Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

9 June 2016*

(Appeal — Agreements, decisions and concerted practices — Article 81 EC — Spanish market for penetration bitumen — Market sharing and price coordination — Excessive duration of the proceedings before the General Court of the European Union — Excessive duration of the procedure before the European Commission — Appeal on the costs)

In Case C-608/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 November 2013,

Compañía Española de Petróleos (CEPSA) SA, established in Madrid (Spain), represented by O. Armengol i Gasull and J. M. Rodríguez Cárcamo, abogados,

appellant,

the other party to the proceedings being:

European Commission, represented by C. Urraca Caviedes and F. Castillo de la Torre, acting as Agents, and by A.J. Rivas, avocat,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Fourth Chamber, acting as President of the Fifth Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, D. Šváby (Rapporteur), A. Rosas and C. Vajda, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

* Language of the case: Spanish.

Judgment

1 By its appeal, Compañía Española de Petróleos (CEPSA) SA ('CEPSA'), asks the Court to set aside the judgment of the General Court of the European Union of 16 September 2013 in *CEPSA* v *Commission* (T-497/07, 'the judgment under appeal', EU:T:2013:438), which dismissed CEPSA's action for annulment of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article [81 EC] (Case COMP/38.710 — Bitumen (Spain)) ('the decision at issue'), in so far as that decision concerns CEPSA, and, in the alternative, the reduction of the amount of the fine imposed on it.

Legal context

2 Article 3 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Community (OJ, English Special Edition 1952-1958, p. 59) provides that 'documents which an EU institution sends to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State'.

Background to the dispute and the decision at issue

3 The background to the dispute was set out in paragraphs 1 to 91 and 107 and 108 of the judgment under appeal and may be summarised as follows.

4 The product concerned by the infringement is penetration bitumen, namely a type of bitumen which has not been processed and is used for the construction and maintenance of roads.

5 The Spanish bitumen market comprises, first, three producers, namely the Repsol, CEPSA-PROAS and BP groups, and, second, importers, including the Nynäs and Petrogal groups.

6 The CEPSA-PROAS group is an international group of companies in the energy sector listed on the stock exchange and is present in several countries. Productos Asfálticos (PROAS) SA ('PROAS'), a wholly-owned subsidiary of CEPSA since 1 March 1991, markets bitumen produced by CEPSA and produces and markets other bitumen products.

7 From sales of penetration bitumen to third parties, in Spain PROAS achieved turnover of EUR 90 700 000 during the 2001 business year, that is 31.67% of the market at issue. CEPSA-PROAS' total consolidated turnover reached EUR 18 474 000 000 in 2006.

8 Following an application for immunity submitted on 20 June 2002 by the one of the companies in the BP group pursuant to the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3, 'the 2002 Leniency Notice') investigations were carried out on 1 and 2 October 2002 at the premises of the Repsol, CEPSA-PROAS, BP, Nynäs and Petrogal groups.

9 On 6 February 2004, the European Commission sent the undertakings concerned a first round of requests for information pursuant to Article 11(3) of Council Regulation No 17 of 6 February 1962: first regulation implementing Articles [81 and 82 EC] (OJ, English Special Edition 1959-1962, p. 87).

10 By faxes of, respectively, 31 March and 5 April 2004, Repsol and PROAS group companies submitted an application to the Commission pursuant to its 2002 Leniency Notice, together with a corporate statement.

11 After having sent four other requests for information to the undertakings concerned, the Commission formally initiated proceedings and, between 24 and 28 August 2006, notified a statement of objections to the companies concerned in the BP, Repsol, CEPSA-PROAS, Nynäs and Petrogal groups.

12 Prior to the notification of the statement of objections to the companies concerned of the CEPSA-PROAS group, the Commission asked CEPSA, by letter of 19 July 2006, whether it agreed that the Commission would address any official document, statement of objections or decision which the Commission may adopt in relation to it in English. By letter of 20 July 2006, CEPSA stated that the Commission could provide it with a statement of objections in English.

13 On 3 October 2007, the Commission adopted the decision at issue by which it found that the 13 companies to which it was addressed had participated in a complex of market-sharing agreements and price coordination of penetration bitumen in Spain (excluding the Canary Islands).

14 The Commission considered that each of the two restrictions of competition established, namely the horizontal market-sharing agreements and the price coordination, was by its nature among the most serious types of infringements of Article 81 EC, which, according to the case-law, are capable of warranting the classification of 'very serious' infringements.

15 The Commission set the 'starting amount' of the fines to be imposed at EUR 40 000 000 by taking into account the gravity of the infringement, the estimated value of the relevant market, namely EUR 286 400 000 for 2001, the last full year of the infringement, and the fact that the infringement was limited to sales of bitumen in one Member State.

16 The Commission then placed the companies to which the decision at issue was addressed in different categories, defined by reference to their relative importance on the relevant market, for the purposes of applying differential treatment, in order to take account of their effective economic capacity to cause significant damage to competition.

17 The Repsol group and PROAS, whose shares of the relevant market amounted, respectively, to 34.04% and 31.67% in 2001, were placed in the first category, the BP group, with a market share of 15.19%, in the second category, and the Nynäs and Petrogal groups, whose market shares varied between 4.54% and 5.24%, in the third category. On that basis, the basic amounts of the fines to be imposed were adjusted as follows:

— category one, for the Repsol group and PROAS: EUR 40 000 000;

— category two, for the BP group: EUR 18 000 000; and

— category three, for the Nynäs and Petrogal groups: EUR 5 500 000.

18 After increasing the 'basic amount' of the fines according to the length of the infringement, namely a period of 11 years and 7 months as regards PROAS (from 1 March 1991 to 1 October 2002), the Commission found that the amount of the fine to be imposed on it had to be increased by 30% on the basis of aggravating circumstances, since that undertaking had been amongst the significant 'driving forces' of the cartel at issue.

19 The Commission also decided that, pursuant to the 2002 Leniency Notice, PROAS was entitled to a reduction of 25% of the amount of the fine which should have normally been imposed on it.

20 On the basis of those factors, CEPSA and PROAS were fined jointly and severally EUR 83 850 000.

Procedure before the General Court and the judgment under appeal

21 By application lodged at the General Court Registry on 20 December 2007, CEPSA applied for annulment of the decision at issue, in so far as that decision concerns it, and, in the alternative, for a reduction of the amount of the fine imposed on it. CEPSA also requested that the Commission be ordered to pay the costs.

22 In support of its action, CEPSA raised seven pleas in law.

23 The General Court rejected each of CEPSA's pleas and therefore dismissed the action in its entirety.

24 By way of counterclaim, the Commission requested the General Court, in the exercise of its unlimited jurisdiction, to increase the amount of the fine imposed on CEPSA, a request which the General Court refused to grant.

Forms of order sought

25 By its appeal, CEPSA claims that the Court should:

— set aside the first and third paragraphs of the operative part of the decision at issue;

— rule definitively on the dispute, without referring the case back to the General Court, and reduce the amount of the fine imposed in the decision at issue to an amount which the Court of Justice considers to be correct; and

— order the Commission to pay the costs of the appeal.

26 The Commission contends that the Court should:

— dismiss the appeal; and

— order the appellant to pay the costs.

The appeal

27 The appellant puts forward six grounds in support of its appeal.

28 The first two grounds of appeal, which should be considered together, allege infringement of essential procedural requirements and the distortion of the facts as regards the language regime. The third ground concerns the failure to observe the principle of proportionality in determining the amount of the fine imposed on the appellant. By its fourth and fifth grounds, which should be examined together, the appellant claims that the General Court disregarded the principle of observance of a reasonable time limit. The sixth ground alleges infringement of Article 87(2) of the Rules of Procedure of the General Court, in the version applicable to the dispute.

The first and second grounds of appeal, alleging infringement of essential procedural requirements and distortion of the facts regarding the language regime

Arguments of the parties

29 By its first ground of appeal, directed against paragraphs 113 to 115 and 119 of the judgment under appeal, the appellant criticises the General Court for not having annulled the decision at issue for infringement of essential procedural requirements, which resulted from the Commission sending CEPSA a statement of objections in English, in infringement of Article 3 of Regulation No 1, of Article 3 TEU and of Article 41(4) of the Charter of Fundamental Rights of the European Union ('the Charter'), as it had claimed, in particular, in the context of its reply and at the hearing. In that regard, the appellant submits that the allegation that it freely and voluntarily accepted that infringement is irrelevant.

30 The Commission is of the view that the ground of appeal alleging infringement of essential procedural requirements and of Regulation No 1 is a new ground of appeal, which is inadmissible at the stage of the appeal. In the alternative, it takes the view that it is unfounded.

31 By its second ground of appeal, directed against, first, paragraphs 109, 110 and 114 of the judgment under appeal and, second, paragraph 115 of that judgment, the appellant criticises the General Court for having distorted the facts by finding that CEPSA had freely accepted the infringement of the language regime and that its rights of defence as a result of that infringement had not been affected.

32 In that regard, the appellant claims, first, that on 20 July 2006 it returned the document by which it agreed to receive the statement of objections in English with the sole purpose of avoiding an increase in the fine as a result of the fact that sending the statement of objections after 1 September 2006 would have led the Commission to impose a significantly harsher fine on it.

33 Second, it maintains that the fact that that communication had not been drafted in the required language should have been regarded by the General Court as not only an infringement of Regulation No 1, but also as an infringement of its rights of defence, in so far as CEPSA had to have that document translated before being able to respond to it and accordingly was deprived of the accuracy and authenticity of any original.

34 The Commission submits that the General Court did not distort the facts and that, in any event, an infringement of the rights of defence cannot be established, since, in the absence of the alleged irregularity, the proceedings would not have led to a different result.

Findings of the Court

35 The plea of inadmissibility raised by the Commission must be rejected. A party is entitled to raise before the Court of Justice grounds of appeal seeking to criticise, in law, the solution adopted by the General Court (see judgment of 29 November 2007 in *Stadtwerke Schwäbisch Hall and Others* v *Commission*, C-176/06 P, not published, EU:C:2007:730, paragraph 17). In paragraphs 107 to 119 of the judgment under appeal, the General Court specifically answered the appellant's claims alleging infringement of essential procedural requirements and of Regulation No 1. Therefore, the appellant is entitled to raise grounds criticising, in law, the part of the judgment under appeal which dismisses those pleas in law.

36 As regards the claims alleging infringement of essential procedural requirements and of Regulation No 1 and Article 3 TEU and Article 41(4) of the Charter, it is clear from the case-law of the Court of Justice, referred to by the General Court in paragraph 115 of the judgment under appeal, that the use of the language laid down in Article 3 of Regulation No 1 does not constitute an essential procedural

requirement, within the meaning of Article 263 TFEU, the infringement of which necessarily affects the validity of any document addressed to a person in another language (see, to that effect, judgment of 15 July 1970 in *ACF Chemiefarma* v *Commission*, 41/69, EU:C:1970:71, paragraphs 47 to 52). According to that case-law, where an institution sends a person within the jurisdiction of a Member State a document which is not drawn up in the language of that State, such a process vitiates the procedure only if it gives rise to harmful consequences for that person in the course of the administrative procedure.

37 It follows that, contrary to what the appellant claims, it is only if the use of a language other than that laid down in Article 3 of Regulation No 1, when sending the statement of objections, has had harmful consequences for the appellant that the validity of sending that statement and, therefore, that of the procedure, can be called into question.

38 In the latter regard, the appellant's arguments, put forward in the second ground of appeal, that the General Court distorted the facts by finding that it had freely consented to receive the statement of objections in the English language version, must be rejected, without it being necessary for the Court of Justice to rule on its merits. The distortion alleged in the present case could result in the annulment of the judgment under appeal only insofar as it were shown that the resulting lack of consent had given rise to an infringement of the appellant's rights of defence in the administrative procedure.

39 For the purposes of establishing such an infringement, the appellant relies, in essence, on the same arguments which it has already made before the General Court and which were rejected in paragraph 113 of the judgment under appeal on the grounds that it does not rely on any distortion of the facts. Accordingly, those arguments must be rejected as being inadmissible and it follows that the second ground of appeal cannot succeed in that it is based on an alleged distortion of the facts.

40 Therefore, the first and second grounds of appeal must be rejected in their entirety.

The third ground of appeal, alleging infringement by the General Court of the principle of proportionality

Arguments of the parties

41 By its third ground of appeal, directed against paragraphs 321 to 332 of the judgment under appeal, the appellant criticises the General Court for having failed to state reasons and for having infringed the principle of proportionality, as interpreted by the Court of Justice.

42 The General Court ought, as it did in the judgment of 14 July 1994 in *Parker Pen* v *Commission* (T-77/92 EU:T:1994:85), relied upon by the appellant in support of its action, to have reduced the amount of the fine imposed jointly and severally on CEPSA and PROAS, insofar as the Commission had not taken account of the small proportion — namely 0.77% — which the turnover of the product concerned by the infringement represented compared to the overall turnover of the CEPSA-PROAS group, which resulted in the final amount of the fine imposed on CEPSA representing over 90% of the turnover achieved by PROAS during the last full year of the infringement.

43 According to the appellant, the General Court refused to apply the approach adopted in that judgment and merely stated, first, that the ceiling of 10% of turnover was correctly applied in the case, without examining the possible relevance of the weak turnover of the product affected by the infringement, and, second, that that judgment does not concern a group of companies.

44 In doing so, the General Court erred in law in upholding a level of fine which was not only inappropriate, but also excessive to the point of being disproportionate, for the purposes of paragraph 126 of the judgment of 22 November 2012 in *E.ON Energie* v *Commission* (C-89/11 P, EU:C:2012:738).

45 The Commission submits that that ground of appeal is unfounded.

Findings of the Court

46 In so far as the appellant complains that the General Court gave insufficient reasons for rejecting the line of argument relating to the disproportionate nature of the fine imposed on the CEPSA-PROAS group, it should be noted that that claim is based on a manifestly incorrect reading of the judgment under appeal.

47 To dismiss the claim concerning the disproportionate nature of the fine imposed jointly and severally on CEPSA and PROAS, the General Court stated, first, in paragraph 316 of the judgment under appeal, that, as regards the CEPSA-PROAS group, only the sales of PROAS' penetration bitumen had been taken into account. Second, the General Court stated, in paragraphs 317 and 318 of that judgment, that no multiplier had been applied by the Commission. Third, in paragraph 323 of that judgment, it found that the judgment of 14 July 1994 in *Parker Pen* v *Commission* (T-77/92 EU:T:1994:85) was not relevant in the present case having regard (i) to the fact that, in the decision at issue, the Commission solely took account of the amount of sales of the product which was the subject of the infringement and (ii) the fact that the judgment of 14 July 1994 in *Parker Pen* v *Commission* (T-77/92 EU:T:1994:85) concerned an independent company, so that consideration of total turnover of a group did not arise. Fourth, in response to CEPSA's argument as to exceeding the 10% turnover threshold provided for in Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [81 and 82 EC] (OJ 2003 L 1, p. 1), it found, in paragraph 324 of that judgment, that the fact that the amount of the fine imposed on the CEPSA-PROAS group is almost equal to PROAS' total sales during the last full year of the infringement at issue did not, in itself, enable the conclusion of non-compliance with the principle of proportionality, noting in that regard, in paragraphs 327 to 329 of that judgment, that the Commission had been entitled to find that PROAS and CEPSA constituted an economic unit and that that threshold had to be calculated on the basis of the total turnover of all the companies constituting the single economic entity acting as an undertaking for the purposes of Article 81 EC.

48 In so far as the appellant claims that the General Court committed an error of law by finding the amount of the fine to be proportionate, it should be borne in mind that it is not for the Court of Justice, when ruling on points of law in the context of an appeal, to substitute, on grounds of fairness, its own assessment for that of the General Court when ruling on the amount of fines imposed on undertakings for infringements of EU law. Accordingly, only inasmuch as the Court of Justice considers that the level of the fine is not merely inappropriate, but also excessive to the point of being disproportionate, would it have to find that the General Court erred in law, on account of the inappropriateness of the amount of a fine (judgment of 10 July 2014 in *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 205 and the case-law cited).

49 In that regard, it should be borne in mind, as the General Court correctly did in paragraph 328 of the judgment under appeal, that the maximum amount laid down in Article 23(2) of Regulation No 1/2003 must be calculated on the basis of the total turnover of all the companies constituting the single economic entity acting as an undertaking for the purposes of Article 81 EC, which now corresponds to Article 101 TFEU (see judgments of 8 May 2013 in *Eni* v *Commission*, C-508/11 P, EU:C:2013:289, paragraph 109; of 11 July 2013 in *Team Relocations and Others* v *Commission*, C-444/11 P, EU:C:2013:464, paragraphs 172 and 173; and of 26 November 2013 in *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraph 56). The proportionality of a fine must in

particular be assessed having regard to the objective of deterrence which is sought by its imposition and consideration of that total figure is therefore necessary for the purposes of that assessment in order to take into account the economic power of that entity (see, to that effect, judgment of 20 January 2016 in *Toshiba Corporation* v *Commission*, C-373/14 P, EU:C:2016:26, paragraphs 83 and 84).

50 By essentially claiming that the amount of the fine imposed on the CEPSA-PROAS group represents over 90% of PROAS' turnover, the appellant adduces, in support of its claim, no element demonstrating that the amount of the fine imposed on it and which represents less than 1% of the turnover of the CEPSA-PROAS group is excessive to the point of being disproportionate, for the purposes of the case-law of the Court referred to in paragraph 48 above.

51 In so far as the appellant criticises the General Court, by relying on the judgment of 7 June 1983 in *Musique Diffusion française and Others* v *Commission* (100/80 to 103/80, EU:C:1983:158), for having failed to review whether the fine imposed was proportionate not only in relation to the group's total turnover but also in relation to the scale of the infringement, suffice it to state that the General Court correctly applied that case-law since it took account not only of the group's total turnover but also the sales of penetration bitumen made by the cartel participants, including those by PROAS. Moreover, the appellant has not disputed paragraphs 315, 316 and 322 of the judgment under appeal, according to which PROAS participated in the infringement during a period of 11 years and 7 months. It also does not dispute the increase by the Commission of the basic amount of the fine to take account of that long period of participation in the infringement.

52 In view of the foregoing, the third ground of the appeal must be rejected as being unfounded.

The fourth and fifth grounds of appeal, alleging infringement of the principle of observance of a reasonable period

Arguments of the parties

53 By its fourth ground of appeal, directed against paragraphs 267 to 269 of the judgment under appeal, the appellant criticises the General Court for having infringed Article 261 TFEU and Article 31 of Regulation No 1/2003, by refusing to rule on the consequences of its own delay in delivering the judgment under appeal. In that regard, CEPSA claims that the unlimited jurisdiction of the General Court required it to take into account all the factual and legal circumstances of the case, in particular the principle of observance of a reasonable period.

54 The fifth ground of appeal, also alleging infringement of the principle of observance of a reasonable period resulting from Article 41(1), and from the second paragraph of Article 47 of the Charter, is divided into three parts. As a result of that infringement and by way of compensation, the appellant requests that the amount of the fine which has been imposed on it should be reduced by 25%. In that regard, it claims that each year of delay in handling the case should result in a 10% reduction of the fine imposed and a 5% reduction of that amount for each period of more than 6 months and less than a year.

55 By the first part of that ground of appeal, the appellant criticises the General Court for having infringed its obligation to rule on cases within a reasonable period, account being taken of the period of 5 years and 9 months which elapsed between the introduction by the appellant of its action and the delivery of the judgment under appeal, including a period of 4 years and 2 months between the closure of the written procedure and the oral stage of the proceedings.

56 By the second part of that ground of appeal, the appellant criticises the General Court for having infringed the principle of observance of a reasonable period by not assessing together the duration of the administrative and judicial proceedings which, as a whole, exceeded 11 years. In support of its line of argument, CEPSA refers to point 240 of Advocate General Kokott's Opinion in *Solvay* v *Commission* (C-109/10 P, EU:C:2011:256).

57 By the third part of that ground of appeal, directed against paragraphs 245 to 265 of the judgment under appeal, the appellant criticises the General Court for having committed an error of law when it considered that the administrative proceedings had been handled in a reasonable time.

58 In support of that part of the fifth ground of appeal, CEPSA claims that the 5-year period in which the Commission dealt with the present case cannot be justified by the complexity of the dispute or the conduct of the undertakings against which proceedings had been brought, which all cooperated in the proceedings.

59 The appellant also submits that, in paragraphs 245 to 250 of the judgment under appeal, the General Court was wrong to take into consideration, for the purposes of assessing the duration of the administrative procedure, the fact that the Commission had observed the limitation period for imposing fines in the area of competition. The appellant also criticises the General Court for not having taken into account in its assessment, in paragraphs 251 to 265 of the judgment under appeal, the beginning of the administrative procedure, namely the period which elapsed between October 2002 and June 2004, during which the Commission had been able to analyse the BP group's leniency application and conduct the reviews required by that application.

60 The Commission contends that, as regards the claims of infringement of a reasonable period in the context of both the administrative procedure and judicial proceedings, taken separately or together, it is for the appellant to bring a claim for damages before the General Court. The Commission adds that, in any event, the appellant does not adduce any evidence to show that the procedure before the Commission and/or the proceedings before the General Court were excessively long in the light of the circumstances of the case.

Findings of the Court

61 As regards the third part of the fifth ground of appeal, by which the appellant criticises the General Court for having committed an error of law by finding that the administrative procedure had not exceeded a reasonable period, it should be noted that, although the infringement of the principle of observance of a reasonable period is capable of justifying the annulment of a decision taken following an administrative procedure based on Article 101 or 102 TFEU inasmuch as it also constitutes an infringement of the rights of defence of the undertaking concerned (see, to that effect, judgment of 21 September 2006 in *Nederlandse Vereniging voor de Groothandel Federatieve op Elektrotechnisch Gebied* v *Commission*, C-105/04 P, EU:C:2006:592, paragraphs 42 and 43), the Commission's infringement of a reasonable period for such an administrative procedure, if established, is not capable of leading to a reduction of the amount of the fine imposed (see, to that effect, judgment of 8 May 2014 in *Bolloré* v *Commission*, C-414/12 P, EU:C:2014: 301, paragraph 109).

62 In the present case, as follows from paragraphs 54 and 57 to 59 of the present judgment, it is established that, by its claims relating both to the General Court's consideration of the non-expiry of the limitation period in finding that the duration of the administrative procedure was not excessive and to the failure of the General Court to take into consideration part of the contested administrative procedure, the appellant seeks solely to obtain the reduction of the fine which has been imposed on it.

63 Regardless of its merits, the third part of the fifth ground of appeal must, consequently, be rejected as being ineffective.

64 As regards the fourth ground of appeal and the first part of the fifth ground of appeal, alleging infringement by the General Court of a reasonable period for the judgment, it should be borne in mind that the sanction for a breach by a Court of the European Union of its obligation under the second paragraph of Article 47 of the Charter to adjudicate on the cases before it within a reasonable time must, notwithstanding the unlimited jurisdiction of the General Court recognised under Article 261 TFEU and Article 31 of Regulation No 1/2003, be an action for damages brought before the General Court, since such an action constitutes an effective remedy. It follows that a claim for compensation in respect of the damage caused by the General Court's failure to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself (see, inter alia, judgments of 10 July 2014 in *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 66; of 9 October 2014 in *ICF* v *Commission*, C-467/13 P, EU:C:2014:2274, paragraph 57; and of 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraphs 17 and 18).

65 The General Court, which has jurisdiction under Article 256(1) TFEU, hearing a claim for damages, is required to rule on such a claim sitting in a different composition from that which heard the dispute which gave rise to the procedure whose duration is criticised (see, inter alia, judgments of 10 July 2014 in *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 67; of 9 October 2014 in *ICF* v *Commission*, C-467/13 P, EU:C:2014:2274, paragraph 58; and of 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 19).

66 That said, where it is clear, without any need for the parties to adduce additional evidence in that regard, that the General Court infringed, in a sufficiently serious manner, its obligation to adjudicate on the case within a reasonable time, the Court of Justice may note that fact (see, inter alia, judgments of 9 October 2014 in *ICF* v *Commission*, C-467/13 P, EU:C:2014:2274, paragraph 59, and of 12 November 2014 in *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 20).

67 That is the situation here. The duration of the proceedings before the General Court, namely almost 5 years and 9 months, which includes, in particular, a period of 4 years and 1 month which elapsed, as is apparent from paragraphs 92 to 94 of the judgment under appeal, without any step in the proceedings, between the end of the written procedure and the hearing, cannot be explained by either the nature or the complexity of the case or by its context.

68 First, the dispute submitted to the General Court was not particularly complex. Second, it is not apparent from the judgment under appeal or from the evidence presented by the parties that that period of inactivity was objectively justified or that the appellant had contributed to it.

69 However, it follows from the considerations set out in paragraph 64 of the present judgment that the fourth ground of appeal and the first part of the fifth ground of appeal must be rejected.

70 As regards the second part of the fifth ground of appeal, by which the appellant complains that the General Court did not assess the duration of the administrative and judicial stages together in order to assess, as a whole, their reasonableness, it must again be noted that the appellant seeks to obtain a reduction of the fine imposed on it.

71 Even assuming that, contrary to the General Court's findings in the judgment under appeal, an infringement of the right to observance of a reasonable time limit may be found to exist due to the long duration of the administrative and judicial proceedings to which CEPSA has been subject, such an infringement cannot, by itself, lead the General Court, or the Court of Justice in the context of an

appeal, to reduce the amount of the fine which has been imposed on that company in respect of the infringement at issue (see, to that effect, judgment of 8 May 2014 in *Bolloré* v *Commission*, C-414/12 P, EU:C:2014:301, paragraph 107).

72 Therefore, the second part of the fifth ground of appeal must be rejected.

73 Consequently, the fourth and fifth grounds of appeal must be rejected in their entirety.

The sixth ground of appeal, alleging infringement of Article 87(2) of the Rules of Procedure of the General Court in the version applicable to the dispute

74 By its sixth ground of appeal, the appellant submits that the General Court infringed Article 87(2) of the Rules of Procedure of the General Court, in the version applicable to the dispute, by ordering CEPSA to pay the costs whereas it should have divided the costs between the parties, account being taken of the fact that both parties were unsuccessful.

75 According to settled case-law, where all the other grounds put forward in an appeal have been rejected, any ground challenging the decision of the General Court on costs must be rejected as inadmissible by virtue of the second paragraph of Article 58 of the Statue of the Court of Justice of the European Union, under which no appeal lies regarding only the amount of the costs or the party ordered to pay them (see, to that effect, order of 13 January in *Roujansky* v *Council*, C-253/94 P, EU:C:1995:4, paragraphs 13 and 14, and judgment of 2 October 2014 in *Strack* v *Commission*, C-127/13 P, EU:C:2014:2250, paragraph 151).

76 Since the first five grounds of appeal put forward by the appellant have been rejected, the last ground of appeal, relating to the allocation of costs, must, accordingly, be declared inadmissible.

77 The appeal must therefore be dismissed in its entirety.

Costs

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

79 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

80 Since the Commission has applied for costs to be awarded against CEPSA and the latter has been unsuccessful, CEPSA must be ordered to pay the costs relating to the present appeal proceedings.

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

1. Dismisses the appeal;

2. Orders Compañía Española de Petróleos (CEPSA) SA to pay the costs.

[Signatures]