Reports of Cases

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

13 December 2016*

(Competition — Agreements, decisions and concerted practices — European stock/catalogue and special printed envelopes market — Decision establishing an infringement of Article 101 TFEU — Coordination of sales prices and allocation of customers — Settlement procedure — Fines — Basic amount — Exceptional adjustment — Maximum of 10% of total turnover — Article 23(2) of Regulation (EC) No 1/2003 — Obligation to state reasons — Equal treatment))

In Case T-95/15,

Printeos, SA, established in Alcalá de Henares (Spain),

Tompla Sobre Exprés, SL, established in Alcalá de Henares,

Tompla Scandinavia AB, established in Stockholm (Sweden),

Tompla France SARL, established in Fleury-Mérogis (France),

Tompla Druckerzeugnisse Vertriebs GmbH, established in Leonberg (Germany),

represented by H. Brokelmann and P. Martínez-Lage Sobredo, lawyers,

applicants,

v

European Commission, represented by F. Castilla Contreras, F. Jimeno Fernández and C. Urraca Caviedes, acting as Agents,

defendant,

APPLICATION based on Article 263 TFEU seeking annulment in part of Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (AT.39780 — Envelopes) or, in the alternative, a reduction of the fine imposed on the applicants,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of M. Prek, President, I. Labucka, J. Schwarcz, V. Tomljenović and V. Kreuschitz (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

* Language of the case: Spanish.

having regard to the written procedure and further to the hearing on 4 July 2016,

gives the following

Judgment

Facts of the case

1 By Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (AT.39780 — Envelopes) ('the contested decision'), the European Commission found, inter alia, that the applicants, Printeos SA, Tompla Sobre Exprés SL, Tompla Scandinavia AB, Tompla France SARL and Tompla Druckerzeugnisse Vertriebs GmbH, had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) by participating, from 8 October 2003 to 22 April 2008, in an agreement concluded and implemented on the European stock/catalogue and special printed envelopes market covering, inter alia, Denmark, Germany, France, Sweden, the United Kingdom and Norway. The purpose of the agreement was to coordinate sale prices, allocate customers and exchange sensitive commercial information. In addition to the applicants, the Bong group ('Bong'), the GPV France SAS and Heritage Envelopes Ltd group ('GPV'), the Holdham SA group ('Hamelin') and the Mayer-Kuvert group ('Mayer-Kuvert'), to which the contested decision was similarly addressed, also participated in the cartel.

2 The contested decision was adopted in the context of a settlement procedure within the meaning of Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18) and the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ 2008 C 167, p. 1) ('the Settlement Notice').

3 Having regard to the infringement established (Article 1(5) of the contested decision), the Commission imposed on the applicants, jointly and severally, a fine of EUR 4 729 000 (Article 2(1)(e) of the contested decision).

4 The administrative procedure leading to the adoption of the contested decision was instigated by the Commission of its own initiative, on the basis of information and documents provided by an informant. On 14 September 2010, the Commission carried out inspections pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1) at the premises of the applicants and other companies involved in the cartel in Denmark, Spain, France and Sweden. On 1 October 2010 and 31 January 2011, further inspections took place in Germany (recital 16 of the contested decision).

5 On 22 October 2010, the applicants submitted to the Commission an application for leniency under the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17) (the 'Leniency Notice') (recital 17 of the contested decision) and a similar application to the Comisión Nacional de la Competencia, subsequently renamed the Comisión Nacional de los Mercados y la Competencia (National Competition Authority, Spain) ('the CNC').

6 On 15 March 2011, the CNC instigated a procedure to investigate whether, among others, Tompla Sobre Exprés, including its Spanish subsidiaries, had infringed Article 101 TFEU and the analogous Spanish competition rules, but only in so far as concerned the Spanish paper envelope market (Case S/0316/10, Sobres de papel (paper envelopes)). That procedure concluded with the adoption by the CNC on 25 March 2013 of a decision imposing on those companies a total fine of EUR 10 141 530,

on account of their participation on the Spanish market, between 1977 and 2010, in agreements to fix prices, to allocate tenders in procedures launched by the Spanish authorities in connection with the supply of pre-printed envelopes for elections and referendums at European, national and regional level, to allocate the supply of pre-printed envelopes for commercial use for major customers, to fix the price of plain envelopes and to limit technology.

7 As all the parties concerned expressed their willingness to take part in settlement discussions, on 10 December 2013 the Commission opened the procedure provided for in Article 10a of Regulation No 773/2004, under which it held bilateral meetings with each of the parties (recitals 19 and 20 of the contested decision).

8 At a meeting held on 21 January 2014, the Commission presented to the applicants an overview of the cartel, including its analysis of the evidence in its possession.

9 On 24 February 2014, the applicants submitted an informal 'non paper' document in which they asked the Commission to take into account, for the purposes of determining the fine, (i) the fine imposed by the CNC, on the ground that that fine was equivalent in itself to 10% of their total turnover in 2012, (ii) the fact that they formed a 'mono-product' group (that is, a group involved in the production of a single product) and (iii) paragraph 37 of 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 Guidelines'), which allows the Commission, in the light of the particularities of the case in question, to depart from the general methodology for setting the amount of fines or from the limits specified in paragraph 21 of the Guidelines.

10 Instead of a second meeting, with the applicants' agreement, by email of 17 June 2014, the Commission presented an overview of the essential criteria to be taken into consideration in determining the amount of the fine to be imposed, such as the value of the applicants' sales in 2007, namely EUR 143 316 000, their turnover in 2013, namely EUR [*confidential*],[1] the duration of their participation in the infringement, etc. The applicants replied by email of 18 June 2014, confirming the value of sales and turnover used by the Commission and stating that they did not have any substantive comments on the case overview.

11 At a meeting on 24 October 2014, the Commission informed the applicants of the methods and parameters for calculating the amount of the fine, namely: (i) the proportion (15%) of the sales value (EUR 143 316 000 in 2007) used to determine the basic amount of the fine; (ii) the duration of the applicants' involvement in the infringement (four years and six months); (iii) the additional amount of the 15%; (iv) the lack of any mitigating or aggravating circumstances; (v) the fact that a multiplication factor was not to be applied; (vi) the maximum authorised fine of EUR [*confidential*] (10% of the applicants' total turnover in 2013); (vii) a reduction of the amount of the fine by way of exception pursuant to paragraph 37 of the Guidelines, in view of the particular circumstances of the case, including the fact that the basic amount of the fine of all the parties participating in the cartel was above the 10% ceiling laid down in Article 23(2) of Regulation No 1/2003; (viii) an additional reduction on account of the 'mono-product' nature of the applicants' group; (ix) the fact that it was not possible to grant a reduction to reflect the existence of the fine imposed by the CNC, as the cartel investigated by the CNC was separate from that investigated by the Commission and had to be sanctioned independently and in accordance with the applicable rules, which are different from those applied by the Commission; (x) an envisaged reduction of 50% in line with paragraphs 24 and 25 of the Leniency Notice; (xi) an envisaged reduction of 10% in line with paragraph 32 of the Settlement Notice; and, finally, (xii) the potential range of the fine, from EUR 4 610 000 to EUR 4 848 000, and the fact that the applicants would be required to accept the maximum amount in their settlement submissions.

1 — Confidential data omitted

12 On 7 November 2014, the applicants submitted their settlement submissions, accepting the value of sales and turnover used by the Commission and the maximum amount of the fine.

13 The Commission adopted its statement of objections on 18 November 2014.

14 On 20 November 2014, the applicants confirmed, in accordance with paragraph 26 of the Settlement Notice, that the statement of objections corresponded to the contents of their settlement submissions and that they remained committed to following the settlement procedure.

15 As regards the calculation of the fines imposed, in the contested decision the Commission determined the basic amount of each of the undertakings concerned as summarised in the table below (recitals 71 to 84 of the contested decision):

Undertaking	Value of sales (EUR)	Coefficient for seriousness	Duration	Additional amount	Basic amount
Bong	140 000 000	15%	4.5	15%	115 500 000
… GPV	125 086 629	15%	4.5	15%	103 196 000
Hamelin	185 521 000	15%	4.416	15%	150 717 000
Mayer-Kuvert	70 023 181	15%	4.5	15%	57 769 000
Printeos …	143 316 000	15%	4.5	15%	118 235 000

16 Moreover, in recitals 85 to 87 of the contested decision, the Commission stated that it was not necessary to adjust the basic amounts under paragraphs 28 and 29 of the Guidelines, with the exception of Mayer-Kuvert, to which a 10% reduction was to be applied on account of its limited involvement in the infringement.

17 Under the heading ‘Adaptation of the basic amounts’, the Commission stated that, as most of the parties’ sales were generated on a single market on which they had participated in a cartel for several years, in practice, all the fines could reach the maximum of 10% of total turnover, and that the application of that limit would be the rule rather than the exception (recital 88 of the contested decision). In that regard, the Commission referred to the case-law of the General Court to the effect that such an approach could raise possible concerns in view of the principle that penalties must be specific to the offence and the offender, as it could lead, in certain circumstances, to a situation where any distinction on the basis of gravity or mitigating circumstances would no longer have any impact on the amount of the fine (judgment of 16 June 2011, *Putters International* v *Commission*, T-211/08, EU:T:2011:289, paragraph 75). In view of the specific circumstances of the present case, the Commission deemed it appropriate to exercise its discretion and to apply paragraph 37 of the Guidelines, which allows it to depart from the methodology set out in the Guidelines (recitals 89 and 90 of the contested decision).

18 Recitals 91 and 92 of the contested decision are worded as follows:

‘(91) In this case, the basic amount is adapted in a way that takes into account the proportion that the value of sales of the cartelised product represents of the total turnover, as well as differences between the parties in view of their individual participation in the infringement. Overall, the fines will be set at a level that is proportionate to the infringement and achieves a sufficiently deterrent effect.

(92) As a result, a reduction will be applied to the calculated fine of all parties. In the specific circumstances of the case, and in view of the fact that all parties were dealing to a different but important extent in stock/catalogue and special printed envelopes, it is proposed to apply a

decrease of [*confidential*] % of the fine to be imposed for the infringement of GPV, of [*confidential*] % for Tompla, of [*confidential*] % for Bong and Mayer-Kuvert and of [*confidential*] % for Hamelin.'

19 The result of that adjustment of the basic amounts may be summarised as follows (see also the table in recital 93 of the contested decision):

Undertaking	Basic amount before adjustment (EUR)	Reduction %	Basic amount after adjustment (EUR)
Bong	115 500 500	*[confidential]*	*[confidential]*
GPV	103 196 000	*[confidential]*	*[confidential]*
Hamelin	150 717 000	*[confidential]*	*[confidential]*
Mayer-Kuvert	57 769 000	*[confidential]*	*[confidential]*
Printeos	118 235 000	*[confidential]*	*[confidential]*

20 Furthermore, the Commission reduced the applicants' fine by an additional 50% on the basis of the Leniency Notice and an additional 10% pursuant to paragraph 32 of the Settlement Notice (recitals 99, 102 and 103 of the contested decision). In accordance with the relevant corresponding rules, the fines to be imposed on both Hamelin and Mayer-Kuvert were reduced by 25% and 10%, respectively, (leniency) and 10% (settlement) (recitals 100 to 103 of the contested decision).

21 Lastly, it is apparent from recitals 104 to 108 of the contested decision, which come under the heading 'Ability to pay', that, following requests supported by evidence submitted by [*confidential*] and [*confidential*], the Commission, pursuant to paragraph 35 of the Guidelines, reduced their fines to EUR [*confidential*] and EUR [*confidential*], respectively. The applicants neither submitted such a request to the Commission nor obtained a reduction under paragraph 35.

Procedure and forms of order sought by the parties

22 By application lodged at the Court Registry on 20 February 2015, the applicants brought the present action.

23 On a proposal from the Fourth Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

24 On a proposal from the Judge-Rapporteur, the Court (Fourth Chamber, Extended Composition) decided to open the oral part of the procedure and, by way of measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, put a number of written questions to the parties concerning the confidential treatment vis-à-vis the public of certain figures included in the Report for the Hearing. The parties answered those questions within the period prescribed.

25 The parties presented oral argument and replied to the Court's oral questions at the hearing on 4 July 2016.

26 The applicants claim that the Court should:

— annul Article 2(1)(e) of the contested decision;

— in the alternative, first, set the amount of the fine imposed on them to a level at least 55% below the 10% maximum laid down in Article 23(2) of Regulation No 1/2003, or, failing which, to a percentage level which the Court deems appropriate for the purpose of ensuring that the fine is commensurate with fines imposed on Bong and Hamelin, and, second, reduce that amount further by at least 33% or, failing which, to a percentage level which the Court deems appropriate for the purpose of taking into account the fine imposed by the CNC in its decision of 25 March 2013;

— order the Commission to pay the costs.

27 The Commission contends that the Court should:

— dismiss the third plea in law as inadmissible;

— in any event, dismiss the action as unfounded in its entirety;

— in any event, order the applicants to bear the costs.

Law

Subject matter of the application and summary of the pleas in law

28 The applicants claim that they dispute neither their involvement in the infringement referred to in Article 1 of the contested decision, nor the facts pertaining to the infringement, nor the legal classification of those facts. They simply seek annulment of Article 2(1)(e) of the contested decision in so far as it imposed a fine on them, the amount of which, as determined before the reductions made under the Leniency Notice and the Settlement Notice were applied, is disputed.

29 By their first plea in law, the applicants claim that the Commission failed to have regard to its duty to state reasons in so far as concerns the adjustment of the basic amount of the fine pursuant to paragraph 37 of the Guidelines and the actual percentage reduction applied to each undertaking. The applicants also maintain in the reply that the Commission misused its powers.

30 By their second plea in law, the applicants allege infringement of the principle of equal treatment, to their detriment, in connection with the exceptional adjustment of the basic amount of the fines under paragraph 37 of the Guidelines.

31 By their third plea in law, the applicants submit that the Commission failed to have regard to the principles of proportionality and non-discrimination when determining the amount of the fine and failing to take into account the fine imposed on them by the CNC.

The first plea in law, alleging failure to have regard to the duty to state reasons in so far as concerns the adjustment of the basic amount of the fine pursuant to paragraph 37 of the Guidelines and the actual percentage reduction applied to each undertaking, and misuse of powers

Arguments of the parties

32 According to the applicants, recitals 88 to 92 of the contested decision do not identify, to the requisite legal standard, the specific reasons which led the Commission to adjust, by way of exception pursuant to paragraph 37 of the Guidelines, the basic amount of the fines imposed on the undertakings concerned, and to apply to those amounts, in that context, different rates of reduction, namely 85%, 88%, 90% and 98%, respectively. In particular, it is not possible to understand why the Commission

granted an [*confidential*]% reduction to Hamelin. That failure to state adequate reasons is all the more serious and, conversely, the duty to state reasons all the more important because, in the present case, the Commission departed from the general methodology applied for the determination of fines under the Guidelines. In the reply, the applicants state, in essence, that the Commission explained the actual reasons for that adjustment of the basic amount of the fines for the first time in the defence. However, that belated explanation cannot remedy the failure to state reasons vitiating the contested decision and demonstrates that, in making that adjustment, the Commission also misused its powers. Thus, in paragraphs 28, 64 and 65 of the defence, the Commission argued that, even though Hamelin was not 'a mono-product undertaking, the basic amount to be applied to it also had to be adjusted, pursuant to paragraph 37 of the Guidelines, and following the same method, on equitable grounds, in order to reflect its involvement in the infringement and to redress the balance as regards the fines imposed on the various undertakings after the adjustments indicated'. The explanation that the fine imposed on Hamelin was in fact reduced on equitable grounds, not on account of the fact that Hamelin was not a 'mono-product' undertaking, does not emerge from recital 92 of the contested decision.

33 The Commission disputes the applicants' arguments and contends that the first plea should be rejected.

34 As regards the calculation of the fines, in particular the basic amounts as determined in the contested decision, the Commission states that there are exceptional circumstances in the present case on account of the 'mono-product' nature of the undertakings concerned, with the exception of Hamelin, a matter that was given due consideration in recitals 88 to 95 of the contested decision. According to the Commission, as the basic amount of the fines exceeded the ceiling of 10% of total turnover, there was 'a risk that the fine might be imposed only on the basis of total turnover and would not reflect the gravity and duration of the infringement or the particular circumstance of the case'. In other words, as explained in recital 89 of that decision, in view of the volume of total turnover, the application of the coefficient for seriousness and of the multiplier would have had 'not practical effect on the calculation of the fine'. The Commission bore in mind the fact that, in the present case, if it took those circumstances into account, that would not have the effect of reducing the final amount of the fine. Accordingly, if account had been taken of the mitigating circumstance that Mayer-Kuvert's involvement in the infringement was limited (see recital 87 of the contested decision), that would have had no effect on the final amount of the fine, as the reduction would have been applied before the application of the 10% ceiling. In the rejoinder, the Commission states that, before adjustment of the basic amounts, the relevant figures for the undertakings concerned would have exceed the ceiling as follows: 38.98% for Bong, 441.83% for GPV, 30.04% for Hamelin, 36.71% for Mayer-Kuvert and 97.13% for the applicants.

35 The Commission therefore applied to each undertaking the reduction necessary to ensure that the basic amount of the fine was below the ceiling of 10% of total turnover in 2013. For that purpose, the basic amount was reduced proportionately in line with the 'mono-product' status of the undertakings. With regard to Hamelin, the Commission took the view that, 'even though it is not a mono-product undertaking, the basic amount to be applied to it should also be adjusted pursuant to paragraph 37 of the Guidelines and in accordance with the same method on grounds of equity, in order to reflect its involvement in the infringement and redress the balance as regards the fines imposed on the various undertakings after the adjustments indicated'. The Commission did not apply the reduction on a linear basis but, mindful of the 10% ceiling, ensured that the resulting fine had a sufficiently deterrent effect, having regard to the gravity and duration of the infringement. Following the method described in recital 91 of the contested decision, it therefore applied the following reductions to the basic amounts: [*confidential*]% for Bong, [*confidential*]% for GPV, [*confidential*]% ('equity') for Hamelin, [*confidential*]% for Mayer-Kuvert and [*confidential*]% for the applicants.

36 According to the Commission, the Court must confine itself to examining whether it complied with its duty to state reasons in relation to the applicants alone, not the other undertakings concerned, which have not brought proceedings before the Court and for which the reasons given in the contested

decision are now definitive. Accordingly, the applicants cannot rely in the present case on their claim that the reasons given concerning the reduction of the fine imposed on the other undertakings to which the contested decision was addressed are insufficient. Those reasons are, in any event, sufficient as they enabled the applicants to ascertain the reasons for the adjustment of the fine imposed on them — reasons with which they were already familiar as they had requested the reduction — and enabled the Court to exercise its powers of review.

37 According to the Commission given that the contested decision was adopted at the conclusion of a settlement procedure in the course of which the parties were informed, in bilateral discussions, of all the relevant factors, including the alleged facts, the legal classification of those factors, the gravity and duration of the infringement, the attribution of liability and an estimate of the likely ranges of fines, it was possible for the statement of reasons in the contested decision to be much more succinct than that in other decisions adopted under Articles 7 and 23 of Regulation No 1/2003. Thus, in the present case, the bilateral discussions between the Commission and the applicants enabled the latter to ascertain each of those factors and the method envisaged for calculating the fines, so that they were free to decide whether or not to put forward settlement submissions. In those circumstances, the reasons given in the contested decision were amply sufficient.

38 The Commission contends that the contested decision explained in detail the factors taken into account in determining the gravity and duration of the infringement and in calculating the basic amount of the fines. Thus, in recitals 72 to 84 of the contested decision, an explanation is given of the method used to calculate the basic amount, which the applicants do not take issue with. That explanation also provides other details, such as the sales volume of the undertakings concerned, which was taken into account in calculating the basic amount of the fines (see Table 1 in recital 75), the various multipliers in respect of duration (see Table 2 in recital 81) and the various basic amounts before and after adjustment (see Tables 3 and 4 in recitals 84 and 93). According to the Commission, the requirement to state reasons was therefore complied with in so far as concerns the factors enabling the gravity and duration of the infringement to be measured.

39 Furthermore, at the meeting of 24 October 2014, the Commission provided the applicants with a detailed description of the method of calculating the amount of the fine contemplated in their regard, including the value of sales used to calculate the basic amount, the duration of their involvement in the infringement, the additional amount included for deterrence purposes (multiplier), the lack of any aggravating or mitigating circumstances, the reductions made pursuant to the Settlement and Leniency Notices and the reduction made on the basis of paragraph 37 of the Guidelines. The applicants understood those explanations perfectly and expressly accepted, in their settlement submissions, the maximum amount of the fine that may be imposed on them in line with the range proposed.

40 With regard to the reduction of the basic amount pursuant to paragraph 37 of the Guidelines, the Commission maintains that recitals 88 to 92 of the contested decision explain, to the requisite legal standard, the reasons why it considered it necessary to adjust the basic amounts. The particular circumstances of the case which led to the adjustment contemplated for the applicants had already been examined at the meeting of 24 October 2014, namely before their settlement submissions had been presented, the statement of objections sent and the contested decision adopted. At that meeting, the Commission explained that the basic amounts calculated for all the undertakings exceeded the 10% ceiling because of a combination of factors, such as the value of the percentage volume of sales affected by the infringement, the lengthy duration of the cartel and the ‘mono-product’ ratio of the undertakings (calculated as the ratio of the total value of sales of envelopes to the total sales volume of the undertaking concerned). Lastly, while it is true that, at the meeting of 24 October 2014, there was some confusion as to the effect of the reduction based on the ‘mono-product’ ratio on the final amount of the fine, that confusion was cleared up in the course of that meeting, following which the applicants presented the settlement submissions.

41 The Commission adds that it was the applicants themselves that requested it, in the 'non paper' document of 24 February 2014 (see paragraph 9 above), to grant a reduction of the fine pursuant to paragraph 37 of the Guidelines. The applicants explained that, as their group is a 'mono-product' group, limiting the duration of the infringement would have no effect on the amount of the fine to be imposed on them. Given that the sale of envelopes generated more than 90% of their total sales volume, the imposition of an additional amount of more than 10% for deterrence purposes would result in a fine exceeding the maximum amount of 10% of total turnover laid down in Article 23(2) of Regulation No 1/2003. In the light of the matters outlined above, in particular the similar line of reasoning set out in recital 91 of the contested decision, the Commission concludes that, in the present case, there was no need to provide a more detailed statement of reasons.

42 As regards the specific rates of reduction granted to each of the undertakings concerned, the Commission refers to recitals 91 and 92 of the contested decision, which explained the factors that it took into account in determining those rates, and to recital 87, which explains that Mayer-Kuvert had a different role and was less involved in the infringement. Tables 3 and 4, in recitals 84 and 93 of the contested decision, thus set out the basic amounts for each undertaking, before and after adjustment, and it was possible, by means of a simple arithmetical calculation, to work out the exact amount of the adjustment made to each fine. As regards the applicants, the adjustment rate applied to reflect their 'mono-product' status, which they specifically requested, was [*confidential*]%. Moreover, case-law does not impose a requirement to provide an arithmetical calculation or to specify all the factors leading to the setting of an exact amount for the fine. In the rejoinder, the Commission stated, with regard to the reduction granted to Hamelin 'on grounds of equity', that that reduction was justified by the need to take into account the particular circumstances of the present case, as indicated in recital 90 of the contested decision.

Findings of the Court

43 By their first plea in law, the applicants claim, in essence, that recitals 88 to 92 of the contested decision are vitiated by failure to state adequate reasons. According to the applicants, those recitals do not specify, to the requisite legal standard, the reasons which led the Commission to adjust, as an exceptional measure pursuant to paragraph 37 of the Guidelines, the basic amount of the fines imposed on the undertakings concerned, and to apply to them, in that context, different rates of reduction and to grant, in particular, an [*confidential*]% reduction to Hamelin. It is also alleged that such an approach amounts to an abuse of power. In particular, the Commission put forward for the first time in the course of the proceedings the argument that Hamelin was not a 'mono-product' undertaking and that the adjustment of the basic amount of the fine imposed on Hamelin, in accordance with paragraph 37 of the Guidelines, was justified, inter alia, on equitable grounds, which is not apparent from recital 92 of the contested decision.

44 It is established case-law that the obligation to state reasons laid down in the second paragraph of Article 296 TFEU is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure. From that point of view, the statement of reasons required must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. As regards, in particular, the reasons given for individual decisions, the purpose of the obligation to state the reasons on which such a decision is based is, therefore, in addition to permitting review by the Courts, to provide the person concerned with sufficient information to know whether the decision may be vitiated by an error enabling its validity to be challenged (see judgments of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraphs 146 to 148 and the case-law cited; of

11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraphs 114 and 115 and the case-law cited; and of 5 December 2013, *Solvay* v *Commission*, C-455/11 P, not published, EU:C:2013:796, paragraphs 89 and 90 and the case-law cited).

45 Moreover, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgments of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 150; of 11 July 2013, *Ziegler* v *Commission*, C439/11 P, EU:C:2013:513, paragraph 116; and of 5 December 2013, *Solvay* v *Commission*, C-455/11 P, not published, EU:C:2013:796, paragraph 91).

46 It is also settled case-law that the statement of reasons must, therefore, in principle be notified to the person concerned at the same time as the decision adversely affecting him. A failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the decision during the proceedings before the EU courts (judgments of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 149, and of 19 July 2012, *Alliance One International and Standard Commercial Tobacco* v *Commission*, C-628/10 P and C-14/11 P, EU:C:2012:479, paragraph 74).

47 Contrary to what is claimed by the Commission, in the light of the requirements laid down in Article 47 of the Charter of Fundamental Rights of the European Union, in conjunction with Article 263 TFEU on the one hand, and Article 31 of Regulation No 1/2003 on the other (see, to that effect, judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraphs 52 to 67), as referred to in paragraph 41 of the Settlement Notice, those principles are applicable *mutatis mutandis* to the obligation the Commission is under, by virtue of the second paragraph of Article 296 TFEU, to state the reasons for the decision imposing fines which it adopts at the conclusion of a settlement procedure, in which it is assumed that the undertaking concerned accepts only the maxim amount of the fine proposed. Indeed, it is in the light of the provisions of primary and secondary law referred to above that the Court of Justice has emphasised the special importance attached to the Commission's duty to state the reasons for its decisions imposing fines in competition cases and, in particular, to explain the weighting and assessment of the various factors taken into account in determining the amount of fines, and to the court's duty to verify of its own motion whether such reasons have been given (see, to that effect, judgment of 8 December 2011, *Chalkor* v *Commission*, C 386/10 P, EU:C:2011:815, paragraph 61).

48 When the Commission decides to depart from the general methodology set out in the Guidelines, by which it limited the discretion it may itself exercise in setting the amount of fines, and relies, as in the present case, on paragraph 37 of the Guidelines, the requirements relating to the duty to state reasons must be complied with all the more rigorously. In that regard, it is appropriate to refer to the settled case-law to the effect that the Guidelines lay down a rule of conduct indicating the approach to be adopted from which the Commission cannot depart, in an individual case, without giving reasons which are compatible with, inter alia, the principle of equal treatment (see, to that effect, judgments of 30 May 2013, *Quinn Barlo and Others* v *Commission*, C-70/12 P, not published, EU:C:2013:351, paragraph 53, and of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 60 and the case-law cited). Those reasons must be all the more specific because paragraph 37 of the Guidelines simply makes a vague reference to 'the particularities of a given case' and thus leaves the Commission a broad discretion where it decides, as in the present case, to make an exceptional adjustment of basic amount of the fines to be imposed on the undertakings concerned. In such a case, the Commission's respect for the rights guaranteed by the EU legal order in administrative procedures,

including the obligation to state reasons, is of even more fundamental importance (see, to that effect, judgment of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14).

49 It follows that the Commission was required in the present case to explain with sufficient clarity and precision the way in which it intended to use its discretion, including the various facts and points of law it had taken into consideration for that purpose. In particular, in the light of the obligation it is under to have due regard for the principle of equal treatment when determining the amount of fines — which, according to the applicants, it failed to do, to their detriment (as submitted in their second plea in law) — the duty to state reasons encompasses all the relevant factors necessary for determining whether or not the undertakings concerned, for which the basic amount of the fine was adjusted, were in a comparable situation, whether the situations of those undertakings were treated in the same way or differently and whether any equal or different treatment of those situations was objectively justified (see judgment of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraphs 51 and 62 and the case-law cited).

50 In order to determine whether the Commission had due regard for its duty to state the reasons for the contested decision, it is appropriate to recall the various stages of the calculations made in establishing and adjusting, pursuant to Article 37 of the Guidelines, the basic amount of the fines imposed on the undertakings concerned. The reasons given in that connection in the contested decision may be summarised as follows:

Undertaking	Value of sales (EUR) in 2007	Coefficient for seriousness	Duration (years)	Additional amount	Basic amount (EUR)	Adjustment / Reduction	Adjusted basic amount
Bong	140 000 000	15%	4.5	15%	115 500 000	*[confidential]%*	*[confidential]*
… GPV	125 086 629	15%	4.5	15%	103 196 000	*[confidential]%*	*[confidential]*
Hamelin	185 521 000	15%	4.416	15%	150 717 000	*[confidential]%*	*[confidential]*
Mayer-Kuvert	70 023 181	15%	4.5	15%	57 769 000	*[confidential]%*	*[confidential]*
Printeos …	143 316 000	15%	4.5	15%	118 235 000	*[confidential]%*	*[confidential]*

51 It should also be noted, first, that the Commission stated in recitals 88 and 89 of the contested decision, in essence, that the sales of most of the undertakings involved were generated on a single market. so that, in practice, all the fines could reach the maximum of 10% of total turnover laid down in Article 23(2) of Regulation No 1/2003, that the application of that maximum figure was the rule rather than the exception and that any distinction on the basis of the gravity of the infringement or mitigating circumstances was unlikely to have an impact on the fines (see, to that effect, judgment of 16 June 2011, *Putters International* v *Commission*, T-211/08, EU:T:2011:289, paragraph 75). Second, in recitals 90 to 92 of the contested decision, the Commission justified the application of paragraph 37 of the Guidelines and the adjustment of the basic amount of the fines for 'all the parties' by referring, inter alia, to 'the proportion that the value of sales of the cartelised product represent of the total turnover, as well as [to] differences between the parties in view of their individual participation in the infringement', and to the fact that 'all the parties were dealing to a different but important extent in [the sale of] envelopes'. The Commission therefore proposed, in view of the specific circumstances of the case and the fact that 'all the parties were dealing to a different but important extent in

stock/catalogue and special printed envelopes … to apply a decrease of [*confidential*]% of the fine to be imposed for the infringement of GPV, of [*confidential*]% for [the applicants], of [*confidential*]% for Bong and Mayer-Kuvert and of [*confidential*]% for Hamelin'.

52 In the first place, it is nevertheless clear, as the applicants claim, that in the contested decision, in particular recital 92 thereof, the Commission does not explain why it applied those different rates of reduction to the undertakings concerned. In particular, the variation in those rates of reduction cannot be explained by the simple fact that the Commission intended to reduce all the basic amounts, already at the intermediate stage of calculating the fines, to a percentage figure within the maximum of 10% of total turnover, for the purpose of Article 23(2) of Regulation No 1/2003, of each of those undertakings, in keeping with the spirit of paragraph 75 of the judgment of 16 June 2011, *Putters International* v *Commission* (T-211/08, EU:T:2011:289). As the applicants are correct to submit in the second plea in law, those adjusted basic amounts disclose clear discrepancies, in terms of percentage, as regards the 10% maximum limit, namely, 4.5% and 4.7% in the case of Hamelin and Bong, respectively, and 9.7% in the case of the applicants.

53 There is no justification for the Commission's claim that the applicants were notified, to the requisite legal standard, of the approach it envisaged adopting during the administrative procedure, or that they were aware of its context — a claim that is not supported by the documents before the Court. In reply to an oral question put by the Court on this point at the hearing, the Commission acknowledged that the reasons given in that connection in the contested decision were perfunctory and succinct and, in essence, simply argued that, in such a settlement procedure, it was under a less onerous duty to state reasons as the parties were familiar with the contents of the case-file, including the evidence which the Commission intended to take into account, and freely engaged in bilateral discussions with a view to reaching a settlement. Moreover, with regard to the application of different rates of reduction, as referred to in recital 92 of the contested decision, the Court reminded the parties of its duty to examine, if necessary of its own motion, whether the reasons given were adequate for the purposes of the second paragraph of Article 296 TFEU, formal note of which was taken in the minutes of the hearing.

54 In the second place, recital 92 of the contested decision clearly omits to state what the Commission explained belatedly — and in a way that could not remedy the inadequacy of its reasoning or total failure to state reasons (see the case-law cited in paragraph 46 above) — only in the course of the proceedings, by providing substantive additional reasons, namely that, unlike the other undertakings involved, Hamelin's business concerned the production of more than just one product and the adjustment of the basic amount for that company was justified, in any event, on equitable grounds and the need to redress the balance between the various fines (see paragraphs 34 and 35 above). Accordingly, in the light of those further explanations, contrary to the impression that might be given by recital 91 of the contested decision, the decisive factor in the Commission's appraisal when adjusting the basic amounts was not the fact that there were 'differences between the parties in view of their individual participation in the infringement', which, in the case of Hamelin, was only slightly less, as it participated in the infringement for a period of 4.416 years, as opposed to 4.5 years in the case of the other undertakings concerned. Furthermore, contrary to what the applicants would appear to have understood, that recital cannot be construed as referring to the lesser degree of participation in the infringement by Mayer-Kuvert alone, as that had already given rise to a 10% reduction for mitigating circumstances, for the purpose of paragraph 29 of the Guidelines (recitals 85 and 87 of the contested decision), that is, before the contested adjustments were made to the basic amounts, as set out in recitals 88 et seq. of the contested decision.

55 It follows that, on the basis of the reasons given in the contested decision, the applicants were not in a position effectively to dispute the merits of the Commission's approach in the light of the principle of equal treatment, and the Court would not have been able fully to exercise its powers of judicial review with regard to whether that principle had been complied with (see the second plea in law). In particular, having regard to recitals 91 and 92 of the contested decision, it is not possible to

understand or assess whether Hamelin and the other undertakings concerned were in comparable or different situations or whether the Commission treated them equally or differently. On that basis, it is therefore even less possible to ascertain whether equal treatment of the different situations of the undertakings concerned, pursuant to paragraph 37 of the Guidelines, essentially on the ground of the 'mono-product' nature of their business and, in part, on equitable grounds, or different treatment of comparable situations, including the application of different rates of reduction, were objectively justified. The perfunctory statement of reasons given in recital 92 of the contested decision is capable of giving the misleading impression that the main reason for the horizontal adjustment of the basic amounts for the undertakings concerned was the fact that they were all in situations that were, at the very least, comparable, on account of the 'mono-product' nature of their businesses. That was not the case with Hamelin, as the Commission acknowledged in the course of the proceedings.

56 In view of the fact that paragraph 84 of the statement of objections contained information that was even more vague as to the method envisaged for adjusting the basic amounts and the justifications for so doing, the Commission is not entitled to claim that the applicants received sufficient information in that regard during the administrative procedure or that they had sufficient knowledge of the relevant context. In any event, there is no other evidence before the Court which might establish that that was nonetheless the case and the Commission cannot substantiate the claim that it communicated that information to the applicants, in particular at the meeting of 24 October 2014.

57 In the light of the foregoing considerations, it must be concluded that the contested decision is vitiated by failure to state adequate reasons and it is therefore necessary to uphold the first plea in law in so far as it alleges infringement of the duty to state reasons for the purpose of the second paragraph of Article 296 TFEU.

58 As a consequence, it is necessary to annul Article 2(1)(e) of the contested decision. There is no need to rule on the complaint alleging misuse of power or the second and third pleas, including the question of the admissibility of the third plea. Furthermore, there is no need to rule on the second head of claim, put forward in the alternative.

Costs

59 Pursuant to Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. As the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Annuls Article 2(1)(e) of Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (AT.39780 — Envelopes).**

2. **Orders the European Commission to pay the costs.**

Prek Labucka Schwarcz

Tomljenović Kreuschitz

Delivered in open court in Luxembourg on 13 December 2016.

[Signatures]