Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

14 March 2014*

(Competition — Administrative procedure — Decision requesting information — Need for the information requested — Reasonable grounds — Review by the Court — Proportionality)

In Case T-296/11,

Cementos Portland Valderrivas, SA, established in Pamplona (Spain), represented by L. Ortiz Blanco, A. Lamadrid de Pablo and N. Ruiz García, lawyers,

applicant,

v

European Commission, represented by F. Castilla Contreras, C. Urraca Caviedes and C. Hödlmayr, acting as Agents, and by A. Rivas, lawyer,

defendant,

APPLICATION for annulment of Commission Decision C(2011) 2368 final of 30 March 2011 in proceedings pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case 39520 — Cement and related products),

THE GENERAL COURT (Seventh Chamber),

composed of A. Dittrich, President, I. Wiszniewska-Białecka and M. Prek (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 February 2013,

gives the following

Judgment

Facts of the dispute and procedure

1 In November 2008 and September 2009, the Commission of the European Communities — acting under Article 20 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1) — carried out a number of inspections at the premises of companies active in the cement industry.

* Language of the case: Spanish.

Those inspections were followed by the sending of requests for information under Article 18(2) of Regulation No 1/2003. The applicant, Cementos Portland Valderrivas, SA, was not subject to an inspection of its premises nor was it sent a request for information.

2 By letter of 17 November 2010, the Commission notified the applicant that it intended to send the latter a decision requesting information under Article 18(3) of Regulation No 1/2003 and forwarded the draft questionnaire it planned to annex to that decision.

3 By letter of 3 December 2010, the applicant submitted its observations on the draft questionnaire.

4 On 6 December 2010, the Commission notified the applicant that it had decided to initiate proceedings against it under Article 11(6) of Regulation No 1/2003 as well as against seven other companies active in the cement industry for suspected infringements of Article 101 TFEU involving 'restrictions on trade flows in the European Economic Area (EEA), including restrictions on imports in the EEA coming from countries outside the EEA, market-sharing, price coordination and related anti-competitive practices in the cement market and related product markets'.

5 On 30 March 2011, the Commission adopted Decision C(2011) 2368 final in proceedings pursuant to Article 18(3) of Regulation No 1/2003 (Case 39520 — Cement and related products) ('the contested decision').

6 In the contested decision, the Commission stated that, under Article 18 of Regulation No 1/2003, in order to carry out the duties assigned to it by that regulation, it may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information (recital 3 of the preamble to the contested decision). After pointing out that the applicant had been informed of the Commission's intention to adopt a decision under Article 18(3) of Regulation No 1/2003 and that the former had submitted its observations on the draft questionnaire (recitals 4 and 5 of the preamble to the contested decision), the Commission, by decision, required the applicant — as well as its subsidiaries located in the European Union under its direct or indirect control — to answer the questionnaire set out in Annex I to the contested decision, comprising 94 pages and 11 sets of questions (recital 6 of the preamble to the contested decision). The instructions concerning the answers to that questionnaire are set out in Annex II to the contested decision, while the answer templates are set out in Annex III thereto.

7 The Commission also drew attention to the description of the alleged infringements, set out in paragraph 4 above (recital 2 of the preamble to the contested decision).

8 Referring to the nature and volume of information requested, as well as the seriousness of the alleged infringements of the competition rules, the Commission considered it appropriate to give the applicant twelve weeks to reply to the first ten sets of questions and two weeks to reply to the eleventh set, concerning 'contacts and meetings' (recital 8 of the contested decision).

9 The operative part of the contested decision reads as follows:

'Article 1

[The applicant], together with its subsidiaries located in the European Union under its direct or indirect control, shall provide the information referred to in Annex I to this decision, in the form requested in Annexes II and III thereto, no later than twelve weeks, for questions 1-10, and two weeks, for question 11, from the date of notification of this decision. All annexes form an integral part of this decision.

Article 2

This decision is addressed to [the applicant], together with its subsidiaries located in the European Union under its direct or indirect control.'

10 On 15 April 2011, the applicant sent its answer to the eleventh set of questions. On 3 May 2011, the Commission requested information on that answer. The applicant replied to the Commission on 4 and 31 May 2011.

11 On 9 May 2011, the applicant asked the Commission to exempt it from the obligation to reply to the contested decision, in the light of the financial damage caused by the significant workload entailed by that obligation against an economic background of a particularly serious nature, and, in any event, requested an extension of the time-limit for replying.

12 On 19 May 2011, a meeting was held between representatives of the Commission and of the applicant.

13 On 25 May 2011, the applicant asked the Commission to extend the time-limit for replying to the first ten sets of questions by eight weeks or, at the very least, to accept a partial reply.

14 On 1 June 2011, the Commission refused to grant the requested extension and asked the applicant to identify specifically the questions that, in its view, required additional time.

15 On 7 June 2011, the applicant asked for an additional two weeks, until 11 July 2011, to reply to questions 1B, 3, 5, 9A and 9B.

16 By application lodged at the Registry of the General Court on 10 June 2011, the applicant brought this application for annulment of the contested decision.

17 By separate document lodged at the Registry of the General Court on 15 June 2011, the applicant made an application for interim relief, requesting the President of the General Court to suspend operation of the contested decision.

18 By letter of 23 June 2011, the Commission notified the applicant that it had been given five further weeks, or until 2 August 2011, to reply to the first ten sets of questions.

19 By order of 29 July 2011 in Case T-296/11 R *Cementos Portland Valderrivas* v *Commission*, not published in the ECR, the President of the General Court rejected the application for interim relief.

20 On 2 August 2011, the applicant submitted its reply to the first ten sets of questions.

21 Upon hearing the report of the Judge-Rapporteur, the General Court (Seventh Chamber) decided to open the oral procedure.

22 At the hearing held on 6 February 2013, the parties presented their oral arguments and answered the oral questions of the Court. At the end of the hearing, the Court decided not to close the oral procedure.

23 On 25 March 2013, by way of measures of organisation of procedure provided for under Article 64 of its Rules of Procedure, the General Court called on the Commission to provide it with a list and a summary of the evidence on the basis of which it had opened proceedings pursuant to Article 18(3) of Regulation No 1/2003 against the applicant.

24 On 11 April 2013, the Commission refused that request. By order of 14 May 2013, the Court ordered the Commission to provide it with the list of said evidence and the summary thereof. In accordance with the first subparagraph of Article 67(3) of the Rules of Procedure, and with a view to reconciling the adversarial principle and the characteristics of the preliminary investigation stage of the procedure, when the undertaking concerned has neither the right to be informed of the essential evidence on which the Commission relies nor a right of access to the file, the order of 14 May 2013 limited inspection of the information supplied by the Commission to the applicant's lawyers and made such inspection conditional upon them giving an undertaking of confidentiality.

25 The Commission complied with that demand within the prescribed period, providing the General Court with the list as well as a summary of the evidence on the basis of which it had opened proceedings pursuant to Article 18(3) of Regulation No 1/2003 against the applicant.

26 On 19 June 2013, the applicant's lawyers inspected the documents referred to in paragraph 23 above at the Registry of the General Court and, on 15 July 2013, they submitted their observations on the documents supplied by the Commission. Finally, on 18 September 2013, the Commission replied to the observations submitted by the applicant's lawyers.

27 The oral procedure was closed on 27 September 2013.

Forms of order sought by the parties

28 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

29 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

30 In support of its action, the applicant relies on a single plea in law alleging infringement of Article 18 of Regulation No 1/2003 and the principle of proportionality. In essence, this plea is made up of four limbs relating to, first, the alleged arbitrary nature of the contested decision, second, the fact that the information requested was not necessary, third, the nature of the information requested and, fourth, the disproportionality of the request for information.

First limb of the sole plea in law, alleging that the contested decision was arbitrary

31 In essence, the applicant considers that merely stating the putative infringements in the contested decision does not afford adequate protection against the abusive exercise by the Commission of its powers under Article 18 of Regulation No 1/2003. The Commission must be in possession of evidence pointing to the existence of an infringement. Neither the contested decision nor the context in which it was taken suggests that the Commission is in possession of such evidence. This tends to show that the contested decision is of an exploratory nature (fishing expedition), in that it is directed at uncovering possible evidence of an infringement of competition law. The applicant also suggests that the Court should request disclosure of the evidence on which the Commission relies.

32 The Commission recalls that, pursuant to its obligation to state reasons for a decision requesting information, it is required to state clearly the putative infringements it intends to investigate, but not to indicate the evidence in its possession. Furthermore, it submits that it was in possession of such evidence when the contested decision was adopted.

33 For the purpose of addressing this limb of the plea in law, it should be borne in mind that the administrative procedure under Regulation No 1/2003, which takes place before the Commission, is divided into two distinct and successive stages, each having its own internal logic, namely a preliminary investigation stage and an *inter partes* stage. The preliminary investigation stage, during which the Commission uses the powers of investigation provided for in Regulation No 1/2003 and which covers the period up until the notification of the statement of objections, is intended to enable the Commission to gather all the relevant information tending to prove or disprove the existence of an infringement of the competition rules and to adopt an initial position on the course of the procedure and how it is to proceed. By contrast, the *inter partes* stage, which covers the period from the notification of the statement of objections to the adoption of the final decision, must enable the Commission to reach a final decision on the alleged infringement (see, to that effect, Case T-99/04 *AC-Treuhand* v *Commission* [2008] ECR II-1501, paragraph 47).

34 The starting point for the preliminary investigation stage is the date on which the Commission, in exercise of the powers conferred on it by Articles 18 and 20 of Regulation No 1/2003, takes measures which involve the allegation of an infringement and which have major repercussions on the situation of the undertakings under suspicion. It is not until the beginning of the *inter partes* administrative stage that the undertaking concerned is informed, by means of the notification of the statement of objections, of all the essential evidence on which the Commission relies at that stage of the procedure and that that undertaking has a right of access to the file in order to ensure that its rights of defence are effectively exercised. Consequently, it is only after notification of the statement of objections that the undertaking concerned is able to rely in full on its rights of defence. If those rights were extended to the period preceding the notification of the statement of objections, the effectiveness of the Commission's investigation would be compromised, since the undertaking concerned would already be able, at the preliminary investigation stage, to identify the information known to the Commission, hence the information that could still be concealed from it (see, to that effect, *AC-Treuhand* v *Commission*, paragraph 33 above, paragraph 48 and the case-law cited).

35 However, the measures of inquiry adopted by the Commission during the preliminary investigation stage — in particular, the investigation measures and the requests for information — suggest, by their very nature, that an infringement has been committed and may have major repercussions on the situation of the undertakings under suspicion. Consequently, it is necessary to prevent the rights of the defence from being irremediably compromised during that stage of the administrative procedure since the measures of inquiry taken may be decisive in providing evidence of the unlawful nature of conduct engaged in by undertakings for which they may be liable (see, to that effect, Joined Cases 46/87 and 227/88 *Hoechst* v *Commission* [1989] ECR 2859, paragraph 15, and *AC-Treuhand* v *Commission*, paragraph 33 above, paragraphs 50 and 51).

36 Against that background, it should be recalled that the obligation imposed on the Commission by Article 18(3) of Regulation No 1/2003 requiring it to state the legal basis and the purpose of the request for information is a fundamental requirement designed not merely to show that the information requested from the undertakings concerned is justified, but also to enable those undertakings to ascertain the scope of their duty to cooperate whilst at the same time safeguarding their rights of defence. It follows that the Commission is entitled to require the disclosure only of information which may enable it to investigate the putative infringements which justify the conduct of the investigation and are set out in the request for information (see, to that effect and by analogy, Case T-39/90 *SEP* v *Commission* [1991] ECR II-1497, paragraph 25, and Case T-34/93 *Société Générale* v *Commission* [1995] ECR II-545, paragraph 40).

37 In view of the foregoing, at the preliminary investigation stage the Commission cannot be required to indicate — besides the putative infringements it intends to investigate — the evidence, that is to say the information leading it to consider that Article 101 TFEU may have been infringed. Such an obligation would upset the balance struck by the case-law between preserving the effectiveness of the investigation and upholding the defence rights of the undertaking concerned.

38 However, it cannot be inferred from the foregoing that the Commission does not have to be in possession of information leading it to consider that Article 101 TFEU may have been infringed before adopting a decision under Article 18(3) of Regulation No 1/2003.

39 It should be recalled that the need for protection against arbitrary or disproportionate intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, is recognised as a general principle of law of the European Union (judgment of 22 March 2012 in Joined Cases T-458/09 and T-171/10 *Slovak Telekom* v *Commission* [2012] ECR, paragraph 81).

40 With a view to observing that general principle, a decision requesting information must be directed at gathering the necessary documentary evidence to check the actual existence and scope of a given factual and legal situation concerning which the Commission already possesses certain information, constituting reasonable grounds for suspecting an infringement of the competition rules (see, to that effect and by analogy, Case C-94/00 *Roquette Frères* [2002] ECR I-9011, paragraphs 54 and 55).

41 In the present case, the applicant expressly asked the Court to order the Commission to produce the evidence in its possession so that the Court could satisfy itself that the contested decision was not arbitrary. In order to justify such a request, the applicant casts doubt on the fact that such information was in the Commission's possession before the adoption of the contested decision. It considers that the Commission, rather than checking the actual existence and scope of a given factual and legal situation concerning which it already possesses certain information, is actually seeking to uncover information which might point to the existence of an infringement. In support of its proposition, the applicant relies on the particularly broad scope of the contested decision addressed to it, as well as on the fact that the Commission did not carry out any inspections at its premises under Article 20(4) of Regulation No 1/2003 or send it a request for information under Article 18(2) thereof.

42 Since an application to that effect was brought before the Court and the applicant has put forward certain arguments which may cast doubt on the reasonableness of the grounds on which the Commission relied in order to adopt a decision under Article 18(3) of Regulation No 1/2003, the Court is of the view that it has a duty to examine those grounds and check that they are reasonable.

43 The assessment of the reasonableness of the grounds must be carried out having regard to the fact that the contested decision forms part of the preliminary investigation stage, which is intended to enable the Commission to gather all the relevant information tending to prove or disprove the existence of an infringement of the competition rules and to adopt an initial position on the course of the procedure and how it is to proceed. In order to perform that task, the Commission is entitled to send requests for information pursuant to Article 18 of Regulation No 1/2003 or to have recourse to inspections under Article 20 thereof. Accordingly, at that stage — before the adoption of a decision requesting information — the Commission cannot be required to be in possession of evidence establishing the existence of an infringement. It is therefore enough for such evidence to give rise to a reasonable suspicion as to the commission of putative infringements in order for the Commission to be entitled to request the provision of additional information by way of a decision adopted under Article 18(3) of Regulation No 1/2003.

44 In its reply to the order of 14 May 2013, the Commission informed the Court of the evidence it had in its possession which, in its view, justified the adoption of the contested decision.

45 It is apparent to the Court on reading the summary provided by the Commission and the extracts of evidence it contains that the Commission was entitled to send a decision requesting information to the applicant in respect of all the putative infringements covered by the contested decision. Those infringements are specified in recital 2 of the preamble to the contested decision and concern 'restrictions on trade flows in the European Economic Area (EEA), including restrictions on imports in the EEA coming from countries outside the EEA, market-sharing, price coordination and related anti-competitive practices in the cement market and related product markets'.

46 As regards, in the first place, the restrictions on trade flows in the European Economic Area (EEA), including restrictions on imports in the EEA coming from countries outside the EEA, the Court considers that the reference in the summary and the extracts from the document [*confidential*] could reasonably result in the Commission seeking to secure information on the applicant's conduct. Likewise, the references in the summary and the extracts from the document [*confidential*].

47 Furthermore, it is apparent from the summary and the extracts from the document [*confidential*]. The inevitable inference is that such a document could reasonably result in the Commission suspecting that the applicant was involved [*confidential*] in practices which restricted trade flows.

48 As regards, in the second place, the putative infringements arising from market sharing, several categories of information put forward by the Commission constitute reasonable grounds enabling it to send the applicant a request for information in that respect. First, the Commission's premiss that there was initial market sharing [*confidential*].

49 Second, it should be pointed out that [*confidential*]. This is true of the document [*confidential*]. The same applies to the document [*confidential*].

50 Third, the Commission refers, in essence, to a [*confidential*].

51 Fourth and last, in circumstances where the Commission was in possession of [*confidential*].

52 As regards, in the third place, the price coordination and related anti-competitive practices referred to in recital 2 of the preamble to the contested decision, [*confidential*]. First, [*confidential*].

53 Second, the document [*confidential*].

54 Third, the Commission could reasonably infer from the reference in the summary and the extracts from the document [*confidential*].

55 Fourth and last, it can also be reasonably inferred from the summary and the extracts from the document [*confidential*].

56 In the light of all the foregoing, it must be concluded that the Commission was in possession of reasonable grounds enabling it to seek to secure additional information from the applicant on all of the putative infringements listed in recital 2 of the preamble to the contested decision.

57 This conclusion is not affected by the arguments set out in the observations on the Commission's reply to the measures of inquiry.

58 Essentially, those arguments are based on a divergence in the interpretation of the evidence held by the Commission. Thus, for instance, it is claimed that [*confidential*].

59 The fact remains that such arguments do not take into account the specific context of the contested decision, in that they are, in actual fact, tantamount to contending that the evidence in the Commission's possession is not such as to prove that the applicant was involved in the putative

infringements referred to in the contested decision. For the reasons stated in paragraph 43 above, unless the powers conferred on the Commission by Articles 18 and 20 of Regulation No 1/2003 are to be entirely deprived of their purpose, no such proof can be required of the Commission. Therefore, the fact that the evidence held by the Commission may be subject to different interpretations does not preclude it from constituting reasonable grounds within the meaning of the case-law cited in paragraph 40 above, since the interpretation favoured by the Commission is plausible.

60 Furthermore, emphasis is also placed on the fact that [*confidential*].

61 In the light of all the foregoing, the first limb of the plea in law must be rejected.

Second limb of the sole plea in law, alleging that the requested information was not necessary

62 In essence, the applicant claims that the information requested by means of the contested decision was not necessary, within the meaning of Article 18(1) of Regulation No 1/2003. Its arguments can be divided into two complaints. In its first complaint, the applicant contends that the contested decision contains numerous examples of items of information which do not satisfy the requirement of necessity, as they have no connection with the putative infringements set out in the contested decision. In its second complaint, the applicant disputes the necessity of the requested information which is already in the Commission's possession or which is publicly available. Lastly, in its observations on the Commission's reply to the measures of inquiry of the Court, the applicant puts forward a third ground of complaint concerning the necessity of the request for information, alleging that there is no link between the evidence in the Commission's possession and the questionnaire that was sent to the applicant.

63 The Commission contends that this limb of the plea in law should be rejected.

64 So far as concerns the complaint raised in the observations on the Commission's reply, the Court takes the view that this complaint must be rejected at the outset. It must be stated that although such a complaint is admissible under Article 48(2) of the Rules of Procedure, in so far as it is based on matters of fact to which the applicant did not have access when the application was lodged, it does not satisfy the requirements of Article 44(1)(c) of those rules, in that it goes no further than a general criticism and does not specifically state why there are no links between the questionnaire and the evidence in the Commission's possession. Accordingly, it must be held that this complaint is not sufficiently clear and precise to enable the defendant to prepare its defence and to enable the Court to give judgment in the action without the need to seek further information, and it must, therefore, be declared inadmissible (see, to that effect, Case T-352/94 *Mo och Domsjö* v *Commission* [1998] ECR II-1989, paragraphs 333 and 334). Lastly, in so far as this complaint is based on the arguments developed for the purpose of disputing the probative value of the evidence put forward by the Commission, it should be rejected for the reasons set out in paragraphs 43 to 59 above.

Claim that some of the information requested was unnecessary in view of the putative infringements that the Commission intends to investigate

65 As noted in paragraph 36 above, the Commission is entitled to require the disclosure only of information which may enable it to investigate the putative infringements which justify the conduct of the investigation and are set out in the request for information (see, to that effect and by analogy, *SEP* v *Commission*, paragraph 36 above, paragraph 25, and *Société Générale* v *Commission*, paragraph 36 above, paragraph 40).

66 In the light of the Commission's broad powers of investigation and inspection, it falls to it to assess the necessity of the information requested from the undertakings concerned (see, to that effect, Case 155/79 *AM & S Europe* v *Commission* [1982] ECR 1575, paragraph 17, and Case 374/87 *Orkem* v

Commission [1989] ECR 3283, paragraph 15). As regards the Court's power of review over that assessment by the Commission, it should be noted that, according to the case-law, the term 'necessary information' must be interpreted according to the objectives for the achievement of which the powers of investigation in question have been conferred upon the Commission. Thus, the requirement that there must exist a correlation between the request for information and the putative infringement is satisfied where, at that stage in the proceeding, the request may legitimately be regarded as having a connection with the putative infringement, in the sense that the Commission may reasonably suppose that the document will help it to determine whether the alleged infringement has taken place (*SEP* v *Commission*, paragraph 36 above, paragraph 29, and *Slovak Telekom* v *Commission*, paragraph 39 above, paragraph 42).

67 The Court observes that the only questions whose necessity is doubted by the applicant on that ground are questions 5, point AG, and 5, point AH, which ask the applicant to state for each production site of each of its companies, first, the carbon dioxide (CO_2) emissions in tonnes attributable to the relevant site and, second, the average price of the CO_2 emissions rights actually used by the relevant facility.

68 The Court notes that the applicant did not challenge the assertion set out in the Commission's defence according to which CO_2 emissions are one of the largest components of the cost of producing cement, which itself is one of the largest components of the price charged to customers and consumers.

69 It should also be recalled that one of the putative infringements under investigation by the Commission involves possible price coordination between competing undertakings. Clearly, information concerning one of the main constituents of the products concerned can legitimately be regarded as having a connection with such an infringement.

70 This complaint must therefore be rejected.

Claim that some of the information requested was unnecessary on the ground that it is already in the Commission's possession or is of a public nature

71 In essence, the applicant submits that the provision of information which is already in the Commission's possession or is of a public nature cannot be regarded as necessary within the meaning of Article 18(1) of Regulation No 1/2003.

72 It is true that, in Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and Others* v *Commission* [2003] ECR II-3275, paragraph 425, the Court made it clear that requests for information seeking to secure information on a document already in the Commission's possession could not be regarded as justified by the needs of the investigation.

73 However, the fact remains that the applicant has not been subject to any previous requests for information under Article 18(2) of Regulation No 1/2003. The questionnaire making up Annex I to the contested decision cannot, therefore, in any event be regarded as compelling the applicant to produce information which is already in the Commission's possession.

74 As regards the criticism that some of the information requested is in the public domain and, therefore, accessible to the Commission without it having to order its production, it should be noted that the only example put forward by the applicant involves 'postcodes relating to specific addresses'.

75 None the less, such information is the logical complement of information in the applicant's sole possession. Therefore, the fact that the information might be public is not capable of precluding it from being regarded as necessary within the meaning of Article 18(1) of Regulation No 1/2003.

76 Accordingly, the Court must reject the present complaint and, consequently, the second limb of the plea in law.

Third limb of the sole plea in law, concerning the nature of the information requested

77 In essence, the applicant submits that Article 18(3) of Regulation No 1/2003 only permits the Commission to require economic operators to provide information or data which are in their possession. It does not entitle the Commission to order an undertaking to process such information for the purpose of presenting it in a format which facilitates the work of the Commission, thereby generating the evidence the Commission will use against it.

78 The Commission contends that this limb of the plea in law should be rejected.

79 It should be recalled that, according to recital 23 of Regulation No 1/2003, the 'Commission should be empowered throughout the [European Union] to require such information to be supplied as is necessary to detect any agreement, decision or concerted practice prohibited by Article [101 TFEU] or any abuse of a dominant position prohibited by Article [102 TFEU]'. Furthermore, '[w]hen complying with a decision of the Commission, undertakings cannot be forced to admit that they have committed an infringement, but they are in any event obliged to answer factual questions and to provide documents, even if this information may be used to establish against them or against another undertaking the existence of an infringement'.

80 Accordingly, since the provision of 'information' within the meaning of Article 18 of Regulation No 1/2003 should be understood as covering not only the production of documents, but also the obligation to answer questions relating to those documents, the Commission is not confined merely to requesting the production of existing information irrespective of any involvement of the undertaking concerned. It is therefore open to the Commission to direct questions at an undertaking even if this means that the latter has to marshal the requested information (see, to that effect and by analogy, the opinion of Advocate General Darmon in *Orkem* v *Commission*, paragraph 66 above, point 55).

81 However, it should be noted that the exercise of this prerogative is subject to the observance of at least two principles. First, as noted in recital 23 of Regulation No 1/2003, the questions directed at an undertaking cannot force it to admit that it has committed an infringement. Second, the provision of answers to those questions must not constitute a burden which is disproportionate to the requirements of the investigation (*SEP* v *Commission*, paragraph 36 above, paragraph 51; *Atlantic Container Line and Others* v *Commission*, paragraph 72 above, paragraph 418; and *Slovak Telekom* v *Commission*, paragraph 39 above, paragraph 81).

82 In the present case, although it is not claimed that some of the questions directed at the applicant forced it to provide answers which might involve an admission on its part of the existence of an infringement which it was incumbent upon the Commission to prove, the fact remains that the applicant raises the issue of the disproportionality of the burden entailed by answering the questionnaire. In so far as that criticism is indissociable from the fourth limb of the plea in law, alleging infringement of the principle of proportionality, it will be examined in that context.

83 Subject to that proviso, the third limb of the plea in law must be rejected.

Fourth limb of the sole plea in law, alleging infringement of the principle of proportionality

84 In this limb, the applicant essentially argues that the workload entailed by the contested decision is disproportionate in the light of, first, the scope and level of detail of the information requested as well as the need to provide such information in a specific format, second, the time-limit for replying and,

third, the impact of these aspects on the applicant's financial situation. Lastly, the applicant submits that the cumulative effect of these various factors should, in any event, result in the Court finding that the principle of proportionality was infringed.

85 The Commission contends that this limb of the plea in law should be rejected.

86 It is settled case-law that requests for information made by the Commission to an undertaking must comply with the principle of proportionality and the obligation imposed on an undertaking to supply information should not be a burden on that undertaking which is disproportionate to the needs of the inquiry (*SEP* v *Commission*, paragraph 36 above, paragraph 51; *Atlantic Container Line and Others* v *Commission*, paragraph 72 above, paragraph 418; and *Slovak Telekom* v *Commission*, paragraph 39 above, paragraph 81).

87 In its first complaint, the applicant criticises the scope and excessive detail of the requested information and the answer format required by the Commission. It refers to question 1B by way of example, in so far as this question entails providing information on all domestic purchases made by undertakings controlled by the applicant in respect of five products (cement, CEM I in bulk, clinker, aggregates and ground and granulated blast-furnace slag cement as well as granulated blast-furnace slag cement) over a ten-year period and requires the answer to be broken down on the basis of 37 parameters.

88 Admittedly, neither the scale of the information requested in the questionnaire, particularly as regards question 1B, nor the extremely high level of detail of the questionnaire can be reasonably disputed. It is thus undeniable that the answers to the questionnaire entailed a particularly heavy burden for the applicant.

89 However, it cannot be concluded that this burden is disproportionate having regard to the needs of the inquiry relating to, inter alia, the putative infringements that the Commission intends to investigate and the circumstances of the procedure.

90 In this connection, first, it must be noted that the contested decision forms part of a procedure concerning 'restrictions on trade flows in the European Economic Area (EEA), including restrictions on imports in the EEA coming from countries outside the EEA, market-sharing, price coordination and related anti-competitive practices in the cement market and related product markets'. Clearly, the particularly broad scope and the seriousness of the putative infringements under investigation by the Commission are capable of justifying the provision of a large volume of information.

91 Second, it should also be recalled that the contested decision forms part of an inquiry into anti-competitive practices involving, besides the applicant, seven other companies active in the cement sector. Thus, in view of the volume of information to be cross-referenced, it does not seem disproportionate for the Commission to require the answers to be provided in a format that facilitates their comparison.

92 The first complaint must therefore be rejected.

93 In its second complaint, the applicant emphasises the disproportionality of the time-limits for replying of twelve weeks for the first ten sets of questions and two weeks for the eleventh set, in view of the volume of information to be supplied.

94 The Commission disputes the applicant's arguments. It points out that the applicant was given seventeen weeks, not twelve as initially provided, to reply to the first ten sets of questions.

95 As a preliminary point, the Court observes that although the applicant asked the Commission during the administrative procedure for an extension of the twelve-week time-limit for replying to the first ten sets of questions, it made no such request as regards the eleventh set, which is enough to prove that the time given to it was sufficient (see, to that effect and by analogy, Case T-338/94 *Finnboard* v *Commission* [1998] ECR II-1617, paragraph 54).

96 For the purpose of assessing the possible disproportionality of the burden entailed by the requirement to answer the first ten sets of questions within twelve weeks, account must be taken of the fact that the applicant, as addressee of a decision requesting information under Article 18(3) of Regulation No 1/2003, ran the risk not only of receiving a fine or periodic penalty payment if it supplied incomplete or belated information or if it failed to provide information, pursuant to Article 23(1)(b) and Article 24(1)(d) of Regulation No 1/2003, respectively, but also of receiving a fine if it supplied information which the Commission considered to be incorrect or 'misleading', pursuant to Article 23(1)(b) of that regulation.

97 It can be inferred from the above that the examination of the appropriateness of the time-limit fixed in a decision requesting information is particularly important. That time-limit must enable the addressee of the decision not only to provide its reply in practical terms, but also to ensure that the information supplied is complete, correct and not misleading.

98 As indicated in paragraph 88 above, it cannot be denied that the volume of information requested and the particularly strict format in which the answers had to be sent resulted in a particularly significant workload.

99 However, in view of the resources at the applicant's disposal associated with its economic weight, the Court finds that it could reasonably be considered to be in a position to provide a reply which met the requirements set out in paragraph 97 above within the stipulated time-limit which, moreover, was ultimately fixed at seventeen weeks.

100 The second complaint must therefore be rejected.

101 In its third complaint, the applicant emphasises the damage caused to it as a result of the workload entailed by replying to the questionnaire and points out that it asked to be exempted from the obligation to reply. Beyond the financial expense, the applicant's preparations also had the negative effect of mobilising and paralysing its administrative resources in particularly difficult economic circumstances for the cement sector and, specifically, for the applicant.

102 First, as regards the financial damage caused to the applicant as a result of replying to the questionnaire, it has been concluded — for the reasons set out in paragraphs 88 to 91 above — that the burden entailed by that action was not manifestly unreasonable having regard to the circumstances of the case. The potential scale of the financial expense incurred by replying is simply an indication of that burden. Therefore, notwithstanding how high it might turn out to be, that financial expense is not, in itself, capable of demonstrating that the principle of proportionality was infringed.

103 Second, as regards the claim that the applicant's administrative resources were paralysed, suffice it to note that this is a mere assertion not supported by any real evidence. Indeed, the only annex concerning this matter, Annex A 13, comprises a single table in which the applicant provides a breakdown of the costs it claims to have incurred as a result of its reply to the questionnaire and the number of hours spent on it. This annex does not, in itself, substantiate the applicant's assertion regarding the paralysis of its administrative resources.

104 The third complaint must therefore be rejected.

105 Lastly, in its fourth complaint, the applicant submits that the cumulative effect of the scope and level of detail of the information requested, the obligation to provide such information in a mandatory format, the nature of the information requested, the shortness of the time-limits for replying and the financial expense involved should, in any event, lead to Court to find that the principle of proportionality was infringed.

106 In the Court's view, that line of argument cannot succeed in the circumstances of the case.

107 As indicated in paragraph 102 above, the significant financial expense claimed by the applicant is simply an indication of the burden entailed by replying to the questionnaire. Since, first, the view has been taken that that burden was not manifestly unreasonable in the light of the putative infringements that the Commission intended to investigate and, second, the time-limit ultimately set enabled the applicant to deal with the burden, it necessarily follows that the claim that the principle of proportionality was infringed must be rejected.

108 In the light of the foregoing, the fourth limb of the plea in law must be rejected and, in consequence, the action must be dismissed in its entirety.

Costs

109 Under Article 87(2) 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. As the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission, including those incurred in the proceedings for interim relief.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. Dismisses the action;

2. Orders Cementos Portland Valderrivas, SA to pay the costs, including those incurred in the proceedings for interim relief.

Dittrich Wiszniewska-Białecka Prek

Delivered in open court in Luxembourg on 14 March 2014.

[Signatures]