater indulgence on the Commission's part as regards any fine, that question is dealt with in recital 567 of the contested decision, in which the Commission stated that, even though the infringement had ended a relatively long time ago, the adoption of a decision imposing a fine remained important, particularly on the concrete reinforcing bar market in Italy, in order to deter the addressee undertakings from engaging once more in conduct of such gravity.

236 It may be concluded from the foregoing that the statement of reasons provided by the Commission in the contested decision clearly and unambiguously set outs the reasoning followed by it to justify the adoption of a new decision imposing a fine in spite of the past annulments, including the concern that the contested decision has a deterrent effect.

237 The second argument must therefore be rejected, as must the complaint taken as a whole.

The second complaint, concerning a manifest error of assessment made by the Commission vis-à-vis the deterrent effect capable of being produced by the adoption of a new decision imposing a fine

238 The applicants submit that the Commission made a manifest error of assessment in considering, despite the changes which had occurred on the concrete reinforcing bar market, that adopting a decision and imposing a fine was still necessary in order to deter the addressee undertakings from engaging in such conduct in the future and to deter all persons potentially concerned from committing comparable offences in the future.

239 In that regard, it must be observed that the Commission could consider, given the serious nature of the infringement established, that adopting a decision and imposing a fine was still justified, when the contested decision was adopted, in light of the deterrent effect that that decision and that penalty could have on the markets.

240 Indeed, it is the penalty, that is to say, the requirement to pay the fine imposed, which actually deters an undertaking, and generally speaking the players on the market, from infringing the competition rules laid down in Articles 101 and 102 TFEU.

- 241 It is true that a penalty has twice been imposed on the applicants in the course of the procedure: the first time by the 2002 decision and the second by the 2009 decision. However, those decisions were annulled by the EU judicature respectively in the judgments of 25 October 2007, *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317), and of 21 September 2017, *Ferriera Valsabbia and Others v Commission* (C-86/15 P and C-87/15 P, EU:C:2017:717). In those circumstances, imposing a penalty in the contested decision could be deemed justified in the light of the need to ensure the deterrent effect.
- 242 It may be added that the sole objective of the Commission's imposition of a fine, in the present case, was not to give the contested decision a certain deterrent effect, but also to prevent the undertakings concerned from going wholly unpunished, as would have been the case if they had not been penalised in the contested decision (see recital 527 of the contested decision).
- 243 Furthermore, the latter objective was sufficient on its own, having regard to all the elements set out in the contested decision, and in view quite specifically, first, of the serious nature of the infringement established by the Commission and, second, the duration of that infringement, as determined by that institution, to justify the adoption of a decision imposing a fine in the present case.
- 244 The complaint must therefore be rejected.

The third complaint, concerning an error made by the Commission in the assessment of the possibility of third parties bringing an action for damages before the national courts and tribunals

- 245 The applicants contest one of the arguments raised by the Commission to justify the resumption of the administrative procedure, namely that it was necessary to guarantee that third parties could still bring actions for damages following the adoption of the contested decision. In their view, a civil action could no longer be brought once that decision was adopted, since such an action is time-barred after five years in Italy and the conduct at issue in these proceedings dates back, in some cases, to more than thirty years ago.
- 246 In that regard, it must be observed that, in recital 564 of the contested decision, the Commission explained that, in its view, the resumption of the procedure and the adoption of a new decision could make it easier for third parties wishing to bring, where appropriate, an action for damages before the national courts and tribunals.
- 247 That assessment is well founded. The Commission could not rule out, by adopting the contested decision, the possibility that some victims interrupted the limitation period and that that decision may therefore make it easier for those persons to bring an action to obtain compensation for any damage suffered.
- 248 Moreover, it should be pointed out that the applicants focus their argument on the limitation period in civil matters in Italy.
- 249 However, countries other than Italy could have been concerned by the bringing of actions to obtain compensation for any damage resulting from the restrictive practice, since the goods affected by that practice could have been purchased by customers located abroad.

250 In those circumstances, the application of other national rules providing, as the case may be, for different rules on the limitation period or for reasons capable of suspending, or even interrupting, that period could not be ruled out by the Commission.

251 Thus, the applicants' argument fails to establish the existence of an error, since their position is limited to stating that they do not share the Commission's opinion on the matter concerned, namely the interest in the existence of a Commission decision for actions for damages to be brought before national courts and tribunals by any injured third parties.

252 The complaint must therefore be rejected.

The other arguments

253 In support of the fourth plea in law, the applicants raise a further two arguments which have been examined, partly in any case, in the response given to the other pleas in law previously examined.

254 By the first argument, the applicants claim that, in the contested decision, the Commission failed to examine to the requisite legal standard whether the duration of the administrative procedure had exceeded a reasonable time.

255 Specifically, the applicants allege that the Commission failed to explain to the requisite legal standard why, as part of its analysis, it had to examine only the duration of the administrative procedure.

256 In that regard, it must be pointed out, as is stated in paragraphs 152 to 169 above in response to the first complaint of the second plea in law, that the Commission, contrary to the applicants' claim, determined the overall duration of the administrative procedure, including the administrative stages and the interruptions caused by the judicial review, and examined whether that duration could or must have had consequences for the possibility of resuming that procedure and for the situation of the undertakings concerned.

257 In that context, the Commission acknowledged that, further to the procedural errors that had been made, the various successive stages could have resulted, with regard to the administrative procedure taken as a whole, including the administrative stages and interruptions caused by the judicial review, in an 'objectively' lengthy duration, as stated in paragraphs 156 and 157 above.

258 Next, balancing the public interest in the effective implementation of the competition rules and the interest of the parties that account is taken of the possible consequences of the procedural errors committed, the Commission decided to adopt a decision finding an infringement of competition rules, but to reduce the fine imposed by 50%.

259 The first argument must therefore be rejected.

260 By the second argument, the applicants claim that the Commission made a manifest error of assessment in considering that a reasonable time had not been exceeded.

261 In particular, the applicants submit that the Commission could not assert, as it did, that the administrative procedure had been conducted swiftly.

- 262 In that regard, in view of the factors mentioned in response to the third plea in law (see paragraphs 183 to 214 above), the view must be taken that, in concluding that the duration of the administrative procedure had not been unreasonable, the Commission did not make an error of assessment.
- 263 It follows from those considerations and, in particular, from paragraphs 185 to 202 above, in the same vein, that nor does the statement made by the Commission in recital 555 of the contested decision, namely that, ‘in the present case, with regard to the administrative stage, [it] considers that it always carried out its investigative activities swiftly and without undue interruptions’, contain an error of assessment.
- 264 The second argument must therefore be rejected.
- 265 In the light of the foregoing considerations, the fourth plea in law must be rejected in its entirety as unfounded.

The request submitted by the applicants at the hearing regarding the variation of the fine

- 266 The applicants stated, at the oral hearing, that their action challenged the legality of the contested decision as well as, implicitly, the amount of the fine, such that a request is also made to the Court for variation of the fine in the exercise of its unlimited jurisdiction.
- 267 In that regard, it must be recalled that, as the Commission pointed out at the hearing, according to case-law, the Courts of the European Union cannot exercise of their own motion the unlimited jurisdiction provided for in Article 261 TFEU and Article 31 of Regulation No 1/2003.
- 268 Since the procedure before the Courts of the European Union is adversarial, it is for the applicant to raise that request against the contested decision, set out the pleas in law justifying that request and adduce evidence in support of those pleas (see, to that effect, judgment of 19 December 2013, *Siemens and Others v Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 335).
- 269 In addition, it must be observed that, in the present case, the application does not contain any request for variation of the fine. It is true that the applicants did argue at the hearing that such a request was clear from the scheme of the application. However, they failed to put forward any evidence in support of that claim. In those circumstances, the view must be taken that the requirements under Article 76(e) of the Rules of Procedure, in accordance with which an applicant is required to set out in its application the form of order sought, are not satisfied. Under that provision, only the forms of order set out in the originating application may be taken into consideration and the substance of the application must be examined solely with reference to the orders sought (judgment of 18 November 2020, *H v Council*, T-271/10 RENV II, EU:T:2020:548, paragraph 84 and the case-law cited).
- 270 The view must therefore be taken that the request to vary the fine was made belatedly in the course of the procedure and that, given its belated nature, pursuant to Article 84(1) of the Rules of Procedure, it is inadmissible.
- 271 In any case, since the arguments in support of the action have been wholly rejected, the fine can neither be reduced, nor a fortiori annulled, on the basis of the pleas in law raised in support of the action.

Conclusion

272 In the light of all the foregoing considerations, the action must be dismissed.

Costs

273 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay, in addition to their own costs, the costs incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Ferriera Valsabbia SpA and Valsabbia Investimenti SpA to pay the costs.

Gervasoni

Madise

Nihoul

Frendo

Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 9 November 2022.

[Signatures]