



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 January 2017*

(Appeal — Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Coordination of selling prices and exchange of sensitive business information — Regulation (EC) No 1/2003 — Article 23(2) — Ceiling of 10% of turnover)

In Case C-618/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 26 November 2013,

Zucchetti Rubinetteria SpA, established in Gozzano (Italy), represented by M. Condinanzi, P. Ziotti and N. Vasile, avvocati,

appellant,

the other party to the proceedings being:

European Commission, represented by L. Malferrari and F. Ronkes Agerbeek, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, M. Berger, E. Levits, S. Rodin (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2015,

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

gives the following

* *Language of the case: Italian.

Judgment

- 1 By its appeal Zucchetti Rubinetteria SpA asks the Court of Justice to set aside the judgment of the General Court of the European Union of 16 September 2013, *Zucchetti Rubinetteria v Commission* (T-396/10, ‘the judgment under appeal’, EU:T:2013:446), by which the General Court dismissed its action for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom Fittings and Fixtures) (‘the decision at issue’) in so far as the decision concerns it and, in the alternative, for cancellation or reduction of the fine imposed on it by that decision.

Legal context

Regulation (EC) No 1/2003

- 2 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) provides, in Article 23(2) and (3):

‘2. The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

(a) they infringe Article [101] or [102 TFEU] ...

...

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

...

3. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.’

- 3 Article 31 of that regulation provides:

‘The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.’

The 2006 Guidelines

- 4 The Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; ‘the 2006 Guidelines’) state, in point 2, that, so far as concerns the setting of fines, ‘the Commission must have regard both to the gravity and to the duration of the infringement’ and that ‘the fine imposed may not exceed the limits specified in Article 23(2), second and third subparagraphs, of Regulation (EC) No 1/2003’.
- 5 Points 19, 21, 23, 29 and 37 of the 2006 Guidelines state:

‘19. The basic amount of the fine will be related to a proportion of the value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of infringement.

...

21. As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30% of the value of sales.

...

23. Horizontal price-fixing ... agreements ..., which are usually secret, are, by their very nature, among the most harmful restrictions of competition. As a matter of policy, they will be heavily fined. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale.

...

29. The basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as:

...

- where the undertaking provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market; ...

...

37. Although these Guidelines present the general methodology for the setting of fines, the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in point 21.'

Background to the dispute and the decision at issue

- 6 The background to the dispute was set out in paragraphs 1 to 11 of the judgment under appeal and may be summarised as follows.
- 7 The appellant is an Italian undertaking which manufactures and distributes exclusively taps and fittings.
- 8 By the decision at issue, the Commission found there to have been an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) in the bathroom fittings and fixtures sector. That infringement, in which 17 undertakings had allegedly participated, was said to have taken place over various periods between 16 October 1992 and 9 November 2004 and to have taken the form of anticompetitive agreements or concerted practices covering Belgium, Germany, France, Italy, the Netherlands and Austria.
- 9 More specifically, the Commission stated, in that decision, that the infringement found consisted in (i) the coordination by those bathroom fittings and fixtures manufacturers of annual price increases and additional pricing elements within the framework of regular meetings of national industry associations; (ii) the fixing or coordination of prices on the occasion of specific events such as the increase of raw material costs, the introduction of the euro and the introduction of road tolls; and (iii) the disclosure and exchange of sensitive business information. The Commission also found that price setting in the bathroom fittings and fixtures industry followed an annual cycle. In that context, the manufacturers set price lists which generally remained in force for a year and formed the basis for commercial relations with wholesalers.

- 10 The products covered by the decision at issue are bathroom fittings and fixtures belonging to the following three product subgroups: taps and fittings, shower enclosures and accessories, and ceramic sanitary ware (ceramics) ('the three product subgroups').
- 11 So far as concerns the anticompetitive practices alleged to have taken place, in particular, in Italy, they were said to have been implemented within the framework of two informal groups. The first, known as 'Euroitalia', was made up of undertakings, including the appellant, which met two to three times a year during the period between July 1992 and October 2004. Within that group, which had been formed when German manufacturers entered the Italian market, the exchange of information related not only to taps and fittings but also to ceramics. The second informal group of undertakings, known as 'Michelangelo', also included the appellant and met on several occasions between the end of 1995 or the start of 1996 and 25 July 2003. During those meetings, the discussions covered a wide range of bathroom products including, in particular, taps and fittings and ceramics.
- 12 As regards the appellant's participation in the meetings of those two informal groups, the Commission considered that, even though the appellant disputed the legal classification of the practices in question as a cartel, it nevertheless acknowledged that it had taken part in inappropriate discussions with competitors. Furthermore, irrespective of whether or not the appellant applied the price increases at issue, the Commission's view was that it had played an active role in organising meetings and participated in discussions during those meetings.
- 13 As regards the participation of the undertakings in question in the infringement found, the Commission considered that there was insufficient evidence to conclude that the appellant, and the other Italian undertakings which attended the Euroitalia and Michelangelo meetings, were aware of an overall plan.
- 14 The Commission therefore noted, in point 18 of Article 1(5) of the decision at issue that the appellant had participated in an infringement relating to bathroom fittings and fixtures in Italy between 16 October 1992 and 9 November 2004.
- 15 In Article 2(17) of the decision at issue, the Commission imposed a fine of EUR 3 996 000 on the appellant.
- 16 The Commission relied on the 2006 Guidelines in calculating that fine.

Proceedings before the General Court and the judgment under appeal

- 17 By application lodged at the Registry of the General Court on 8 September 2010, the appellant brought an action for annulment of the decision at issue in so far as it concerned it and, in the alternative, for reduction of the fine imposed on it.
- 18 In support of its action, the appellant relied on three pleas in law, alleging, first, that the Commission erred in determining the relevant market, secondly, that the Commission was incorrect in finding that the practices in question constituted an infringement of Article 101 TFEU, and thirdly, that the Commission committed errors and infringements in calculating the amount of the fine.
- 19 The General Court, in ruling, in the first place, on the head of claim seeking annulment of the decision at issue, in so far as it concerns the appellant, rejected those pleas in law, with the exception of part of the third plea in law concerning the Commission's reasoning relating to the application of multipliers for the 'gravity of the infringement' and the 'additional amount'. In that regard, the General Court held, in paragraph 119 of the judgment under appeal, that the Commission had made two errors of

assessment in basing the application of the multipliers for the ‘gravity of the infringement’ and the ‘additional amount’ of 15% on the fact that the appellant had participated in a single infringement covering six Member States and relating to the three product subgroups.

- 20 The General Court nevertheless considered, in paragraphs 138 to 140 of the judgment under appeal, that those errors of assessment did not give cause for annulment of the articles of the decision at issue at which the claim for partial annulment of that decision was directed.
- 21 Consequently, in paragraph 141 of the judgment under appeal, the General Court rejected that head of claim.
- 22 In the second place, the General Court also rejected, in paragraph 152 of the judgment under appeal, the alternative head of claim, which sought cancellation or reduction of the fine imposed on the appellant.
- 23 In that regard, the General Court, in the exercise of its unlimited jurisdiction, held that, notwithstanding the errors committed by the Commission, as identified in paragraph 119 of that judgment, the multipliers for the ‘gravity of the infringement’ and for the ‘additional amount’ of 15% were wholly justified in the light of all the relevant factors in the present case.
- 24 Accordingly, the General Court dismissed the action in its entirety.

Forms of order sought by the parties

- 25 The appellant claims that the Court should:
- set aside the judgment under appeal in so far as the General Court dismissed the action;
 - cancel or reduce the fine in the exercise of its unlimited jurisdiction, while giving a final judgment in the matter; and
 - order the Commission to pay the costs.
- 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 two grounds of appeal. The first ground of appeal alleges infringement of EU law in so far as concerns the calculation of the fine imposed on it. The second ground of appeal concerns the fact that the General Court did not take mitigating circumstances into account in calculating that fine.

The first ground of appeal

Arguments of the parties

- 28 By its first ground of appeal, concerning paragraphs 118, 120 to 124, 127 and 128 of the judgment under appeal, the appellant submits that the General Court infringed EU law when reviewing the calculation of the fine imposed on it, first, by assessing the gravity of the infringement in question incorrectly, and, secondly, by disregarding the *inter partes* nature of the proceedings and infringing the obligation to state reasons. In particular, the appellant claims that the General Court infringed Article 23(2) and (3) of Regulation No 1/2003 and the principles of personal responsibility, proportionality and equal treatment in the application of penalties relating to action against cartels.
- 29 The appellant maintains that the General Court, in paragraph 118 of the judgment under appeal, upheld the argument that the infringement in question, which covered six Member States and related to three product subgroups, cannot be regarded as being of the same gravity as an infringement committed in one Member State alone and relating to two product subgroups. Likewise, the General Court correctly recalled the scope of the principle of proportionality and that of the principle of equal treatment, in paragraphs 120, 127 and 128 of the judgment under appeal. Based on those statements, the General Court should, in the context of its unlimited jurisdiction, have reduced the fine imposed in order to take into account the fact that the appellant's participation in the alleged infringement was of lesser gravity. The General Court, having noted, in paragraph 119 of the judgment under appeal, that the Commission had made two errors of assessment in examining the multipliers for the 'gravity of the infringement' and the 'additional amount', confirmed the amount of the fine, which, in the appellant's view, is wholly illogical and at variance with the grounds of that judgment.
- 30 The appellant further maintains that such reasoning is contrary to the principles of proportionality and equal treatment and the principle that the penalty must be specific to the offender, in particular as regards the conduct of undertakings established outside Italy, to which the same multiplier of 15% was applied but which infringed the rules of competition law in the six Member States concerned and in respect of the three product subgroups.
- 31 The Commission contends, first of all, that the first ground of appeal is inadmissible on account of the fact that the appellant does not criticise the part of the judgment under appeal in which the General Court, in the exercise of its unlimited jurisdiction, recalculated the fine. That part is however the only relevant part for the purposes of the present appeal. Thus, the appellant has referred only to the paragraphs of that judgment which concern the review of legality alone. Moreover, the error of law that the General Court is alleged to have made in the exercise of its unlimited jurisdiction remains obscure. The appellant relies on the principles of proportionality, equal treatment and the principle that the penalty must be specific to the offender in a general and abstract way. In order to be admissible, the appeal should indicate precisely the legal arguments relied upon in support of the application to have the earlier judgment set aside. Furthermore, it follows from the case-law that it is not for the Court of Justice to take the place of the General Court and to rule, in the exercise of its unlimited jurisdiction, on the amount of the fine, unless that amount is not only inappropriate but also excessive to the point of being disproportionate.
- 32 As regards the substance of that ground of appeal, the Commission claims, in the alternative, that the General Court carried out a detailed analysis, in paragraphs 146 to 150 of the judgment under appeal, of all the reasons leading it to set the multiplier for the gravity of the infringement and the additional amount in the present case at 15%.
- 33 The Commission submits, in particular, that the multiplier of 15% is the minimum multiplier for the type of infringement in question. In that regard, it adds however, in essence, that, contrary to the view which the General Court seems to have taken, the gravity of such an infringement is not necessarily

different if the cartel relates two or three types of products or concerns six Member States rather than one, since it is a serious infringement in the light of the objective of Article 101 TFEU, which is also intended to protect competition as such. Furthermore, the Commission submits that the differences to which the General Court refers, in paragraph 114 of the judgment under appeal, between, first, the appellant, which participated in the infringement only in Italy and in respect of two of the three product subgroups, and, secondly, the other members of the cartel, which participated in that infringement in six Member States in respect of those three product subgroups, were already reflected in the different values relating to turnover, which constitute the basis of the calculation of the fines. Moreover, the appellant's role was not secondary. In that regard, its participation in the infringement in question went on for 12 years and factors such as Italy's population and gross domestic product (GDP) were duly taken into consideration in calculating the fine. Accordingly, the principle of equal treatment was not infringed.

- 34 In any event, the Commission submits that the appellant may not rely to its own advantage on a possible illegality, in the calculation of the fine, in favour of other participants in the cartel in question.

Findings of the Court

- 35 First of all, the objection of inadmissibility raised by the Commission must be rejected.
- 36 It is apparent from the pleadings that Zucchetti Rubinetteria claims, in essence, that the General Court disregarded the principles of proportionality and equal treatment and the principle that the penalty must be specific to the offender inasmuch as it did not reassess the fine after finding, in paragraph 119 of the judgment under appeal, that the Commission had made two errors of assessment in calculating the fine. Therefore, the appeal makes it possible to identify with sufficient clarity and precision the error of law by which the judgment under appeal is alleged to be vitiated.
- 37 The first ground of appeal is therefore admissible.
- 38 As regards the substance of the first ground of appeal, which alleges that the General Court infringed the principles of personal responsibility, proportionality and equal treatment in calculating the fine, it should be noted, first, that the principle of equal treatment is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. According to settled case-law, that principle requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified. Secondly, it is also settled case-law that, when the amount of the fine is determined, there cannot, by the application of different methods of calculation, be any discrimination between the undertakings which have participated in an agreement or a concerted practice contrary to Article 101(1) TFEU. Thirdly, the Court has repeatedly held that the Commission's practice in previous decisions does not itself serve as a legal framework for the fines imposed in competition matters and that decisions in other cases can give only an indication for the purpose of determining whether there is discrimination (see, to that effect, judgment of 11 July 2013, *Ziegler v Commission*, C-439/11 P, EU:C:2013:513, paragraphs 132 to 134).
- 39 Next, it is settled case-law that, in the first place, the supervisory task conferred on the Commission by Article 105(1) and Article 106 TFEU not only includes the duty to investigate and punish individual infringements but also encompasses the duty to pursue a general policy designed to apply, in competition matters, the principles laid down by the Treaties and to guide the conduct of undertakings in the light of those principles. That competition policy is characterised by a wide discretion on the part of the Commission, in particular as regards the determination of the amount of

finer (see, to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 170 and 172).

- 40 In the second place, for the purposes of determining the fine, regard must be had both to the gravity and to the duration of the infringement so that it is necessary to take account of the legislative background and economic context of the conduct to which exception is taken, the nature of the restrictions of competition, as well as the number and size of the undertakings concerned (see, to that effect, judgment of 16 December 1975, *Suiker Unie and Others v Commission*, 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, EU:C:1975:174, paragraph 612).
- 41 In the third place, it is necessary to take into account all the factors capable of affecting the assessment of the gravity of the infringement and the conduct of the undertaking during the administrative procedure (judgment of 11 January 1990, *Sandoz prodotti farmaceutici v Commission*, C-277/87, EU:C:1990:6, paragraph 27).
- 42 In the fourth place, in order to determine the gravity of an infringement, regard must be had to a large number of factors, the nature and importance of which vary according to the type of infringement in question and the particular circumstances of the case. Those factors may, depending on the circumstances, include the conduct of each of the undertakings, the role played by each of them in the establishment of the cartel, the volume and value of the goods in respect of which the infringement was committed and the size and economic power of the undertaking and, consequently, the influence which the undertaking was able to exert on the market (see, to that effect, judgments of 7 June 1983, *Musique Diffusion française and Others v Commission*, 100/80 to 103/80, EU:C:1983:158, paragraph 120; of 9 November 1983, *Nederlandsche Banden-Industrie-Michelin v Commission*, 322/81, EU:C:1983:313, paragraph 111; and of 11 July 2013, *Gosselin Group v Commission*, C-429/11 P, not published, EU:C:2013:463, paragraphs 89 and 90).
- 43 Finally, only inasmuch as the Court of Justice considers that the level of the penalty 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, due to the inappropriateness of the amount of a fine (judgment of 22 November 2012, *E.ON Energie v Commission*, C-89/11 P, EU:C:2012:738, paragraph 126).
- 44 In the present case, the General Court analysed, in paragraphs 145 to 150 of the judgment under appeal, the conclusions to be drawn from its finding, in paragraph 119 of that judgment, that the Commission erred in considering, in calculating the fine, that the appellant had participated in the alleged infringement in six Member States and as regards the three product subgroups and that the Commission made two errors of assessment in taking such participation as the basis for the application of the multipliers for ‘the gravity of the infringement’ and the ‘additional amount’ of 15%.
- 45 Accordingly, in paragraph 145 of the judgment under appeal, the General Court, first, noted that it would draw on the 2006 Guidelines in the exercise of its unlimited jurisdiction. Next, it recalled, in paragraph 146 of that judgment, that the multipliers applicable to the type of infringement in question are consistent with the principle of proportionality, on a scale of 0 to 30% in the case of the multiplier for the ‘gravity of the infringement’ and 15 to 25% in the case of the multiplier for the ‘additional amount’. Finally, the General Court held, in paragraph 147 of the judgment under appeal, which reproduces in essence the findings of paragraphs 118 and 128 of that judgment, that an infringement covering three product subgroups in six Member States is more serious, on account of its geographic scope and the number of product subgroups, than the infringement in which the appellant participated.
- 46 Furthermore, the General Court observed, in paragraph 148 of the judgment under appeal, that the fact that the undertakings which participated in the single infringement covering six Member States and three product subgroups should have received a fine calculated on the basis of higher multipliers for

the ‘gravity of the infringement’ and the ‘additional amount’ than those adopted to penalise the appellant cannot not justify the Court’s imposing, in the exercise of its unlimited jurisdiction, a fine on the appellant which is not a sufficient deterrent in the light of the gravity of the infringement in which it participated. The General Court therefore held, in paragraph 149 of that judgment, that the multipliers for the ‘gravity of the infringement’ and the ‘additional amount’ of 15% are appropriate in the light of the findings set out in paragraph 148 of that judgment and the 2006 Guidelines.

- 47 In that regard, it must be noted that, as the Commission in essence submits, there is an error of law in the grounds set out, inter alia, in paragraphs 118 and 128 and 147 and 148 of the judgment under appeal, which state that, first, an infringement covering three product subgroups in six Member States is more serious than the infringement in which the appellant participated, which was committed only on the territory of a single Member State and covered only two product subgroups, and, secondly, the undertakings that participated in the former infringement should, for that reason alone, be subject to a fine calculated on the basis of higher multipliers for the ‘gravity of the infringement’ and for the ‘additional amount’ than those applied to the appellant.
- 48 Although, in order to assess the gravity of an infringement and, subsequently, set the fine to be imposed, account may be taken, inter alia, of the geographic extent of that infringement and the number of products it covers, the mere fact that the geographic scope of one infringement is more extensive and that the infringement covers a greater number of products than that of another does not, in itself, necessarily mean that the first infringement, considered as a whole, and in particular in the light of its nature, must be classified as more serious than the second and as therefore justifying the setting of higher multipliers for the ‘gravity of the infringement’ and for the ‘additional amount’ than those used in calculating the fine for the second infringement (see, to that effect, judgment of 10 July 2014, *Telefónica and Telefónica de España v Commission*, C-295/12 P, EU:C:2014:2062, paragraph 178).
- 49 It should be borne in mind, however, that if the grounds of a decision of the General Court contain an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement is not one that should cause that decision to be set aside, and the grounds should be substituted (see, to that effect, judgments of 9 June 1992, *Lestelle v Commission*, C-30/91 P, EU:C:1992:252, paragraph 28, and of 9 September 2008, *FIAMM and Others v Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 187 and the case-law cited).
- 50 Accordingly, it is necessary to determine whether the error of law made by the General Court gives cause to set aside the judgment under appeal.
- 51 In that regard, it should be noted that the basic amount of the fine includes the amount reflecting the gravity of the infringement and the additional amount.
- 52 The amount reflecting the gravity of the infringement is determined in accordance with a percentage between 0 and 30% of the value of the relevant sales of the undertaking concerned in the final year of its participation in the cartel. Accordingly, that value is specific to each undertaking which participated in the infringement concerned.
- 53 As the Commission rightly noted in recital 1220 of the decision at issue, for the purposes of setting the multiplier for the ‘gravity of the infringement’, it is necessary to take into account, in particular, the nature of the infringement concerned.
- 54 As the General Court pointed out in paragraph 104 of the judgment under appeal, a cartel with the objective of coordinating prices is by its nature one of the most harmful restrictions of competition. Consequently, it may not be claimed that the Commission and the General Court made errors of law in setting, for such an infringement, a rate of 15% as the multiplier for the ‘gravity of the infringement’ and considering that rate to be consistent with the principle of proportionality.

- 55 Furthermore, as regards the multiplier for the ‘additional amount’, as the Commission noted in recitals 1224 and 1225 of the decision at issue, the multiplier of 15% is the minimum rate provided for in the 2006 Guidelines. Consequently, the rate set is the most favourable rate possible for the appellant in the light of the scale set by those guidelines.
- 56 Moreover, it follows from the Court’s case-law that the differentiation in the amounts of the fine, which the principle of equal treatment between undertakings requires, need not necessarily be undertaken in the context of setting the multipliers for the ‘gravity of the infringement’ and the ‘additional amount’, in view of the broad discretion enjoyed by the Commission in calculating the fine. The differences and circumstances particular to the undertakings concerned may, if need be, be taken into account at another stage in calculating the fine, such as in the context of adjusting the basic amount in the light of aggravating and mitigating circumstances under points 28 and 29 of the 2006 Guidelines (see, to that effect, judgments of 11 July 2013, *Gosselin Group v Commission*, C-429/11 P, not published, EU:C:2013:463, paragraphs 96 to 100, and of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraphs 104 and 105), or in the context of the value of sales taken into account in calculating the basic amount of the fine, inasmuch as that value reflects, for each participating undertaking, the extent of its participation in the infringement in question, in accordance with point 13 of the 2006 Guidelines.
- 57 As the Court has already held, that point pursues the objective of adopting as the starting point for the setting of the fine imposed on an undertaking, an amount which reflects the economic significance of the infringement and the size of the undertaking’s contribution to it (see judgment of 11 July 2013, *Team Relocations and Others v Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 76).
- 58 Consequently, since it is common ground that the basic amount of the fine imposed on the appellant was determined, as is apparent from recital 1219 of the decision at issue, on the basis of the value of sales made by the appellant in Italy, the General Court was entitled, in paragraph 149 of the judgment under appeal, without infringing the principle of equal treatment, to set, for the purposes of calculating the fine to be imposed on the appellant, the multipliers for the ‘gravity of the infringement’ and the ‘additional amount’ at a rate of 15%, equal to that applied to the undertakings which participated in the infringement covering the three product subgroups and six Member States.
- 59 Accordingly, it is necessary, by making a substitution of the grounds, to reject the argument that the General Court failed to draw any conclusions from the findings made in paragraph 119 of the judgment under appeal and infringed the principles of proportionality and equal treatment.
- 60 In the light of the foregoing considerations, the first ground of appeal must be rejected as unfounded.

The second ground of appeal

Arguments of the parties

- 61 By the second ground of appeal, the appellant claims, in essence, that the reasons given by the General Court for rejecting, in paragraph 150 of the judgment under appeal, its arguments challenging the Commission’s refusal to grant it, in accordance with point 29 of the 2006 Guidelines, a reduction in the fine on the ground that it played only a minor role in the infringement in question, are incorrect.
- 62 In that regard, the appellant submits that the General Court wrongly held that the appellant had not demonstrated that its role in the infringement in question was minor, given that the Commission had itself acknowledged in the decision at issue the central role played by certain other undertakings in the context of the unlawful practices found. Contrary to what the Commission and the General Court stated, the different or minor role played by the appellant and the different level of gravity of

participation in the infringement in question are not reflected in the value of sales of the products concerned which formed the basis of the calculation of the fine imposed on it, that value being the mere expression of a quantitative parameter which has nothing to do with the qualitative value of the conduct of the undertakings concerned.

- 63 Consequently, according to the appellant, inasmuch as the Commission and the General Court treated in the same way situations which were, in fact, completely different — given that its role in the collusion was not comparable with that played by the other undertakings responsible for the practices concerned — the principles of equal treatment and the personal nature of liability were clearly infringed.
- 64 According to the Commission, the second ground of appeal must be rejected as inadmissible or ineffective. That ground of appeal concerns only purely factual points and seeks only to obtain a reassessment of the facts. The appellant has in no way explained how, as it seems to maintain, the General Court distorted the facts. In any event, the second ground of appeal is too vague and imprecise to be admissible.
- 65 As regards, in the alternative, the substance of the second ground of appeal, the Commission submits that the General Court found, in paragraphs 133 to 140 and 150 of the judgment under appeal, after analysing the decision at issue, that the appellant could not benefit from any mitigating circumstance. Moreover, such circumstances are not taken into account automatically and the appellant did not adduce the evidence to make out its case that it played a passive or ‘follow-my-leader’ role in the cartel in question. In any event, it cannot be claimed that the appellant’s role was passive, given that it participated in the anticompetitive practices continuously and very assiduously and that, as established by the General Court in paragraph 52 et seq. of the judgment under appeal, the appellant benefited from information received by other participants in the cartel.
- 66 The Commission maintains, furthermore, that even if the appellant’s arguments were well founded, they would, in any case, be ineffective since, even if it had applied a multiplier of 14% to the appellant, the fine imposed on the latter would not have been reduced because the fine calculated by applying that coefficient would in any event have been above the threshold of 10% of the appellant’s turnover.

Findings of the Court

- 67 By the second ground of appeal, the appellant calls into question, in essence, the reasons given by the General Court for rejecting, in paragraph 150 of the judgment under appeal, its arguments challenging the Commission’s refusal to reduce the fine on the ground that it played a minor role in the infringement.
- 68 In that regard, it suffices to recall that, under the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court, consequently, has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence submitted to it. The appraisal of the facts and the assessment of the evidence do not therefore, save where the facts and evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, inter alia, order of 11 June 2015, *Faci v Commission*, C-291/14 P, not published, EU:C:2015:398, paragraph 31 and the case-law cited, and, to that effect, judgment of 21 January 2016, *Galp Energía España and Others v Commission*, C-603/13 P, EU:C:2016:38, paragraph 46 and the case-law cited). Such distortion must be obvious from the documents in the case, without it being necessary to undertake a fresh assessment of the facts and evidence (see, inter alia, order of 11 June 2015, *Faci v Commission*, C-291/14 P, not published, EU:C:2015:398, paragraph 32 and the case-law cited).

- 69 In the present case, whilst purporting to argue that the General Court disregarded the principles of equal treatment and the personal nature of responsibility, the appeal in fact asks the Court of Justice to re-examine elements of the case, in particular whether, as the General Court found in paragraph 150 of the judgment under appeal, the appellant participated actively in the implementation of the practices concerned.
- 70 Since the appellant has neither relied upon nor demonstrated an obvious distortion of the facts or evidence, the second ground of appeal is manifestly inadmissible.
- 71 Since none of the grounds of appeal raised by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

- 72 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.
- 73 Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) thereof, 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 Commission has applied for costs and the appellant has been unsuccessful, the latter must be ordered to pay the costs.

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

- 1. Dismisses the appeal;**
- 2. Orders Zucchetti Rubinetteria SpA to pay the costs.**

[Signatures]