JUDGMENT OF THE GENERAL COURT (First Chamber)

3 July 2018 (*)

(Competition — Agreements, decisions and concerted practices — French bathroom fittings and fixtures market — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Participation of certain entities in a cartel — Reassessment of the evidence)

In Joined Cases T-379/10 RENV and T-381/10 RENV,

Keramag Keramische Werke GmbH, formerly Keramag Keramische Werke AG, established in Ratingen (Germany), and the other applicants whose names are set out in the annex, (1)

applicants in Case T-379/10 RENV,

Sanitec Europe Oy, established in Helsinki (Finland),

applicant in Case T-381/10 RENV,

represented by P. Lindfelt and K. Struckmann, lawyers, and J. Killick, Barrister,

v

European Commission, represented by F. Castillo de la Torre, F. Ronkes Agerbeek and J. Norris-Usher, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for, first, annulment in part 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), and, secondly, reduction of the fine imposed on the applicants in that decision,

THE GENERAL COURT (First Chamber),

composed of I. Pelikánová (Rapporteur), President, P. Nihoul and J. Svenningsen, Judges,

Registrar: K. Guzdek, Administrator,

having regard to the written part of the procedure and further to the hearing on 27 February 2018,

gives the following

Judgment

Background to the dispute and the contested decision

1 By 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 contested decision’), the European Commission found that there had been an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area (EEA) 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 the territory of Belgium, Germany, France, Italy, the Netherlands and Austria.

2 On 15 July 2004, the Commission was informed of the existence of a cartel in the bathroom fittings and fixtures sector, in the course of an application under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

3 On 9 and 10 November 2004, the Commission conducted unannounced inspections at the premises of various companies and industry associations operating in the bathroom fittings and fixtures sector. Between 15 November 2005 and 16 May 2006, the Commission sent requests for information to those companies and associations, including some of the applicants in Case T-379/10 RENV. It then, on 26 March 2007, adopted a statement of objections, which was also notified to those applicants. Between 15 November 2004 and 20 January 2006, a number of undertakings applied for immunity from fines or a reduction in fines.

4 Following (i) a hearing from 12 to 14 November 2007, in which the applicant in Case T-381/10 RENV, Sanitec Europe Oy, took part, (ii) the sending, on 9 July 2009, to several companies, including some of the applicants in Case T-379/10 RENV and the applicant in Case T-381/10 RENV, of a letter of facts, drawing their attention to certain evidence on which the Commission was minded to rely when adopting a final decision, and (iii) the sending, between 19 June 2009 and 8 March 2010, to several companies, including some of the applicants in Case T-379/10 RENV and the applicant in Case T-381/10 RENV, of further requests for information, the Commission, on 23 June 2010, adopted the contested decision.

5 In the contested decision, the Commission found that the infringement identified consisted, first and foremost, in the coordination, by those bathroom fittings and fixtures manufacturers, of annual price increases and other pricing elements within the framework of regular meetings of national industry associations; secondly, in the fixing or coordination of prices on the occasion of specific events such as increases in raw material costs, the introduction of the euro and the introduction of road tolls; and, thirdly, in the disclosure and exchange of sensitive business information. Those practices had followed a recurring pattern which was consistent in each of the six Member States covered by the Commission's investigation. Price setting in the bathroom fittings and fixtures industry had followed an annual cycle; specifically, the manufacturers had set price lists, which generally remained in force for a year and formed the basis for commercial relations with wholesalers.

6 The applicants in Case T-379/10 RENV, Keramag Keramische Werke GmbH, Koninklijke Sphinx BV, Allia SAS and its subsidiary Produits Céramiques de Touraine SA (PCT) and Pozzi Ginori SpA, produced ceramic ware ('ceramics'). Koralle Sanitärprodukte GmbH, which is also an applicant in Case T-379/10 RENV, produced shower enclosures. At the time of the facts at issue, the applicants in Case T-379/10 RENV were all subsidiaries of Sanitec Europe, the applicant in Case T-381/10 RENV and also an addressee of the contested decision. In that decision, Sanitec Europe and its subsidiaries were collectively referred to by the Commission as 'Sanitec'. Throughout their participation in the infringement alleged against them, Allia was a member of the Association Française des Industries de Céramique Sanitaire ('AFICS'), a national industry association of bathroom fittings and fixtures manufacturers in France.

7 As regards the participation of the applicants in the infringement identified, the Commission found that they belonged to a central group of undertakings and were aware, or ought reasonably to have been aware, that the infringement found concerned at least three product subgroups, namely taps and fittings, shower enclosures and accessories and ceramics, and had an extensive geographic scope as it covered the territory of six Member States.

8 For the purpose of setting the fines imposed on each undertaking, the Commission took as a basis the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2). It determined the basic amount of the fine, explaining that this

calculation was based, for each undertaking, on its sales by Member State concerned, multiplied by the number of years of participation in the infringement found in the Member State in question for the relevant product subgroup, so that account had been taken of the fact that certain undertakings were active only in certain Member States or in only one of the three product subgroups.

9 As regards the gravity of the infringement, the Commission set the multiplier at 15%, taking into account the four criteria for assessing the infringement: the nature of the conduct, the combined market shares, the geographic scope of the infringement and its implementation. In addition, it set the multiplier to be applied, to take account of the duration of the infringement, inter alia, at 0.66 for Allia and PCT, reflecting 8 months' participation in the infringement, between 25 February and 9 November 2004. Finally, in order to deter the companies in question from participating in the unlawful practices with which the contested decision was concerned, the Commission decided to increase the basic amount of the fine by an additional amount set at 15%.

10 This resulted in basic amounts, inter alia, of EUR 10 500 000 for Allia and EUR 5 800 000 for PCT.

11 After having determined the basic amount, the Commission considered whether there were any aggravating or mitigating circumstances capable of justifying adjustments to the basic amount. It did not find that any aggravating or mitigating circumstances applied in the case of the applicants, and, after the ceiling of 10% of turnover was applied, pursuant to Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1), the amount of the fine imposed on the applicants in Article 2 of the contested decision was EUR 57 690 000, which corresponded, inter alia, to EUR 9 873 060 for Sanitec Europe, EUR 4 579 610 for Allia and Sanitec Europe jointly and severally and EUR 2 529 689 for PCT, Allia and Sanitec Europe jointly and severally.

Procedure before the General Court and the Court of Justice

12 By applications lodged at the Registry of the General Court on 8 September 2010, the applicants brought two actions for annulment of the contested decision.

13 The General Court decided on 16 December 2010 to join those cases for the purposes of the written procedure and, on 23 March 2012, to join them for the purposes of the oral procedure and of the judgment.

14 In support of their actions, the applicants raised, in essence, nine pleas in law.

15 By judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, 'the initial judgment', EU:T:2013:457), the General Court rejected the majority of the pleas put forward by the applicants at first instance, but upheld the first and third parts of the third plea in law put forward by the applicants at first instance, alleging errors of assessment on the part of the Commission at the stage of the analysis of the evidence concerning their participation in the infringement found in France and in Italy. It found that the Commission had erred in concluding that Allia and PCT had participated in the infringement at issue and in concluding that Pozzi Ginori had participated in that infringement between 10 March 1996 and 14 September 2001 when its participation had been established to the requisite legal standard only in respect of the period between 14 May 1996 and 9 March 2001. Consequently, the General Court annulled the relevant part of point 6 of Article 1(1) of the contested decision.

16 As regards the reduction of fines, the General Court, taking into account the fact that it had partially upheld the third plea put forward by the applicants, annulled Article 2(7) of the contested decision setting the amount of the fine imposed on the applicants at first instance, in so far as it exceeded EUR 50 580 701.

17 By application lodged at the Registry of the Court of Justice on 26 November 2013, the Commission brought an appeal against the initial judgment, claiming that the Court should, inter alia, set aside point 1 of the operative part of the initial judgment 'in so far as it annuls Article 1 of the contested

decision as regards the events in AFICS and the liability of Allia, [PCT] and Sanitec Europe for them', and point 2 of the operative part.

18 The applicants brought a cross-appeal against the initial judgment.

19 By judgment of 26 January 2017, *Commission* v *Keramag Keramische Werke and Others* (C-613/13 P, 'the judgment on appeal', EU:C:2017:49), the Court set aside point 1 of the operative part of the initial judgment. The Court also set aside point 2 of the initial judgment, in so far as it had annulled Article 2(7) of the contested decision, concerning the amount of the fine imposed on the applicants.

20 The Court dismissed the remainder of the appeal, as well as the cross-appeal, and referred the case back to the General Court.

Procedure and forms of order sought after the referral back to the General Court

21 Following the judgment on appeal, and in accordance with Article 217 of the Rules of Procedure of the General Court, the applicants and the Commission lodged written observations at the Court Registry on 31 March 2017 and 4 April 2017 respectively.

22 By way of measures of organisation of procedure under Article 89 of the Rules of Procedure, the Court put written questions to the parties, which the parties answered within the prescribed period.

23 By decision of the President of the First Chamber of the General Court of 17 January 2018, after taking the views of the parties, Cases T-379/10 RENV and T-381/10 RENV were joined for the purposes of the oral part of the procedure and the decision which closes the proceedings, in accordance with Article 68 of the Rules of Procedure.

24 The applicants claim that the Court should:

– annul point 6 of Article 1(1) of the contested decision in so far as it finds that Allia and PCT participated in an infringement relating to a cartel on the French market between 25 February 2004 and 9 November 2004;

– annul Article 2(7) of the contested decision in so far as the total amount of the fine imposed on the applicants exceeds EUR 50 580 701;

– order the Commission to pay the costs incurred by the applicants in the appeal and in the present proceedings;

– uphold the order as to costs determined in points 4 and 5 of the operative part of the initial judgment.

25 The Commission contends that the Court should:

– reject as unfounded the first part of the third plea put forward by the applicants, relating to the evidence concerning the infringement in France;

– uphold the fine imposed on the applicants;

– order the applicants to pay the costs relating to the proceedings instituted before it and to the appeal proceedings before the Court of Justice.

Law

Subject matter of the dispute after its referral back to the General Court

26 It must be recalled that, under Article 61 of the Statute of the Court of Justice of the European Union, where the appeal is well founded and the case is referred back to the General Court for judgment, the latter is bound by the decision of the Court of Justice on points of law. Thus, once the Court of Justice has set aside a judgment or an order and referred the case back to the General Court, that Court is seised, pursuant to Article 215 of the Rule of Procedure, of the case by the judgment of the Court of Justice and must rule again on all the pleas in law in support of annulment raised by the applicant, apart from those elements of the operative part not set aside by the Court of Justice and the considerations on which those elements are essentially founded, as those elements have acquired the authority of *res judicata* (judgment of 14 September 2011, *Marcuccio* v *Commission*, T-236/02, EU:T:2011:465, paragraph 83).

27 In the present case, as the judgment on appeal dismissed the cross-appeal brought by the applicants, the initial judgment is final in so far as it dismissed the applicants' claims and pleas in law.

28 It is therefore for the General Court to take a new decision on the part of the initial judgment set aside in the appeal, namely whether Allia and PCT participated in the infringement found by the contested decision.

29 Furthermore, in so far as point 1 of the operative part of the judgment on appeal sets aside, without limitation, point 1 of the operative part of the initial judgment, that setting aside must — in view of, first, the form of order sought by the Commission in the appeal (see paragraph 17 above) and, secondly, the principle of *ne ultra petita* — be interpreted as concerning only the part of point 1 of the operative part of the initial judgment that relates to Allia and PCT's participation in the infringement. In their answers to the written questions put by the Court, the parties agreed with that interpretation.

30 Accordingly, the subject matter of the dispute now concerns only the analysis undertaken by the General Court in the context of the applicants' third plea in law, alleging errors of law and of assessment, of the evidence relating to Allia and PCT's participation in the infringement concerning the agreements on prices of ceramics, within AFICS, demonstrated in particular by the AFICS meeting of 25 February 2004. The Court will then have to draw such conclusions as may be appropriate from those findings, with regard to the fine imposed on Allia, PCT and Sanitec Europe.

31 Finally, it must be noted that, by its head of claim seeking confirmation of the fine imposed on the applicants, the Commission is seeking the dismissal of the actions, as it had sought in those actions (see, by analogy, judgment of 22 January 2013, *Budějovický Budvar* v *OHIM — Anheuser-Busch (BUD)*, T-225/06 RENV, T-255/06 RENV, T-257/06 RENV and T-309/06 RENV, EU:T:2013:31, paragraph 37).

Substance

32 It is apparent from recitals 572, 587 and 588 of the contested decision that, in order to find that the AFICS meeting of 25 February 2004 was anticompetitive, the Commission relied in particular on the statement made by the Ideal Standard group in the context of its leniency application ('Ideal Standard's statement'), supplemented, on the one hand, by a chart drawn up by its representative following the meeting ('Ideal Standard's chart') and, on the other, by statistics, established by AFICS in July and August 2004, reporting on the sales trends and prices achieved by each of its members ('the AFICS statistics'), as well as on the statement made by the Roca group in the context of its leniency application ('Roca's statement').

33 With regard to that evidence, the Court of Justice noted errors made by the General Court concerning, first, the assessment of Roca's statement, secondly, the assessment of Ideal Standard's chart, thirdly, the assessment of the AFICS statistics and, fourthly, the verification of whether the evidence, viewed as a whole, could be mutually supporting. It is therefore for the General Court to reassess the probative value of that evidence, individually and as a whole, in order to determine whether the Commission was justified in finding that Allia and PCT participated in an infringement in France between 25 February and 9 November 2004.

34 The applicants submit that, following the reassessment of the evidence, ruling on the case as referred back to it, the General Court must repeat the findings made in the initial judgment on the lack of sufficient evidence of an infringement in France, if necessary supplementing its reasoning. In their view, the criticism expressed by the Court of Justice relates only to the succinctness of the reasoning in the initial judgment, and not to the conclusion it reached.

35 The Commission submits that the General Court's examination should confirm the findings made in recitals 556 to 590 of the contested decision. Furthermore, and in any event, the Commission submits that the principles of equal treatment and of *res judicata* require the outcome of the present proceedings to be consistent with the judgments of 16 September 2013, *Roca* v *Commission* (T-412/10, EU:T:2013:444); of 16 September 2013, *Villeroy & Boch Austria* v *Commission* (T-373/10 and T-374/10, not published, EU:T:2013:455); and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477), in which the General Court, on the basis of the same evidence, concluded that anticompetitive discussions had taken place at the AFICS meeting of 25 February 2004.

Ideal Standard's statement and Ideal Standard's chart

36 It is apparent from recital 572 of the contested decision that Ideal Standard explained, inter alia, that, at the AFICS meeting of 25 February 2004, the participants had examined a graph prepared by AFICS showing the minimum and maximum prices applied on the market for six standard products. The participants, including Allia, had examined those figures and agreed, after discussion, to apply a 3% increase to the 'catalogue' prices of all products.

37 The Court of Justice criticised the General Court, in paragraphs 53 to 55 of the judgment on appeal, for (i) submitting Ideal Standard's chart to requirements such that, if they were met, the chart would, by itself, have constituted sufficient evidence to show price fixing, and (ii) failing to consider whether the evidence, viewed as a whole, could be mutually supporting.

38 The applicants claim that the General Court was right to require, in the initial judgment, a link between Ideal Standard's chart and the meeting of 25 February 2004 in order for the chart to be corroborative of Ideal Standard's assertion as to the discussions that occurred during that meeting. The points set out in paragraph 119 of the initial judgment are valid reasons why the chart is not sufficient to corroborate Ideal Standard's statement. Furthermore, as the chart was drawn up 'subsequently', according to Ideal Standard's statement, it has no probative value beyond that of that statement.

39 The Commission submits that Ideal Standard's chart, together with the explanations provided, constitutes corroborating evidence which may help support other pieces of evidence, taking into account in particular the very clear and precise explanations provided by Ideal Standard as regards the circumstances surrounding its drafting, its author and its date.

40 It should be noted, in that regard, that Ideal Standard's chart bears the heading 'COMPARAZIONE PREZZI (fourchette mini-maxi)' ('PRICE COMPARISON (minimum-maximum range)') and comprises four columns entitled respectively 'mini', 'maxi', 'IS' and 'Porcher', 'IS' standing for Ideal Standard and the sign Porcher being registered as a trade mark whose proprietor is Ideal Standard. It is apparent from recitals 714 to 726 of the contested decision, which concern the findings of fact made by the Commission in respect of France, that the Porcher brand was distributed by Ideal Standard on the French market. Furthermore, the chart consists of six rows corresponding to various categories of ceramics, indicated in Italian.

41 As the General Court stated in paragraph 119 of the initial judgment, Ideal Standard's chart is undated, contains nothing that might link it to the AFICS meeting of 25 February 2004 or to any anticompetitive discussions and does not mention the names of competitors or any minimum or maximum prices which those competitors should apply. The only information to be gained with certainty from the document itself is that the prices of the Ideal Standard and Porcher brands, marketed by Ideal Standard, are at different levels within a range. By contrast, it is not stated to which period those figures relate, or whether they are past sales statistics or a guideline for the future.

42 Only the information provided in Ideal Standard's statement places the chart in the context of the infringements of competition law alleged by Ideal Standard, namely the fact that the chart was drawn up following the meeting of 25 February 2004 by the representative of Ideal Standard who was present at that meeting and his superior and that it reproduces for internal use the decisions taken at that meeting in respect of the product lines marketed by Ideal Standard.

43 In actual fact, Ideal Standard's chart thus draws its indicative value from Ideal Standard's statement and its probative value stems from that statement. In those circumstances, as the applicants maintain, the probative value of the chart does not go beyond that of Ideal Standard's statement and it must therefore be regarded as forming part of that statement and not as evidence corroborating it.

The corroborative quality of Roca's statement

44 The Court of Justice criticised the General Court, in paragraphs 41 and 42 of the judgment on appeal, for denying Roca's statement any probative value, by relying exclusively on recital 586 of the contested decision, which summarises another item of evidence, and failing to examine recital 556 of the contested decision, which relates to Roca's statement, or even the content of that statement.

45 The applicants claim that Ideal Standard's statement alone could not form the basis of a finding of infringement and submit that a high degree of corroboration was necessary, given that that statement contained inconsistencies. The applicants also submit that the General Court rightly did not take Roca's statement into consideration to corroborate Ideal Standard's statement, since Roca had renounced its leniency statement in the course of the procedure.

46 The Commission contends that Roca's statement is sufficiently precise to corroborate the information provided by Ideal Standard regarding the anticompetitive nature of the AFICS meeting of 25 February 2004.

47 In the first place, in that regard, as the General Court stated in paragraphs 117 and 118 of the initial judgment, being upheld on this point by the Court of Justice in paragraphs 29 and 30 of the judgment on appeal, Ideal Standard's statement, which was contested by other undertakings, had to be confirmed by other evidence in order to prove the anticompetitive nature of the meeting of 25 February 2004.

48 In that regard, the claim made by the applicants at the hearing to the effect that the corroboration must concern specifically the anticompetitive nature of the AFICS meeting of 25 February 2004 must be rejected. The infringement alleged against the applicants, in so far as it is the subject matter of the present action, consists in the coordination of prices for low-end ceramic goods between 25 February and 9 November 2004 in the context of AFICS.

49 As evidence of that infringement, Ideal Standard's statement, which reports on the discussions and decisions on prices that occurred during the meeting of 25 February 2004, may therefore be corroborated by any evidence indicating or giving credibility to the existence of price coordination between 25 February and 9 November 2004.

50 In the second place, with regard to Roca's statement, it is apparent from recital 556 of the contested decision that that undertaking stated, inter alia, that ceramics manufacturers had regularly discussed prices or price increases over several years, with meetings taking place at least two or three times per year. Moreover, it is apparent from recital 573 of the contested decision that Roca stated that members of AFICS had tried to halt the downward trend in prices for low-end goods, either by means of a price increase of 3% or by introducing 'floor' prices, for example a minimum price of EUR 15 for a washbasin at a given point in time. The accuracy of that summary, by the Commission, of Roca's statement has not been disputed by the applicants.

51 In the third place, it must be noted, in that regard, that, while Roca's statement does not contain any reference to the AFICS meeting of 25 February 2004, it nevertheless confirms, generally, that discussions on prices occurred regularly within AFICS. Furthermore, it mentions the mechanism of floor prices and a decision concerning a 3% price increase for low-end products, which coincides with at least some of the information provided by Ideal Standard (which concerned all products). Specifically, in its conclusion as to price coordination in France, set out in recital 590 of the contested

decision, the Commission found that there was price coordination in the ceramics sector solely in respect of low-end products.

52 In those circumstances, it must be held that Roca's statement, although it may, in some respects, be less precise than Ideal Standard's statement, does not contradict it and, on the contrary, confirms it in several important respects. Therefore, in those respects, and, in particular, in respect of the fact that discussions on prices of products and, especially, those of low-end products occurred regularly over several years and the fact that a 3% increase could have been decided upon during the meetings, it may serve as evidence corroborating Ideal Standard's statement.

The AFICS statistics

53 The Court of Justice criticised the General Court, in paragraph 64 of the judgment on appeal, for failing to consider whether the AFICS statistics could, as the Commission expressly argued, corroborate the statements of Ideal Standard and Roca.

54 The applicants argue that the AFICS statistics do not demonstrate that a discussion on prices took place during the meeting of 25 February 2004, especially since they are dated 1 October 2004 and contain data for the months of July and August 2004 which are not anticompetitive in nature.

55 The Commission submits that the AFICS statistics constitute significant corroborating evidence which supports the findings of the contested decision.

56 In that regard, it must be noted that the AFICS statistics — which are in the form of tables dated 1 October 2004 — contain, for each AFICS member, and in the aggregate for all members, data for the months of July and August 2004 and cumulative data for the year 2004, relating to two subgroups of products, namely, first, 'Grès Incluant Receveurs et éviers' ('Fireclay including shower trays and kitchen sinks') and, secondly, 'Porc. G.F.' ('Porcelaine Grès Fin' ('Vitreous China and Fine Fireclay')). According to the parties' concurring information, those two subgroups covered, respectively, generally larger ceramic products (shower trays, kitchen sinks, ceramic tabletops for bathroom furniture) and smaller sanitary products (toilet bowls, washbasins and pedestals), which are generally produced at different factories. Production volumes, delivery volumes and values on the French market and for export outside of France and unit prices are indicated for each of those subgroups of products, as well as the evolution of those data as compared with the same months of 2003. The words 'CONFIDENTIEL À NE PAS DIFFUSER HORS AFICS' ('CONFIDENTIAL NOT TO BE DISTRIBUTED OUTSIDE AFICS') appear diagonally across each page.

57 It must be noted that the fact that those data were able to be put together and distributed within AFICS, as a national industry organisation, shows the existence, over a prolonged period, of a regular exchange of sensitive commercial data, enabling each AFICS member to be aware of the volumes produced and sold by its competitors, allowing it to calculate its own share of the overall market, to follow the turnover generated by its competitors and to monitor in the aggregate, yet accurately, the evolution of sales and prices on the market. It must be held that such an exchange of sensitive commercial data, without any apparent legitimate reason, goes beyond the limits of normal competitive conduct.

58 In those circumstances, even if it is true that, as the Commission accepts, the AFICS statistics do not prove that a discussion on prices occurred at the meeting of 25 February 2004, they show that price coordination took place during 2004 and must therefore be regarded as evidence corroborating Ideal Standard's statements to that effect.

The overall assessment of the evidence

59 The Court of Justice criticised the General Court, in paragraph 69 of the judgment on appeal, for failing to ascertain whether the evidence, viewed as a whole, could be mutually supporting.

60 The applicants reiterate that the criticism expressed by the Court of Justice relates to the extent of the reasoning set out in the initial judgment. In their view, the conclusions of the General Court in the initial judgment in respect of the evidence contained in the file were well founded. Since that evidence

remains the same, the General Court should now reach the same conclusion, if necessary supplementing its reasoning.

61 The Commission submits that the various pieces of evidence, taken together, demonstrate that there was a discussion on prices at the AFICS meeting of 25 February 2004.

62 In the overall assessment of the evidence, it is necessary to examine whether that evidence, taken as a whole, supports the Commission's conclusion, deriving from recitals 556, 590, 1149 and 1170 of the contested decision, that manufacturers of ceramics in the bathroom fittings and fixtures sector in France — including Allia and its subsidiary PCT — coordinated, between 15 February and 9 November 2004, their minimum prices for low-end products in the context of AFICS.

63 It should be noted, in that regard, that Ideal Standard's statement, according to which, inter alia, the AFICS meeting of 25 February 2004 gave rise to a discussion on prices and a decision to increase them by 3%, has been corroborated by Roca's statement, which stated, more generally, that discussions on prices and, especially, those for low-end products had occurred regularly over several years within AFICS. In particular, Roca referred, as an example, to an increase of 3% of the minimum prices for some products and to the application of floor prices. Furthermore, the AFICS statistics show that price coordination, within AFICS, took place at least during 2004 and therefore also corroborate Ideal Standard's statements to that effect. It must also be noted that those statistics are contemporaneous documents which are dated and of which the author (AFICS) is known, and they are therefore of high probative value.

64 It follows that the evidence referred to above, taken as a whole, confirms the conclusion reached by the Commission in the contested decision, summarised in paragraph 62 above.

65 Accordingly, the applicants' third plea must be rejected.

66 Consequently, the action, in so far as it continues in the present proceedings referred back to the General Court, must be dismissed in its entirety.

Costs

67 Pursuant to Article 219 of the Rules of Procedure, in decisions of the General Court given after its decision has been set aside and the case referred back to it, it is to decide on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of Justice. However, in the present case, as the judgment on appeal did not set aside the initial judgment in respect of the decision as to costs, the present proceedings no longer concern the costs relating to the proceedings in Cases T-379/10 and T-381/10.

68 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Under Article 134(3) of those rules, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the General Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

69 Having regard to the circumstances of the present case, since the applicants have been largely unsuccessful in the appeal and unsuccessful in the proceedings referred back to the General Court, they must be ordered to bear all their own costs and to pay all the costs incurred by the Commission before the Court of Justice and the General Court in Cases C-613/13 P, T-379/10 RENV and T-381/10 RENV.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Keramag Keramische Werke GmbH and the other applicants whose names are set out in the annex to bear their own costs and to pay those incurred by the European Commission in Cases C-613/13 P, T-379/10 RENV and T-381/10 RENV.**

Pelikánová Nihoul Svenningsen

Delivered in open court in Luxembourg on 3 July 2018.

E. Coulon I. Pelikánová

Registrar President

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* Language of the case: English.

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1 The list of the other applicants is annexed only to the version sent to the parties.