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NON-CONFIDENTIAL VERSION

COMMISSION DECISION*

of 23 June 2010

**relating to a proceeding under Article 101 on the Treaty of the Functioning of the
European Union and Article 53 of the EEA Agreement**

Case COMP/39092 - Bathroom Fittings and Fixtures

(Only the English, French, German and Italian texts are authentic)

(Text with EEA relevance)

* Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as (...).

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COMMISSION DECISION

of 23 June 2010
relating to a proceeding under
Article 101 of the Treaty on the Functioning of the European Union
and Article 53 of the EEA Agreement

Case COMP/39092 - Bathroom Fittings and Fixtures

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (hereinafter referred to as "TFEU"),

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishing the European Community,¹ and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Decision of 8 March 2007 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty establishing the European Community,²

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,³

Whereas:

¹ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Article 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Article 81 and 82, respectively, of the EC Treaty when appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

² OJ L 123, 27.4.2004, p. 18.

³ To be published in the Official Journal of the European Union.

1. INTRODUCTION

1.1. Addressees

(1) The addressees of this Decision are:

- I. Masco Corporation (USA) and its subsidiaries:
 - Hansgrohe AG (Germany), and its subsidiaries: Hansgrohe Deutschland Vertriebs GmbH (Germany), Hansgrohe Handelsgesellschaft mbH (Austria), Hansgrohe S.A./N.V. (Belgium), Hansgrohe BV (Netherlands), Hansgrohe S.A.R.L. (France), Hansgrohe S.R.L. (Italy)
 - Hüppe GmbH (Germany), and its subsidiaries: Hüppe Ges.mbH (Austria), Hüppe Belgium S.A. (N.V.), Hüppe B.V. (Netherlands).
- II. Grohe Beteiligungs GmbH and its subsidiaries: Grohe AG and its subsidiaries: Grohe Deutschland Vertriebs GmbH (Germany), Grohe Gesellschaft mbH (Austria), Grohe S.A. (N.V.) (Belgium), Grohe S.A.R.L. (France), Grohe S.P.A. (Italy), Grohe Nederland B.V. (the Netherlands).
- III. Trane Inc. (USA)
- IV. WABCO Europe BVBA (Belgium) and WABCO Austria GesmbH
- V. Ideal Standard GmbH (Germany)
- VI. Ideal Standard Produktions-GmbH (Germany)
- VII. Ideal Standard France
- VIII. Ideal Standard Italia s.r.l. (Italy)
- IX. Ideal Standard Nederland BV
- X. Roca Sanitario S.A., and its subsidiaries: Roca SARL. (France) and Laufen Austria AG (Austria).
- XI. Hansa Metallwerke AG (Germany), and its subsidiaries: Hansa Nederland B.V., Hansa Italiana s.r.l., Hansa Belgium BVBA-SPRL, Hansa Austria GmbH.
- XII. Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik (Germany)
- XIII. Sanitec Europe Oy (Finland) and its subsidiaries Allia S.A.S., (France) Produits Céramiques de Touraine S.A., (France) and Keramag Keramische Werke AG, Koninklijke Sphinx B.V., and its subsidiary Koralle Sanitärprodukte GmbH (Germany) and Pozzi Ginori S.p.A. (Italy).
- XIV. Villeroy & Boch AG (Germany), and its subsidiaries: Villeroy & Boch Austria GmbH, Villeroy & Boch Belgium S.A., Villeroy & Boch S.A.S. (France).
- XV. Duravit AG (Germany) and its subsidiaries Duravit BeLux Sprl/Bvba. (Belgium) and Duravit S.A. (France).
- XVI. Duscholux GmbH & Co. KG (Austria), and Duscholux Belgium SA/NV
- XVII. DPM Duschwand-Produktions- und Montagegesellschaft mbH i.L. (Germany)
- XVIII. Kludi GmbH & Co. KG (Germany) and Kludi Armaturen GmbH & Co. KG (Austria)
- XIX. Artweger GmbH. & Co. KG (Austria)
- XX. Rubinetteria Cisal S.p.A. (Italy)
- XXI. Mamoli Rubinetteria SpA (Italy)

- XXII. RAF Rubinetteria S.p.A. (Italy)
- XXIII. Rubinetterie Teorema S.p.A. (Italy)
- XXIV. Zucchetti Rubinetteria S.p.A. (Italy).

1.2. Summary of the infringement

- (2) The addressees of this Decision participated in a single, continuous and complex infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement, through agreements and concerted practices in the bathroom fittings and fixtures industry, spanning Austria, Belgium, France, Germany, Italy and the Netherlands.⁴
- (3) Bathroom fittings and fixtures producers coordinated their prices in Austria, Belgium, France, Germany, Italy and the Netherlands, in a systematic and sustained way from (...) 16 October 1992 until 9 November 2004. The coordination concerned annual price increases (and, often, additional pricing elements such as rebates and minimum prices) within the framework of regular meetings of national associations. Within this scheme, the producers also fixed or coordinated their prices on several occasions connected to specific events, such as the increase of raw material costs, the introduction of the Euro, as well as the introduction of road tolls. The cartel arrangements were supported by the exchange of sensitive business information amongst participants.
- (4) The market value of the products concerned by this Decision, in the six Member States included in the investigation, was estimated at EUR 2 888.7 million in 2004.⁵ Total sales in 2004 of the addressees of this Decision in the six Member States concerned amounted to EUR 1 760 million.

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The products concerned

- (5) The products concerned are defined as bathroom fittings and fixtures. These include more or less every type of equipment which can usually be found in a standard bathroom such as baths; shower trays, cubicles, enclosures and panels; ceramic sanitary ware and plastic cisterns; sanitary taps and mixers; hydrotherapy products, and accessories.
- (6) Manufacturers consider all "products before the wall" ("Produkte vor der Wand") to be a part of bathroom fittings and fixtures.⁶ For the purposes of this investigation, the Commission focused on three product groups, namely taps and fittings, shower enclosures and accessories, and ceramics. The term "bathroom fittings and fixtures" in this Decision thus refers to those product groups.

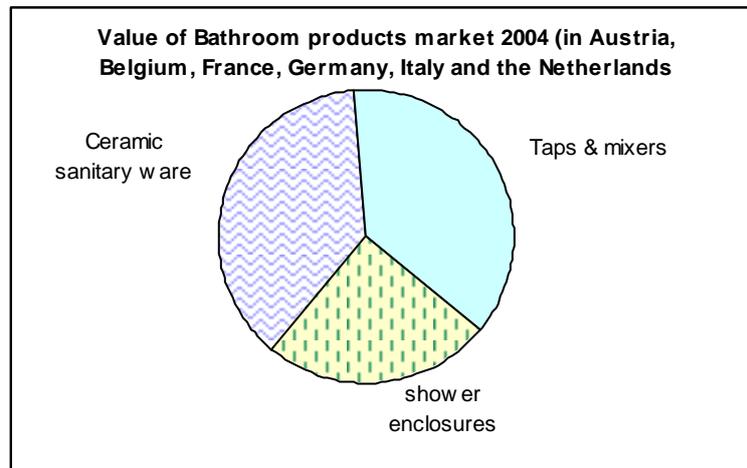
⁴ As regards the participation of each addressee in the single and continuous infringement, see further Section 5.2.3. Moreover, as this Decision is adopted after 31 December 2009, the infringement is time-barred insofar as it relates the cartel meetings in the Netherlands within the framework of SFP. The Commission considers that there is a legitimate interest in finding that part of the infringement, as it is part of a wider overall infringement, and therefore helps explain the true scope and consistency of the anticompetitive behaviour. See Section 8.2.

⁵ (...)

⁶ (...) For the sake of clarity, it is noted at the outset that the page numbers of the Commission's file cited in this Decision refer to the entire document to which they belong. File numbers in parentheses refer to the non-confidential version of each document. All numbers preceded by "p." refer to pages of the Commission's file except when referring to the Official journal.

- (7) The total size of these three product groups in the six Member States was estimated at EUR 2 888.7 million in 2004,⁷ with a share for each product group as given below in Figure A (approximately 37% taps and fittings, 25% for shower enclosures and 38% for ceramics):

FIGURE A – Value of Bathroom products market 2004 in Austria, Belgium, France, Germany, Italy and the Netherlands



2.1.1. Taps and fittings

- (8) The taps and fittings product group includes products such as pillars, single and double head mixers and thermostatic taps and mixers. The value of sales of taps and mixers in the six Member States was estimated as EUR 1 082 million in 2004.⁸

2.1.2. Shower enclosures and accessories

- (9) Shower enclosures can be grouped with conventional shower cubicles and bath screens. They include the following products: doors (sliding, hinged, folding, pivoting), side walls, corner entry, round, 5-angle.
- (10) The shower enclosures and screens product group was valued at EUR 720 million in 2004, for the six Member States covered by this Decision.⁹ This figure does not however include “traditional shower cubicles” or “hydrotherapy shower cubicles”.

2.1.3. Ceramic sanitary ware

- (11) Ceramics include ceramic sanitary ware such as: WCs and cisterns, washbasins, pedestals, bidets, urinals, sinks, shower trays.
- (12) The value of this product group was estimated as EUR 1 087 million in 2004.¹⁰

⁷ (...)

⁸ (...). The CEIR (Comité Européen de l’Industrie de la Robinetterie – European Committee for the Valve Industry) estimated the total EU-15 sanitary valves (taps) market as EUR 3 630 million in 2004: p. 130773.

⁹ (...)

¹⁰ (...) the value of the market for (sales of) ceramic sanitary ware in 2004 was EUR 1,959 million in 2004, although they admit (p. 109925): “It has always been difficult to give figures on total sales as FECS has a better knowledge of volumes. Therefore the [following] estimate was made on the basis of the estimated average market price in each country so as to try and approximate the total sales figure. Production [in 2004 was]: approximately 50.2 million pieces or 816 thousand tons.”

2.2. The undertakings subject to the proceedings

2.2.1. Masco Corporation Inc and subsidiaries

- (13) The parent company of the Masco group is Masco Corporation (hereinafter referred to as "Masco Corporation Inc"), an American company based in Michigan, USA, with a number of subsidiaries active in Europe, including: Hansgrohe AG and its subsidiaries (active in sanitary taps and mixers and accessories, bathroom accessories and hydrotherapy products), Hüppe GmbH (previously called Hüppe GmbH & Co KG) and its subsidiaries (shower enclosures, non-ceramic shower trays and accessories), and Damixa ApS Denmark and its subsidiary Damixa Belgium SA/NV (sanitary taps and mixers, shower accessories). Masco had acquired control over Damixa in 1976.¹¹ Masco Corporation Inc and all its subsidiaries are hereinafter collectively referred to as "Masco".
- (14) Masco Corporation Inc acquired control of Hansgrohe AG in December 2002.¹² Hansgrohe AG, Schiltach, Germany is active in all six Member States covered by this Decision. Its sales subsidiaries in the relevant Member States are: Hansgrohe Handelsgesellschaft mbH (hereinafter referred to as "Hans Grohe Handelsges. mbH") (Austria), Hansgrohe S.A./N.V. (hereinafter referred to as "Hans Grohe S.A. (Belgium)"), Hansgrohe S.A.R.L. (France), Hansgrohe Deutschland Vertriebs GmbH (Germany), Hansgrohe S.R.L. (Italy), and Hansgrohe BV (hereinafter referred to as "Hans Grohe B.V.") (Netherlands). Hansgrohe AG and these subsidiaries are hereinafter collectively referred to as "Hansgrohe". Hansgrohe was also involved in a joint venture with its competitor "(...)" in France from 1998 until 30 June 2004.¹³ Hansgrohe manufactures and sells taps and fittings.
- (15) Masco also owns Hüppe GmbH, Bad Zwischenahn, Germany.¹⁴ Hüppe GmbH owns the following sales subsidiaries which are addressees of this Decision: Hüppe Ges.mbH (Austria), Hüppe Belgium S.A. (N.V.) (Belgium), Hüppe S.A.R.L. (France), and Hüppe B.V. (Netherlands). Hüppe manufactures and sells shower enclosures. Hüppe GmbH and these subsidiaries are hereinafter collectively referred to as "Hüppe".
- (16) Masco was, throughout its participation in the infringement, a member of the following associations of manufacturers of bathroom fittings and fixtures products: IndustrieForum Sanitär (hereinafter referred to as "IFS"), Arbeitsgemeinschaft Sanitärindustrie (hereinafter referred to as "AGSI") and Arbeitskreis Baden und Duschen (hereinafter referred to as "ABD") in Germany, Arbeitskreis Sanitär Industrie (hereinafter referred to as "ASI") in Austria, Home Comfor Team (hereinafter referred to as "HCT") and Amicale du Sanitaire in Belgium, L'Association Francaise des Pompes et de la Robinetterie (hereinafter referred to as "AFPR") in France, Euroitalia and Michelangelo in Italy, as well as Sanitair Fabrikanten Platform (hereinafter referred to as "SFP") and Stichting Verwarming en Sanitair (hereinafter referred to as "SVS") in the Netherlands.
- (17) Masco's worldwide turnover in 2009 was (...).¹⁵

2.2.2. Grohe Beteiligungs GmbH and subsidiaries

- (18) Grohe Beteiligungs GmbH is the parent company of Grohe AG, formerly known as Grohe Water Technology AG & Co. KG based in Hemer, Germany. Grohe Beteiligungs GmbH and

¹¹ (...)

¹² See Commission Decision of 19 December 2002 in Case No COMP/M.3045 - *Masco/Hansgrohe* - OJ C 22, 21.1.2003, p. 10.

¹³ (...)

¹⁴ (...)

¹⁵ (...)

its subsidiaries manufacture taps and fittings for bathrooms and kitchens and automatic fittings for the commercial and public sector. Subsidiaries of Grohe AG, which are all 100 % owned, are: Grohe Deutschland Vertriebs GmbH (Germany), Grohe Gesellschaft mbH (Austria); Grohe S.A. (N.V.) (Belgium) Grohe S.A.R.L. (France); Grohe S.P.A. (Italy), and Grohe Nederland B.V. (Netherlands). Grohe Beteiligungs GmbH, Grohe AG and all these subsidiaries are hereinafter collectively referred to as "Grohe". Grohe Water Technology AG & Co. KG has been merged into Grohe AG with effect as of 21 February 2006.¹⁶

- (19) Grohe's worldwide turnover in 2009 was EUR (...).¹⁷
- (20) Grohe was, throughout its participation in the infringement, a member of the following groupings or associations of manufacturers of bathroom fittings and fixtures products: IFS and AGSI in Germany, ASI in Austria, Amicale du Sanitaire in Belgium, AFPR in France, Euroitalia and Michelangelo in Italy, as well as SFP and SVS in the Netherlands.

2.2.3 American Standard Inc (now Trane Inc) and subsidiaries

- (21) American Standard Inc was an American company with subsidiaries in the Union active in the field of bathroom fittings and fixtures. (...)
- (22) In the Union, American Standard Inc and its subsidiaries manufactured under the brand "Ideal Standard" and distributed ceramic sanitary ware products, as well as taps and fittings. It operated in the six Member States Austria, Belgium, France, Germany, Italy and the Netherlands with its subsidiaries Ideal Standard GmbH (Germany), Ideal Standard Produktions-GmbH (Germany), Ideal Standard France (hereinafter also referred to as "Idéal Standard S.A.S."), (France) Ideal Standard Italia s.r.l. and Ideal Standard Nederland BV (which was until 2005 called Metaalwarenfabriek Venlo BV) (...).
- (23) The various subsidiaries of American Standard Inc. were, throughout their participation in the infringement, members of associations of manufacturers of bathroom fittings and fixtures products, including IFS, AGSI and Fachverband Sanitär-Keramische Industrie ("FSKI") in Germany, ASI in Austria, Vitreous China-group (hereinafter referred to as "VC") in Belgium, AFPR and Association Francaise des Industries de Céramiques Sanitaire (hereinafter referred to as "AFICS") in France, Euroitalia and Michelangelo in Italy and SFP and SVS in the Netherlands throughout the duration of the infringement.
- (24) American Standard Inc and its subsidiaries underwent substantial changes in 2007. American Standard Inc was renamed Trane Inc. American Standard Europe was spun-off and renamed WABCO Europe BVBA. WABCO Europe BVBA is quoted on the New York stock exchange. American Standard Europe's bathroom and kitchen business, including the subsidiaries Ideal Standard GmbH (Germany), Ideal Standard Produktions-GmbH (Germany), Idéal Standard S.A.S. (France), Ideal Standard Nederland B.V., Ideal Standard Italia s.r.l. and the Belgian and Austrian branches that were active in bathroom fittings and fixtures were sold to funds advised by Bain Capital Partners LLC.
- (25) Trane Inc. achieved a turnover in 2009 of (...),¹⁸ WABCO Europe BVBA achieved a turnover of (...) in 2009. Ideal Standard GmbH (Germany) achieved a turnover (...), Ideal Standard S.A.S. (France) (...), Ideal Standard Nederland B.V. (...), the turnover of Ideal Standard Produktions-GmbH amounted to (...) and Ideal Standard Italia s.r.l. (...).¹⁹

¹⁶ (...)
¹⁷ (...)
¹⁸ (...)
¹⁹ (...)

(26) Trane Inc., WABCO Europe BVBA, WABCO Austria GmbH, Ideal Standard GmbH, Idéal Standard S.A.S., Ideal Standard Nederland B.V., Ideal Standard Produktions-GmbH (including its Belgian branch) and Ideal Standard Italia s.r.l. are hereinafter collectively referred to as "Ideal Standard".

2.2.4. *Roca Sanitario S.A. and subsidiaries*

(27) Roca Sanitario S.A. (hereinafter also referred to as "Roca Sanitario") is headquartered in Barcelona, Spain, and is the ultimate parent company of Roca SARL (France) and of Laufen Austria AG (Austria).

(28) Roca Sanitario acquired Laufen Austria AG on 29 October 1999. Roca Sanitario's and its subsidiaries core business is ceramics and taps and fittings, although in 2003 it started to distribute and sell shower enclosures.²⁰ Roca Sanitario, Roca SARL and Laufen Austria AG are hereinafter collectively referred to as "Roca". Laufen Austria AG is hereinafter individually referred to as "Laufen". Roca SARL is hereinafter individually referred to as "Roca France".

(29) Roca was, throughout its participation in the infringement, a member of the following associations of manufacturers: ASI in Austria, AFRP and AFICS in France.

(30) Roca France does not manufacture products but distributes and sells them on the French market. Laufen was named "ÖSPAG" until 2002. Its activities were limited to ceramics at the time of the infringement.²¹ It distributes products of Duravit in Austria.²²

(31) Roca Sanitario's worldwide turnover in 2009 (...).²³

2.2.5 *Hansa Metallwerke AG and subsidiaries*

(32) (...) These legal entities are hereinafter collectively referred to as "Hansa".

(33) Hansa's worldwide turnover in 2009 was (...).²⁴ Hansa was, throughout its participation in the infringement, a member of the following groupings or associations of manufacturers of bathroom fittings and fixtures products: IFS and AGSI in Germany, ASI in Austria, HCT in Belgium, AFPR in France,²⁵ Euroitalia and Michelangelo in Italy and SFP in the Netherlands.

2.2.6 *Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik*

(34) Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik, based in Iserlohn, Germany, produces mainly taps and fittings but also accessories. In Austria, it was active during the infringement period via its branch "Vertriebsbüro Österreich".²⁶ Aloys F. Dornbracht GmbH & CO. KG Armaturenfabrik is hereinafter referred to as "Dornbracht".

(35) Dornbracht products are also sold by Keramag AG (Ratingen) and Duravit (Hornberg), both in Germany.²⁷

(36) Dornbrachts's worldwide turnover in 2009 was (...).²⁸ Dornbracht was, throughout its participation in the infringement, a member of the following groupings or associations of

20 (...)
21 (...)
22 (...)
23 (...)
24 (...)
25 (...)
26 (...)
27 (...)
28 (...)

manufacturers of bathroom fittings and fixtures products: IFS and AGSI in Germany and ASI in Austria.

2.2.7 *Sanitec Europe Oy and subsidiaries*

- (37) Sanitec Europe Oy, based in Helsinki, Finland (...). These legal entities and their subsidiaries have been active in the bathroom fittings and fixtures market since 1990.²⁹ Sanitec Oy's subsidiaries produce and sell ceramics and shower enclosures and additionally sell taps and fittings. Sanitec Oy and its subsidiaries' business was divided into six business regions in 2002. Sanitec Oy was fully acquired by EQT Private Equity Funds on 11 April 2005.³⁰
- (38) (...).
- (39) (...).³¹
- (40) (...).
- (41) Sanitec Oy's subsidiaries were, throughout their participation in the infringement, members of the following associations of manufacturers: IFS, ABD, and FSKI in Germany, ASI in Austria, Michelangelo in Italy, VC in Belgium, AFICS in France, as well as SFP and SVS in the Netherlands.
- (42) Sanitec Europe Oy's worldwide turnover in 2009 was (...).³² Sanitec Europe Oy's subsidiaries are described in the following recitals.

Keramag Keramische Werke AG and subsidiaries

- (43) (...) It is based in Ratingen, Germany (...). Keramag Keramische Werke Aktiengesellschaft and its subsidiaries are hereinafter collectively referred to as "Keramag".
- (44) Keramag produces taps and fittings as well as ceramics.³³ Keramag was, throughout its participation in the infringement a member of the following associations of manufacturers of bathroom fittings and fixtures products: IFS and FSKI in Germany, ASI in Austria, VC in Belgium and SFP in the Netherlands.

Koralle Sanitärprodukte GmbH and subsidiaries

- (45) (...).³⁴ It is a producer of shower enclosures and accessories.³⁵ Koralle Sanitärprodukte GmbH and all its subsidiaries are hereinafter collectively referred to as "Koralle". Koralle was, throughout its participation in the infringement a member ABD and IFS in Germany.

Koninklijke Sphinx B.V. and subsidiaries

- (46) Koninklijke Sphinx B.V., based in Maastricht, the Netherlands, is a manufacturer and distributor of ceramic sanitary products, baths, showers and taps, mainly active in Benelux, the United Kingdom and Slovakia.³⁶ (...) These entities are hereinafter referred to as "Sphinx".

²⁹ www.sanitec.com: "Sanitec Corporation was established in 1990 as a subsidiary of Wärtsilä Corporation. Wärtsilä's bathroom operations were merged to form Sanitec, which at that same time comprised Wärtsilä Tammisaari Porcelain (currently Ido Bathroom), Ifö Sanitär AB, Porsgrund A/S and Evac AB. Prior to 1991 Sanitec was mainly active in Finland, Sweden and Norway. In 1991 Wärtsilä merged with Lohja Oy and became Metra Corporation."

³⁰ www.keramag.com

³¹ See Case T-305/94, *Limburgse Vinyl Maatschappij NV and others (PVC II)*, [1999] ECR II-0931, paragraph 953; Case C-49/92 *Commission v. Anic Partecipazioni SpA*, [1999] ECR I-4125, paragraph 145.

³² (...)

³³ www.keramag.com

³⁴ www.sanitec.com

³⁵ www.sanitec.com

(47) (...) Sphinx was, throughout its participation in the infringement a member of the following associations of manufacturers of bathroom fittings and fixtures products: VC in Belgium and SFP in the Netherlands.

Allia S.A.S. and Produits Céramiques de Touraine S.A.

(48) (...) The two legal entities produce ceramics products, and are based in Samoreau, France. Allia S.A.S. and Produits Céramiques de Touraine S.A. are hereinafter collectively referred to as "Allia". Allia was a member of AFICS throughout its participation in the infringement.

Pozzi Ginori S.p.A.

(49) (...) Pozzi-Ginori was member of Michelangelo in Italy during the period of infringement.

(50) For ease of reference, Sanitec Europe Oy, Allia S.A.S. and its subsidiaries, Keramag Keramische Werke AG and its subsidiaries, Koninklijke Sphinx B.V. as well as Pozzi Ginori S.p.A. will be collectively referred to in this Decision as "Sanitec".

2.2.8 Villeroy & Boch AG and subsidiaries

(51) Villeroy & Boch AG is an undertaking based in Mettlach, Germany. It fully owns Villeroy & Boch Austria GmbH (Austria, previously called Villeroy & Boch Handels-GmbH), Villeroy & Boch Belgium S.A. (Belgium), Ucosan B.V. (the Netherlands), and Villeroy & Boch S.A.S. (France).³⁷ In 1999, it also acquired the Dutch manufacturer Ucosan B.V. and its subsidiaries (hereinafter collectively referred to as "Ucosan"), which mainly produces shower enclosures.³⁸ Villeroy & Boch AG, Villeroy & Boch Austria Handels-GmbH, Villeroy & Boch Belgium S.A., Villeroy & Boch Nederland B.V., Villeroy & Boch S.A.S. and Ucosan is hereinafter collectively referred to as "Villeroy & Boch".

(52) Villeroy & Boch is active in ceramics, taps and fittings and (since the acquisition of Ucosan) also in shower enclosures.

(53) Villeroy & Boch's worldwide turnover in 2009 was (...).³⁹

(54) Villeroy & Boch was, throughout its participation in the infringement, a member of the following groupings or associations of manufacturers of bathroom fittings and fixtures products: IFS, ABD and FSKI in Germany, ASI in Austria, the VC group in Belgium, SFP in the Netherlands and AFICS in France.

2.2.9 Duravit AG and subsidiaries

(55) (...).⁴⁰ Duravit AG, Duravit BeLux Sprl/Bvba and Duravit S.A. are hereinafter collectively referred to as "Duravit".

(56) Duravit's worldwide turnover in 2009 was (...).⁴¹

(57) Duravit was, throughout its participation in the infringement, a member of the following groupings or associations of manufacturers of bathroom fittings and fixtures products: IFS and FSKI in Germany, the VC group in Belgium and AFICS in France.

2.2.10 Duscholux GmbH & Co KG, DPM Duschwand Produktions- und Montagegesellschaft, Duscholux Belgium SA/NV

³⁶ www.sphinx.nl

³⁷ www.villeroy-boch.com

³⁸ (...)

³⁹ (...)

⁴⁰ (...)

⁴¹ (...)

(58) Duscholux AG, based in Thun, Switzerland, Duscholux GmbH based in Schriesheim, Germany, Duscholux GmbH & Co KG Austria (hereinafter referred to as "Duscholux Austria"), Duscholux Belgium SA/NV (hereinafter referred to as "Duscholux Belgium") and DPM Duschwand-Produktions- und Montagegesellschaft mbH (previously named Duscholux GmbH, hereinafter referred to as "Duscholux Germany") all form part of one undertaking with its ultimate parent company Duscholux Holding AG based in Switzerland. Duscholux Holding AG and all its subsidiaries is hereinafter collectively referred to as "Duscholux".

(59) Duscholux manufactures and sells shower enclosures.

(60) The worldwide turnover in 2009 was (...) for Duscholux Austria,⁴² (...) for Duscholux Belgium.⁴³ The worldwide turnover of Duscholux Germany was (...) for Duscholux Germany in 2008.⁴⁴

(61) Duscholux was, throughout its participation in the infringement, a member of the following groupings or associations of manufacturers of bathroom fittings and fixtures products: IFS and ABD in Germany, ASI in Austria, SFP in the Netherlands and Amicale du Sanitaire in Belgium.

2.2.11 Kludi GmbH & Co. KG and Kludi Armaturen GmbH & Co. KG

(62) (...).

(63) Kludi's worldwide turnover in 2009 was (...).⁴⁵

(64) Kludi was, throughout its participation in the infringement, a member of the following groupings or associations of manufacturers of bathroom fittings and fixtures products: IFS and AGSI in Germany and ASI in Austria.

2.2.12 Artweger GmbH. & Co. KG

(65) Artweger GmbH. & Co. KG is a producer of shower enclosures, based in Bad Ischl, Austria. It has subsidiaries in Germany, Artweger GmbH. & Co. KG but also in Poland, Hungary and the Slovak Republic. Artweger is a producer of shower enclosures.

(66) Artweger GmbH. & Co. KG is hereinafter referred to as "Artweger". Artweger was, throughout its participation in the infringement a member of the Austrian association of manufacturers of bathroom fittings and fixtures products ASI.

(67) Artweger's worldwide turnover in 2009 was (...).⁴⁶

2.2.13 Cical Rubinetteria S.p.A.

(68) Cical Rubinetteria S.p.A., is based in Pella Frazione Alzo (Novara), Italy. Cical Rubinetteria S.p.A. is hereinafter referred to as "Cical". Cical manufactures and distributes taps and fittings for the bathrooms and kitchens market.⁴⁷

(69) Cical's worldwide turnover in 2009 was (...).⁴⁸

⁴² (...)
⁴³ (...)
⁴⁴ (...)
⁴⁵ (...)
⁴⁶ (...)
⁴⁷ (...)
⁴⁸ (...)

(70) Cisal was, throughout its participation in the infringement a member of the Italian association Euroitalia.

2.2.14 Mamoli Robinetteria SpA

(71) Mamoli Robinetteria SpA is an Italian undertaking based in Milan.⁴⁹ Mamoli Robinetteria SpA is hereinafter referred to as "Mamoli".

(72) Mamoli manufactures and distributes taps and fittings for the bathrooms and kitchens market.

(73) Mamoli's worldwide turnover in 2009 was (...).⁵⁰

(74) Mamoli was, throughout its participation in the infringement, a member of the Italian association Euroitalia.

2.2.15 RAF Rubinetteria S.p.A.

(75) RAF Rubinetteria S.p.A., is based in San Maurizio d'Opaglio (Novara), distributes taps and mixers. RAF Rubinetteria S.p.A. is hereinafter referred to as "RAF".

(76) RAF's worldwide turnover in 2009 was (...).⁵¹

(77) RAF was, throughout its participation in the infringement, a member of the Italian association Euroitalia.

2.2.16 Rubinetterie Teorema S.p.A.

(78) Rubinetterie Teorema S.p.A. produces taps and mixers for both kitchen and bathroom use. It is based in Flero (BS), Italy. Rubinetterie Teorema S.p.A. is hereinafter referred to as "Teorema".

(79) Teorema's worldwide turnover in 2009 was (...).⁵²

(80) Teorema was, throughout its participation in the infringement, a member of the Italian association Euroitalia.

2.2.17 Zucchetti Rubinetteria S.p.A.

(81) Zucchetti Rubinetteria S.p.A., based in Gozzano, Italy, is an undertaking which manufactures taps and fittings. Zucchetti Rubinetteria S.p.A. is hereinafter referred to as "Zucchetti".

(82) Zucchetti's worldwide turnover in 2009 was (...).⁵³

(83) Zucchetti was, throughout its participation in the infringement, a member of the Italian associations Euroitalia and Michelangelo.

2.3. The relevant industry associations

(84) The infringement was mainly carried out within the framework of regular meetings of national associations. In general, these associations, organised either in a formal way with institutional features or just in informal circles, were presided over by their member representatives and were, therefore, dependant on the activities and input of their members.

(85) The larger, pan-European producers were the driving force of the cartel using the infrastructure of the associations. The associations were thus an instrument for the anti-competitive conduct of their member companies. Of the national associations cited in this Decision, two have been

49 (...)
50 (...)
51 (...)
52 (...)
53 (...)

dissolved (ASI, SFP) as a result of the Commission's investigation.⁵⁴ As a general remark, national associations and their activities will be dealt with in the following order: Germany, Austria, Italy, Belgium, France and The Netherlands.

IFS (Germany)

- (86) IFS covered all sectors of the bathroom fittings and fixtures industry and thus all three product sub groups concerned by this Decision. It was established in 2001 in order to replace its predecessor "Freundeskreis der deutschen Sanitärindustrie" (hereinafter referred to as "DSI").
- (87) IFS members include the following undertakings that are pertinent to this Decision: Dornbracht, Duravit, Duscholux (which participated partly through its sister entity (...)) Grohe, Hansa, Masco (Hansgrohe and Hüppe), Ideal Standard, Sanitec (Keramag and Koralle), Kludi and Villeroy & Boch.⁵⁵

AGSI (Germany)

- (88) AGSI is a product-specific association grouping of taps and fittings manufacturers and importers, under the umbrella of the Verband der Investitionsgüterindustrie, originally called "Verband Deutscher Maschinen- und Anlagebau", (hereinafter referred to as "VDMA"), a larger and broader German trade association. AGSI was founded on 10 December 1996, deriving from the former "VDMA Section taps and fittings (VDMA Fachgemeinschaft Armaturen)",⁵⁶ which had started to operate even prior to 1990.⁵⁷
- (89) Membership in AGSI is company-specific and participants at the meetings comprised management representatives at business operational level. AGSI had a so-called steering committee ("Lenkungsgremium"), which consisted of approximately five members and held separate meetings from the general assembly of AGSI.⁵⁸ Furthermore, the vast majority of AGSI members met regularly in a sub-group called "AGSI Erfa(ssung) Marktentwicklung", also called "AGSI Erfa".⁵⁹
- (90) AGSI members include the following undertakings that are pertinent to this Decision: Dornbracht, Grohe, Hansa, Hansgrohe, Ideal Standard and Kludi. Members of the AGSI Erfa

⁵⁴ (...) National associations, as well as some individual undertakings, are active at EU level in sectoral organizations, which include: (1) The Confederation of European Bath Manufacturers (Cofeb) that represents manufacturers of baths, shower enclosures and related products at a European level. Its members are: Syndicat Français de la Douche et de la Baignoire (France); Domino S.p.A.; Jacuzzi Europe S.p.A., Teuco Guzzini S.R.L. (Italy); Compania Roca Sanitario S.A., Metaliberica S.A., Vitrometal S.A. (Spain); Ifo Sanitar A.B. (Sweden); The Bathroom Association (UK); (2) The European Committee for the Valves [taps] Industry (CEIR) that was founded in 1959. Its members are national associations, including: Berufsgruppe Armaturen in den Fachverbänden Maschinen & Metallwaren Österreichs (Austria), AGORIA (Belgium), VDMA (Germany), AFPR (France), AVR c/o ANIMA (Italy), VIFIA (Netherlands); and (3) The European Federation of ceramic sanitary ware manufacturers (FECS - Fédération Européenne des Fabricants de Céramique Sanitaire) that was created in 1954 and has 11 members, which are national organisations of ceramic sanitary ware manufacturers, or member companies which represent and approximate their local market. FECS members include: FSKI (Germany), Laufen Company (Austria, Switzerland), Sphinx (Benelux), AFICS (France), Ideal Standard (Greece), Federceramica (Italy), Sanitec Group (Nordic Member States), as well as national associations BMA (UK), APICER (Portugal), ANFDACESA (Spain), as well as Eczacibasi Holding A.S. (Turkey).

⁵⁵ (...)

⁵⁶ (...)

⁵⁷ (...)

⁵⁸ (...) minutes of the meeting of 10 December 1996, where it is also decided that the first AGSI meeting will take place on 4 February 1997 while the first meeting of the steering committee would take place on 15 May 1997.

⁵⁹ The minutes of AGSI meetings also make references to the so-called "ARGE Neue Medien". This is a data system, used as a tool for information exchanges regarding *inter alia* sales volumes, prices of products and product descriptions.

sub-group included: Dornbracht, Grohe, Hansa, Masco (Hansgrohe), Ideal Standard and Kludi.⁶⁰

ABD, formerly ADA (Germany)

- (91) Shower enclosure manufacturers are grouped within Arbeitskreis Duschtabtrennungen (hereinafter referred to as “ADA”, where “*Duschtabtrennungen*” means shower enclosures) since at least 1992. ABD is the trade organisation which replaced ADA. It was founded on 16 May 2003 by ADA and *Arbeitskreis Badewannen* (where “*Arbeitskreis Badewannen*” means “*working group bathtubs*”), thus including both shower enclosure and bathtub manufacturers.
- (92) ADA members included the following undertakings that are pertinent to this Decision: Duscholux GmbH (now DPM Duschwand Produktions- und Montagegesellschaft mbH; at the meetings at the time, it was partly represented by its sister company (...)), Masco (Hüppe) and Sanitec (Koralle). Member of ABD were inter alia: Duscholux, Masco (Hüppe), Sanitec (Koralle) and Villeroy & Boch.⁶¹

FSKI (Germany)

- (93) Ceramic sanitary ware manufacturers were represented at the association FSKI during the period of the infringement. Like AGSI, FSKI is also associated with VDMA and holds its meetings at the offices of VDMA in Frankfurt.⁶²
- (94) FSKI members include the following undertakings that are pertinent to this Decision: Duravit, Sanitec (Keramag), Ideal Standard and Villeroy & Boch.⁶³

ASI (Austria)

- (95) In Austria, the suppliers of bathroom fittings and fixtures met in the context of ASI. ASI was already in existence at the beginning of the infringement and was dissolved in 2005 (following a decision taken during a meeting held on 26 January 2005).⁶⁴ ASI covered all three product groups concerned by this Decision. Within ASI, companies participated in several product groups (“*Produktgruppen*”), namely: (i) taps and mixers (*Armaturen*); (ii) bathroom furniture and accessories (*Badmöbel + Accessoires*); (iii) ceramics (*Keramik*); (iv) shower enclosures (*Duschtrennwände*); (v) bathtubs (*Wannen*), and (vi) Wellness.⁶⁵ Member companies met at general meetings, as well as within different sub-committees representing various product groups. The association was presided over by the various member representatives:⁶⁶ the board of ASI, consisting of the President of ASI and two Vice-Presidents, met regularly at the so-called board meetings (“*Vorstandssitzungen*”).⁶⁷
- (96) ASI members included the following undertakings that are pertinent to this Decision: Artweger, Dornbracht (starting 2001), Duscholux (which participated in ASI until at least August 2003), Grohe, Masco (Hüppe and Hansgrohe), Hansa (terminated in 2003), Ideal Standard, Sanitec (Keramag), (...), Kludi, Roca (Laufen) and Villeroy & Boch.⁶⁸ The vast majority of ASI members were subsidiaries of German companies.

⁶⁰ (...)

⁶¹ (...)

⁶² (...)

⁶³ (...)

⁶⁴ (...) ASI was then deleted from the register of associations in Austria on 27 December 2005 (...).

⁶⁵ (...)

⁶⁶ ASI was presided by the following member representatives: (...).

⁶⁷ As of 2004, the vice presidents were (...) of Laufen and (...) of Ideal Standard.

⁶⁸ See official list of attendees in the minutes of each meeting as set out in the annexes to this Decision. (...)

Euroitalia (Italy)

- (97) Euroitalia is an informal group of companies in the bathroom fittings and fixtures sector in Italy. It had its origins in the early 1990s, when several key German manufacturers entered the Italian market and established contacts amongst them, with the view to forging "friendly" relationships with their key Italian counterparts and to extending the German model of cooperation into the Italian market. The members of Euroitalia took turns in organizing meetings in hotels or restaurants, two to three times a year between July 1992 and October 2004 at least. The discussions of Euroitalia members mostly pertained to taps and fittings, but often included ceramics as well.
- (98) Euroitalia members included the following undertakings that are pertinent to this Decision: Masco (Hansgrohe), Grohe, Hansa, Ideal Standard, Zucchetti, RAF, Cisal, Mamoli, Teorema and (...).⁶⁹

Michelangelo (Italy)

- (99) Michelangelo is another informal group of companies in the bathroom fittings and fixtures sector in Italy. It had its origins in the mid 1990s, when the leading members of Euroitalia set up an enlarged circle to address common issues faced by the entire sanitary industry. The group took its name from the hotel "Michelangelo" in Milan, where participants met at the end of 1995 and the beginning of 1996. Meetings were held three to five times per year (and were occasionally linked to Euroitalia meetings of the same date). The last meeting of Michelangelo took place on 25 July 2003. Michelangelo comprised members that covered a broader range of sanitary products, including taps and fittings and ceramic sanitary ware.
- (100) Members of Michelangelo included the following undertakings that are pertinent to this Decision: Grohe, Ideal Standard, Hansa, Zucchetti, and Sanitec (Pozzi Ginori).⁷⁰

Amicale du Sanitaire (Belgium)

- (101) Certain sanitary products manufacturers and sales agents in Belgium also met in the informal group called Saniclub (...). Saniclub was succeeded by another informal organisation: Amicale du Sanitaire. Although membership was open to undertakings active in the three product groups, members of this association that are pertinent to this Decision mainly comprised manufacturers or importers of taps and fittings and shower enclosures. Meetings took place three to four times a year at the different offices of the participants. Membership was by invitation.⁷¹
- (102) In 2004, Amicale du Sanitaire members included the following undertakings that are pertinent to this Decision: Masco (Hansgrohe), Grohe and Duscholux.

VC (Belgium)

- (103) VC was an informal group of ceramics manufacturers created at the initiative of (...). All VC meetings were organised by (...),⁷² with a view to exchanging market information such as sales developments and prices. VC activities started in 2001 and meetings were held every 3 to 4 months. Although some members were active in various market sections, the discussions held in the framework of VC concerned mainly ceramics.

⁶⁹ See Section 4.2.3 and Annex [6] below.

⁷⁰ See Section 4.2.3 and Annex [7] below. Participants also included producers of heating boilers, radiators, whirlpools etc. that are not concerned by this Decision.

⁷¹ (...) Amicale members had each other's private phone numbers. (...)

⁷² (...) explained that there was a need for such information exchange given the inaccuracy of the available (...) data caused by undertakings reporting inflated volumes.

(104) In 2004, VC members included the following undertakings that are pertinent to this Decision: Ideal Standard, Duravit, Villeroy and Boch, Sanitec (Keramag and Sphinx).

HCT (Belgium)

(105) HCT is a group of manufacturers, agents or importers that supply sanitary, heating, and kitchen equipment products on the market via professional wholesalers (perceived as 'the traditional way' of distribution).⁷³ Although HCT membership is open to undertakings active in the three product groups, members of HCT that are pertinent to this Decision mainly comprise manufacturers or importers of taps and fittings and shower enclosures.

(106) HCT already existed at the beginning of the infringement period referred to in this Decision. It had originally started as a (...). It then evolved into a professional organisation and was renamed HCT in 1996.⁷⁴ The Chair of HCT meetings rotated between members and was re-elected every year.⁷⁵ Minutes were drafted after every meeting and circulated to the members. The so called "*HCT charter*", which was signed by every member, obliged them to respect the confidentiality of the information shared in the framework of the organization.⁷⁶

(107) In 2004, HCT members included the following undertakings that are pertinent to this Decision: Masco (Damixa and Hüppe) and Hansa.

AFPR (France)

(108) AFPR is a professional organisation for taps and fittings which was created in 2000 by the merger of AFIR and AFCP.⁷⁷ AFPR is a member of the Fédération des Industries Mécaniques, which in turn is a member of the national MEDEF. At Union level, AFPR is a member of Comité Européen de l'Industrie de la Robinetterie ("CEIR"). It is also an associate member of Fédération Française des Industries de la Salle de Bains ("FISB").⁷⁸

(109) AFPR members have included the following undertakings that are pertinent to this Decision: American Standard (Idéal Standard, (...)), Grohe, Roca, Hansa France and Hansgrohe (now owned by Masco).

AFICS (France)

(110) AFICS is a professional organisation for ceramic sanitary ware which was created in 1937. Member companies include both French and foreign ceramics manufacturers who are active in France. AFICS is a member of Fédération Européenne des Fabricants de Céramique Sanitaire ("FECS").

(111) AFICS members have included the following undertakings that are pertinent to this Decision: Ideal Standard, Duravit, Roca, Sanitec (Allia) and Villeroy & Boch.

SFP (The Netherlands)

⁷³ (...)

⁷⁴ (...)

⁷⁵ (...)

⁷⁶ (...)

⁷⁷ Association Française des Industries de la Robinetterie (AFIR) and Association Française des Constructeurs de Pompes (AFCP). These two associations merged on 26 January 2000 and took the new name of AFPR on 24 April 2002.

⁷⁸ The Fédération des Industries de la Salle de Bains was created in 1995, bringing together 5 professional associations in the bathrooms sector: AFICS, SDB, AFPR, the Groupement des Industries de Mobilier de Salle de bains, and l'Association des Industries des Accessoires de la Salle de bains. Its membership covers manufacturers of ceramic sanitary ware, baths and showers, taps and fittings, furniture and accessories. It represents around 60% of the French bathrooms market.

- (112) Manufacturers, importers and sales agents active in the field of bathroom fittings and fixtures products established an informal circle called SFP in 1985,⁷⁹ which was chaired by (...) of Grohe. Members took turns to organise meetings, take minutes of those meetings and circulate those minutes.⁸⁰ Meetings were held at least four times a year, twice before the summer holidays and twice after. SFP was discontinued after the Commission inspected SFP's premises in November 2004.
- (113) SFP was an umbrella organisation, that is, an organisation that regrouped members active in the three product groups covered by this Decision. According to the admission test ("*toelatingstoetsing*"),⁸¹ an undertaking had to be a member of SVS, an association established in 1990 by manufacturers, wholesalers and installers covering all three product groups addressed by this Decision,⁸² in order to be admitted to SFP. However, SFP itself did not grant membership to wholesalers.
- (114) All members were also bound by a code of conduct ("*gedragscode*"),⁸³ according to which they had to give an insight on the development of their turnover and to treat any matter discussed within the SFP as confidential.
- (115) In 2004, SFP's members included the following undertakings that are pertinent to this Decision: Masco (Hansgrohe), Grohe, Ideal Standard, Hansa, Sanitec (Keramag and Sphinx) Villeroy & Boch and Duscholux.

2.4. Description of the sector

2.4.1. The supply

- (116) When assessed as a whole, the Union market for bathroom fittings and fixtures is dominated by big multi-national companies such as Masco, Grohe, American Standard, Hansa, Sanitec and Villeroy & Boch. A number of smaller companies are also present on each national market, particularly in Austria, Italy and France. Details about the structure of supply in each national market covered by the Commission's investigation are provided in Sections 4.2.1. to 4.3.3.
- (117) In general, a number of factors can be taken into account when determining price increases: the cost of raw materials and other inputs such as energy and labour, the specifics of the manufacturing process and logistics, general inflation, market positioning, the relative price of a product on the market and its position on the high end / low end scale. However, as demonstrated in Section 4, the coordination of pricing between the bathroom fittings and fixtures manufacturers was bound to influence the determination of prices in the industry.⁸⁴

2.4.2. The demand

- (118) Factors influencing the demand for the products concerned by this Decision include *inter alia* demographics and the nature of the housing stock, national preferences (for example for bidets), and changing consumer preferences (for example for showers rather than baths).
- (119) The products reach the end consumer through various distribution channels: via a bathroom specialist distributor or fitter, the plumbing trade, or through Do-It-Yourself (DIY) outlets.

⁷⁹ (...)

⁸⁰ (...) SFP code of conduct ('gedragscode'), point 8.

⁸¹ (...)

⁸² (...). The association SVS was formally organised, having annual general meetings, with a supervisory board, a day-to-day board, and various working groups. Its aim was to promote the sector.

⁸³ (...)

⁸⁴ See Section 4 for a description of the cartel in the various Member States covered by this Decision.

- (120) In particular, one of the key features characterizing distribution is the so-called “three-tier distribution system”, which is used to denote the three main participants in the distribution of bathroom products to the end consumer: (1) manufacturers, (2) wholesalers, and (3) installers or plumbers.⁸⁵ As a result of the three-tier distribution system, there are different types of price lists that vary depending on the addressees involved or the relevant stage of the distribution process. Gross price lists are those which are generally charged to the wholesalers by the manufacturers. Manufacturers negotiate their rebates with the wholesalers.⁸⁶ The wholesalers then negotiate with the plumbers or installers (who then resell to the end customer). Another way of reaching the end customer is for manufacturers to sell directly to the large DIY distribution outlets.
- (121) Wholesalers sell the product range in its entirety, meaning that no matter which products they receive from particular manufacturers, they offer all bathroom fittings and fixtures products to their customers, as required by those customers, whether installers or end consumers.⁸⁷ Although the wholesalers play an important role within the three-tier distribution system, and may be involved in discussions concerning prices, the Commission focused its investigation on the horizontal level of coordination amongst manufacturers.⁸⁸

2.4.3. *Geographic scope*

- (122) The agreements and concerted practices analysed in this Decision took place on the territory of Austria, Belgium, France, Italy, Germany and the Netherlands.

2.5. **Inter-state trade**

- (123) The sales volumes of producers of bathroom fittings and fixtures show that there is a considerable amount of trade between the Member States of the European Union and the Contracting Parties to the EEA Agreement. The main European manufacturers are household names which are active across the Union, with sales in all Member States covered by the Commission's investigation and with manufacturing facilities in several Member States, for example in Germany (Hansgrohe, Grohe, Hansa, Kludi, Duscholux, Dornbracht and others), in Italy (Zucchetti) and Spain (Roca), as well as outside the Union.
- (124) Moreover, as further described in Part I (facts), the price coordination arrangements at issue, in which all addressees actively participated, followed the same pattern in all relevant Member States. The cross-border features of these arrangements are also apparent in the form of links between the implicated national associations, notably in view of the presence of a core group of companies in all those Member States. In addition, customers of the producers and products concerned by this Decision can be found in all 25 Member States at the time of the infringement, as well as in Norway, Iceland and Liechtenstein. Finally, it has not been questioned that the products to which the infringement relates are traded across the contracting parties to the EEA Agreement and Member States.

85 (...)

86 (...)

87 (...)

88 As regards possible agreements or concerted practices by the wholesalers, the Commission has taken the view that it is up to the National Competition Authorities (NCAs) to investigate any vertical issues. However, the Commission refers to wholesalers (and generally to parties involved in the different stages of the distribution process) in this Decision, with a view to providing a more accurate and complete description of the context of the cartel arrangements at issue.

3. PROCEDURE

(125) The case originated from a leniency application, and concerns bathroom fittings and fixtures such as taps and fittings, shower enclosures and ceramic sanitary ware. The Commission's investigation is limited to six Member States: Austria, Belgium, France, Italy, Germany and the Netherlands.

3.1. The Commission's investigation

3.1.1. Original leniency application

(126) The Commission's investigation began as a result of information received in an immunity application. On 15 July 2004, Masco (...) ⁸⁹ with the purpose of obtaining immunity from fines under the 2002 Commission notice on immunity from fines and reductions of fines in cartel cases (hereinafter referred to as the "Leniency Notice") ⁹⁰ or, in the alternative, a reduction of fines. Masco's leniency application of 15 July 2004 (hereinafter referred to as "Masco's leniency application") described alleged cartel activities in the bathroom fittings and fixtures industry in Austria, Belgium, France, Germany, Italy the Netherlands, Poland, Spain and the United Kingdom. Masco applied for immunity on behalf of all its subsidiaries and affiliates, namely Hansgrohe and Hüppe (Germany).

(127) Masco's leniency application of 15 July 2004 was subsequently supplemented (...). ⁹¹

(128) On 2 March 2005, the Commission granted Masco conditional immunity pursuant to points 8(a) and 15 of the Leniency Notice. The specific geographic and product markets of the decision were: bathroom fittings and fixtures, such as taps and fittings, shower enclosures and ceramic sanitary ware, in Germany, Austria, Italy, Belgium, the Netherlands, France, the United Kingdom, Spain and Poland.

3.1.2. The Commission's inspections

(129) On 9 and 10 November 2004, the Commission carried out unannounced inspections in several undertakings and associations of the bathroom fittings and fixtures industry 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 Article 81 and 92 of the Treaty establishing the European Community (hereinafter referred to as "Regulation 1/2003"). ⁹² In particular, the Commission inspected the premises of the following undertakings and associations:

- Germany: Masco, Grohe, Ideal Standard, Kludi, Hansa Metallwerke and Duscholux as well as (...);
- Austria: Grohe, Kludi and Artweger as well as (...)
- Italy: Masco, Hansgrohe, Grohe, Ideal Standard and Zucchetti;
- Belgium: Grohe, Ideal Standard, Hansa and Duscholux; and
- The Netherlands: Masco, Hansgrohe, Grohe, Ideal Standard, Duscholux and Sphinx as well as (...).

(130) Documents which were not relevant to the Commission's investigation were sent back to the undertakings and associations on 9 August 2005.

⁸⁹ (...)

⁹⁰ OJ C 45, 19.2.2002, p. 3.

⁹¹ (...)

⁹² OJ L 1, 4.1.2003, p. 1

3.1.3. *Leniency applications following the Commission's inspections*

- (131) Following the inspections, on 15 November 2004, Grohe applied for immunity from fines or for a reduction of fines. Grohe's leniency application covered Germany and its subsidiaries in Austria, Belgium, France, Italy and the Netherlands.
- (132) Only few days later, on 19 November 2004, Ideal Standard also applied for immunity from fines or for a reduction of fines. Ideal Standard's leniency application covered, in particular, its subsidiaries in Germany, Austria, Belgium, France, Italy and the Netherlands.

3.1.4. *The Commission's Article 18 requests*

- (133) Starting in November 2005, various Article 18 requests were sent out by the Commission:
- On 15 November 2005, the Commission sent an Article 18 request to Masco Corporation (USA).
 - On 17 November 2005, the Commission sent an Article 18 request to Grohe Deutschland Vertriebs GmbH (Germany).
 - On 18 November 2005, the Commission sent an Article 18 request to the following undertakings: Teorema s.r.l. (Italy), (...); Villeroy & Boch Wellness (Belgium); Hansa (the Netherlands); Hansa (Belgium); (...); Villeroy & Boch (France); Duravit (Belgium); (...); RAF Rubinetteria s.p.a. (Italy); Rubinetteria Cisal s.p.a. (Italy); Mamoli Rubinetteria s.p.a. (Italy); Hansa Italiana s.r.l. (Italy); Roc, France sarl (France); Duravit SA (France); Keramag Keramische Werke AG (Germany); Villeroy & Boch AG (Germany); Aloys F Dornbracht GmbH & Co KG (Germany); Duscholux GmbH (Germany); (...); Laufen, Austria; Villeroy & Boch Austria Handels GmbH (Austria); Duravit AG (Germany); (...); Duscholux GmbH (Austria); Hansa Austria GmbH (Austria); Dornbracht Vertriebsbüro Österreich (Austria); (...); Koninklijke Sphinx BV (the Netherlands); Baker and McKenzie as representatives of American Standard – all undertakings within the group; Kludi Armaturen GmbH; Kludi Armaturen GmbH & Co KG, Kludi Armaturen Austria GmbH (Austria); Hansa Metallwerke AG (Germany); Kludi GmbH & Co KG (Germany); Zucchetti Rubinetteria S.p.A. (Italy); Artweger GmbH, Artweger GmbH & Co, Artweger Holding GmbH (Austria); and Duscholux Belgium NV/SA, (...).
 - On the same day (18 November 2005), Article 18 requests were similarly sent out to national associations, namely IFS, FSKI and ABD in Germany, ASI in Austria, Federceramica in Italy, SVS and SFP in the Netherlands, HCT in Belgium and AFICS and AFPR in France.
 - On 5 January 2006, the Commission sent an Article 18 request to the German association AGSI.
 - On 24 February 2006, the Commission sent an Article 18 request to Sanitec, Finland.
 - On 27 March 2006, the Commission sent an Article 18 request to the European-wide organised associations CEIR, COFEB and FECS.
 - On 16 May 2006, the Commission sent an Article 18 request to (...).
- (134) The Commission received the replies from these undertakings and associations during the period going from December 2005 to June 2006. The Commission then returned the catalogues and price lists that were not necessary to the investigation to certain undertakings.

3.1.5. *Leniency applications following the Commission's Article 18 requests*

- (135) In the process of answering the Commission's an Article 18 request, three additional undertakings filed leniency applications: Roca, Hansa and Dornbracht.

(136) On 17 January 2006, Roca Sanitario SA applied for immunity from fines or for a reduction of fines.

(137) On 19 January 2006, Hansa applied for immunity from fines or for the reduction of fines. In addition to Germany, Hansa's leniency application also covered its subsidiaries in Austria, Belgium, Italy and the Netherlands.

(138) On 20 January 2006, Dornbracht applied for immunity from fines or for the reduction of fines.

3.2. Statement of Objections and Oral Hearing

(139) On 26 March 2007, the Commission initiated proceedings in this case and adopted a Statement of Objections (hereinafter referred to as "the SO").

(140) On 28 March 2007, the SO was notified to the following undertakings: Masco Corporation, Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hans Grohe Handelsges. mbH, Hans Grohe S.A., Hans Grohe B.V., Hansgrohe S.A.R.L., Hansgrohe S.R.L., Hüppe GmbH & Co. KG, Hüppe Ges. mbH, Hüppe Belgium N.V./S.A., Hüppe BV, Grohe Beteiligungs GmbH, Grohe AG, Grohe Deutschland Vertriebs GmbH, Grohe Gesellschaft mbH, Grohe N.V., Grohe S.A.R.L., Grohe S.P.A., Grohe Nederland B.V., American Standard Companies Inc, American Standard Europe BVBA, Ideal Standard GmbH, Ideal Standard Austria, the Belgian branch of Ideal Standard Produktions-GmbH in Germany (Idéal Standard Belgium), Idéal Standard France, Ideal Standard Italia s.r.l., Ideal Standard Nederland BV, Roca Sanitario SA, Roca s.a.r.l. France, Laufen Austria AG, Hansa Metallwerke AG, Hansa Nederland B.V., Hansa France S.A., Hansa Italiana s.r.l., Hansa Austria GmbH, Hansa Belgium BVBA-SPRL, Aloys F. Dornbracht GmbH & CO. KG Armaturenfabrik, Sanitec Corporation, Sanitec Europe Corporation, Keramag Keramische Werke AG, Keramag Vertriebsges.m.b.H., Keramag Belgium n.v./s.a., Keramag Nederland B.V., Koninklijke Sphinx B.V., Sphinx Bathrooms Belgium N.V. (S.A.), Pozzi-Ginori, Allia S.A.S., Villeroy & Boch AG, Villeroy & Boch Austria Handels-GmbH, Villeroy & Boch Belgium S.A., Villeroy & Boch Nederland B.V., Villeroy & Boch S.A.S., Duravit AG, Duravit Belux SPRL./BVBA., Duravit S.A., Duscholux AG, Duscholux GmbH Germany, Duscholux GmbH Austria, Duscholux Belgium N.V./S.A., Duscholux Nederland B.V., (...), Kludi GmbH & Co KG (Germany), Kludi Armaturen GmbH & CO. KG (Austria), Rubinetteria Cisal S.p.A, (...), Mamoli Rubinetteria S.p.A., RAF Rubinetteria S.p.A., Teorema Rubinetteria S.p.A., Zucchetti Rubinetteria S.p.A.; on 29 March 2007 to Artweger GmbH & Co KG, on 27 March 2007 to Produits Céramiques de Touraine S.A., Koralle Sanitärprodukte GmbH; and on 30 March 2007 to Dornbracht (Vertriebsbüro Österreich).

(141) The addressees had access to the Commission's investigation file in the form of a DVD copy. Legal representatives for Artweger, Duscholux, Teorema, Roca, Villeroy & Boch, American Standard, Cisal, Dornbracht, Hansa, Zucchetti and Sanitec exercised their right to access those parts of the Commission file that were only accessible on Commission premises.

(142) All addressees made known their views on the SO to the Commission in writing before the deadline expired.

(143) An Oral Hearing took place on 12 to 14 November 2007, in which all undertakings participated, with the exception of the following addressees: Trane Inc.; Duscholux A.G.; the Italian RAF Rubinetteria S.p.A.; and the subsidiaries of Sanitec Europe Corporation: Allia S.A.S. (France), Produits Céramiques de Touraine S.A. (France), Keramag Keramische Werke A.G., and its subsidiaries Keramag Vertriebsges.m.b.H. (Austria), Keramag Belgium N.V. (S.A.); Keramag Netherlands B.V.; Koralle Sanitärprodukte GmbH (Germany); Koninklijke Sphinx B.V. and its subsidiary Sphinx Bathrooms Belgium N.V. (S.A.) and Pozzi-Ginori (Italy).

- (144) On 25 April 2008, a request for information was sent to all addressees in order to establish the value of sales in the relevant products, as well as the turnover of the undertakings/groups involved. All addressees, with the exception of Duscholux AG, have responded to these requests.⁹³
- (145) On 25 November 2008, a request for information was sent to American Standard group of undertakings concerning their business restructuring (in particular, the sale of the bathroom business to Bain Capital Partners LLC and the spin-off of WABCO Europe BVBA).
- (146) On 6 April 2009 a request for information was sent to Duscholux AG Switzerland, Duscholux GmbH Germany, Duscholux GmbH & Co KG Austria, Duscholux Belgium N.V./S.A. and Duscholux Nederland B.V.; (...); Sanitec Corporation (Finland), Sanitec Europe Corporation, Allia S.A.S. (France), Produits Céramiques de Touraine S.A. (France), Keramag Keramische Werke AG, Keramag, Vertriebsges.m.b.H. (Austria), Keramag Belgium n.v. s.a. and Keramag Netherland BV, Koralle Sanitärprodukte GmbH (Germany) and Koninklijke Sphinx B.V., Sphinx Bathrooms Belgium N.V. (S.A.) and Pozzi-Ginori (Italy); Trane Inc (USA), WABCO BVBA (Belgium), Ideal Standard GmbH (Germany), Ideal Standard (Austria), Ideal Standard Italia s.r.l. (Italy), Ideal Standard (Belgium), Ideal Standard (France), Ideal Standard Nederland B.V.; Masco Corporation (USA), Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hans Grohe Handelsges.mmbH, Hans Grohe S.A., Hans Grohe B.V., Hans Grohe s.r.l., Hansgrohe S.A.R.L., Hüppe GmbH & Co. KG, Hüppe Ges.mmbH, Hüppe Belgium N.V./S.A. and Hüppe B.V., with a view to clarifying issues relating to their corporate group structure.

3.3. Letter of Facts

- (147) On 9 July 2009, the Commission sent a Letter of Facts to Masco Corporation, Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hans Grohe Handelsges. mbH, Hans Grohe S.A., Hans Grohe B.V., Hansgrohe S.A.R.L., Hansgrohe S.R.L., Hüppe GmbH & Co. KG, Hüppe Ges. mbH, Hüppe Belgium N.V./S.A., Hüppe BV, Grohe Beteiligungs GmbH, Grohe AG, Grohe Deutschland Vertriebs GmbH, Grohe Gesellschaft mbH, Grohe N.V., Grohe S.A.R.L., Grohe S.P.A., Grohe Nederland B.V., American Standard Companies Inc, American Standard Europe BVBA, Ideal Standard GmbH, Ideal Standard Austria, Idéal Standard Belgium, Idéal Standard France, Ideal Standard Italia s.r.l., Ideal Standard Nederland BV, Roca Sanitario SA, Roca s.a.r.l. France, Laufen Austria AG, Hansa Metallwerke AG, Hansa Nederland B.V., Hansa France S.A., Hansa Italiana s.r.l., Hansa Austria GmbH, Hansa Belgium BVBA-SPRL, Aloys F. Dornbracht GmbH & CO. KG Armaturenfabrik, Dornbracht (Vertriebsbüro Österreich), Sanitec Corporation, Sanitec Europe Corporation, Keramag Keramische Werke AG, Keramag Vertriebsges.m.b.H., Keramag Belgium n.v./s.a., Keramag Netherland B.V., Koninklijke Sphinx B.V., Sphinx Bathrooms Belgium N.V. (S.A.), Pozzi-Ginori, Allia S.A.S. Produits Céramiques de Touraine S.A., Koralle Sanitärprodukte GmbH, Villeroy & Boch AG, Villeroy & Boch Austria Handels-GmbH, Villeroy & Boch Belgium S.A., Villeroy & Boch Nederland B.V., Villeroy & Boch S.A.S., Duravit AG, Duravit Belux SPRL./BVBA., Duravit S.A., Duscholux AG, Duscholux GmbH Germany, Duscholux GmbH & Co KG Austria, Duscholux Belgium N.V./S.A., Duscholux Nederland B.V., (...), Kludi GmbH & Co KG (Germany), Kludi Armaturen GmbH & CO. KG (Austria), Rubinetteria Cisal S.p.A, RAF Rubinetteria S.p.A., Teorema Rubinetteria S.p.A., Zucchetti Rubinetteria S.p.A. and Artweger GmbH & Co KG.

⁹³ Duscholux AG claimed that the request for information infringed the principle of territoriality because its corporate seat is in Switzerland (...).

(148) By means of that letter, the Commission drew the addressees' attention to certain specific evidence on which the Commission might also rely in a possible finding of an infringement, in addition to other evidence which the addressees had already had the opportunity to comment upon in their responses to the Statement of Objections. While the relevant documents were already in the possession of the addressees (as they formed part of the access to the file exercise), the Commission nonetheless offered the addressees the opportunity to comment on them, taking into consideration that this specific evidence had not been identified as supporting certain allegations in the SO.

3.4. Further information requests

- (149) On 19 June 2009 and 8 July 2009, requests for information were sent to WABCO BVBA, Ideal Standard GmbH (Germany), Ideal Standard (Austria), Ideal Standard Italia s.r.l. (Italy), Ideal Standard (Belgium), Ideal Standard (France), Ideal Standard Nederland B.V. to further clarify their corporate structure. On 23 June 2009, a request for information with a view to further clarifying these groups' structure was sent to Duscholux GmbH (Germany), Duscholux GmbH & Co KG (Austria), Duscholux Belgium N.V./S.A., Duscholux AG (Switzerland), Duscholux Nederland B.V., Grohe Beteiligungs GmbH, Grohe AG, Grohe Deutschland Vertriebs GmbH, Grohe Gesellschaft mbH, Grohe N.V., Grohe S.A.R.L., Grohe S.P.A. and Grohe Nederland B.V..
- (150) On 7 October 2009 and 21 December 2009, requests for information regarding the undertakings' worldwide consolidated turnover were sent to Masco Corporation, Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hans Grohe Handelsges. mbH, Hans Grohe S.A., Hans Grohe B.V., Hansgrohe S.A.R.L., Hansgrohe S.R.L., Hüppe GmbH & Co. KG, Hüppe Ges. mbH, Hüppe Belgium N.V./S.A., Hüppe BV, Grohe Beteiligungs GmbH, Grohe AG, Grohe Deutschland Vertriebs GmbH, Grohe Gesellschaft mbH, Grohe N.V., Grohe S.A.R.L., Grohe S.P.A., Grohe Nederland B.V., American Standard Companies Inc, American Standard Europe BVBA, Ideal Standard GmbH, Ideal Standard Austria, Idéal Standard Belgium, Idéal Standard France, Ideal Standard Italia s.r.l., Ideal Standard Nederland BV, Roca Sanitario SA, Roca s.a.r.l. France, Laufen Austria AG, Hansa Metallwerke AG, Hansa Nederland B.V., Hansa France S.A., Hansa Italiana s.r.l., Hansa Austria GmbH, Hansa Belgium BVBA-SPRL, Aloys F. Dornbracht GmbH & CO. KG Armaturenfabrik, Sanitec Corporation, Sanitec Europe Corporation, Keramag Keramische Werke AG, Keramag Vertriebsges.m.b.H., Keramag Belgium n.v./s.a., Keramag Netherland B.V., Koninklijke Sphinx B.V., Sphinx Bathrooms Belgium N.V. (S.A.), Pozzi-Ginori, Allia S.A.S. and Produits Céramiques de Touraine S.A., Villeroy & Boch AG, Villeroy & Boch Austria Handels-GmbH, Villeroy & Boch Belgium S.A., Villeroy & Boch Nederland B.V., Villeroy & Boch S.A.S., Duravit AG, Duravit Belux SPRL./BVBA., Duravit S.A., Duscholux AG, Duscholux GmbH Germany, Duscholux GmbH & Co KG Austria, Duscholux Belgium N.V./S.A., Duscholux Nederland B.V., (...), Kludi GmbH & Co KG (Germany), Kludi Armaturen GmbH & CO. KG (Austria), Rubinetteria Cital S.p.A, (...), Mamoli Rubinetteria S.p.A., RAF Rubinetteria S.p.A., Teorema Rubinetteria S.p.A., Zucchetti Rubinetteria S.p.A.; Artweger GmbH & Co KG, Koralle Sanitärprodukte GmbH.
- (151) On 5 March 2010 and 8 March 2010, an additional request for information was sent to all addressees as well as on 8 March 2010 to (...), as regards the value of sales in the relevant products.

4. THE CARTEL ARRANGEMENTS

4.1. The basic principles and functioning of the cartel

- (152) The addressees of this Decision participated in a single, continuous and complex infringement of Article 101 TFEU and Article 53 of the EEA Agreement, through agreements and concerted practices in the bathroom fittings and fixtures industry, covering the territories of Germany, Austria, Italy, Belgium, France and The Netherlands. As to the precise extent of the liability of each undertaking, please see Section 5.2.3.
- (153) In particular, bathroom fittings and fixtures manufacturers coordinated their prices and pricing policies in a systematic and sustained way from (...) 16 October 1992 until 9 and 10 November 2004 (the date of the inspections). (...).⁹⁴
- (154) The collusive arrangements at issue covered the product groups taps and fittings, shower enclosures and ceramics, and notably comprised:
- the regular coordination of annual price increases within the framework of regular meetings of industry associations. In certain cases, the coordination included additional pricing elements, such as the fixing of minimum prices and rebates;
 - the coordination of pricing on several other occasions connected to specific events, for which price increase rates were often fixed, in particular: the increase of raw material costs, the introduction of the Euro and the introduction of road tolls and
 - the additional disclosure and exchange of sensitive business information which supported and facilitated the overall price coordination scheme.
- (155) These three types of arrangement were generally carried out by the same undertakings and within the framework of the same industry associations in each of the Member States covered by the Commission's investigation. In addition, several of these arrangements were simultaneously discussed during a single industry association meeting. The Commission thus considers that they together formed part of an overall price coordination scheme, the object of which was to restrict competition.
- (156) Based on the evidence in the Commission's possession,⁹⁵ the anticompetitive conduct at issue followed largely the same pattern and had the same content and purpose of coordinating or fixing prices, across all territories covered by the Commission's investigation.
- (157) The price-setting mechanisms of the bathroom fittings and fixtures industry played a key role in the organization of the cartel, which transcended national borders. In all the Member States covered by the Commission's investigation, the core price coordination arrangements at issue had a cyclical (regular and recurring) character, attuned to annual price cycles (and ensuing price-setting negotiations between participants in the distribution chain).⁹⁶
- (158) The annual price cycle in the industry generally operates as follows: each manufacturer has a price list which typically stays in force for a year and forms the basis for sales to wholesalers

⁹⁴ The precise duration of each party's participation in the infringement is specified at Section 7.

⁹⁵ The description of the facts presented in Section 4 of this Decision is based on a variety of sources, notably documentary evidence which has been corroborated by (...). (...) The biggest portion of evidence nevertheless comprises documents obtained through the inspections at the premises of several undertakings and industry associations. This material has been subsequently complemented and corroborated by additional evidence collected from the replies to the Commission's requests for information (...).

⁹⁶ In the context of the distribution system in place in the industry, that is, the so-called three-tier distribution system, the key participants in the distribution chain were the manufacturers, the wholesalers and the installers/plumbers.

(subject to negotiations regarding sales conditions, rebates). New prices are typically introduced by the manufacturers once per year (often with an additional grace period granted to wholesalers for application). They are nevertheless communicated to the wholesalers in advance, in order to enable them to prepare their catalogues/price lists.

- (159) The evidence in the Commission's file establishes that, at a time period prior to releasing their new prices, manufacturers met to discuss their pricing for the forthcoming price cycle. These price discussions notably concerned the manufacturers' planned price increases for the next price cycle. In certain cases, manufacturers also discussed additional price elements, such as minimum prices and discounts/rebates offered to customers. Subsequently, during meetings that usually took place at the beginning of each price cycle, manufacturers met again to discuss the price increases previously communicated amongst them and since introduced on the market.⁹⁷
- (160) Such arrangements between the manufacturers were mainly carried out within the framework of regular meetings of national industry associations, in all relevant Member States covered by the Commission's investigation.⁹⁸ In general, these associations, organised either in a formal way or just in informal circles by Member State, were presided over by their member representatives and were, therefore, dependant on the activities and input of their members. The associations were thus an instrument for the anti-competitive conduct of their member undertakings. Meetings and discussions in the context of these associations often covered all or more than one of the bathroom fittings and fixtures groups concerned by this Decision (taps and fittings, shower enclosures and ceramics).
- (161) As the arrangements at issue were mainly coordinated within these industry associations, members were also able to monitor the implementation of the exchanged price increase rates actually applied by the other member undertakings (for example during the meetings taking place at the first months of each price cycle).⁹⁹ In the same context, cartel participants often communicated their price increases, not only to their customers, but also to their competitors.¹⁰⁰
- (162) Within the same scheme, bathroom fittings and fixtures manufacturers also fixed or coordinated their prices on several occasions connected to specific events, such as the increase of raw material costs, the introduction of the Euro or the introduction of road tolls.¹⁰¹ The coordination of those practices was conducted in the framework of industry associations and bilateral contacts between the manufacturers.

⁹⁷ Section 4.2 of this Decision provides details on the nature, scope and content of those price discussions, by reference to industry association meetings in chronological order for each of the Member States covered by the investigation. Section 5.2 further explains the anticompetitive character of such contacts amongst manufacturers. (...)

⁹⁸ The Commission's file also contains several examples of additional bilateral contacts amongst participants in furtherance of the same arrangements or objectives.

⁹⁹ As demonstrated in Section 4.2 below, depending on the date of each association meeting, price discussions amongst participants typically pertained to either their intended future price increases for the coming price cycle (for example during meetings taking place in autumn of each year for the price cycle commencing in January of the following year), or to the price increases previously communicated at meetings and since introduced into the market (for example during meetings taking place at the first months of each price cycle). In the Commission's view, the latter discussions served *inter alia* as a means of monitoring the implementation of the price coordination arrangements concerned by this Decision.

¹⁰⁰ Communications to customers and competitors were taking place in parallel or at about the same time (and most often prior to the relevant price increases becoming effective).

¹⁰¹ In view of the multitude of association meetings and coordination arrangements, the Commission examines these occurrences in a separate Section (Section 4.3). For the avoidance of doubt, it is noted at the outset that the coordination of pricing on the occasion of such events forms part of the overall price coordination scheme concerned by this Decision.

- (163) Finally, during the entire period of their sustained price coordination, bathroom fitting and fixtures manufacturers also exchanged sensitive business information within the framework of the same industry association meetings (but also on a bilateral basis). The Commission considers that this exchange of information helped to increase transparency on the market and supported the overall price coordination scheme concerned by this Decision.
- (164) The description of the facts identified in the course of the Commission's investigation is organised in the following way:
- Section 4.2. explains the regular coordination of price increases among manufacturers, notably within the framework of regular meetings of associations. Facts are presented by Member State in the following order: Germany, Austria, Italy, Belgium, France and the Netherlands. Section 4.2. further presents evidence pertaining to the coordination of additional price elements, such as minimum prices and rebates, as well as the exchange of sensitive business information among participants.
 - Section 4.3. explains the coordination of prices on several occasions connected to specific events, such as the increase of raw material costs and the introduction of the Euro, the introduction of road tolls. Facts are presented by Member State in the following order: Germany, Austria, Italy, Belgium, France and the Netherlands.

4.2. Regular coordination of price increases

4.2.1. Germany

4.2.1.1 Chronology and pattern of meetings within the framework of the German associations

(165) Annexes 1, 2, 3 and 4 provide a comprehensive list of meetings within the associations IFS (the umbrella association of sanitary products manufacturers in Germany), AGSI, ABD/ADA and FSKI respectively.¹⁰² The Annexes are intended to provide an overview of the relevant meetings, with a view to complementing the statement of facts in chronological order (while also illustrating the incidence and ensuing pattern of coordination amongst participants). It is noted that the total number of undertakings present at those meetings is often greater than the undertakings identified in the Annexes, as the Annexes only include those undertakings that are addressees of the Decision. Unless stated otherwise, all footnote references in this Section contain documentary evidence relating to minutes of those meetings. The minutes sometimes also pertain to sub-committees within the relevant associations.

4.2.1.2 The facts identified by the Commission

(166) The Commission considers that the following preliminary observations are most useful in understanding the context and nature of the price coordination arrangements in Germany.

(167) One of the key features of distribution arrangements in Germany is the operation of the so-called "three tier distribution system". Within this system, manufacturers provide wholesalers with price lists for their products (which are then subject to negotiations and rebates). The wholesalers then sell the products to plumbers or installers, who then resell the products to the end consumer (usually together with the service of assembly/installation of the products). In Germany (unlike in Austria), negotiations of prices at these different levels of the distribution system are generally made independently of each other.¹⁰³ Price lists containing gross prices are commonly used to determine the prices from manufacturers to wholesalers.¹⁰⁴

(168) Manufacturers generally followed the following price cycle. Prices were increased annually, with effect as of January of each year (subject to a "grace period" of some months). Price increases were thus generally implemented in April of each year, sometimes even June, depending on negotiations between the wholesalers and the manufacturers.¹⁰⁵ Manufacturers communicated their prices to wholesalers at the end of the preceding year (usually, between October and November) to allow sufficient time for preparation or ensuing negotiations. There was a common understanding amongst manufacturers regarding which point in time new price lists would be submitted to the wholesalers and at which point in time they would become valid.¹⁰⁶ These arrangements are clearly reflected in a document of May 1999 (presented at a joint producers/wholesalers meeting of 9 June 1999 and submitted by (...) as attachment to its internal notes of that meeting):

¹⁰² The tables in Annexes 1 - 12 list meetings at which the parties engaged in the anti-competitive arrangements set out in Sections 4.1. to 4.3. The factual description in those Sections predominantly refers to association meetings attesting to price coordination. However, the annexed tables also include additional meetings at which parties exchanged information in support of the cartel arrangements or meetings which are otherwise linked to the annual price cycle.

¹⁰³ (...)

¹⁰⁴ Subsequently, the wholesalers in taps and fittings sector create their own price lists for resale to their customers. However, (...), wholesalers mostly use the manufacturers' price lists to determine the prices of shower enclosures to their customers (plumbers or installers): (...).

¹⁰⁵ (...)

¹⁰⁶ (...)

"Price lists: The following rhythm should be in force for all SHK business lines [SHK standing for sanitary, heating and air conditioning ("Sanitär Heizung Klima"), remark added]:

1. *The industry submits its finished list for the following year to the wholesalers between October and end November.*
- 2a. *From 01.01. – 01.04 cost surcharges are in force for the craftsmen for all product groups. (...)*
- 2b. *The finally printed price list with all detailed prices of the wholesale will be submitted to the craftsmen with validity as of 01.04. In general the prices issued by the wholesale are valid from 01.01. – 31.12. of each year.*¹⁰⁷

(169) Taps and fittings manufacturers in Germany were primarily represented at AGSI.¹⁰⁸ At the very inception of AGSI, there was the need to ensure an increased degree of cooperation amongst taps and fittings producers. In this regard, the minutes of a meeting held on 28 March 1996 within the FG Armaturen sub-group of VDMA (the precursor group of taps and fittings producers) state that it was:

*"...necessary, that the sanitary taps and fittings manufacturers within the FG Armaturen confederate more closely in order to achieve a better forming of opinion and representation vis-à-vis market partners and in relation to all other problems. The present persons agree in the sense that a stronger representation of interests and a stronger organisation of the producers of sanitary taps and fittings within the FG Armaturen is necessary".*¹⁰⁹

This materialized with the creation of AGSI.

- (170) Indeed, the evidence in the Commission's possession exposes the true scope and content of the discussions that took place within AGSI. Those discussions were not limited to the exchange of general views on market trends and conditions, but went as far as to include the coordination of planned price increases (in relation to forthcoming price cycles), cost surcharges and, often, other sensitive pricing elements (such as rebates for customers or minimum prices) - in a systematic and sustained way over a long period of time.
- (171) AGSI members generally discussed planned price increases in late summer or early autumn of each year.¹¹⁰ (...) confirm that the exchange of planned increases was usually conducted in the first half of September of each year, so that competing producers were informed of the upcoming price increase three weeks before the announcement letters were sent to customers. Documentary evidence in the Commission's file reveals that discussions on planned price

¹⁰⁷ (...) German text: "*Preislisten: Folgender Rhythmus für das Erstellen neuer Preislisten in der SHK Branche soll künftig gelten: 1. Die Industrie legt ihre fertige Liste fürs Folgejahr zwischen Oktober und Ende November dem Großhandel vor. 2a. Vom 01.0. – 01.04. gelten fürs Handwerk TZ's/Teuerungszuschläge für alle Sortimente bzw. Warengruppen. (...) 2b. Die endgültige gedruckte Preisliste mit allen Detailpreisen des Großhandels erhält das Handwerk mit Gültigkeit ab 01.04. Grundsätzlich gelten die vom Großhandel herausgegebenen Preise vom 01.01. – 31.12. eines jeden Jahres.*"

¹⁰⁸ See association description in Section 2.2.

¹⁰⁹ (...) "*...notwendig, dass sich die Sanitärarmaturenhersteller innerhalb der FG Armaturen stärker zusammenschließen, um so eine bessere Meinungsbildung und Interessensvertretung gegenüber den Marktpartnern bzw zu allen anderen Problemen zu erreichen. Die Anwesenden sind sich darüber einig, dass eine stärkere Interessensvertretung bzw eine stärkere Organisation der Hersteller von Sanitärarmaturen innerhalb der FG Armaturen notwendig ist.*"

¹¹⁰ (...)

increases for the forthcoming price cycle actually took place as early as July of each year, that is, months prior to their implementation, effective date or announcement to wholesalers. (...), each competitor would take note of what the others indicated. In general, the price increases did not deviate more than 1% between the competitors. At the meetings, participants also discussed what level of price increase could be implemented on the market. In general, the price increase announcement letters addressed to customers were then sent, not only to customers, but also to competitors.¹¹¹ (...) there was a common understanding that the prices would be increased on a yearly basis.¹¹² (...), [non-confidential summary: participants by and large followed through on the price increases they communicated in AGSI meetings].¹¹³ This coordination scheme was often complemented by bilateral contacts amongst members.¹¹⁴

- (172) The implementation of the coordinated price increases was monitored in the context of AGSI meetings usually taking place in the earlier months of each year (price cycle). In addition, if certain participants did not want to increase prices, (...) of the VDMA (moderator at AGSI meetings), (...), often contacted them to inquire by telephone after the meeting.¹¹⁵ (...) acted as a political and legal consultant to AGSI members, and served as an information channel amongst AGSI members.¹¹⁶ Furthermore, participants sometimes also discussed matters relating to a different product group within another product-specific association. For example, (...) repeatedly referred to its ceramics planned price increases when discussing price increases with taps manufacturers at AGSI meetings.¹¹⁷
- (173) Similar arrangements were put into place by shower enclosure manufacturers, mostly within the framework of the association ADA/ABD.¹¹⁸ The Commission's file contains evidence of shower enclosure producers coordinating their future price increases (and other pricing elements such as rebates), in a systematic and sustained way since (...) 1994. (...), members would discuss their planned price increases between May and July of each year (prior to their communication to customers in autumn). The competitors would make a proposal for a specific price increase or a minimum price increase, or a price range increase, which was then agreed upon. Since the competitors were aware of the illegal nature of their conduct, it was not recorded in the official minutes of the meetings. Issues such as when to send out the price announcement letters to customers and which undertaking would be the first to do so was also agreed upon. During the preparation of their prices internally, competitors would also sometimes telephone each other to discuss their intended price increases.¹¹⁹
- (174) The price coordination arrangements between shower enclosure manufacturers exhibited a very high degree of intensity. Most notably, members of ADA/ABD had developed particularly close bonds with each other. For example, to resolve the issue of members occasionally being dishonest to each other, the group introduced trust-building measures, such as a weekend retreat in Vienna with the wives of the members' representatives. The group occasionally even used the code name "Vienna blood" (referring to the concept of "blood brotherhood") to signify that, if members deviated from an agreement, they should inform the other members and be absolutely truthful about it.¹²⁰ In the context of monitoring the implementation of price

111 (...)
112 (...)
113 (...)
114 (...)
115 (...)
116 (...)
117 (...)
118 See association description in Section 2.2 above.
119 (...)
120 (...)

increases, participants sent their announcement letters to each other's home addresses, instead of each other's offices.¹²¹ That scheme was further supplemented by intense bilateral contacts amongst competitors. [Non-confidential summary: E.g., if a competing shower enclosure producer offered a significantly lower price than (...), (...) would contact them by phone to ask why their price was so low. (...) This would occur up to ten times a year.]¹²²

- (175) Ceramics manufacturers also engaged in price coordination. [Non-confidential summary: Duravit, Sanitec (Keramag), Villeroy & Boch and Ideal Standard would inform each other of their intended price increases in September. This coordination was effected by means of bilateral contacts and contacts in the framework of FSKI meetings. They would exchange sales information and the percentages of planned price increases.¹²³ (...).¹²⁴ This lasted until 2004.¹²⁵ These facts are corroborated by documentary evidence in the Commission's file regarding Germany for the years 2000 to 2004.]¹²⁶
- (176) Finally, discussions concerning pricing also took place in the context of IFS (the umbrella association for the sanitary industry; formerly DSI). These discussions involved overall pricing policies or pricing issues of broader interest for all manufacturers (for example coordination of timing arrangements with respect to price lists).¹²⁷
- (177) The Commission refers in this Section to specific meetings and contacts identified during the course of the investigation in chronological order and focuses on the period from 1994 to 2004.
- (178) Coordinated practices in the shower enclosures segment were in place as early as 1994. In a meeting of shower enclosures manufacturers held 15 September 1994 in Frankfurt, Masco (Hüppe), Duscholux and their competitor (...) (not an addressee of this Decision) coordinated their planned price increases for the forthcoming price cycle (1995). The contemporaneous handwritten minutes of the meeting taken by (...) representative record each participant reporting its intended price increases in exact percentages (overall averaged around [0-5]%) to the other participants. The exchanges covered a number of Member States, including the Netherlands, Belgium, France, Italy and Austria. [Non-confidential summary: For example the Netherlands: price increase on 1 April 1995 by same amount as in Germany ([5-10%]). Duscholux: increase of [0-5]%, with an average of [0-5]%. Hüppe: increase of [0-5]%, on average like Duscholux. In Belgium: Duscholux increase of approximately [0-5]%, as of 1 January 1995 and; [5-10]%, (as in Germany) as of 1 May 1995. Hüppe: [0-5]%, as of 1 April 1995; France: [0-5]%, for its low-end product range, [0-5]%, for the medium product range and [0-5]%, for the high-end product range. The notes also record price differentials amongst suppliers: for example, Duscholux' sliding door was already priced higher (by [0-5]%) (and its corner product already [5-10]%, higher) than the corresponding prices of (...). Italy: Hüppe planned to discontinue its discount of [0-5]%, and Duscholux planned a price increase of [0-5]%, as of September 1994. Austria: (...) increase by [0-5]%, as of 1 October 1994.]¹²⁸

121 (...)

122 (...)

123 (...)

124 (...)

125 (...)

126 In particular, ceramics manufacturers exchanged expected price increases in the years 2000 and 2001. In the year 2003, FSKI members had agreed that transport price increases due to a road toll surcharge would have to be passed on to consumers, as explained at recital (753). Additionally, ceramics producers participated in the umbrella association IFS, in which exchanges of sensitive business information took place among other things in the years 2000 – 2004, exchanges of sensitive business information took place, as explained at recital (238).

127 (...)

128 (...)

- (179) An internal note by (...) dated 12 October 1994 records the following concerning the price increases for the upcoming price cycle (1995) across the three product groups (taps and fittings, ceramics and shower enclosures):

"Price increase 1995...until now, the following price increases in the sanitary business are known:

- *shower enclosure manufacturers: [5-10]%*
- *ceramic manufacturers: no increase in relation to staple products, for series [0-5]% - 4%.*
- ...
- *Dornbracht: [0-5]%*

Our price increase can in my view lie between [0-5]%. "¹²⁹

The note attests to the fact that taps and fittings manufacturers (in this case, (...)) had an interest in following price developments pertaining to the other product groups (ceramics and shower enclosures) and, indeed, took such future pricing information into account when determining their own prices.

- (180) Price coordination regarding shower enclosures continued in 1995. Hüppe and Duscholux met again in Frankfurt on 25 September 1995 to coordinate their international strategy. During the meeting, they notably discussed their intended price increases for the forthcoming price cycle (1996) with respect to The Netherlands, Belgium, Luxembourg, Austria and Italy. For each of these markets, they exchanged future price increases in percentages: Hüppe was planning an increase of [0-5]% in all markets, whereas Duscholux communicated a [0-5]% increase to be applied in Belgium and Luxembourg, [5-10]% in the Netherlands and Italy, and [5-10]% in Austria.¹³⁰ This evidence corroborates the Commission's finding regarding the links between the respective price coordination arrangements in Germany and other Member States (the center of gravity being in Germany).
- (181) Competitors in Germany also met at trade fairs, where they used the opportunity to discuss prices or exchange other business information. In this regard, (...) took notes of contacts with competitors at the SHK trade fair of 10 November 1995. The notes provide a *"summary of conversations in the taps and fittings industry during the SHK [a trade fair, remark added] on 10 November 1995"* (*"Zusammenfassung der Gespräche in der Armaturenindustrie während der SHK in Berlin am 10.11.1995"*). With regard to future prices it is stated: *"Price development: Duscholux increases the prices by [0-5]%, (...) by [0-5]%, our price increase can amount to [0-5]%. "¹³¹*
- (182) At the ABW/ABD meeting of 24 January 1996, shower enclosures manufacturers discussed, in addition to sales developments in 1995 and sales forecasts for 1996, the stability of the market. In particular, the notes state that market shares could not really be altered through competition in a permanent way and *"this is why members should deal with each other more reasonably".¹³²*

¹²⁹ (...) internal note of (...) dated 12 October 1994: *"Preiserhöhung 1995...Bisher liegen folgende Preiserhöhungen im Sanitärbereich vor: - Duschabtrennungshersteller: [5-10]% ...- Keramikhersteller: keine Preiserhöhung bei Stapelware, für Serien [0-5] % ...- Dornbracht: [0-5]% ... Unsere Preiserhöhung kann m. E. zwischen [0-5]% liegen."*

¹³⁰ (...)

¹³¹ (...) *"Preisentwicklung: Duscholux erhöht die Preise um [0-5]%, (...) um 0-5]%, unsere Preiserhöhung kann [0-5] % betragen."*

¹³² (...) *"Abschließend stellte (...) fest, daß Marktanteile durch den Wettbewerb nicht wirklich dauerhaft zu verschieben seien, deshalb sollten wir im ABW etwas vernünftiger miteinander umgehen."*

- (183) On 10 December 1996, taps and fittings manufacturers founded AGSI, which also served as a close platform for coordinating future price increases (and other pricing elements), cost surcharges and the exchange of other sensitive business information.¹³³ The purpose was to ensure an increased degree of cooperation between taps and fittings producers.
- (184) Manufacturers were clearly aware of their anticompetitive behaviour. At a joint meeting held on 14 January 1997 between plumbers and DSI (the predecessor of IFS, which covers all three product groups concerned by this Decision), it was stated – in relation to the distribution system – that wholesalers wanted to defend the "*existing cartel*" and sanction manufacturers which deviated from the system. It was further stated that "*the reason why the cartel functions so well is that the dependencies are very strong*".¹³⁴
- (185) On the occasion of the DSI meeting with the wholesalers held on 23 June 1997, participants agreed that price increases in relation to taps and fittings and ceramics would be in place as of the end of the year, with a "*transition period*" until April 1998.¹³⁵
- (186) At the AGSI meeting of 1 September 1997 taps and fittings manufacturers suggested that there would be a "*clearing house*" ("*Clearing Stelle*") consisting of representatives of manufacturers and wholesalers, which should determine price groups for the various products.¹³⁶ The idea originated from discussions in the context of VDMA Fachgemeinschaft Armaturen (the precursor group of taps and fittings producers, VDMA Fachgemeinschaft Armaturen means "*VDMA Product community taps and fittings*", hereinafter referred to as "*VDMA FG Armaturen*"): in particular, the minutes of a joint meeting of VDMA FG Armaturen with representatives of wholesalers held on 23 June 1997 record manufacturers as seeking to determine prices charged to end consumers, while wholesalers considered that to be a restriction of their (and plumbers') freedom to determine resale prices. A compromise was said to be the determination of price ranges for low-end, medium and high-end product categories. That system necessitated, however, the "*clearing house*" ("*Clearing Stelle*") mechanism.¹³⁷
- (187) In the course of 1997, shower enclosure manufacturers coordinated again their prices. In particular, members of ADA agreed on a gross price reduction in 1997 in order to be in a more competitive position compared to the lower prices of DIY products.¹³⁸ The report attached to the minutes of the ADA/ABD meeting held on 16 December 1997 states that it was decided to reduce all prices for shower enclosures by 10% and to grant a rebate of 15%. It was further agreed to apply these new reduced prices by 1 April 1998.¹³⁹ (...) [Non-confidential summary: For 1998, prices were to be lowered by 10% to 12%. However, due to an agreed annual price increase of approximately 5%, so the resulting gross price decrease amounted to no more than 5% to 7%.]¹⁴⁰

¹³³ (...)

¹³⁴ (...) This item of evidence mostly concerns aspects of the vertical collusion between manufacturers and wholesalers – an issue which was not the focus of the Commission's investigation in this case. Nonetheless, it also corroborates the Commission's findings as to the overall operation of the three-tier-distribution system and the ensuing interdependence amongst manufacturers at horizontal level, while further indicating the manufacturers' continuous attempts to form and maintain a united front against their customers (that is, wholesalers).

¹³⁵ (...) the minutes state: "*price increase only as of end of year – transition until 4/98*", "*Preiserhöhungen nur zum Jahressende – bis 4/98 Übergangsfrist*".

¹³⁶ (...) The possibility of establishing a clearing house was previously already discussed at the joint meeting of the wholesalers with the manufacturers on 23 June 1997 (...).

¹³⁷ (...) These issues were discussed under the agenda item "*price finding, price transparency*" ("*Preisfindung, Preistransparenz*").

¹³⁸ (...)

¹³⁹ (...)

¹⁴⁰ (...)

- (188) The evidence in the Commission's file further attests to the monitoring of the implementation of the coordinated prices. At the AGSI meeting of 6 March 1998, participants discussed sales developments and informed each other of their implemented price increases, as well as the date of implementation. Price increases had remained within a [0-5]% band: Dornbracht confirmed that the [0-5]% price increase was implemented, Grohe confirmed its [0-5]% increase, Ideal Standard a [0-5]% increase, Kludi a [0-5]% increase and Hansa a [0-5]% increase. Participants also exchanged information on their basic rebates.¹⁴¹ At an AGSI meeting of 4 May 1998, participants discussed certain conditions which were granted to wholesalers and it was stated that an extra [0-10] Deutsch Mark for orders below [0-100] Deutsch Mark should be charged.¹⁴²
- (189) At the AGSI meeting of 2 October 1998, taps and fittings manufacturers discussed their envisaged price increases for the forthcoming price cycle (1999), well ahead of their implementation of those price increases by each participant. In this regard, the minutes state: "*from 1.1. valid as of 1.4.: Grohe 3.8, Hansa 4.0, Ideal 3.8, ... Dornbracht 4.2 -4.5...*". Ideal Standard is further recorded to have communicated its intended price increases in relation to other product groups: "*from 1.1. ceramics 3-4%, from 1.1. valid as of bathtubs 4 – 5%*". The minutes also list undertakings that were going to apply a "*linear*" price increase.¹⁴³
- (190) The minutes of the AGSI meeting held on 21 October 1998 reveal that taps and fittings manufacturers sought to align their prices. In particular, one of the discussion items was "*Pricing systems corrections of price positions (which priced too high?)*" ("*Preissysteme Korrekturen von Preispositionen (Welche zu hoch angepreist?)*"). It was further concluded at the meeting that one of the actions to be taken was to "*adjust prices*" ("*Preise abstimmen*").¹⁴⁴
- (191) An internal (...) email dated 26 October 1998 concerning the forthcoming 1999 price increase corroborates the notion that competitors agreed on price ranges, often referred to as "*corridors*", within which the intended price increases had to remain. [Non-confidential summary: In particular, (...) ((...)) in Germany) informed a colleague that he had spoken with (...) ((...)) German sales entity and member of (...)’s executive board; (...) and that he was of the opinion that (...) should stay with a price increase of [0-5]%, although the competitors were to increase their prices by up to [0-5]%, and that the range to be applied in 1999 was set at [0-5]%.¹⁴⁵ According to another (...) document dated 10 February 1999, competitors' prices did indeed remain within this band] and that price increase announcements were sent not only to customers, but also to competitors.¹⁴⁶
- (192) In the context of their sustained price coordination, it was common practice for AGSI members to send their price increase announcements to AGSI and its members (once the annual price increase had been determined), with a view to monitoring price developments.¹⁴⁷ An example of this practice can be found on the occasion of the annual price increase for 1999, where Hansgrohe sent a letter on 30 November 1998 to AGSI and AGSI members, namely competitors (such as Hansa, Grohe, Ideal Standard, Kludi and Dornbracht), in which it

¹⁴¹ (...)

¹⁴² (...) the minutes state: "*In case of orders below [0-100] DM, a minor order surcharge of [0-10] DM should be invoiced*" ("*Bei Bestellungen unter [0-100] DM soll ein Mindermengenzuschlag von [0-10] DM berechnet werden.*")

¹⁴³ (...) The German text reads as follows: "*ab 1.1. wirksam ab 1.4.: Grohe 3.8, Hansa 4.0, Ideal 3.8, ... Dornbracht 4.2 -4.5...*", "*ab 1.1. Keramik, ab 1.1. wirksam ab 1.4. Badewannen*".

¹⁴⁴ (...)

¹⁴⁵ (...)

¹⁴⁶ (...)

¹⁴⁷ (...)

announced its future price increases for 1999.¹⁴⁸ Similarly, by letter dated 28 December 1998, Villeroy & Boch asked (...) for its new price list and offered to send its own in return.¹⁴⁹

- (193) During the AGSI meeting held on 14 January 1999, participants said that they had achieved a common price level throughout Europe with a deviation of +5%/-5% (with end consumer prices within the Union varying to a larger extent). In the latter regard, manufacturers expressed their interest to resolve the issue and stated that it should be discussed with wholesalers during one of the next joint meetings.¹⁵⁰
- (194) Taps and fittings manufacturers used the opportunity of the AGSI meeting held on 9 March 1999 to monitor the implementation of the 1999 price increases, which were previously coordinated at the AGSI meeting of 2 October 1998. In particular, manufacturers reassured each other about the implementation of the price increases to be applied as of 1 April 1999, which would remain within the band of 3.5% and 4.6%.¹⁵¹ Such monitoring of price increases was common for meetings taking place in the earlier months of each price cycle, which also typically included discussions on sales developments up to date.
- (195) Further evidence corroborates the notion that manufacturers pursued the goal of price alignment in the Union. The issue was again discussed at the AGSI meeting of 30 September 1999 and the AGSI meeting with wholesalers held on 13 October 1999. The minutes record AGSI as stating: "AGSI assumes that the industry in Europe has aligned its prices +/- 5 – 7%" (*"Die AGSI geht davon aus dass die Industrie ihre Preise in Europa bereits weitgehend harmonisiert haben (+/- 5 – 7%)"*).¹⁵²
- (196) Contemporaneous handwritten notes (found during the inspections at the premises of VDMA and Hansa) show that manufacturers of taps and fittings discussed their planned price increases for the forthcoming price cycle (2000) at the AGSI meeting held on 26 October 1999. During the meeting aside from exchanging information on sales developments, participants communicated their future price increases to be applied in 2000, in precise percentages.¹⁵³ In the course of November 1999, (...) received the corresponding price increase announcements from several of its competitors including Kludi and Grohe.¹⁵⁴ In general, the planned price increases for 2000 were within the range of [0-5]%.¹⁵⁵
- (197) In 1999, the shower enclosure manufacturers also agreed on a minimum price for a standard product in the lower price segment, namely the 90 cm doors.¹⁵⁶ In particular, an internal (...) note reporting on the joint ADA/wholesalers meeting held on 9 June 1999 attests to an agreement amongst manufacturers on the minimum price for that product (referred to as "low price point"). The following extract from the minutes is most revealing:

"low price point: none of the "present"!!!! manufacturers wanted to question the low price point (approx. DM 460,-. 90 port). For this, one remark from my side: Koralle was missing. I have heard rumours that Koralle has a series below the mentioned price.

148 (...)

149 (...)

150 (...)

151 (...)

152 (...)

153 (...)

154 (...)

155 This is also evident on the basis of an internal (...) document dated 22 November 1999, which lists the 2000 price increase rates to be applied by each competitor Apart from Grohe, all competitors would remain within the narrow range of [0-5]%. (...).

156 (...)

*On the occasion of an accidental meeting with (...) he answered to a question in this direction evasively and in the sense of: rumours often have a truth. But Koralle will not question the gross price point."*¹⁵⁷

- (198) The price coordination arrangements continued during the course of 2000. At the AGSI meeting of 23 February 2000, after having exchanged information on sales developments, manufacturers of taps and fittings reassured each other about the price increases to be applied as of 1 April 2000; rates would remain within the band of 2.2% and 3.8%.¹⁵⁸ The handwritten notes also include the remark: "*price increase without problems*" ("*Preiserhöhung problemlos*").¹⁵⁹
- (199) Contemporaneous handwritten minutes taken during the ADA/ABD meeting held on 20 June 2000 reveal that shower enclosure manufacturers discussed, not only the timing of the forthcoming price increase, but also the rate of that price increase – several months before the next price cycle (2001).¹⁶⁰ The notes contain repeated references to a rate of [5-10]%. Furthermore, the timing of the introduction of the Euro in 2002 was already a topic of discussions.¹⁶¹ It should also be stated that none of these discussions are included in the official meeting minutes of ADA.¹⁶² This supports the notion that members were well aware of the illegality of their conduct and, thus, sought to conceal sensitive topics from the official minutes of the meetings.
- (200) At the FSKI meeting of 7 and 8 July 2000, ceramics producers discussed their pricing (as well as their latest business developments and sales performance). Internal notes reporting on the meeting (taken by (...)) state in relation to price increases: "*According to (...), the French market has announced an irregular price increase via a cost surcharge of + 3%. We should therefore, according to (...), continue the regular price increase of + 4%.*" It can be inferred from these notes that ceramics manufacturers had previously discussed a regular price increase of 4%, which was applied in a coordinated manner.¹⁶³
- (201) The evidence relating to the ADA meeting of 10 and 11 August 2000 attests to regular price fixing arrangements amongst shower enclosures manufacturers. The notes of the meeting show that they coordinated their planned price increases for the forthcoming 2001 price cycle. In addition, manufacturers coordinated rebates for showroom display and agreed to correct the price lists with stickers containing the surcharge.¹⁶⁴ Members agreed on a cost surcharge of 3.5% (as of 15 October 2000) and on the usual price increase of 4.2 to 4.5% (effective as of 1 April 2001), the total price increase amounting to approximately 8%. The notes state:

*"Suggestion: From 01.10.2000 sticker cost surcharge 3.5%
Validity for GH from 15.10.00*

¹⁵⁷ (...) "*Unterer Preispunkt: Den unteren Preispunkt (ca. DM 460,- 90er-Tür) wollte keiner der "anwesenden"!!! Hersteller in Frage stellen. Dazu eine Anmerkung von mir: Koralle fehlte. Ich habe gerüchteweise von einer Serie von Koralle unterhalb des genannten Preises gehört. Anlässlich eines zufälligen Treffens mit (...) hat dieser auf eine Frage in dieser Richtung ausweichend und sinngemäß so geantwortet: An Gerüchten ist schon oft etwas. Aber Koralle wird den Brutto-Preispunkt nicht in Frage stellen.*" (...)

¹⁵⁸ (...)

¹⁵⁹ (...)

¹⁶⁰ (...)

¹⁶¹ (...)

¹⁶² (...)

¹⁶³ (...) "*Frankreich boomt, so dass lt. (...) der französische Markt eine außerordentliche Preiserhöhung mit einem TZ von + 3% bekanntgegeben hat. Wir sollten lt. (...) die Regel Preiserhöhung von + 4% weiter fortsetzen.*"

¹⁶⁴ (...) "*Vorschlag: Ab 01.10.2000 Aufkleber TZ 3.5%; Gültigkeit für GH ab 15.10.00; Preisliste I/2001+ 4.2 – 4.5%; = Preiserhöhung approx. 8.0 %; Gültig ab 01.04.2001.*" (...)

<i>Price list I/2001</i>	+ 4.2 – 4.5%
= price increase	approx. 8.0%
valid as of 01.04.2001".	

Manufacturers had thus agreed on a yearly price increase, as well as a cost surcharge, which would be uniformly applied as of 1 October 2000. It is also apparent that the arrangements were agreed several months ahead of their application. [Non-confidential summary: At the same meeting, shower enclosure manufacturers coordinated their rebates for products on display in the showrooms of wholesalers and plumbers. In particular, they agreed that wholesalers should get a rebate of no higher than 80% and plumbers should get a rebate of 20 to 50%.] This issue had also been previously discussed at the ADA meeting of 8 March 2000.¹⁶⁵

- (202) At ADA meetings, shower enclosure manufacturers also sought to discourage attempts to market products at lower prices. For example, when competitor (...) put a high-quality product at a low price on the market, the issue was discussed at the meeting of ADA on 23 September 2000. (...) (Duscholux) opposed this conduct and encouraged producers to raise their prices.¹⁶⁶ In this regard, the minutes of the meeting record the following: *"Report of the Chairman: In his statement regarding the economic situation within the sanitary business (...) stated that generally a decrease in the volume as well as the value can be remarked. In the context of the current pricing cycle he (the Chairman, remark added) asked the participants not to always look down but rather orientate upwards. This is in particular true for new products which have been already brought to the market by a competitor."*¹⁶⁷ During the meeting, sales information was also exchanged amongst participants.¹⁶⁸
- (203) An internal (...) note (...) in connection with a meeting of the umbrella association DSI on 5 October 2000 further shows that manufacturers had exchanged the rates for their planned 2001 price increases at the meeting. The notes list the price increase rates for all the product groups concerned by this Decision: *"Prices 2001, planned price increases ADA +7.5%, ceramics 4.5%, bath furniture +5-7%, tubs +4-5%, taps +4-5%, tough negotiations with a range of 0.5 – 1%"* (*"Preise 2001, Geplante Preiserhöhungen, ADA +7.5%, Keramiker 4.5%, Badmöbel +5-7%, Wannen +4-5%, Armaturen +4-5%, harte Verhandlungen mit Schlupf von 0,5 – 1%"*). Sales developments for all three product groups concerned had also been exchanged at the meeting.¹⁶⁹ The 7.5% price increase agreed upon in the context of ADA, was also taken into account by Austrian manufacturers when they coordinated their respective price increase within the framework of the Austrian association ASI (at their meeting on 12 October 2000 explained in detail in Section 4.2.2.). The minutes of this ASI meeting explicitly stated that this price increase had been agreed on within ADA.
- (204) Evidence in the Commission's file further demonstrates that manufacturers often used prices in Germany as a reference or benchmark for alignment purposes in a broader geographic context. Internal emails of (...) dated December 2000, which relate to comparative price levels between

¹⁶⁵ (...)

¹⁶⁶ (...)

¹⁶⁷ (...) Sales information was also exchanged on the ADA meeting on 5 December 2000, (...). German text: *"Bericht des Vorsitzenden: In seinem Statement zur wirtschaftlichen Lage innerhalb der Sanitärbranche erklärte (...), dass allgemein ein Rückgang sowohl in der Menge als auch im Wert zu verzeichnen sei. Im Zusammenhang mit der aktuellen Preistrunde forderte er die Anwesenden auf, bei der Festlegung von Preisen nicht immer nach unten zu sehen, sondern sich eher nach oben zu orientieren. Das gilt insbesondere für neue Produkte, die bereits durch einen Wettbewerber im Markt eingeführt sind."*

¹⁶⁸ Sales information was also exchanged at the ADA meeting of 5 December 2000 (...).

¹⁶⁹ (...)

(...) and its competitor (...), read as follows: "*attached please find a comparison of us relating to the price levels in Germany compared to NL – BE – F. We see that there is indeed space for (...) as well as (...) to adapt accordingly, in particular with reference to the German alignments*". The attachment to the email shows a comparison of prices concerning two specific products for the year 2000 in Belgium, the Netherlands, Germany and France.¹⁷⁰

(205) (...) also obtained information about future price increases of its competitors (explicitly referred to as being confidential) for the forthcoming price cycle (several months before their implementation or announcement to customers), in the context of bilateral contacts. An internal email of 2 July 2001 relating to all the Member States subject to this Decision, as well as the United Kingdom, records (...)’s contact with one of its competitors (the Italian manufacturer (...)) as follows:

*"After a telephone call with the marketing boss of (...) attached please find the confidential information about implemented or planned price increases:
B, NL from 01.01.02 + 5%
A from 01.01.02 + 5%
F, UK, G stable after PE (standing for the German word Preiserhöhung meaning price increase, remark added) after 01.03.01
I alignment according to series to Europe price list".¹⁷¹*

(206) At an ADA/ABD meeting in August 2001 (likely to have taken place on 8 to 11 August in Vienna) shower enclosures manufacturers discussed the new price lists for the forthcoming price cycle (2002), also on the occasion of the Euro. They agreed on a price increase of approximately 5.5% valid from 1 January 2002 (in specific cases, there could be a possibility of applying the increase as of 31 January 2002). With respect to the timing arrangements of the price increase, the minutes of the meeting further state: "*For these cases, an information obligation has been agreed on, key word: Vienna blood*".¹⁷² As previously explained, the code word "*Vienna Blood*" ("*Wiener Blut*"), a direct reference to the concept of "*blood brotherhood*", was meant as a monitoring mechanism to ensure the implementation of the agreed price increases: if a member deviated from an agreement, it had to inform the others and be absolutely truthful about it. During the meeting, participants also agreed that calculations of rebates should always be based on the prices after cash discounts, that is, on net prices ("*Es wurde vereinbart, die Ermittlung der Boni immer nach Skonti, d.h. auf der Basis der netto/netto Preise durchzuführen*").

(207) During the AGSI meeting held on 7 March 2001, taps and fittings manufacturers reaffirmed that they were the ones in charge of determining prices – in this regard, the minutes state: "*...we are keeping the autonomous power to calculate*". Furthermore, participants already laid down that the next discussion regarding the 2002 price increase would take place at meetings of 30 and 31 May 2001.¹⁷³

¹⁷⁰ (...) "*anbei ein Preisvergleich unsererseits bzgl. der Preisstellung in D zu NL-B-F. Wir sehen hier durchaus Luft, dass sowohl (...) als auch (...) hier entsprechend anpasst, insb. unter Berücksichtigung der deutschen Anpassungen*".

¹⁷¹ (...) ("*Nach einem Telefonat mit der Marketingleiterin von (...) anbei die vertraulichen Informationen über umgesetzte oder geplante Preiserhöhungen: B, NL ab 01.01.02 + 5%; A ab 01.01.02 + 5 %; F, UK, D gleichbleibend nach PE zum 01.03.01; I serienbezogene Anpassung an Europa-Preisliste*").

¹⁷² (...) The meeting may have taken place on 20 August 2001, as certain references point to that date. The Commission deemed 8 to 11 August 2001 as the most likely date, as this is the date marked on the underlying handwritten notes of the meeting, which were found during the inspections at the premises of (...). For the agreement relating to the introduction of the Euro, please see further Section 4.3.1.1.

¹⁷³ (...) "*... wir behalten die eigenständige Kalkulationshoheit.*"; (...).

(208) Indeed, at the AGSI meeting of 30 and 31 May 2001 taps and fittings producers coordinated their planned price increases for the upcoming price cycle (2002) – more than half a year before their introduction of those price increases and prior to any announcement to customers. All communicated price increases ranged from [0-5]% (with an additional surcharge of [0-1]% for all manufacturers):

"PE (standing for Price Increase, remark added): Info until 31 July – Dates (...) print media:

- ... [0-5]% F.G. (standing for Friedrich Grohe, remark added)
- [0-5]% H.G. (standing for Hans Grohe, remark added)
- [0-5]% I.S. (standing for Ideal Standard, remark added)
- [0-5]% Dornbracht
- [0-5]% Kludi
- [0-5]% Hansa

+ [0-1]%"

Participants at the meeting also agreed on the timing for introducing the price increases.¹⁷⁴ The price increases were to be communicated to wholesalers by 31 July 2001 and be effective as of 1 January 2002.

(209) Similarly, an internal email by (...) dated 25 May 2001 sheds more light into the reasons behind the specific timing arrangements that year (in view of the introduction of the Euro). In the producers' view, the reason that necessitated a price increase in 2001 was that a cost increase would be prohibited if it was made at the same time as the currency conversion to the Euro. The relevant extract of the minutes reads as follows:

"Subject: Price increase in Germany: - ADA is sending sticker in July with a linear price increase of 4.5%, valid as of 01.10.2001 – wholesale is trying to implement this price increase in the small trade before the –conversion – according to EC law the conversion may not at the same time be used for a price increase, so the price increases have to be brought forward! – in practice there will however be a transition period – we win 3.4 months – in the taps industry there are different opinions between 4% - 5.5%, partly also different increases according to product groups. The info to the wholesale has to be made in July".¹⁷⁵

(210) Another internal (...) email dated 8 June 2001 attests to the price coordination efforts taken by manufacturers for the forthcoming price cycle (2002), several months before the new price lists become effective (and prior to their announcement to wholesalers). The email also corroborates the notion that taps and fittings producers took into account price developments in the other two product groups when determining their prices:

"I have had some telephone conversations with colleagues in the sanitary business in order to get a feeling for the price situation 2002:

¹⁷⁴ The German text reads: *"PE 2002 Info b. 31.07.01 – Daten (...) Printmedien: - gew. [0-5]% F.G. – [0-5] % H.G. – [0-5] % I.S., [0-5] % Dornbracht, [0-5] % Kludi, [0-5] % Hansa + [0-1]"*.

¹⁷⁵ (...) German text: *"Thema: Preiserhöhung in Deutschland: - Der ADA verschickt im Juli Aufkleber mit einer linearen Preiserhöhung von 4,5 %, gültig ab 01.10.2001 – der GH versucht, diese Preiserhöhung noch vor der – Umstellung im Handwerk durchzusetzen – nach EG-Recht darf die – Umstellung nicht gleichzeitig zur Preiserhöhung benutzt werden, die Preiserhöhungen müssen also vorgezogen werden! – de facto wird sich aber trotzdem eine Übergangsfrist ergeben – wir gewinnen aber 3-4 Monate – Bei der Armaturenindustrie gibt es unterschiedliche Meinungen in einer Bandbreite zwischen 4 % - 5,5 %, teilweise auch unterschiedliche Erhöhungen nach Produktgruppen. Die Info an den GH muss im Juli erfolgen"*.

Planned price increases:

- of the shower enclosure manufacturers: approx. [0-5]%

- of the ceramics producers: approx. [5-10]%

On the one hand, the increased competition leads to cheap products, on the other hand the cost spiral is increasing. As a consequence, we also have to increase by [0-5]%. ...

*Due to the Euro-change at the end of the year the price increase cycle should be brought forward. The wholesalers expect price increase information until 31 July 2007."*¹⁷⁶

- (211) The fact that taps and fittings producers had due regard to the corresponding price developments in relation to shower enclosures and ceramics when determining their own prices again attests to the links between the different product groups concerned by this Decision (reflecting, to a large extent, the structure of demand and the specific modalities of distribution). An internal (...) document dated 5 July 2001 lists the intended price increases of several competitors for the year 2002 (in exact percentages ranging between 4.1% and 4.4%). The information in (...)’s possession is particularly detailed (already at a time several months prior to the forthcoming price cycle), as it also refers to the exceptions from the price increase rate envisaged for specific products. For example, in relation to Grohe, the list refers to a price increase of 4.4%, with the following exceptions: *"Exceptions: EUROSMART, EUROSTYLE, GROHE-THERM 1000, RAPID "L" and exhibitions news. Price decrease for RAPID "L" and RELEXA, i.e. Ø price increase of 4.1%"*.¹⁷⁷
- (212) Moreover, the minutes of the AGSI meeting of 4 September 2001 reveal that a common approach of the taps and fittings manufacturers in relation to price increases was deemed indispensable for them and that manufacturers which attempted to deviate were brought in line. Under the heading *"price increase" ("Preiserhöhung")*, the following statement can be found in the official minutes of the meeting: *"Despite many objections by the customers, there is unanimity except for Kludi, (...), that the price increase has to be implemented in the announced form. Kludi is to be convinced in this regard."*¹⁷⁸ The handwritten minutes taken by the representative of (...) are more telling as to the peer pressure exercised against the undertakings deviating (or attempting to deviate): *"Price increase – unanimity that one has to stay tough – Kludi, (...), have collapsed – Kludi is being "dealt with"*.¹⁷⁹
- (213) Competitors informed each other of price increases by sending each other their price increase announcements. In this regard, (...) kept a *"list of addressees"* for its price increase announcements 2001/2002 which it communicated on 5 November 2001. That list, on top of

¹⁷⁶ (...) German text: *"Ich habe in den letzten Tagen einige Telefongespräche mit Kollegen der Sanitärbranche geführt um ein Gefühl für die Preissituation 2002 zu bekommen: Geplante Preiserhöhung; - der Duschabtrenner: ca. [0-5] %; - der Keramikhersteller: ca. [5-10] %; Einerseits führt der verschärfte Wettbewerb zu preiswerten Produkten, andererseits steigt aber auch die Kostenspirale. In der Konsequenz müssen auch wir zu einer Preiserhöhung zwischen [0-5] % kommen. ... Wegen der Euro-Umstellung am Jahresende soll die Preiserhöhungsrunde diesmal vorgezogen werden. Der Großhandel erwartet eine Preiserhöhungsinformation bis 31.07.01."*

¹⁷⁷ (...) *"Ausnahmen: EUROSMART, EUROSTYLE, GROHE-THERM 1000, RAPID "L" und Messeneuheiten. Preissenkung bei RAPID "L" und RELEXA, d.h. Ø Preiserhöhung von 4,1 %"*).

¹⁷⁸ (...) German text: *"Trotz vielfacher Einwände von Kundenseite bestand mit Ausnahme von Kludi, (...) generell Einigkeit darüber, dass die Preiserhöhung in der angekündigten Form durchgeführt werden soll. Kludi soll diesbezüglich noch umgestimmt werden."*

¹⁷⁹ The German text reads as follows: *"Preiserhöhung – Einigkeit, das man hart bleiben muß – Kludi, Oras, Shell sind umgefallen - Kludi wird "bearbeitet"."* (...) This issue arose from discussions on the Euro price increase. By way of background, the manufacturers wanted to stick to their *"Euro Roadmap" ("Euro Fahrplan")* within which the price lists would be distributed as of 1 October 2001 and enter into force on 1 January 2002. The wholesalers (and certain producers) wanted to deviate from this arrangement: (...).

which the name "*competitors (...)*" is printed, included *inter alia* the following undertakings, active in all three product subgroups: Ideal Standard, Duravit, Duscholux, Koralle, Hansa, Masco (Hüppe), Sanitec (Keramag), Grohe, (...), Dornbracht, Villeroy & Boch, Kludi and AGSI.¹⁸⁰

- (214) Evidence further attests to the active role of the secretary general of AGSI, (...). The handwritten notes of a meeting of 6 December 2001 read, after participants discussed the Euro price increase states: "*Price negotiation results / atmosphere to (...) / per telephone*".¹⁸¹
- (215) The price coordination of ceramics manufacturers also continued in the framework of FSKI. At a meeting of 23 January 2001, each of the participants presented their sales developments.¹⁸² During their meeting held on 13 July 2001, producers discussed the rebates for exhibition purposes (fixing a uniform rebate of 50% to be granted to wholesalers for showroom display), the priorities in relation to further advantages. They also sought to ensure that there would be no deviation. In particular, the minutes state:

*"All participants agree that from now on, only 50% exhibition rebate is applied for the wholesalers. If deviations are asserted, taking up contacts among each other is necessary. Special cases are subject to an absolute exception rule. Regarding other additional services the following points have priority: ...with regard to staple ceramics, limit prices should be fixed."*¹⁸³

With respect to the forthcoming price cycle (2002), the notes specifically record that the maximum envisaged rate of the price increase would be approximately 3%:

*"The price increase getting to the trade is valid as of 01.01.2002. If at all, necessary exceptions should be granted for the 1 quarter 2002. Maximum rate: approximately 3%".*¹⁸⁴

- (216) Price coordination continued in the course of 2002. At the AGSI meeting of 27 February 2002, at the beginning of the next price cycle, taps and fittings manufacturers reassured each other about the implementation of the previously coordinated price increases of 4 to 5%, after having exchanged information on their recent sales performance and their sales forecasts for 2002. During the meeting Ideal Standard also confirmed its price increase rate for ceramics.¹⁸⁵
- (217) The timing of the 2003 price increase was discussed as early as Spring 2002. At the AGSI meeting held on 19 March 2002, it is recorded that increases would become effective as of 1 January 2003 and that they would be announced to customers as of 1 October 2002. Sales developments were also exchanged, with Ideal Standard again communicating its expectations also in relation to ceramics products.¹⁸⁶ These timing arrangements for the 2003 price increase were confirmed during the AGSI "*steering committee*" ("*Lenkungsausschuss*") meeting held on

180 (...)

181 (...) German text: "*Preisgesprächsergebnisse Atmosphäre and (...) / telef.*". (...)

182 (...)

183 (...) The German text reads as follows: "*Alle Beteiligten sind sich darin einig, dass ab sofort für den Großhandel nur noch 50% Ausstellungsrabatt angewandt werden. Sollten Abweichungen festgestellt werden, so ist Kontaktaufnahme untereinander erforderlich. Sonderfälle bedürfen der absoluten Ausnahmeregelung. Im Hinblick auf weitere Zusatzleistungen haben folgende Punkte Priorität: ... Im Hinblick auf Stapelkeramik sollten Limitpreise fixiert werden.*"

184 (...) The German text reads as follows: "*Die dem Handel zugehende Preiserhöhung gilt fest ab 01.01.2002, Etwaige, erforderliche Ausnahmen sollten prozentual für das I. Quartal 2002 gewährt werden. Maximalsatz: ca 3%.*"

185 (...)

186 (...)

15 May 2002, with the additional information that producers of shower enclosures would follow the same timing.¹⁸⁷ The timing of the 2003 price increase was again confirmed during the AGSI meeting held on 26 June 2002.¹⁸⁸ It had also been discussed at the IFS meeting held on 11 April 2002 (covering all product groups).¹⁸⁹

- (218) Further evidence relating to the AGSI meeting of 15 May 2002 again indicates that the various product groups were closely interlinked. In particular, when sales developments were discussed at the meeting, an overview of the sales developments in the ceramics industry was also given. It can also be inferred from the minutes that taps and fittings manufacturers considered the consequences that ceramics sales developments could have for their business as they record: *"consequences for the taps and fittings industry?"* (*"Konsequenzen für die Armaturenbranche?"*).¹⁹⁰
- (219) Later in August, taps and fittings manufacturers coordinated again their planned price increases for the forthcoming price cycle (months prior to their implementation). In particular, at the AGSI meeting held on 27 August 2002, participants discussed the rates for the upcoming 2003 price increases, as well as their recent sales performance and sales forecasts for 2002. The official minutes of the meeting include the following: *"the percentage of the price increase was determined between [0-5]%. ... Kludi, Hansa and Hansgrohe will most likely also increase by [0-5]%"*.¹⁹¹ The handwritten notes of the meeting taken by (...)’s representative shed more light into the relevant price discussions at the meeting. In particular, the price increases were to be announced by the end of September, for application as of 1 October 2002 (with a grace period until 1 January 2003). By way of example, Dornbracht is recorded as planning an increase of [0-5]%, Hansa [0-5]%, Kludi above [0-5]%, Ideal Standard at least [0-5]% and Hansgrohe around [0-5]%.¹⁹² Members also agreed to inform (...) of the grace periods negotiated with customers. Moreover, Ideal Standard again communicated its price increases for ceramic sanitary ware ([0-5]%).¹⁹³ An internal document prepared by (...) on 2 September 2002 (few days after the meeting) with the heading *"Planned price increases 2003"* (*"Geplante Preiserhöhung 2003"*) contains a price comparison of the 2003 rates to be applied by competitor: Grohe – [0-5]%, Hansa – [0-5]%, Dornbracht – [0-5]%, Ideal Standard – [0-5]% and Kludi – [0-5]%; (...) +[0-5]%, Hansgrohe + [0-5]% and (...) +/- [0-5]% (new list).¹⁹⁴
- (220) During the combined ADA/ABW/ABD meeting held on 17 September 2002, shower enclosure manufacturers discussed rates in percentages for showroom discounts and other discounts offered to installers. While discussing the calculation of rebates, the participants realized that

¹⁸⁷ (...) The fact that AGSI participants (mostly comprising taps and fittings producers) had due regard to the corresponding timing arrangements made by shower enclosure producers again attests to the links between the different product groups concerned by this Decision (reflecting, to a large extent, the structure of demand and the specific modalities of distribution).

¹⁸⁸ (...)

¹⁸⁹ (...) The handwritten notes taken by (...) mention that new prices for taps and fittings and shower enclosures would be sent out in October (with a grace period of 3 months noted for ADA): (...).

¹⁹⁰ (...) the issue of consequences regarding developments in ceramics had already been discussed at the AGSI steering committee meeting of 15 May 2002.

¹⁹¹ (...): *"Der Prozentsatz der Preiserhöhung wurde zwischen [0-5]% festgelegt. ... Kludi, Hansa, Hansgrohe werden voraussichtlich ebenfalls um [0-5]% erhöhen"*.

¹⁹² (...)

¹⁹³ (...)

¹⁹⁴ (...)

they calculated those rates differently and, thus, agreed to discuss this point at their next meeting, with a view to agreeing on a uniform calculation.¹⁹⁵

- (221) At the IFS meeting of 20 November 2002, participants reflected on the issue of the current pricing system, whereby wholesalers determined the resale price charged to end consumers. In this regard, they considered ways to determine end consumers prices by agreeing with wholesalers on a uniform fixed multiplier.¹⁹⁶
- (222) At the AGSI meeting of 21 November 2002, taps and fittings manufacturers discussed again the timing of the price increase, notably with a view to aligning the applicable grace periods granted to customers. It was decided that each undertaking deviating from the agreed timing arrangements had to inform VDMA: (...).¹⁹⁷ At the same meeting, manufacturers also exchanged their sales growth figures and estimates for the upcoming month.¹⁹⁸
- (223) On December 2002, Duscholux directly informed its competitor (...) of its 4.9% price increase for the year 2003 (as announced) and provided an overview of all changes to the 2003 price list, as well as a CD Rom containing "*price data 1/2003*" ("*Preisdaten 1/2003*").¹⁹⁹ This type of evidence attests to the close cooperation amongst competitors and corroborates the notion that manufacturers continuously monitored price increase developments, with a view to ensuring adherence to their price coordination scheme.
- (224) An IFS meeting was held on 2 April 2003, with inter alia Dornbracht and Duscholux and their competitor (...) participating as representatives of IFS, ABD and AGSI respectively. The topic of the meeting was the division of work between IFS (the umbrella association of the sanitary industry) and the product-specific associations. The notes of the meeting reveal that the objectives of the associations at issue covered the coordination of prices and pricing policies: "*tasks of IFS ... price formation in the business (if not product specific)... Tasks of special association: ... price development (price mechanisms (partly also IFS))*".²⁰⁰ While IFS was, according to the notes, competent for strategic questions concerning the entire industry, the specialised associations were competent for questions "*arising due to competition*" ("*wettbewerbsgeleitete Fragen*"). The issue of distribution of tasks was subsequently also discussed during the IFS plenary meeting held a week later (on 9 April 2003).²⁰¹ Notes taken by (...) illustrate that the manufacturers wanted to determine end consumer prices, as they state: "*We want to achieve that we can give the prices to the end consumers*".²⁰²
- (225) An extraordinary ABD meeting took place on 25 June 2003 to discuss gross prices in view of the market situation at the time. In particular, shower enclosures manufacturers discussed their planned prices for the upcoming price cycle (2004) and sought to decrease prices in a coordinated manner. However, due to timing constraints, it was decided not to depart from the

¹⁹⁵ (...) At the same meeting, participants agreed not to grant special discounts to wholesalers from East Germany who were damaged by a flood.

¹⁹⁶ (...) The term "*multiplication factor*" relates to the ration purchase price of the plumber / price to be charged from plumber to end consumer (the term is often to be found in the notes of ASI meetings in Austria: see further details in the statement of facts below regarding Austria). During the meeting, participants also discussed the division of tasks between IFS and the product-focused associations AGSI, ADA and FKSI. It was generally agreed that topics concerning all product sub-groups should be dealt within IFS.

¹⁹⁷ (...)

¹⁹⁸ (...)

¹⁹⁹ (...)

²⁰⁰ (...) ("*Aufgaben des IFS: ... Preisbildung in der Branche (sofern nicht produktspezifisch) ... Aufgaben der Fachverbände: Preisentwicklung/Preismechanismen (teilweise auch IFS)*").

²⁰¹ (...)

²⁰² (...) German text: "*Wir wollen erreichen dass wir Preise an die Endverbraucher geben können*".

arrangements for the regular price increase for 2004, which meant that no exceptional price change would be implemented in 2003.²⁰³

- (226) A paper dated 22 July 2003, prepared by ADA after the meeting of 11 July 2003, shows that participants had exchanged their rebates for showrooms: Koralle granted rebates of [20-30]% to [5-60]0%, Duscholux [20-30]% and Hüppe [10-20]% to [20-30]%. For products purchased for the wholesalers' own needs, Koralle and Duscholux granted [5-10]% to [20-30]% and Hüppe [10-20]% to [20-30]%.²⁰⁴
- (227) At the ABD meeting held on 31 July 2003, participants again discussed the intended price increases for the forthcoming price cycle (2004), several months prior to those price increases becoming effective. Contemporaneous handwritten notes of the meeting record for example Duscholux as planning an increase of [0-5]% on average, Hüppe [0-5]%, their competitor (...) [0-5]% for the lower segment and [0-5]% for the medium and upper segment, Koralle on average less than [0-5]% and their competitor (...) [0-5]%.²⁰⁵ During this meeting, members also discussed the delivery conditions and charges for products for showroom purposes, as well as financial contributions to wholesalers for advertising.²⁰⁶
- (228) Shower enclosure manufacturers again discussed their planned price increases for 2004 at the ABD meeting of 7 November 2003. The increases recorded in the minutes were very similar to those previously communicated at the meeting of 31 July 2003: Duscholux communicated an average increase of [0-5]% in Germany, (...) an increase of [0-5]%, Koralle increases of [0-5]% and Masco an increase of [0-5]%.²⁰⁷
- (229) In this regard, it is also pertinent to refer to an email of 11 November 2003 by (...) of Duscholux to his competitors in Hüppe and Koralle, which states the following:

*"...undertaking (...) has announced that the topic price increases is still being discussed and that there is no decision yet!!!!!!!!!!!! It may well be that one does not increase!!!! This would in my opinion also have an effect on our area of borderless shower enclosures and would simply not be arguable! Maybe we should cooperate in this regard!"*²⁰⁸

- (230) Similarly, taps and fittings manufacturers coordinated their planned price increases for the forthcoming price cycle (2004), several months prior to their implementation or communication to customers. In particular, the 2004 price increases were already discussed at the AGSI meeting of 10 July 2003. The majority of the producers was in favor of a price increase within the range of [0-5]%. Price increases would be announced in October 2003, to be effective as of

²⁰³ (...) The official meeting minutes do not record any such discussions, which further supports the notion that participants were aware of their anticompetitive conduct and sought to conceal it.

²⁰⁴ (...)

²⁰⁵ (...) The official meeting minutes again do not record these price discussions (...).

²⁰⁶ (...) Manufacturers agreed that shower enclosures for exhibition purposes would be delivered without extra charge within the first three to six months after their launch. After this period, 20% of the price would typically be charged. If they were removed from the showroom before 18 months, 30% would be charged. Bath and shower tubs made of steel enamel were generally delivered without extra charge, while for those made of sanitary-acrylic a multiplying factor of 0.15 would be applied. As regards financial contributions to wholesalers for advertising, manufacturers concluded that they would agree on these contributions bilaterally by phone. Emails were also circulated among ADA members in order to determine how to react to requests from wholesalers (...).

²⁰⁷ (...)

²⁰⁸ (...) The German text reads as follows: *"...hat die (...) bekanntgegeben, dass das Thema Preiserhöhung noch diskutiert wird und es noch keine Entscheidung gibt!!!!!!!!!!!! Es kann durchaus sein, dass man nicht erhöht !!!! Dies hätte meiner Meinung nach auch Auswirkungen auf unseren Bereich rahmenloser DW und wäre einfach nicht zu argumentieren ! Vielleicht sollten wir uns diesbezüglich abstimmen!"*.

January 2004 (with a grace period until April 2004). The handwritten notes of the meeting (taken by (...)) explicitly state: "*prevailing opinion: price increase [0-5]%*" ("*Herrschende Meinung: Preiserhöhung [0-5]%*").²⁰⁹ Further handwritten notes (taken by Kludi) shed more light into the relevant price discussions:

*"Price change 2004
Ceramics – we need [0-5]% and enter with [0-5]% (IS)
Taps and fittings: 80% = [0-5]%
20% = [0-5]% (hg, keramag)
announcement October 03 – implementation 1.1.04 – realization 1.4.04".*²¹⁰

(231) The hand-written notes cited at recital (230) corroborate (...) who admitted exchanging information on possible price increases with his counterpart at Grohe before the AGSI meetings.²¹¹ [Non-confidential summary: In particular, as regards the price increase discussion for 2004, (...) recalled that there was an understanding that prices should be increased by at least [0-5]%.]²¹²

(232) Members used the price information exchanged during the association meetings for their own calculation of prices. An internal Kludi note dated 21 July 2003 states that due to the latest information acquired during the AGSI meeting (obviously referring to the one held on 10 July 2003) with regard to the 2004 intended price increase of other competitors, Kludi would be increasing prices by [0-5]% (the increase to be applied to the entire group, including exports):

*"After the last AGSI round we know approximately, how the industry will behave in relation to the price increase 2004 and in which amount the prices will be changed. Due to this pre-information ... in the management we have put down bindingly the following price change for 2004: The prices 2004 will be changed by [0-5]%. The following note: ... 3. The price increase is valid for (...) and affects also in this amount the (...)."*²¹³

(233) The coordination of price increases continued throughout the course of 2004 (the Commission's file contains notes of meetings to that effect, including meetings which took place just a few weeks before the Commission's inspections). During a joint AGSI/wholesalers meeting held on 12 January 2004, a surcharge of 5% was discussed in connection to sales of shower products made directly by the wholesalers.²¹⁴

(234) At the AGSI meeting held on 14 July 2004, taps and fittings producers discussed their intended price increases for the forthcoming price cycle (2005). By way of example, the notes of the meeting record Dornbracht as communicating a planned price increase of up to [0-5]%, Kludi of [0-5]%, Grohe of [0-5]% (above 5% for steel products), Hansa of approx. [0-5]% and Ideal

²⁰⁹ (...) During the meeting, participants also exchanged the usual information on their sales performance.

²¹⁰ (...) The German text reads as follows: "*Preisänderung 2004; Keramik – wir brauchen [0-5]% und gehen mit [0-5]% rein (IS); Armaturen: 80% = [0-5]%; 20 % = [0-5]% (hg, Keramag); Ankündigung Okt. 03 – Umsetzung 1.1.04; Realisierung 1.4.04"*.

²¹¹ (...) reported to have typically held bilateral phone conversations with Ideal Standard and Hansa, ahead of an AGSI meeting, on a regular basis.

²¹² (...)

²¹³ (...) The German text reads as follows: "*Nach der letzten AGSI-Runde wissen wir in etwa, wie sich die Branche bei der Preisänderung 2004 verhält und in welcher Größenordnung die Preise verändert werden. Aufgrund dieser Vorinformation ... haben wir in der Geschäftsführung folgende Preisänderung 2004 verbindlich festgelegt: Die Preise 2004 werden um [0-5] % erhöht. Folgende Anmerkung dazu: ... 3. Die Preiserhöhung ist gültig für das (...) und betrifft also auch in dieser Höhe den (...)."*

²¹⁴ (...)

Standard of [0-5]%.²¹⁵ Grohe also informed other AGSI members that Grohe had no problems with the implementation of the previous price increase.²¹⁶ Furthermore, an internal report of the meeting prepared by Hansa provides the following account of the 2005 price increases exchanged at the meeting: "*in relation to this, everything hints to a corridor of 0% to 3,5%. The positions of the specific undertakings will be discussed at the next Erfa meeting of 27.9.2004 in Frankfurt.*"²¹⁷

- (235) Indeed, the intended price increases for 2005 were again discussed at the AGSI meeting held on 27 September 2004, where each participant again communicated its planned price increase for 2005.²¹⁸ The rates for the price increases broadly corresponded (with some adjustments) to the rates previously exchanged at the AGSI meeting of 14 July 2004. It is also pertinent to note that, in anticipation of the AGSI meeting on 27 September 2004, (...) (a manufacturer which is not addressee of this Decision) informed AGSI of its future conduct (by letter dated 14 September 2004), in view of the fact that it was unable to attend the meeting. It communicated that it would introduce a surcharge of 3% into its price list for 2005, without imposing an additional price increase.²¹⁹
- (236) During the entire period of their sustained price coordination within the framework of regular meetings of associations, bathroom fittings and fixtures producers in Germany also exchanged commercial information regarding, in particular, their sales. Notably, members exchanged at the meetings information on the evolution of their domestic sales and export sales (in percentages, by reference to a preceding reference period), as well as forecasts for the coming months, in a systematic and sustained way throughout the relevant period in Germany.
- (237) The Commission takes the view that such information exchange supported the primary price coordination plan concerned by this Decision. Contrary to certain addressees' submissions,²²⁰ it is apparent that the turnover/sales information exchanged was not sufficiently aggregated, nor sufficiently historic. To the contrary, participants at the meetings exchanged company-specific information relating to the evolution of sales, as well as sales forecasts (sales estimates) for the coming months.²²¹ On the basis of this detailed information (in particular, the evolution of sales compared with a preceding reference period in precise percentages and sales forecasts for the coming months) participants were often able to calculate market shares. In the latter regard, it is most pertinent to recall that ABD itself considered that the exchange of the sales information at issue enabled competitors to monitor the evolution of market shares. In a ABD letter addressed

²¹⁵ (...) The official meeting minutes do not record any such discussions (which is yet another indication that participants were aware of their anticompetitive conduct and sought to conceal it).

²¹⁶ (...)

²¹⁷ (...) The German text reads as follows: "*hier deutet alles auf einen Korridor von 0 % bis 3,5 % hin. Die Positionen der einzelnen Unternehmen sollen auf der nächsten Erfa Sitzung am 27.09.2004 in Frankfurt diskutiert werden*".

²¹⁸ (...)

²¹⁹ (...) This type of evidence is entirely consistent with the thesis that manufacturers routinely exchanged their planned price increases in the last months before the next price cycle, with a view to aligning their future conduct. It also corroborates the pattern of price coordination, while also attesting to the close links of cooperation and interdependency amongst participants.

²²⁰ Certain addressees argue that the exchange of such information was general and could not be deemed to reveal the commercial strategy of the participating undertakings (nor did it enable undertakings to determine market shares).

²²¹ The file contains several examples of this practice (for example, exchanges of information at association meetings with respect to both recent sales and sales forecasts) (...): consolidated tables recording the sales information exchanged at the AGSI meetings of 6 March 2003 and 27 September 2004 respectively, which detail the evolution of domestic sales, export sales and forecasts by producer (NB the table corresponding to the meeting of 27 September 2004 also lists the planned price increases for 2005 by producer), (...) participants at both AGSI and ADA/ABD meetings typically exchanged this type of information (...).

to members dated 19 May 2004, it is stated: "*The sense of the sales volume and turnover information on shower enclosures, which has been conducted already since many years, was that the specific member undertakings of the former ADA can, as promptly as possible, have knowledge about how their own market share has developed in comparison to their colleague undertakings*".²²² Moreover, there is evidence suggesting that the participating undertakings themselves deemed such exchanges as being confidential.²²³ Overall, the Commission considers that the regular exchange of this type of information thus helped members to continuously monitor developments pertaining to other participants, with a view to ensuring stability and maintaining their close ties of cooperation and interaction. Moreover, communications relating to sales often formed the basis of discussions at the meetings, with attendees referring interchangeably to both their sales performance and pricing in a roundtable discussion. This is evident from the handwritten minutes of the meetings. Bearing in mind all those circumstances, the Commission considers that it would be artificial to attempt to distinguish the information exchanges at issue from the overall price coordination scheme described in this Section.

(238) Moreover, the exchanges of sales information at the meetings very often corroborate the links between the product groups concerned by this Decision. The file contains various examples of meetings within the framework of product-specific associations, where participants also discussed market and sales developments in connection with other product groups.²²⁴ Similarly, in the context of IFS meetings, manufacturers of all three sanitary product groups exchanged information on their sales (notably domestic and export sales developments, but also sales forecasts).²²⁵ For example, at the IFS meeting of 27 April 2004, manufacturers of all three product groups exchanged their present and expected turnover in Germany and export data in percentages for the year 2004.²²⁶ The same is true for the IFS meetings on 4 July 2002,²²⁷ 20 July 2004²²⁸ and 15 October 2003²²⁹, where participants also exchanged their present turnover data and export figures. For all meetings, it should be noted that these particular exchanges in a roundtable discussion between the undertakings were not included in the official minutes of the meetings. This shows that the undertakings were well aware of the anti-competitive nature of their conduct and deliberately excluded those discussions from the official IFS minutes.²³⁰

²²² (...) The German text reads as follows: "*der Sinn der schon seit vielen Jahren durchgeführten Absatz- und Umsatzmeldungen Duschtabtrennungen war, dass die einzelnen Mitgliedsunternehmen des früheren ADA möglichst zeitnah Kenntnis darüber erhielten, wie sich ihr eigener Marktanteil im Verhältnis zu den Kollegenfirmen entwickelt hat*". Participants at ADA/ABD meetings exchanged company-specific sales growth information on the occasion of the statistical programme reports conducted by ADA/ABD during the course of several years: (...).

²²³ For example, following the AGSI meeting of 10 July 2003, (...) reported internally on the exchanges of sales information amongst participants at the meeting. The internal email includes the caution "*all information has to be treated confidential and exclusively internally*" ("*alle Angaben vertraulich behandeln und ausschließlich intern verwenden*") (...).

²²⁴ In relation to 2003, see for example: FSKI meeting of ceramics producers on 17 January 2003, where sales data for shower enclosures and taps and fittings were also exchanged (...); FSKI meeting of 4/5 July 2003, where sales data in relation to shower enclosures were also discussed: (...); AGSI meeting of taps and fittings producers on 30 January 2003, where sales forecasts for ceramics were also mentioned:

²²⁵ (...)

²²⁶ (...) Kludi also communicated data for its "Handelsmarken", that is, products it manufacturers for wholesalers which they in turn sell under their own brand name, (...).

²²⁷ (...)

²²⁸ (...)

²²⁹ (...)

²³⁰ (...)

(239) (...).²³¹(...), the Commission's investigation is primarily focused on price coordination arrangements within the broader framework of regular meetings of associations. This Decision thus aims at illustrating the pattern of price coordination in Germany in the context of those meetings from 1994 to 2004 (based on the evidence gathered in the course of the investigation).

4.2.1.3 The addressees' arguments in response to the Statement of Objections and the Letter of Facts, and the Commission's findings

(240) In their replies to the SO and during the course of the Oral Hearing, several respondents raise arguments pertaining to the legal qualification, likely effects or legal and economic context of the arrangements in question, while also disputing their individual involvement in the single and continuous infringement described in the SO. Such arguments, as well as those pertaining to the precise duration of each undertaking's individual participation in the infringement and equal treatment as compared to other undertakings, are further addressed in Part II (legal assessment). This Section mainly addresses the addressees' arguments directly relating to the facts presented by the Commission in relation to the German market.

Masco

(241) In its reply to the SO, Masco (on behalf of Hansgrohe and Hüppe), (...) the evidence adduced by the Commission regarding price coordination amongst German producers.²³²

Grohe

(242) Similarly, in its reply to the SO, Grohe (...) the evidence put forward by the Commission in relation to Germany.²³³ Grohe points to several items of evidence submitted by it in the course of the proceedings, with a view to demonstrating that (...). This is reiterated by Grohe in its reply to the Letter of Facts.²³⁴ The Commission considers that Grohe provided evidence of added value in relation to Germany. This is duly taken into account in the assessment of Grohe's reduction of fine pursuant to the Leniency Notice (see Section 8.8.2).

Ideal Standard

(243) In its reply to the SO, Ideal Standard (...) the facts presented by the Commission in relation to Germany.²³⁵ Ideal Standard further seeks to establish (...). The quality and added value of Ideal Standard's leniency submissions is further considered in Section 8.8.3).

Hansa

(244) Hansa (...) the facts with regard to Germany as assessed by the Commission, (...).²³⁶ In its reply, Hansa emphasizes the continuous and prompt cooperation it has provided throughout the process, while arguing that its contribution was more valuable (...). Similarly, in its reply to the Letter of Facts dated 30 June 2009, Hansa (...) the Commission's findings and points to a number of corroborating documents (...). The latter arguments pertain to the assessment of the added value of Hansa's leniency submissions and, as such, they are further addressed at Section 8.8.5.

²³¹ (...)

²³² (...) In its reply to the SO, Masco seeks to clarify a few factual points relating *inter alia* to its presence in the German market, as well as its participation in the German associations(...). All other arguments raised by Masco regarding the nature and legal assessment of the arrangements at issue (as well as the precise duration of its own participation in the infringement) are addressed in Part II.

²³³ (...) All other arguments by Grohe regarding the nature and legal assessment of the arrangements at issue (as well as the precise duration of its own participation in these arrangements) are addressed in Part II below.

²³⁴ (...)

²³⁵ (...)

²³⁶ (...)

Kludi

- (245) Similarly, Kludi (...) the coordinated practices and agreements operated by the producers of taps and fittings (mainly AGSI members, as well as participants of IFS/DSI meetings comprising all three product groups) in Germany - as assessed by the Commission.²³⁷

Dornbracht

- (246) In its reply to the SO, Dornbracht (...). However, Dornbracht submits that final prices were already calculated autonomously by it before the meetings in which they were communicated to competitors. In this regard, Dornbracht also refers to examples, such as the meeting of 27 September 2004 in Frankfurt, in relation to which it had allegedly already determined its prices.²³⁸ Dornbracht also contends that there were no agreements or negotiations about the applicable rates with competitors (either bilaterally or within the framework of AGSI meetings) and that any exchanges involved prices that would later become known.²³⁹ Furthermore, Dornbracht submits that, in relation to the meeting of 6 March 1998, the price rates exchanged concerned 1998 and 1997 and not future price increases.²⁴⁰ In addition, Dornbracht disputes that the references to price harmonization in the Union, which are contained in the notes of the AGSI meetings dated 30 September 1999 and 13 October 1999, are objectionable from a competition perspective (as they simply reveal the price differentials observed on the market and only concern gross prices). Finally, Dornbracht argues that the sales surveys prepared and circulated by AGSI were very general, such that they cannot be deemed to constitute an exchange of sensitive business information.²⁴¹
- (247) The arguments put forward by Dornbracht cannot be accepted. The price discussions at the AGSI meetings notably concerned future prices in connection with forthcoming price cycles, which were discussed weeks or months prior to them becoming effective. Contrary to Dornbracht's suggestions, the Commission considers that the undertaking could not have failed to take into account, directly or indirectly, the price information disclosed to it by competitors (or the pricing policies discussed with competitors) at those meetings. This is precisely the reason why Dornbracht continued to attend and actively contributed to price discussions at these meetings. The contention that internal price setting deliberations within some participating undertakings may have progressed before certain relevant association meetings (or that price rates would have been ascertainable later on the market) does not detract from the fact that these future price increases were specifically discussed amongst competitors within the framework of regular association meetings (before their announcement or implementation). Nor is the strategic or competitive significance of such price discussions in any way undermined. The Commission explains further in Section 5.2.4.1 that the arrangements at issue had an anticompetitive object and constituted a cartel infringement.
- (248) Moreover, the evidence in the Commission's file contradicts Dornbracht's claims. In particular, the discussions on planned price increases for the forthcoming price cycle actually took place as early as July of each year, that is, several months prior to their implementation, effective date or communication/announcement to customers. Taking the meeting of 27 September 2004 as an example, the Commission has pointed to evidence establishing that the 2005 intended

²³⁷ (...)

²³⁸ (...)

²³⁹ (...)

²⁴⁰ (...)

²⁴¹ (...) refers to the consolidated sales information tables prepared by AGSI on the occasion of the meetings dated 6 March 2003 and 27 September 2004.

price increases had actually already been discussed at the meeting of 14 July 2004.²⁴² Even if the Commission were to accept Dornbracht's contention that the undertaking had (somehow irrevocably) determined internally its 2005 prices a couple of days earlier, for which Dornbracht adduces no concrete evidence, the fact remains that the intended price increases for 2005 were already a subject of discussion at the AGSI meeting more than two months earlier. Similarly, the planned price increases for the 2003 price cycle were already communicated at the AGSI meeting as early as 27 and 28 August 2002.²⁴³

- (249) As regards the price discussions at the meeting of 6 March 1998, the Commission does not contend that they referred to future price increases.²⁴⁴ It was common at the meetings taking place in the earlier months of each price cycle (following the communication of the prices to customers, but often before the expiry of the grace period for implementation), for participants to inform each other of their price increases, with a view to monitoring their implementation. Turning to the AGSI meetings of 30 September 1999 and 13 October 1999, the Commission observes that the issue of price harmonization was first discussed amongst taps and fittings producers at the AGSI meeting of 30 September 1999 (under the topic/heading "*corrections of price positioning, price harmonization Europe*"), with a view to preparing the subsequent meeting with the wholesalers – as also admitted by Dornbracht. The reference may indeed reflect the existing price differentials on the market, but it also attests to the fact that manufacturers aimed at correcting the situation by coordinating their conduct in relation to the wholesalers.²⁴⁵
- (250) Turning to the consolidated sales information tables prepared based on the exchanges at AGSI meetings, the Commission maintains that they contained sensitive business information. The specific surveys identified in the Commission's Letter of Facts (consolidated sales information pertaining to the AGSI meetings of 6 March 2003 and 27 September 2009) even included sales forecasts for the coming months. In addition, these surveys clearly indicate that participants discussed their sales and future price increases in a roundtable on the same occasion of the same AGSI meetings (each table recording this information in adjacent columns). The surveys at issue thus corroborate the Commission's view that it would be artificial to distinguish the sales information exchanges from the overall price coordination scheme, bearing also in mind that the cartel participants themselves willfully perceived them as interconnected.
- (251) The Commission also observes that Dornbracht did not have a marginal role, nor can it be disassociated from the arrangements at issue. It is not necessary for Dornbracht to have participated in all AGSI meetings. It is sufficient that it has actively participated in the AGSI meetings identified (with the exception of the meeting on 29 October 1998 - see Annex 2) and that it actively contributed *inter alia* to price discussions at those meetings, in a systematic and sustained way for a number of years (1998 to 2004) in Germany.²⁴⁶

²⁴² See recital (234).

²⁴³ See recital (219).

²⁴⁴ See recital (188).

²⁴⁵ Regardless of their vertical dimension, the discussions at issue corroborate the Commission's findings as to the overall operation of the three-tier-distribution system and as to the coordination efforts undertaken by the manufacturers at horizontal level. Moreover, the contention that the aimed harmonization only concerned gross prices (which, according to Dornbracht, was bound to be of minor importance in terms of market transparency) does not alter the Commission's assessment.

²⁴⁶ In this regard, it is pertinent to note that Dornbracht also appears to have had a particularly active role in relation to the 2004 cost surcharge (see Section 4.3.2.1). According to Grohe, (...) (vice chairman of the AGSI at the time) trying to convince hesitant undertakings to introduce the 2004 surcharge. AGSI specifically contacted (...) in relation to the issue of Hansgrohe's refusal to apply the 2004 cost surcharge.

(252) Finally, Dornbracht criticizes the Commission for pointing to the meeting of AGSI on 22 August 2001, where the manufacturers planned to found a committee in the context of the platform ARGE Neue Medien, which had the goal of fixing end consumer prices. First, Dornbracht states that this plan was rejected by the wholesalers association DGH; and second, that the prices would have been merely recommended. These arguments cannot be accepted. The fact that customers rejected the proposal is irrelevant. The critical issue is that manufacturers had indeed proposed the setting of this committee, the stated object of which was to fix end consumer prices ("*Objective: fixation of end consumer prices*" (*Ziel: Fixierung von Endverbraucherpreisen*)). Such evidence exposes the intensity of the price coordination arrangements at issue (and the pursuit of controlling end consumer prices to the extent possible). This is furthermore entirely consistent with several corresponding items of evidence in relation to Austria (which demonstrate that price coordination covered a variety of price lists corresponding to more than one level of the distribution chain – including price lists conceived with the objective of, and targeted specifically at, fixing end consumer prices). Finally, even if it was assumed that the intended end result was to set "recommended prices" (an assumption which contradicts the stated object of the committee), manufacturers still meant to act in a coordinated manner. Contrary to Dornbracht's suggestions, the coordination of "recommended prices" can also be anticompetitive.

Duscholux

- (253) Duscholux contests the facts adduced by the Commission in relation to price coordination in Germany. First, Duscholux seeks to distinguish itself from (...) (hereinafter referred to as "..."), with a view to absolving itself of any involvement or liability. The Commission addresses this issue in detail in Part II. All findings and references made (or inferences drawn) in connection with Duscholux in the statement of facts presented entirely attribute to it.
- (254) Second, Duscholux contests the evidence adduced by the Commission in relation to specific association meetings. In particular, Duscholux argues that the minutes of the meeting of September 1994 and September 1995 cannot be deemed to show price coordination.²⁴⁷ Nor can be inferred from the evidence that a gross price decrease was agreed on in 1997. Duscholux also submits that an agreement of a showroom display rebate is not evident from the handwritten minutes of 8 March 2000.²⁴⁸ It further submits that it cannot be inferred from the handwritten notes of the ADA meeting on 11 August 2000 that price coordination took place.²⁴⁹ It also claims not to have participated in the ADA/ABD meeting held in Vienna on August 2001.²⁵⁰ Furthermore, Duscholux contends that it is not specifically referred to in several notes cited in the SO and, thus, no anticompetitive conduct can be imputed on it in relation to those notes.²⁵¹ Duscholux finally submits that the Commission has referred to only two meetings (September 1994 and September 1995) and from this, no regularity of price coordination can be established.²⁵²
- (255) The arguments put forward by Duscholux cannot be accepted. The Commission's findings are based on documentary evidence (notably contemporaneous handwritten notes taken during the meetings), (...). In particular, the notes of the meetings in September 1994 and September 1995 specifically record Duscholux communicating its intended price increases for the forthcoming

²⁴⁷ (...)

²⁴⁸ (...)

²⁴⁹ (...) According to Duscholux, the price increase mentioned in the notes of the meeting might represent the thoughts of the author of the protocol.

²⁵⁰ (...)

²⁵¹ (...)

²⁵² (...)

cycle in exact percentages.²⁵³ With respect to the gross price decrease discussed at the ADA/ABD meeting of 16 December 1997, it suffices to cite the following extract from the annex to the minutes of the ADA meeting: "*The concluding agreement foresees that the prices so far will be reduced by 10% and will be put in the invoice with a rebate of 15/15%*".²⁵⁴

- (256) As regards the ADA meeting on 8 March 2000, the notes reveal that shower enclosure manufacturers discussed the issue of rebates for products displayed in showrooms. [Non-confidential summary: The relevant discussions continued at the meeting of 10 and 11 August 2000, where it was agreed that wholesalers should get a rebate of no more than 80% of the price of products on display in their showroom, with plumbers getting a rebate of 20 to 50%.] Similarly, the notes of the 10 and 11 August 2000 meeting establish that price discussions (in relation to both the usual annual price increase and a cost surcharge) did in fact take place.²⁵⁵ The contemporaneous handwritten notes clearly bear this date, while its contents have been also summarised in a typed format.²⁵⁶ Both documents contain the same information in relation to the envisaged price increases and there is no indication suggesting that the references are not an accurate reflection of the discussions held at the meeting. The fact that the official minutes do not contain the detailed discussions relating to the surcharge does not rebut the Commission's findings; to the contrary, as explained by reference to several similar instances, it suggests that participants were concealing such discussions. Finally, contrary to Duscholux' allusions, the handwritten notes of the ADA/ABD meeting of 8 to 11 August 2001 establish that Duscholux, not only participated, but also actively contributed at the discussions during the meeting.²⁵⁷
- (257) Duscholux further contests the Commission's findings in relation to the agreement on minimum prices for the standard 90cm door product.²⁵⁸ According to Duscholux, the relevant discussions only concerned quality standards. In the course of those discussions the price the product should at least have in order to meet those standards was also addressed. This argument cannot be accepted. The notes of the joint ADA/wholesalers meeting dated 9 June 1999 reveal that such an agreement on a minimum price was actually in place.²⁵⁹ Moreover, there is no indication whatsoever that the context of the discussions somehow related to quality standards. Finally, it is pertinent to note that, at Duscholux' own admission, due to the competition from DIY-outlets, general conversations about quality standards and minimum prices "*of course*" ("*selbstverständlich*") took place.²⁶⁰
- (258) Pertaining to Duscholux' argument that the Commission only refers to two meetings relating to shower enclosures for Germany, reference is made to recital (215) of the SO, in which the Commission cites more than 40 meetings of the shower enclosure manufacturers in Germany (not taking into account the meetings of the umbrella association IFS), in which anti-competitive conduct took place. In this Decision, the Commission refers to several meetings of the shower enclosure manufacturers and describes them in detail. As regards the regularity of the coordination, reference is made to the introductory remarks in relation to Germany, in which the annual price cycle for Germany is explained. In particular, as explained therein, the

²⁵³ See recitals (178) and (180). (...)

²⁵⁴ (...) "*Die abschließende Vereinbarung sieht vor, dass die bisherigen Preise um 10 % abgesenkt werden und mit einer neuen Rabattierung 15/15 % in der Rechnung versehen werden*".

²⁵⁵ See recital (201) above.

²⁵⁶ (...)

²⁵⁷ See recital (201). In particular, (...) the overviews presented during the meeting always included Duscholux, which apparently stated its positions on the topics discussed.

²⁵⁸ See the findings of the Commission at recital (197).

²⁵⁹ (...)

²⁶⁰ (...)

shower enclosure manufacturers had established especially close bonds with each other, engaged in numerous cartel meetings and regular annual price fixing as well as various other anti-competitive agreements from 1994 to 2004. The argument of Duscholux therefore cannot be accepted.

Sanitec / Koralle

- (259) Koralle contests the evidence put forward by the Commission and argues that the Commission attached much weight to the leniency submissions, without conducting a proper analysis of market conditions. It further submits that the discussions at issue cannot be deemed to establish any price coordination, as they only pertained to general exchanges regarding the situation in the industry. Koralle also contends that the employees who represented the undertaking at the ADA/ABD meetings have since left the undertaking and it is therefore not able to clarify the facts alleged by the Commission.²⁶¹
- (260) In addition, Koralle contests specific items of evidence adduced by the Commission in relation to association meetings. According to Koralle, the finding in relation to the gross price reduction in 1997 is not supported by concrete evidence and Koralle argues that one leniency statement is insufficient to establish proof of the agreement. Koralle adds that the minutes of the meeting on 9 May 1998 only refer to terms and conditions with wholesalers, as well as to requests by wholesalers to increase prices.²⁶² It also disputes the Commission's findings in relation to the agreement on minimum prices for the standard 90cm door product.²⁶³ In particular, Koralle argues that the notes of the meeting held on 9 June 1999 actually proves that Koralle was not party to the minimum price agreement.²⁶⁴ With regard to the ADA meeting of 11 August 2000, it argues that the case is based on handwritten notes taken by (...), while the official minutes of the meeting do not contain any reference to the price agreement made.²⁶⁵ Finally, Koralle submits that the evidence in relation to the meeting of 31 July 2003 is too vague to support the conclusion that financial contributions to wholesalers for advertising were agreed on bilaterally between the shower enclosure manufacturers.²⁶⁶
- (261) Some of Koralle's arguments relate to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are considered in detail in Section 5.2.4. It is however appropriate to clarify the following points at the outset. First, the discussions at ADA/ABD meetings did not merely concern general exchanges on market trends or developments in the industry. The evidence adduced by the Commission demonstrates that discussions of shower enclosure manufacturers at those meetings extended to include planned price increases in relation to forthcoming price cycles, which were communicated several months prior to their announcement, effective date or implementation. In particular, discussions on these issues often occurred as early as May or July of each year (for the next annual price cycle). Moreover, at Koralle's own admission, the undertaking only finalized its prices internally towards the end of October each year.²⁶⁷ Second, it is irrelevant that Koralle's employees who were present at the meetings have since left the undertaking. Koralle's active participation in ADA/ABD meetings has been verified by reference to the names of its representatives at the time of those meetings (as recorded in the minutes). Moreover, the Commission can still point to items of evidence pertaining to meetings or bilateral contacts to

²⁶¹ (...)

²⁶² (...)

²⁶³ See recital (197).

²⁶⁴ (...)

²⁶⁵ (...)

²⁶⁶ (...) See recital (227) in relation to the ABD meeting of 31 July 2003.

²⁶⁷ (...)

which Koralle may not have participated, in order to expose the true nature of price exchanges at ADA/ABD meetings (or the ensuing pattern of coordination amongst shower enclosure manufacturers).

- (262) Turning to the specific association meetings referred to by Koralle, the following observations are relevant: the gross price decrease which Koralle seeks to discredit by reference to the minutes of the ADA/ABD meeting on May 1998²⁶⁸ had already been discussed at the ADA/ABD meeting of 16 December 1997. In the annex to the minutes of that meeting it is specifically included that: "*The concluding agreement foresees that the prices so far will be reduced by 10% and will be put in the invoice with a rebate of 15/15%*".²⁶⁹ With respect to the meeting of 11 August 2000, the Commission refers to its observations in response to Duscholux' submissions in this section.
- (263) With regard to the agreement on minimum prices for standard products, (...) ²⁷⁰ is corroborated by documentary evidence on the Commission's file (notably, the notes of the joint ADA/wholesalers meeting dated 9 June 1999 regarding the same issue and the same product).²⁷¹ Contrary to Koralle's suggestions, the fact that the documentary evidence to that effect consists of an internal typed report labeled "*confidential*"²⁷² further underpins its probative value (considering also that sensitive topics were typically not reflected in the official minutes). The evidence indeed indicates that Koralle may have been deviating from the agreement (meaning it was selling below the agreed price point). However, according to the meeting minutes, Koralle would "*...not question the gross price point*". In any event, Koralle's participation in the overall price coordination scheme is not negated by the contention that the undertaking may have deviated from the arrangements in one (or more) instance(s).
- (264) Finally, the evidence put forward concerning financial contributions to wholesalers for advertising (at the meeting of 31 July 2003) is not vague. The notes of the meeting reveal that shower enclosure producers had discussed the issue. The notes also explicitly state that manufacturers would agree on these contributions bilaterally by phone.²⁷³ Indeed, subsequent exchanges of email amongst manufacturers on the issue leave no doubt that coordination did in fact take place.
- (265) In its reply to the Letter of Facts, Koralle contends that certain pieces of evidence referred to therein do not concern shower enclosure manufacturers, such as the document relating to an industry meeting of 12 October 1994 cited at recital (179). Therefore, Koralle expressed its concerns that the Commission may have been mistaken in assessing a taps infringement as a wider cartel involving more product groups. Contrary to Koralle's suggestions, the Commission reviewed the evidence in the Commission's file by reference to each Member State and product group, taking into account each undertaking's individual involvement in the cartel. It is irrelevant that the file contains more evidence of price coordination concerning taps and fittings and ceramics manufacturers (which, as explained, is reasonable given the background to the investigation). Shower enclosure manufacturers can still be held liable for their participation in collusive practices for the relevant duration and the relevant geographic scope established based on the available evidence in the Commission's file. Furthermore, the Commission notes

²⁶⁸ (...) German text: "*...Brutto-Preispunkt nicht in Frage stellen...*".

²⁶⁹ (...) The German text reads as follows: "*Die abschließende Vereinbarung sieht vor, dass die bisherigen Preise um 10 % abgesenkt werden und mit einer neuen Rabattierung 15/15 % in der Rechnung versehen werden*".

²⁷⁰ (...)

²⁷¹ (...)

²⁷² (...)

²⁷³ (...) The German text reads as follows: "*Bei bundesweiten Anfragen soll jeweils vorher eine Abstimmung erfolgen. Spezielle regionale Notwendigkeiten sind jedoch nach wie vor erlaubt*".

that it has not alleged that Koralle has participated in the price coordination arrangements within associations concerning taps and fittings. However, it should be reiterated that Koralle belongs to the undertaking Sanitec which also produces ceramics through its subsidiaries so that Koralle's responsibility for the cartel arrangements cannot be seen as being one limited to the segment of shower enclosures only (see Section 6).

- (266) Koralle furthermore alleges in its reply to the Letter of Facts that the Commission has misinterpreted some pieces of evidence in the Commission's file, such as the minutes of an ADA/ABD meeting in August 2001.²⁷⁴ Koralle submits that these minutes do not carry a date and the information that participants allegedly agreed on a price increase of approximately 5.5% for the following year is not contained in the other minutes, which carry a date and to which the Commission refers. Moreover in Koralle's view, the SO contradicts that the former would have stated that the ADA members had agreed on a price increase of 4.5%. Koralle claims that, for these reasons, it does not know which allegations to address.
- (267) The arguments submitted by Koralle have to be rejected for the following reasons: First, (...) had confirmed to the Commission, that the agreement made extended not only to the timing of the increases, but also to a percentage of approximately 5.5%.²⁷⁵ Moreover, although undated, an examination of the documents themselves reveals that the minutes in question undoubtedly refer to the same meeting as the other minutes which expressly refer to the meeting in August 2001.²⁷⁶ The Commission therefore draws the conclusion that a price increase of 5.5% was agreed on by the manufacturers as described at recital (206). Second, the percentage mentioned at recital 291 of the SO comes from an internal email sent in May 2001; that is, at a point in time when the issue of price increase percentage was still being discussed among the manufacturers and might well have changed afterwards. Therefore, there is no ambiguity as to the allegations.²⁷⁷

Sanitec / Keramag

- (268) In its reply to the SO, Keramag submits that the Commission did not properly analyze the market, but relied too heavily on leniency applications. It further seeks to demonstrate that the market is not conducive to collusion and that no consumer harm could have resulted from the coordination of list prices. According to Keramag this is notably due to the ensuing rebates and other terms negotiated with wholesalers possessing strong bargaining power. With respect to FKSI, Keramag argues that the evidence adduced by the Commission does not support the conclusion that prices were customarily coordinated at the meetings. In particular, Keramag submits that it cannot recall any anticompetitive conduct in relation to the FKSI meeting in July 2000. Furthermore, Keramag disputes that price discussions took place within IFS.²⁷⁸
- (269) Most of Keramag's arguments relate to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are considered in detail in Section 5.2.4.

²⁷⁴ (...)

²⁷⁵ (...) For the agreement relating to the introduction of the Euro, please see further Section 4.3.1.1.

²⁷⁶ All three sets of minutes contain in the exact same order the following agenda points which were one by one discussed as described in a very similar manner in the different sets of minutes: 1) Procedere as regards the Euro price increase, 2) Delcredere liability, 3) Charging of oversizes and installation, 4) costs as regards trade fairs, 5) direct purchase by craftsmen, 6) problems relating to a pilot project called "Interesoh" relating to the direct purchase by craftsmen, 7) returns (cancellation fees). (...)

²⁷⁷ In addition, the statement of Koralle that the Commission suggested in the SO that an overall increase of 8% were to be applied for 2002 according to recital 297 of the SO is incorrect: The SO referred in the mentioned recital to a different point in time, namely an increase agreed on in 2000 to be applied in 2001. Therefore, Koralle's argument must result from an inadvertency in Koralle's reply to the Letter of Facts.

²⁷⁸ (...)

Although evidence of price increases appears to be more numerous for 2000 to 2001, the Commission considers that the anticompetitive activities did not stop after 2001.

- (270) In particular, the notes of the FSKI meetings held on 7 and 8 July 2000 and 13 July 2001 are entirely consistent with (...) regarding price coordination of ceramics producers in Germany. Also, it is apparent from the notes of the FSKI meeting on 7-8 July 2000 that ceramics producers discussed their pricing during that meeting, at least on the occasion of a 3% cost surcharge introduced in neighbouring France. The notes specifically record (...) (Duravit's representative) as proposing to continue with their regular price increase of 4%.²⁷⁹ It can thus readily be inferred from the notes that ceramics manufacturers had previously discussed the regular price increase of 4%, which had been applied in a coordinated manner. Similarly, the notes of the FSKI meeting held on 13 July 2001 specifically record that the maximum price increase envisaged for the forthcoming price cycle (2002) was to be approximately 3%. They also specifically record that all participants agreed to apply a 50% exhibition rebate for wholesalers.²⁸⁰ There is no reason to suggest that these references are not an accurate reflection of the discussions that took place during the meetings. Nor is their veracity otherwise put into question. Keramag participated at the meetings and the contention that it cannot recall these discussions taking place does not suffice to alter the Commission's assessment.
- (271) The evidence of price discussions within the umbrella association IFS/DSI supports the Commission's account of the facts. With regard to ceramics, it is for example most pertinent that at the DSI meeting of 5 October 2000 participants (including ceramics producers) discussed their planned price increases for 2001.²⁸¹ This type of evidence further corroborates the Commission's finding that ceramics producers indeed engaged in price coordination at least as of 2000.
- (272) Finally, with regard to the list of addressees of price announcement letters maintained by (...), Keramag submits that the list did not include a specific contact person for Keramag and, furthermore, only included the address of its warehouse in Ratingen, Germany concluding that the evidence in question is insufficient to establish anti-competitive practices.²⁸² Regardless of which of Keramag's addresses is listed therein, the fact is that Keramag was an addressee of (...)’s price announcement letters. The Commission points to that item of evidence, with the view to exemplifying the practice of manufacturers monitoring closely the coordinated price increases (to ensure adherence to the scheme). This is intended to complement the pattern of price coordination within the framework of regular association meetings.
- (273) Keramag states in its reply to the Letter of Facts, that the Commission did not provide information as to which specific legal entities attended certain meetings but rather only referred to "entities of the Sanitec group". Therefore, according to Keramag, it is difficult for it to comment on the fact that it had supposedly attended certain association meetings.²⁸³ The Commission cannot take account of this argument for the following reasons: First, Keramag is part of the Sanitec group, which was referred to in the Letter of Facts (see Section 6), and moreover must reasonably be aware of the names of association in which it participated as an individual legal entity. Second, being a party to the proceedings, Keramag also had access to the file following the SO and therefore was in possession of the respective evidence, so that it

²⁷⁹ See recital (200); (...).

²⁸⁰ See recital (215); (...).

²⁸¹ See recital (203) (...). Consistent with the pattern of price coordination arrangements in the context of product-specific associations, these discussions within DSI similarly took place a couple of months before the next price cycle, at the critical period when manufacturers were considering or finalising their price lists for customers. (...)

²⁸² (...)

²⁸³ (...)

could easily find out which meetings the Commission referred to for Keramag specifically. Finally, the subject of competition law is an undertaking rather than one legal entity as such and Sanitec is deemed to be an undertaking in the sense of competition law (see further Section 6).

Sanitec

- (274) Sanitec alleges in its reply to the Letter of Facts that the Commission has to reveal which other participants other than Koralle it deems to have taken part in the ABD meeting of 25 June 2003. Moreover, it states that from the document the Commission refers to as proof of that meeting in the SO, Koralle's participation in that meeting cannot be deduced. The fact that it is mentioned in the handwritten minutes on page 19759 of the Commission's file, which, according to Sanitec, are difficult to read does not, in Sanitec's view, attest to the fact that it participated in the meeting.²⁸⁴
- (275) Sanitec is in possession of the respective documents referred to in footnote 309 of the SO so there is no need for the Commission to inform Sanitec explicitly of the names of other participants of the meeting. In addition, the handwritten notes on the ABD meeting in Kassel on the 25 June 2003²⁸⁵ are sufficiently legible and state the respective price increases in percentages in the course of the roundtable discussion of the manufacturers including Koralle as it was common during ABD meetings. It is clear from the list of attendees that Koralle attended the meeting.²⁸⁶
- (276) Sanitec moreover contends in its reply to the Letter of Facts that the note of (...) of 12 October 1994 does not show price coordination between ceramics manufacturers. It furthermore states that (...) itself (...) according to (...)’s recollection, no price discussions took place on 12 October 1994. The Commission would like to state that it does not allege that the note (...) of 12 October 1994 attests to price coordination between ceramics manufacturers. However, the note, as described at recital (181), shows how (...) took into account the price increases of all product groups addressed in this Decision in order to determine its own future price increase. The conclusions the Commission draws from the note of (...) of 12 October 1994 are therefore not in contradiction to Sanitec's arguments.

Duravit

- (277) In its reply to the SO, Duravit argues that regular price coordination was not in place among the producers of ceramics as was the case among the producers of taps and fittings.²⁸⁷ Duravit also states that Ideal Standard exaggerated the ceramics activities in order to be entitled to a significant reduction of a possible fine (...).²⁸⁸ With regard to the FSKI meeting of 7 and 8 July 2000, Duravit suggests that (...) who drafted the minutes of that meeting misinterpreted the statement of (...).²⁸⁹ (...) Duravit also denies the existence of any price discussions within the umbrella association IFS/DSI. Duravit further submits that it is a small player compared to Roca, Ideal Standard and Villeroy & Boch.

284 (...)
285 (...)
286 (...)
287 (...)
288 (...)
289 (...)
290 (...)

- (278) The Commission first notes that the notes of the FKSI meetings held on 7 and 8 July 2000 and 13 July 2001 (in which Duravit participated) supports (...).²⁹¹
- (279) In particular, as regards the meeting of 7 and 8 July 2000, the Commission refers to its observations in response to Keramag's submissions. Furthermore, a close look at the annex supplied by Duravit shows that – contrary to its suggestions – the bulk of price increases applied to the relevant product series stays within a range of 4% and 5% (a proposition which is consistent with the rate included in the notes of the July 2000 meeting). This is also consistent with the references in the notes taken by (...) ²⁹² concerning the DSI meeting held on 5 October 2000 (at which Duravit was also present), where it recorded that ceramics producers generally planned a price increase of 4.5% for 2001. In any event, Duravit's participation in the coordination arrangements at issue is not negated by the contention that it may have somehow deviated from the price target it was communicating or discussing at association meetings. In addition, the fact that the referenced cost surcharge (which prompted the price discussions at the meeting) may not have been introduced in France does not undermine the probative value of the document (as an accurate reflection of the discussions that took place at the meeting).
- (280) As regards the IFS/DSI meetings, the evidence in the Commission's file contradicts Duravit's claims. Discussions on pricing did take place at those meetings. This is evident, for example, from the notes of the meetings held on 14 January 1997, 23 June 1997 and 5 October 2000. Moreover, discussion of surcharges (see recital (667)), as well as extensive information exchange (see recital (238)) also took place between 2002 and 2004.
- (281) In its reply to the Letter of Facts, Duravit again criticizes the Commission for essentially attributing the anti-competitive practices of the taps manufacturers (for which, according to Duravit, there is a large number of indications) to ceramics manufacturers, despite the lack of ceramics-specific or cross-sectoral evidence that could establish the participation of ceramics producers in the alleged collusive arrangements.²⁹³ Contrary to Duravit's suggestions, the Commission has reviewed the evidence in the Commission's file by reference to each Member State and product group, taking into account each undertaking's individual involvement in the cartel. The fact that the file contains more evidence of price coordination pertaining to taps and fittings and shower enclosures (which is, in any event, reasonable given the original immunity application and the ensuing scope of the Commission's inspections) does not mean that ceramics producers should be absolved from any liability, simply because the evidence available enabled the Commission to prove their participation in the collusive scheme for a relatively more limited period of time (as compared with taps and fittings and shower enclosures producers).
- (282) To conclude, notwithstanding Duravit's attempt to deny any involvement, the Commission considers that it engaged in anticompetitive discussions in Germany as of at least 2000.²⁹⁴

²⁹¹ (...)

²⁹² (...)

²⁹³ (...) Duravit also reiterates its arguments against a finding of a single and continuous infringement in this case. The latter issue is further addressed in Section 5.2.3 below.

²⁹⁴ Despite the Decision's focus on this limited period, it is also pertinent to refer to a letter by (...) (Duravit), dated 19 October 1998, addressed to Hansgrohe concerning their coordination in the neighbouring market for accessories. In response to a Hansgrohe complaint about low prices, (...) of Duravit stated that "we" (meaning Duravit and Hansgrohe): "...should well coordinate our activities in all markets in order to be able to offer approximately the same net prices." After referring to a pricing issue in relation to accessories in Switzerland, (...) further notes in relation to Germany: "According to our information the difference between Hans Grohe and Duravit is as big as you claim it is in Switzerland. I hope you will also consider this point, so that we really do not disturb each other in any market. Should there still be differences in other markets, I plead in this regard also for

Villeroy & Boch

- (283) In its Reply to the SO, Villeroy & Boch contests the Commission's case in its entirety. It argues that the Commission misunderstood the role of gross price lists in end-consumer prices and further seeks to establish that the market is not conducive to collusion (particularly by pointing to economic data that indicate that there is no linear relationship between gross prices and net prices actually paid on the market). Villeroy & Boch also seeks to clarify that it cannot be held liable in relation to any arrangements in the context of AGSI or ADA, as it was not a member of those associations. In general, according to Villeroy & Boch, the Commission has therefore not established to the requisite legal standard any anticompetitive conduct in relation to ceramics producers, but only seeks to extend the taps and fittings and shower enclosures cartels to ceramics producers (although it only presented few items of evidence in that regard).²⁹⁵
- (284) The arguments essentially relating to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are further considered in Part II (Section on Legal Assessment, see notably Sections 5.2.4 on restriction of competition and Section 5.2.3 on the single and continuous nature of the infringement).²⁹⁶
- (285) As regards the evidence adduced by the Commission to establish that ceramics producers (including Villeroy & Boch) engaged in price coordination in Germany at least as of 2000, the Commission refers to its observations in response to Keramag's and Duravit's submissions. The Commission reiterates that, contrary to Villeroy & Boch's suggestions, it has reviewed the evidence in the Commission's file by reference to each Member State and product group, taking into account each undertaking's individual involvement in the cartel. It is irrelevant that the file contains more evidence of price coordination concerning taps and fittings and shower enclosures manufacturers (which, as explained, is reasonable given the background to the investigation). Ceramics manufacturers can still be held liable for their participation in collusive practices for the relevant duration established based on the available evidence in the Commission's file. Furthermore, the Commission notes that it has not alleged that Villeroy & Boch has participated in the price coordination arrangements within associations concerning taps and fittings. However, with respect to shower enclosures, Villeroy & Boch was active from the acquisition of Ucosan onwards and has participated in ADA meetings (see Section 6).

4.2.1.4 Conclusion

a clarification as soon as possible." (...) The German text reads as follows: "*Wir sollten in allen Märkten gut koordinieren sodass wir in etwa die gleichen Nettopreise anbieten.*" ... *Die Differenz zwischen Hans Grohe und Duravit ist nach unseren Feststellungen mindestens groß wie Sie dies für die Schweiz beanstanden. Ich hoffe, Sie werden dies ebenfalls aufgreifen, damit wir uns wirklich in keinem Markt gegenseitig stören. Sollte es in anderen Märkten auch noch Differenzen geben, plädiere ich auch hier für eine schnellstmögliche Bereinigung.*" (...), Duravit argues that this item of evidence cannot be used as evidence by the Commission, given that it relates to a product line (bathroom accessories) which falls outside the scope of the present investigation. Although the document refers to bathroom accessories of a specific Starck bathroom design line and predates the period for which Duravit is ultimately held liable, it is not devoid of probative value. It concerns a neighbouring market in Germany and is indicative of Duravit's perception of coordinating with competitors and of its overall behavioral pattern (which is consistent with the Commission's findings regarding ceramics in the relevant period in Germany).

²⁹⁵ (...) Villeroy & Boch argues that only 56 documents mentioned in the SO and only 8 documents mentioned in the Letter of Facts pertain to Villeroy & Boch. On this basis, there is insufficient evidence to establish proof of infringement in respect of the ceramics producers.

²⁹⁶ See also the Commission's observations in response to the recurring themes raised by Villeroy & Boch in the Section dealing with Austria (Section 4.2.2.3 below).

- (286) Based on the considerations developed in Sections 4.2.1.1 to 4.2.1.3, undertakings active in the bathroom fittings and fixtures industry coordinated their prices in Germany, in a systematic and sustained way during the period from (...) September 1994 to November 2004. That coordination notably concerned future price increases (and, often, additional pricing elements, such as minimum prices and rebates offered to customers), primarily within the framework of regular meetings of the industry associations AGSI, ABD/ADA and FSKI.²⁹⁷ The evidence in the Commission's file further reveals that participants took concrete steps to monitor the implementation of the coordinated prices during the relevant period. The scope of the coordination covered the product groups taps and fittings and shower enclosures, as well as – to a more limited extent – ceramic sanitary ware.
- (287) Undertakings involved in price coordination in Germany during the relevant period included: Masco (including Hansgrohe and Hüppe), Grohe, Ideal Standard, Hansa, Villeroy & Boch, Dornbracht, Duravit, Duscholux (...), Sanitec (Keramag and Koralle) and Kludi.²⁹⁸
- (288) The coordination took place within a variety of settings, both at multilateral level in the framework of the industry associations AGSI, ABD/ADA and FSKI, as well as at bilateral level. Aside from the minutes and other documents pertaining to association meetings, the Commission's file also contains various examples of bilateral contacts between producers in the form of emails or notes of telephone conversations.²⁹⁹

²⁹⁷ German manufacturers also coordinated their pricing on the occasion of specific events, such as the introduction of the Euro and rising raw material prices. The Commission examines these occurrences in separate Sections (see Sections 4.3.1.1. and 4.3.2.1 with regard to Germany).

²⁹⁸ (...) The precise duration of each undertaking's participation in those arrangements is addressed at Section 7.

²⁹⁹ Overall, the evidence adduced by the Commission in relation to Germany comprises both documentary evidence (documents found during the Commission's inspections at the undertakings' premises or (...)) and oral statements provided by leniency applicants. The coordination arrangements at issue are often not evident from the official minutes of the association meetings, but the handwritten notes taken by participants at those meetings expose the true scope and content of discussions within the relevant associations.

4.2.2 Austria

4.2.2.1 Chronology and pattern of meetings within the framework of ASI

(289) Annex [5] provides a comprehensive list of meetings within ASI. The Annex is intended to provide an overview of the relevant meetings in chronological order (while also illustrating the incidence and ensuing pattern of coordination amongst participants). It is noted that the total number of undertakings present at the relevant meetings is often greater than the undertakings identified in Annex [5], as that Annex only includes those undertakings that are addressees of the Decision. Unless stated otherwise, all footnote references in this Section contain documentary evidence pertaining to the minutes of those meetings. The minutes relate to both the general assembly and product sub-committees. Unless stated otherwise, the evidence presented in this Section pertains to the general assembly of the ASI, thus covering all three product groups concerned by this Decision (taps and fittings, ceramics and shower enclosures).

4.2.2.2 The facts identified by the Commission

(290) The Commission considers that the following preliminary observations are most useful in understanding the context and nature of the price coordination arrangements in Austria. As stated in recital (95), members of ASI met in general meetings, as well as within different sub-committees representing various product groups. ASI meetings were held every two or three months with a possibility of extraordinary meetings to be held at any other time. In addition to the general meetings, ASI's board (comprising the President and two Vice-Presidents) also held regular board meetings.³⁰⁰ ASI issued an invitation in advance of the meeting containing an outline of the issues to be discussed. After the meeting, ASI sent a copy of the minutes to all of its members, regardless whether the specific member was present at meeting or not so that continuous information on the issues discussed of all members was guaranteed.³⁰¹

(291) From 1999 onwards, in the autumn before each annual price cycle, a survey was usually carried out within the framework of the ASI, where the Chairman of ASI asked each manufacturer what its price increase would be.³⁰² This facilitated the coordination and monitoring of planned price increases. The price increases recorded were generally at a level of 1% to 2%.³⁰³ [Non-confidential summary: Except for certain instances, these surveys and their results were not mentioned in the official ASI minutes.]³⁰⁴

(292) The evidence in the Commission's file exposes the true scope and nature of exchanges within ASI, which covered the coordination of future price increases and other sensitive pricing information (such as rebates and margins relating to customers) in a sustained way over a long period of time. In particular, during meetings towards the end of the year, participants discussed their intended price increases prior to the communication of such price increases to their customers.³⁰⁵ Overall, based on documentary and other evidence in the Commission's possession, it is evident that a yearly cycle of price-fixing took place in Austria from (...) 1994 to 2004.

(293) It is further useful to briefly describe the price cycle followed by manufacturers in Austria. Prices were usually increased annually, effective as of 1 April each year.³⁰⁶ From 2000

300 (...)

301 (...)

302 (...)

303 (...)

304 (...)

305 (...)

306 (...) Wholesalers were then given a grace period up to 1 May of each year to adapt their prices.

onwards, the effective date of the yearly price increase was discussed and agreed upon within ASI.³⁰⁷ Producers usually communicated their price lists to wholesalers at the beginning of each year.³⁰⁸ Documentary evidence from the Commission's file records participants as specifically referring to "pricing cycles" ("*Preisrunden*") in order to describe the annual mechanism of coordinated price setting.³⁰⁹

- (294) It is also pertinent to clarify at the outset the structure of price lists and certain other terms used by manufacturers in Austria (such as multiplication factors and gross price decreases ("*Bruttopreisabsenkung*")), as they explicitly feature in the manufacturer's discussions recorded in the notes and minutes of meetings.³¹⁰ In Austria, it is common for the manufacturers of bathroom fittings and fixtures products to operate with two different price lists. One price list contains the net prices for sales to wholesalers, while the so-called "gross-price list" contains the prices that the wholesalers use for the price charged by them to the plumbers and plumbers also use this price list when selling to their customers, that is the end users.³¹¹ Over time, changes to different price lists were made, which were heavily discussed at ASI meetings. The so called *distributor purchase price list* (*Fachhandelseinkaufspreisliste*) was introduced in 1996 and contained the prices to be charged by the wholesalers to plumbers; it was a gross price list for which rebates to be granted to the plumbers played a minor role. Moreover, the so-called industry or showroom price list contained the prices for sales wholesalers charged for products of their showrooms.
- (295) In addition, the notes often refer to the so-called multiplication factors. They were expressed in percentages (for example 125%) and related to the ratio purchase price of the plumber to the price to be charged from plumber to end consumer.³¹² By way of example, a multiplication factor of 125% meant that the price to be charged by the plumber to the end consumer would be 1.25 times higher than the price charged by the wholesaler to the plumber. Thus, by adjusting the multiplication factors, prices for the end consumers were directly changed as a result.
- (296) As of 1994, there were also discussions relating to the so-called gross price reduction ("*Bruttopreisabsenkung*") on the gross price list.³¹³ The discussions were prompted by the manufacturers' desire to lower the prices they set by wholesalers in sales to plumbers, in an attempt to reduce the amount of products being sold via DIY-outlets.³¹⁴ In the course of a gross price reduction, plumbers, in the context of the three-tier distribution system, saw a reduction in their profits as they had to lower their margins in sales to their customers. The manufacturers had an incentive to lower gross prices in a coordinated way, in order to avoid loss of customers arising from plumbers purchasing their products from a manufacturer which granted them a higher profit margin.³¹⁵
- (297) As in Germany, the Austrian bathroom fittings and fixtures industry generally operates under a three-tier distribution system. The manufacturers sell to wholesalers who operate showrooms.

307 (...)

308 (...)

309 (...)

310 The references to different types of price lists in the minutes of meetings do not in any way alter the Commission's findings regarding price coordination. To the contrary, they reinforce the Commission's findings as they expose the intensity of the price coordination arrangements at issue (which, through the use of various types of price lists, sought to cover additional aspects of the distribution chain).

311 (...)

312 (...)

313 (...)

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Wholesalers sell to plumbers who then sell to the end customers. Aside from this distribution system, the DIY sector is quite successful in Austria. These DIY outlets sell sanitary products under their own brands or from non-branded producers. They obtain certain quantities of the products from direct importers and only occasionally from wholesalers.³¹⁶

- (298) The Commission refers in the following to specific meetings and contacts identified during the course of the investigation in chronological order and focuses on the period from 1994 to 2004.
- (299) On 21 July 1994, participants at the ASI taps sub-committee agreed that "price increases" for the gross price lists would be frozen for a certain period of time and that one gross price list would remain in force.³¹⁷ Such evidence demonstrates that price increases and other changes to the price list were made in a coordinated manner. At a common meeting with wholesalers dated 17 August 1994, manufacturers communicated to wholesalers the date when their price increases for the year 1995 would be made.³¹⁸
- (300) The evidence in the Commission's file also reveals clear links between the respective arrangements in Germany and Austria. In particular, ASI participants were seeking to align the prices of Austria with the prices in Germany (by adopting price increases or decreases, as appropriate). In an ASI meeting of 12 October 1994, it was recorded that – for the alignment of the prices between Austria and Germany – no sudden corrections of rebates should be made.³¹⁹ With regard to taps in particular, notes of a meeting with wholesalers state that, as a result of the alignment of prices between Germany and Austria, price changes would occur (reflecting variations in Germany).³²⁰
- (301) As explained at recital (294), there were also discussions relating to the so-called gross price reduction ("*Bruttopreisabsenkung*") since 1994.³²¹ The aim of these discussions was *inter alia* to align the Austrian prices with those of other Member States.³²² The industry decided on specific price changes and effective dates in order to establish the decrease in a coordinated manner throughout the year, with specific percentages agreed upon for the respective product groups. In an ASI meeting of 29 November 1994, it was stated that new price lists should be made on 1 January or 1 April 1995. The minutes of that meeting further show that percentages of gross price reductions had already been specifically agreed upon in the various product groups, including taps and shower enclosures.³²³ For example, the taps sub committee had decided that the prices according to the gross price list should be reduced by 10% to 15%.³²⁴
- (302) In the course of 1995, the discussion about a gross price reduction continued. At an ASI meeting dated on 2 March 1995 regarding shower enclosures, it was said that the common gross price reduction should be implemented.³²⁵ Since no common ground between the producers could be found at the time, the plan was subsequently modified at the meeting of 30 May 1995.³²⁶ The handwritten notes of another meeting that took place on the same day also attest to price coordination amongst participants (including with respect to rebates offered to customers). In particular, the notes show that Artweger, Duscholux and Laufen, all members of

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the shower enclosures product group, had discussed a certain range for rebates and that there would be no reduction of the gross price list.³²⁷

- (303) Information about price increases with regard to Italy led some producers, namely Hansa, Grohe and Keramag, to adapt their prices accordingly. At the ASI meeting of 1 September 1995, participants again discussed that a gross price reduction would have to be made for some products.³²⁸
- (304) Starting from 1995, there were also discussions about the so-called distributor purchase price list ("*Fachhandel-Einkaufspreisliste*") - explained at recital (294). In relation to this new price list, manufacturers fixed price increases/reductions and rebates, as well as the effective dates for their price lists. In a common meeting on 16 November 1995, ASI explained to the wholesalers:

"Per product group there will be similar, much lower rebates from the distributor purchase prices, which differ according to product group.

The rebate per product group should however be relatively similar. Desired side effect: rebate inflation is being diminished since there will only be 3, 4 or 5%. ...

Report from the ASI product groups:

Ceramics: Villeroy & Boch, Ideal Standard, Laufen: per 1.4. system change ok, Keramag: has price list in the post, will not make due date 1.4., will catch up with this step for 1997 in autumn.

Taps and fittings: ... the sector taps and fittings assumes a rebate of maximum 15% (thus double-digit) is more realistic. Date: 1.7. ok, Hansa would prefer 1.4.. Ideal Standard was not coordinated yet. ...

Showers: (...) reports that Duscholux and Hüppe will issue a list with usual price increases/-reductions on 1.1.1996. They have vaguely said to catch up with the step on 1.7. or 1.10, by bringing the price increase 1997 forward and have the lists valid for 1 ½ years."³²⁹

- (305) At a meeting with wholesalers dated 27 November 1995, manufacturers within the taps product group coordinated price increases for the 1996 price cycle. In particular, they agreed on a common price list for 1996, including price increase ranges ("*percentages as agreed*" ("*vereinbarten Prozentsätze*")). The "*general date*" ("*Termin allgemein*") of application was set as 1 July 1996. An annex to the meeting minutes show that the participants had established an overview of precise maximum and minimum rebates, gross price reductions and multiplication

³²⁷ (...)

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³²⁹ (...) the German text reads: "*Pro Produktgruppe wird es auf die Fachhandelseinkaufspreise ähnliche, viel niedrigere Funktionsrabatte geben, die zwischen den verschiedenen Warengruppen unterschiedlich sein werden. Der Rabatt pro Warengruppe soll jedoch relativ ähnlich sein. Gewünschter Nebeneffekt: Rabattinflation wird eingedämmt, da es nur mehr 3, 4 oder 5 % geben wird. Bericht aus den ASI-Produktgruppen. Keramik: Villeroy & Boch, Ideal Standard, Laufen: per. 1.4. Systemänderung OK, Keramag: hat Preisliste am Postweg, schafft Termin 1.4. nicht, will im Herbst den Schritt für 1997 nachvollziehen. Armaturen: ... Armaturenssektor hält Rabatt von maximal 15 % (also 2-stellig) für realistischer. Termin: 1.7. ok, Hansa würde 1.4. vorziehen. Ideal Standard ist noch nicht abgestimmt. Duschen: (...) berichtet, dass Duscholux und Hüppe am 1.1.1996 eine neue List emit üblichen Preiserhöhungen/-reduktionen auflegen werden. Sie haben sich wage geäußert, zum 1.7. oder 1.10 den Schritt nachzuvollziehen, indem sie die Preiserhöhung 1997 vorziehen und diese Listen dann 1 ½ Jahre Gültigkeit behalten werden.*

factors for each of the taps producers, namely Hansa, Kludi, Ideal Standard, Dornbracht and Hansgrohe.³³⁰

- (306) The coordination of prices continued during 1996. At a meeting of 23 January 1996, the manufacturers discussed the effective dates for the various price lists.³³¹ On the same date, the board of ASI met (of the addressees of this Decision, Grohe and Laufen were present) to discuss the situation up to that point regarding the gross price reductions for each ASI sub-committee, with a view to preparing a discussion with the wholesalers. The notes of the meeting again attest to the intensity of price coordination amongst ASI members. In particular, the status at that time with regard to prices for all product groups was reported on: as regards taps, there was already an agreement on a gross price decrease; for ceramics, the undertakings had informed each other what prices they would implement; for bathtubs, an agreement had been reached that all undertakings except Duscholux would decrease prices on 1 April 1996. According to the minutes, Duscholux would "follow" the other undertakings in the price change ("*Duscholux wird nachziehen*").³³²
- (307) The new pricing system, including the specialized distributor purchase list, was agreed upon by the manufacturers in the context of ASI (effective as from 1 July 1996).³³³ Coordinated conduct with regard to the so-called "*multiplication factors*" ("*Aufschlagsfaktoren*") took place in advance, with a view to agreeing on the new prices for the new list. These multiplication factors were, as explained at recital (294), mostly expressed in percentages relating to the prices charged by plumbers to end consumers. For example, a multiplication factor of 125% meant that the plumber was to sell to the end consumer for 125% of the price he paid for the product himself.³³⁴ At the ASI meeting of 23 April 1996, the participants agreed on a "*factor*" of "1.25" for the specialized distributor price lists. It was also determined that the lists had to be with the wholesalers by 6 May of that year.³³⁵
- (308) In 1996, participants also discussed the so-called "*showroom*" or "*industry*" price list ("*Schauraumpreisliste, Industriepreisliste*"), explained at recital (294). In order to introduce this price list, ASI members decided upon the date and price multiplication factor by reference to various product groups at the meeting of 1 August 1996 (also attended by certain wholesalers); the minutes specifically record that a price multiplication factor of 125% was agreed for taps, bathtubs and shower enclosures.³³⁶ Indeed, on 2 August 1996, ASI circulated a document amongst its members stating that a multiplication factor of 1.25 would be in force for the new price list with respect to all product groups except whirlpools and cleanet (thus, covering all product groups concerned by this Decision).³³⁷
- (309) At the ASI meeting of 6 September 1996, ASI members decided, based on the earlier agreement, to send out the industry price list as soon as possible with the multiplication factor "1.25", valid as of 1 January 1997 or 1 April 1997.³³⁸ At the subsequent meeting of 5 November 1996, various sub-groups of ASI (including all products concerned by this Decision) decided to uphold the agreed factor notwithstanding calls by plumbers and

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(...) Although the new price list was supposed to carry the disclaimer "non-binding recommendation", manufacturers specifically discussed and agreed on the prices to be applied within the framework of ASI.

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wholesalers to change it. The decision to uphold the future price list (including the multiplication factor) was made in a coordinated manner within the different subgroups of ASI. In particular, for each product group, it was unanimously decided that a uniform multiplication factor was to be applied.³³⁹ The notes of a board meeting of ASI held on the same day specifically state that the multiplication factor would indeed be uniform within the various subgroups: "*within the different subgroups, the factor will be uniform*" ("*innerhalb der Produktgruppe wird es einen einheitlichen Faktor geben*").³⁴⁰

- (310) The discussion about various price lists continued at the ASI meeting of 5 December 1996, where members decided to attach the specialized distributor purchase price list to the industry price lists. The specialized distributor purchase price lists would be introduced with the next price change. The surcharge factor should – as previously agreed – be "*uniform*" within the product groups. The manufacturers also agreed to communicate the following statement to wholesalers:

(...)³⁴¹

Furthermore, the precise surcharge factors "*discussed*" at the time within the different product sub-committees were listed:

(...)³⁴²

- (311) During the joint meeting between ASI and wholesalers/plumbers of 19 December 1996, ASI members announced price lists for consumers with a multiplication factor of 130% to be supplied between 1 March and 1 April 1997 "*including price increases*" (not concerning bathroom furniture, accessories and whirlpools – products not concerned by this Decision).³⁴³
- (312) The evidence in the Commission's possession attests to the members' continued price coordination during the course of 1997. At the ASI meeting of 3 February 1997, price lists were again discussed. In particular, participants discussed the timing of the price list and the multiplication factors used therein.³⁴⁴ At the ASI board meeting of 16 April 1997, it was confirmed that the industry price list was distributed on 1 April of that year.³⁴⁵ Previously, on 25 March 1997, ASI had circulated a list to all ASI members containing the dates when the various price lists for each undertaking would enter into force and what multiplication factor would be used by each undertaking.³⁴⁶ The list covered all three product groups concerned by this Decision. Some undertakings had already distributed their price lists, while others planned to do so on 1 April.
- (313) Manufacturers confirmed the multiplication factors (this time referred to as "*Aufschlagsfaktoren*" in the minutes) agreed on for all product groups. At the ASI meeting of 15 October 1997, manufacturers affirmed that the "*130*" list would remain in force (following

³³⁹ (...) The agreement with respect to taps and fittings and shower enclosures related to 1 January 1997 or 1 April 1997; for ceramics, the price list would be revised again in mid-1997: (...).

³⁴⁰ (...) The Commission's file also contains corroborating evidence, which reflects deliberations amongst participants leading to the coordination of the 1997 price list. In particular, on 23 July 1996 (several months prior to the price list being adopted), Grohe sent a letter to the members of the sub-group taps, namely Hansgrohe, Hansa, Kludi and Ideal Standard, asking several questions, including *inter alia* whether the undertakings would be prepared to adopt a factor of 125% (...). Kludi responded by fax dated 26 July 1996, informing Grohe that (...).

³⁴¹ (...)

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³⁴³ (...)

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³⁴⁶ (...)

calls by plumbers for a new calculation).³⁴⁷ This was re-affirmed at the board meeting of ASI held on the same day.³⁴⁸

- (314) [Non-confidential summary: Ideal Standard, Laufen, Keramag and Villeroy & Boch exchanged their planned price increases during the period between 1998 and 2000].³⁴⁹ Corroborating evidence in the Commission's possession indeed demonstrates that ceramics producers coordinated their prices, both within the framework of ASI and through bilateral contacts. On 30 January 1998, Laufen informed (...) that it would increase prices by 4.9%. (...) notes of the telephone call with Laufen read as follows: "*PL 1998 → Economy 0% TZ Basic 3% TZ Luxus 4 % TZ .. Kludi ... TZ linear 4,9%*".³⁵⁰ Contemporaneous handwritten notes taken by (...) at an ASI meeting held on 6 September 1999, record Ideal Standard, Laufen, Keramag and Villeroy & Boch as discussing their planned price increases for 2000 (in percentages or percentage ranges) and the introduction date of the price lists, while also exchanging the applicable prices for some specific products (such as WCs, sinks and shallow flushing toilets).³⁵¹
- (315) The manufacturers' determination to retain control over prices within the framework of the three-tier distribution system was unyielding. The minutes of the ASI meeting of 5 May 1999, reporting on a meeting with wholesalers, record the industry as declaring that the competence for the price determination ("*Kompetenz der Preisgestaltung*") would remain with the manufacturers (accepted without objections by the wholesalers).³⁵² Handwritten notes pertaining to another meeting in the framework of the ASI held on the following day (6 May 1999) leave no doubt as to what this really meant: manufacturers determined the prices, including the net and the gross prices: "*Power of pricing; i.e. determination of the industry, which prices: calculation and gross*".³⁵³ The evidence in the Commission's file relating to 1999 further corroborates the premise that competitors knew well in advance about each others prices. An internal report dated 14 December 1999 from Grohe Austria to Grohe headquarters in Germany lists planned price increases for the upcoming price cycle, by manufacturer and certain product groups (generally within the range of [0-5]%), effective as of 1 April 2000. Moreover, the internal report attests specifically to the information exchange amongst competitors. In particular, Grohe reported to its parent company as follows: "*The competitors: Information exchange with competitors concerning the price cycle 1.4.00. (column 1:)% price increase: Grohe ART + [0-5]%, TEC [-5-+5]%, DAL [-5-+5]%, Service and exchange parts + [0-5]%, Hansa linear [0-5]%, Hansamix [0-5]%, Kludi linear [0-5]%, Kludimix [0-5]%, Ideal Standard [0-5]%, Hansgrohe [0-5]%, Axor [5-10]%, (...) [0-5]%, (...) [0-5]%*". The second column of the document is entitled "*requirement for price harmonization*" and records mechanisms that have to be implemented for the undertakings to reach a common price level.³⁵⁴
- (316) Evidence relating to a ceramics product group meeting of 24 June 1999 shows that Villeroy & Boch informed the other participants about its rebate of 40% on its gross price list to wholesalers and the rebate of 50% to plumbers.³⁵⁵

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348 (...) Such multiplication factors were relevant with respect to the price charged from the plumber to the end consumer.

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352 (...)

353 (...) German text: "*Preishoheit; d.h. Bestimmung der Industrie, welche Preise: Verr. und Brutto*".

354 (...) German text: "*Preisharmonisierungsbedarf*".

355 (...)

- (317) ASI members used to fix the effective date of their yearly price increases, with a view to reinforcing the annual mechanism of coordinated price setting. At the ASI meeting of 24 January 2000 (also attended by wholesalers), the participants agreed that prices were to be increased only once a year, specifically on 1 April of each year. Members deliberated on the appropriate date having regard to the common date at international level ("*international üblich*"), which was 1 January of each year. More particularly, members discussed the fact that the prices should be comparable internationally ("*international vergleichbar*") since offers on the internet were accessible to everyone.³⁵⁶
- (318) The coordination of future price increases continued within the different sub-committees of ASI during the course 2000. At the ASI meeting of the subgroup taps and fittings ("*Feinarmaturen*") that took place on 10 May 2000, the participants discussed *inter alia* the dates for the price increase for 2002 (almost two entire years prior to them becoming effective). In the handwritten notes of the meeting, it was also stated that the prices should be the same as in Germany.³⁵⁷ A handwritten note of (...) dated 27 November 2000 lists its competitors' planned price increases including those of Kludi, Hansa and Hansgrohe in percentages. The notes further indicate that (...) would have a telephone conversation with (...) of Grohe to verify Grohe's price increase and the date of its planned implementation.³⁵⁸
- (319) Evidence of contacts within the sub product groups also shows that for the taps product group, Grohe informed Kludi, Ideal Standard, Hansa and Hansgrohe per letter of 27 November 2000 that "*the actual pricing cycle, supported by all printed materials from industry and wholesalers - as in the past - would be made as of 1 April 2001*" ("*die tatsächliche Preisrunde, gestützt mit allen Printunterlagen der Industrie erfolgt - wie in der Vergangenheit - ab 1.4.2001*"). Grohe also stated that the "*range of the price change of 1 April 2001 would be between 4 and 7%*" ("*die Bandbreite der Preisänderung ab 1.4.2001 wird zwischen 4 und 7% liegen*").³⁵⁹
- (320) A note found during the inspection at the premises of Artweger shows that Artweger and Duscholux, both shower enclosure manufacturers, had a phone conversation on 9 October 2000 regarding prices. The note reads as follows: "*Telephone conversation with company DX, (...), Duscholux has increased per 1 April 2000 by 4.9%. Did not have problems. ADA has decided unanimously: 7.5%. Has already asked around: (...) wants to go along, he [added remark: apparently referring to (...)] between 5-6%, Artweger > 5% difficult, (...) not predictable*".³⁶⁰ In addition to the confirmation of Duscholux' price increase of 4.9% per 1 April 2000, it can readily be inferred from the text of the note that participants also discussed a future price increase for shower enclosures (having regard to the price increase of 7.5% agreed in the context of the German association, ADA). The note further suggests that there had already been contacts amongst shower enclosures producers, with a view to coordinating that price increase.
- (321) At the ASI meeting dated 12 October 2000, members (representing undertakings from all three product groups concerned by this Decision, including Duscholux, Grohe, Hansa, Ideal Standard, Kludi, Keramag and Artweger) discussed their planned price increases for the forthcoming price cycle (2001), with each participant referring to its intended price increase

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358 (...) Similarly, handwritten notes of (...) dated 3 May 2001 show that Grohe and (...) had bilateral contacts with regard to the price cycle 2002; in particular, the notes record that (...) would call back (...) of Hans Grohe to discuss *inter alia* price lists, price changes and cost surcharges for 2002: (...).

359 (...)

360 (...): "*DX hat zum 1.4.00 um 4.9% erhöht. Hatte 0 Probleme. ADA hat beschlossen: einstimmig 7,5%. Hat schon Rundruf gemacht: Neher will mit. Er zwischen 5 → 6%, Artweger > 5 schwer, Lido unvorhersehbar*".

ranges.³⁶¹ At the same meeting, it was also reported, that in Germany the prices for shower enclosures would be raised by 7.5% (with a range of 0.3%) within the framework of ADA (the German shower enclosures association). It was then considered that one would have to increase prices by a similar level in Austria. The latter discussions further establish proof of the Commission's thesis regarding the links between the respective arrangements in Germany and Austria.

(322) At the ASI meeting of 21 June 2001 (relating to all product groups concerned by this Decision), it was agreed that the next price increases should be made on 1 January 2002 and that the price lists should be with the wholesalers on 1 October 2001.³⁶² The same topic had been discussed at the meeting of 24 April 2001 (with wholesalers), where the participants decided to apply an effective date of 1 January for the 2002 price increases and to return to the common effective date of 1 April from 2003 onwards. A summary of the topics discussed at that meeting was sent to all ASI members by the ASI itself.³⁶³ The Commission considers that these adjustments to the price cycle were discussed primarily in view of the introduction of the Euro.

(323) Documents found during the Commission's inspections also attest to bilateral contacts between manufacturers of shower enclosures, with a view to coordinating their upcoming price increases for the 2002 price cycle. (...) (Artweiger) sent out an email dated 25 June 2001 asking other shower enclosures manufacturers (including Duscholux, Masco (Hüppe) and their competitor (...), not an addressee of this Decision) about their planned price increases for 1 January 2002. The text of his email reads: *"Dear fellow sufferers - Since the date of the next price increase seems to be fixed, the same thoughts probably trouble us. What does the market bear, what would we like or how can we stop the downing of our unit numbers? You will surely remember how I said the increase of 7% of this year is madness. In the retrospective I must not revise my statement. Therefore, for 1.1.2002 I can also only imagine a low increase, which justifies merely the print of new lists. In one case or the other also correction measures will be necessary in order to align the level between Austria and Germany. What is your opinion regarding this? If we send our comments directly to all gentlemen, we will all always have the same level of knowledge"*.³⁶⁴ (...) replied by email dated 11 July 2001, as follows: *"Dear Sirs – (...) will calculate a cost surcharge of + 5.1% to 6% to the currently valid shower enclosure gross price list 4 – 2000 A. The cost surcharge will be valid probably as of 01.10.2001. As (...) already stated, correction measures between Austria and Germany are necessary. Since a later alignment in the course of the calendar year 2002 is not possible, this step has to be taken in autumn 2001. I am asking all others to also tell me their procedure for the Austrian market. If you should take part in the planned ASI – Messe Reed – meeting on 18 July 2001 (Raststätte Großram), there would be a possibility to exchange information right on the spot."*³⁶⁵ These

361 (...)

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364 (...): *"Sehr geehrte Leidensgenossen - Da nun das Datum der nächsten Preiserhöhung fix scheint, plagen uns wahrscheinlich alle die selben Gedanken. Was verträgt der Markt, was hätten wir gerne oder wie können wir die Talfahrt der Stückzahlen einbremsen? Sie können sich sicher noch erinnern, wie ich die heurige Erhöhung von 7 % als Wahnsinn bezeichnet habe. Rückblickend muss ich meine Aussage nicht revidieren. Daher kann ich mir auch für 1.1.2002 nur eine geringe Erhöhung vorstellen, die gerade den Druck von neuen Listen rechtfertigt. Verschiedentlich werden auch Korrekturmaßnahmen notwendig sein, um das Niveau zwischen Deutschland und Österreich anzugleichen. Wie ist Ihre Meinung dazu? Wenn die Kommentare gleich an alle Herren gehen, haben wir immer den selben Wissenstand."*

365 (...): *"Sehr geehrte Herrn - (...) wird auf die derzeit gültige Duschkabinen-Bruttopreisliste 4-2000 A einen Teuerungszuschlag von + 5,1 % bis + 6 % berechnen. Den TZ werden wir voraussichtlich ab 01.10.2001 gültig stellen. Wie (...) bereits anmerkte, sind Korrekturmaßnahmen zwischen Österreich und Deutschland notwendig. Da eine spätere Anpassung im Laufe des KJ 2002 nicht möglich ist, muß dieser Schritt im Herbst 2001 erfolgen."*

exchanges also corroborate the Commission's findings regarding the links between the respective arrangements in Germany and Austria.

- (324) The Commission's file further includes an internal email of Artweger dated 24 July 2001, which reports on a telephone conversation between (...) of Artweger and (...) of Duscholux concerning *inter alia* the topics discussed at a preceding ASI meeting, as well as the planned price increase rates (in percentage) for the forthcoming price cycle (effective as of 1 January 2002): "*price increase as of 1.1.2002 – they increase by 3-4%, one ESG series not at all*".³⁶⁶
- (325) The coordination of price increases continued during the course of 2002. Based on the evidence in the Commission's file, taps and fittings manufacturers discussed in detail various possibilities regarding the implementation of the forthcoming price increases for 2003 in their meeting held on 11 September 2002 – in this regard it was stated in the notes of this meeting:

"Price increase:

→ Date: 01.01.03 has been envisaged, we are however convinced that this date would not pass the wholesalers. ... the date cannot be made.

→ Date 01.01.03: in the form of a cost surcharge. ... → advantage: everyone will have the price increase 3 months earlier, furthermore the date of January is fixed also for the future. ...

→ date 01.04.03: if the cost surcharge solution is not accepted, we will provide to the wholesalers in the usual form the catalogue/picture price list with respective leadtime

→ price increase soft: model that an envisaged price increase (for example 5%) will be adjourned. ..."³⁶⁷

- (326) Following the meeting, on 13 September 2002, (...) sent an email to (...) and other competitors (including Dornbracht and Kludi), following-up on the "*our conversation of 11 September 2002 regarding a price increase date per 1 January 2003 in the form of a cost surcharge*" ("*unser Gespräch vom 11.09.02 betreffend Preiserhöhungstermin per 01.01.03 in Form eines TZs*"). He had apparently discussed the matter with a representative of the wholesalers, who had told him that the last price increase was exceptionally introduced in January in view of the introduction of the Euro and that February 2003 would be a more appropriate date; in addition, the email states that the manufacturers had already assured wholesalers and plumbers that "*the next price increase would in the usual manner be implemented in April 2003*".³⁶⁸
- (327) Similarly, the minutes of the ASI meeting of 19 September 2002 record the participants' decision to increase prices in a "TZ" linear way (TZ standing for "*Teuerungszuschlag*", or cost surcharge) per 1 January 2003. The minutes further reveal that the decision to increase prices

Ich bitte alle Beteiligten mir ebenfalls Ihre Vorgangsweise für den österreichischen Markt mitzuteilen. Sollten Sie am geplanten ASI – Messe Reed- Treffen am 18.07.01 (Raststätte Großram teilnehmen, würde sich auch die Möglichkeit eines Info-Austausches vor Ort ergeben."

³⁶⁶ (...) "*Preiserhöhung zum 1.1.2002 – Sie erhöhen um 3-4 %, eine ESG-Serie überhaupt nicht*".

³⁶⁷ (...) "*Preiserhöhung: → Termin: 01.01.03 wurde angedacht, wir sind jedoch überzeugt, dass dieser Termin beim GH nicht mehr durchgeht. Ist der 01.01.03 Termin aus Zeitgründen nicht mehr durchführbar. → Termin 01.01.03: In Form eines TZ's ... → Vorteil: alle bekommen die Preiserhöhung 3 Monate früher durch, weiters ist der Jännertermin auch für die Zukunft fixiert. → Termin 01.04.03: wenn die TZ-Lösung nicht angenommen wird, werden wir dem GH in gewohnter Form Katalog/Bildpreisliste mit entsprechender Vorlaufzeit zur Verfügung stellen. → Preiserhöhung-Soft: Modell bei einer angedachten Preiserhöhung (zB 5 %), dass diese ausgesetzt wird*".

³⁶⁸ (...) German text: "*die nächste Erhöhung wieder in gewohnter Form im April/03 durchgeführt wird*".

was explicitly put into a vote and that the vast majority of attendees voted in the affirmative. The "regular list" was said to be sent out per 1 April 2003.³⁶⁹

- (328) Later in the year, at the ASI meeting held on 7 November 2002 a suggestion by wholesalers to increase prices by way of a cost surcharge by 1.5% and split the profit 50:50 with the manufacturers in the first quarter of 2003 was discussed in detail.³⁷⁰ Similarly, this topic was discussed extensively at the ASI board meeting held on the same day, with the board members recorded as stating that "*between 0 and 1.5% everything can be done if there is also a profit for the industry = recoupmnt of rebates as essential topic and primary goal of all ASI firms*".³⁷¹
- (329) The handwritten notes relating to the general meeting of 7 November 2002 (found during the inspection at the premises of Artweiger) shed more light into the relevant discussions within ASI following the wholesalers' propositions. In particular, they record the following: "*1.5% on gross prices, in return shortening of the rebates of the industry to the wholesalers by 1%. Germany and Switzerland have increases 1 January with validity as of 1 April since a long time*" ("*1,5% auf Bruttopreise, im Gegenzug Kürzung der Rabatte der Industrie an Großhändler um 1%. D und CH haben Erhöhung 1.1. mit Wirksamkeit 1.4. schon lange*").³⁷² In this respect, ASI members further agreed to send a common letter to the wholesalers.³⁷³
- (330) Furthermore, an internal note from Kludi Austria to the head office of Kludi in Germany (found during the inspections at its premises), dated 19 December 2002, provides a detailed account of discussions that took place at a meeting of taps manufacturers on 3 December 2002 (attended *inter alia* by Hansgrohe, Grohe, Hansa, Dornbracht and Kludi). In particular, the note includes a breakdown of price increase rates by attendee for the forthcoming price cycle (2003).³⁷⁴
- (331) The ASI meeting at the beginning of the following year (23 January 2003) again offered members the opportunity to monitor the implementation of the coordinated price increases. Aside from discussing the envisaged price increase of that year, it was also confirmed that customers had been informed of the cost surcharge for 2003.³⁷⁵ The modalities of price changes were also a topic for discussion at the ASI meeting of 14 March 2003 (which covered all product groups). The participants decided that it would be necessary to discuss the date of the price change for 2004 and the way in which it was to be introduced well in advance.³⁷⁶
- (332) The Commission's file contains additional evidence regarding the coordination of the so-called "gross price reductions" (explained at recital (301) and (294)) in the course of 2003. At a meeting on 26 June 2003, the decrease of gross prices in the future was once again discussed. Participants elaborated on the various options discussed with the wholesalers for bringing about such a decrease and carried out a survey to determine which option for the price agreement would be better for the ASI members; the minutes of the meeting state as follows:

*"Gross price decrease:
tough option: between 13 - 17%, one time reduction, is preferred by the wholesalers;
wholesalers could use the industry as scapegoat*

³⁶⁹ (...) See further Section 4.3.2.2. regarding the introduction of a cost surcharge.

³⁷⁰ (...) See further Section 4.3.2.2. regarding the introduction of a cost surcharge.

³⁷¹ (...) German text: "*zwischen 0 und 1.5 % ist alles drinnen, wenn für die Industrie auch etwas drinnen ist = Rabattrückführung als wesentliches Thema und primäres Ziel aller ASI Firmen*". See further Section 4.3.2.2. regarding the introduction of a cost surcharge.

³⁷² (...)

³⁷³ (...)

³⁷⁴ (...)

³⁷⁵ (...)

³⁷⁶ (...)

or

"soft": in three steps: 1, step 5 – 7%, 2. and 3. step in 3% each. Is preferred by ASI since the sustainability of the solution is also important. The wholesalers would have to participate and take responsibility! Transitory solutions, cost surcharges should not be in place anymore. A practicable compromise with the wholesalers for a recoupment of the gross prices should be feasible with a view to the economic situation (to the detriment of end consumers). Therefore first achieve agreement with the wholesalers, then prepare guild.

Date: 1.1. or 1.4.?

Of the present members, in relation to the price list 12 firms are not dependent on foreign countries and 6 have to work with determined European price lists. A survey shows that these 12 firms prefer the option "soft" with higher recoupment in step 1 (6%) in relation to step 2 (approximately 3% in 2004) and 3".³⁷⁷

- (333) (...) the secretary general of the ASI at the time, wrote an email to *inter alia* Laufen, Grohe, Ideal Standard, Grohe and Kludi on 31 July 2003 stating that it had been decided together with the wholesalers that in relation to the pricing policy, a common approach had to be taken for each product group. The different product groups were therefore asked to hold a meeting in order to decide on an envisaged gross price decrease, the modus of implementation, as well as the date of the price change.³⁷⁸
- (334) ASI members thus also coordinated their prices for the forthcoming price cycle (2004) in the context of ASI product sub-committee meetings. At the meeting of the taps ASI sub-committee held on 8 September 2003, participants discussed the rate of the forthcoming price increase for 2004 (again, several months before these price increases were announced to customers or due to come into force). In particular, a range for the price increase of 1 April 2004 was fixed as well as an intended percentage for a gross price decrease in 2004 – the minutes in this regard state: "Issues: Price decrease 04: if, then 10%, YES! Date of price increase: 1 April 04, price increase 3.8 – 4.1%".³⁷⁹
- (335) On 31 July 2003, (...) sent an email to its competitor Artweger in preparation of the shower enclosures sub-group meeting of 19 August 2003. (...) reflects upon a common approach with regard to rebates and the profit margin of manufacturers and wholesalers, and states:

"Basis for the discussion was the attempt of the ASI to (reduce, remark added) gross prices in 2 – 3 steps (in steps up to a maximum rate of 16.7% or amount of VAT respectively, since this amount is according to several opinions the standard rebate of the plumber to the consumer)The wholesale however preferred a one time and high reduction (maximum rate see above). In the last meeting there was a convergence or a compromise that according to the current calculation of the respective product groups, the gross prices would be reduced in a range of 8 to 12% with at the same time taking into account the necessary price increase including an increase of profit for the

³⁷⁷ (...) "Bruttopreisabsenkung: Harte Variante: zwischen 13.17%, einmalige Rückführung, wird vom GH bevorzugt; GH könnte die Industrie als Sündenbock benützen – Oder - "soft" in 3 Schritten: 1. Schritt 5 – 7 %, 2. und 3. Schritt jeweils 3 %. Wird vom ASI bevorzugt, da auch die Nachhaltigkeit der Lösung wichtig ist. Der Großhandel müsste mitarbeiten und mittragen! Übergangslösungen, TZ soll es nicht mehr geben. Ein gangbarer Kompromiss mit dem GH für eine Bruttopreiserhöhung wird im Hinblick auf die Wirtschaftssituation erzielt werden können (zu Lasten des Endkonsumenten). Daher erst Einigkeit mit dem GH erzielen, dann Innung vorbereiten".

³⁷⁸ (...)

³⁷⁹ (...) "Themen: Preisabsenkung 04: wenn, dann 10 %, JA! Preiserhöhungstermin: 1.4.04, Preiserhöhung 3,8 – 4,1 %".

*industry and an increase in margin (we talk about 2 – 3%) for the wholesalers. As a maximum rebate for the plumber, a rebate of 32% could be envisaged."*³⁸⁰

- (336) The ASI meeting of the shower enclosures product group held on 19 August 2003 attests to the detailed nature of price discussions among members. Participants discussed the dates of price increases, with each member stating its envisaged price increase and carried out a survey regarding an envisaged rebate reduction. This survey showed that the present manufacturers were not in favour of decreasing rebates, with a statement from the minutes reading: *"The Austrian plumber is a rebate-purchaser and would therefore prefer the firms that grant him a higher rebate"* (*"der österreichische Installateur ist noch immer ein Rabattkäufer und würde demzufolge die Firmen vorziehen, die ihm einen höheren Rabatt gewähren"*). It was concluded, that a harmonization of rebates in the ASI would be very welcomed by the shower enclosure manufacturers. It was said that it would be desirable for the manufacturers to have higher rebates. A survey on an envisaged gross price decrease made at the meeting also showed that the shower enclosure manufacturers were not in favour of it. After this survey, each manufacturer stated its next price increase date and it was concluded that in ASI, efforts should be made that in the future, price increases would generally be made on 1 January of each year.³⁸¹
- (337) The minutes of the ASI meeting on 25 September 2003 recorded that a compromise with the wholesalers had been found to decrease prices by a maximum of 12% at once and that apparently, that compromise was only valid for ceramics and taps and fittings. The wholesalers then however decided not to implement the gross price reduction at the time. It was therefore concluded by the ASI that the current price level should be retained, while aiming at adjustments in the future (*"we stay at the high level, waiting for a new chance to be used in a better way"*).³⁸²
- (338) An internal email of Artweger, dated 26 September 2003 relating to the ASI meeting of 25 September 2003 shows that, at that meeting, the shower enclosure manufacturers had already taken the opportunity to discuss the prices for 2004. In this email, (...) of Artweger, who had attended the meeting reported to another employee of Artweger, reported:
- "Talked to (...) and (...) about price increase 2004: approx 4%"* (*Mit den (...) und (...) wegen Preiserhöhung 2004 gesprochen: ca 4%"*).³⁸³
- (...) was the Kludi representative while (...) represented (...) (not an addressee of this Decision), both producers of shower enclosures.
- (339) At a meeting of ASI and the wholesalers on 16 November 2003, the industry informed the wholesalers that prices would have to be increased by 2.5% to 3%, presenting a united front.³⁸⁴

³⁸⁰ (...) *"Ausgangsbasis für die Diskussion war das Anliegen der ASI die Bruttopreise in 2 bis 3 Etappen (in Schritten bis zu einem maximalen Satz von 16,7 % bzw. Höhe der Ust, da diese Höhe laut diverser Meinungen als Standardrabatt des Installateurs an den Konsumenten gilt). Der Großhandelsverband machte sich hingegen für eine einmalige und gravierende Absenkung (Maximalsatz siehe oben) stark. ... In der letzten Sitzung gab es insofern eine Annäherung bzw. einen Kompromiss, dass je nach gängiger Kalkulation der jeweiligen Produktgruppen die Bruttopreise in einer Bandbreite von 8-12 % bei gleichzeitigem Einbau der erforderlichen Preiserhöhung inkl. Ertragsverbesserung für die Industrie und einer Spannenverbesserung (wir reden von bis 2-3 %) für den Großhandel abgesenkt werden sollen. Als Maximalrabatt für den Installateur könnte ein Rabattsatz von 32 % ins Auge gefasst werden"*.

³⁸¹ (...)

³⁸² (...) German text: *"wir bleiben am hohen Niveau, eine neuerliche Chance soll abgewartet und besser genutzt werden"*.

³⁸³ (...)

³⁸⁴ (...)

At the ASI meeting of 22 January 2004, the manufacturers also discussed the forthcoming annual price increase for 1 April 2004.³⁸⁵ Indeed, in the minutes of the ASI board meeting held on the same day the regular price change for 1 April 2004 was reported to be definite ("*fix*"). The minutes of the board meeting also record price discussions on road toll pricing.³⁸⁶

- (340) During the entire period of their sustained price coordination within the framework of regular meetings of ASI, bathroom fittings and fixtures producers in Austria also exchanged commercial information regarding, in particular, their sales.³⁸⁷ For example, members of the ASI sub-committee on ceramics, Ideal Standard, Laufen, Villeroy & Boch, Keramag, exchanged information on sensitive sales data of vitreous china on a regular basis. The tables that were produced in the course of the exchange covered the time period 1995 to 1999. Sales of vitreous china are segmented into luxury, basic and economy products and the information provided includes units sold, as well as the value and the percentage change in sales compared to the previous year – by reference to each each undertaking and relevant year.³⁸⁸ The evidence in the Commission's file also shows that Laufen provided tables setting out its exact ceramics sales from 1997 to March 2000 to competitors.³⁸⁹ Moreover, Keramag provided details on its sales in units and value in the high price segment, the middle price segment and the low price segment for the period 1996 to August 1999.³⁹⁰ Moreover, an internal note of (...) details sales figures in volume and value for Villeroy & Boch (with respect to all pricing categories) for the years 1995, 1996 and 1997.³⁹¹
- (341) The Commission takes the view that this information exchange supported the primary price coordination plan concerned by this Decision. Contrary to certain addressees' submissions,³⁹² it is apparent that the turnover and sales information exchanged was not sufficiently aggregated, nor sufficiently historic. On the basis of this detailed information (in particular, percentage changes in comparison with the preceding reference period) participants were often able to calculate market shares. The Commission considers that the regular exchange of this type of information thus helped members to continuously monitor developments pertaining to other participants, with a view to ensuring stability and maintaining their close ties of cooperation and interaction. Moreover, communications relating to sales also formed the basis of discussions at the meetings, with attendees referring interchangeably to both their pricing and sales performance in a tour de table. Indeed, the file includes examples of handwritten notes concerning price increase discussions, which were made on the exchanged sales tables.³⁹³ Given these circumstances, it would also be artificial to attempt to distinguish those exchanges from the overall scheme described in this Section.

4.2.2.3 The addressees' arguments in reply to the SO and the Letter of Facts, and the Commission's findings

- (342) In their replies to the SO and during the course of the Oral Hearing, several respondents raise arguments pertaining to the legal qualification, likely effects or legal and economic context of the arrangements in question, while also disputing their individual involvement in the single

385 (...)

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390 (...)

391 (...)

392 Certain addressees argue that the exchange of such information was general and could not be deemed to reveal the commercial strategy of the undertakings (nor did it enable undertakings to determine market shares). (...)

393 (...)

and continuous infringement described in the SO. Such arguments, as well as those pertaining to the precise duration of each undertaking's individual participation in the infringement, are further addressed in Part II (legal assessment), notably Section 5.2.4. This Section mainly addresses the addressees' arguments directly relating to the facts presented by the Commission in relation to the Austrian market.

Masco

- (343) In its Reply to the SO, Masco (...) the evidence put forward by the Commission regarding price coordination amongst Austrian producers.³⁹⁴

Grohe

- (344) Similarly, Grohe (...) the Commission's account of the facts in relation to Austria.³⁹⁵ However, Grohe claims that the end consumer list produced by the Austrian manufacturers only contained recommended prices (and that its oral statement in that regard should not be generalized for all Member States concerned by this Decision). Grohe further submits that the gross price decrease discussed amongst ASI members in the years 1995 to 1997 was never fully implemented.

- (345) These arguments cannot be accepted. The critical point is not the inclusion of the disclaimer "recommended prices" in the minutes of certain meetings, but the fact that competing manufacturers specifically discussed and agreed upon the content of such price lists within the framework of ASI, with a view to setting end consumer prices (in addition to other price lists).³⁹⁶ Furthermore, those competing manufacturers discussed the end consumer price lists in a coordinated way with wholesalers and plumbers. Such evidence exposes the intensity of the price coordination arrangements at issue, which covered a variety of price lists corresponding to more than one levels of the distribution chain – including price lists conceived with the objective of, and targeted specifically at, fixing end consumer prices. The coordination of the end consumer price lists thus reinforces the Commission's overall findings regarding price coordination of wholesaler price lists. Moreover, the Commission is not required to establish that coordination of list prices within the framework of regular meetings of associations systematically translated to coordinated end consumer prices. However, it must be said that, within the system of price coordination in Austria, manufacturers actually sought to achieve precisely that. Finally, it is irrelevant that the gross price decreases referred to by Grohe may not have been fully implemented. The fact remains (and Grohe does not dispute it) that manufacturers coordinated these decreases in the context of ASI during the relevant period.

Ideal Standard

- (346) In its reply to the SO, Ideal Standard (...) the facts presented by the Commission in relation to Austria.³⁹⁷ Ideal Standard further seeks to establish that its leniency submissions were of more added value (...). This is duly taken into account in the assessment of Ideal Standard's reduction of fine pursuant to the Leniency Notice (see Section 8.8.3).

³⁹⁴ (...)

³⁹⁵ (...)

³⁹⁶ For the avoidance of doubt, it is noted at the outset that agreements on recommended prices between competitors are also caught by the Article 101 TFEU prohibition concerning price-fixing (see also Part II below). Moreover, it should be mentioned that, in the specific circumstances of the three-tier distribution system as operated in Austria, manufacturers were able – through the introduction of such coordinated end consumer price lists – to exercise increased influence on end consumer prices (in the course of subsequent negotiations with wholesalers, which were similarly conducted in a coordinated manner).

³⁹⁷ (...)

Hansa

- (347) Hansa (...) the facts with regard to Austria as assessed by the Commission.³⁹⁸ Similarly, in its reply to the Letter of Facts dated 30 June 2009, Hansa (...) the Commission's findings and points to a number of corroborating documents submitted with its leniency application. The latter arguments pertain to the assessment of the added value of Hansa's leniency submissions and, as such, they are further addressed at Section 8.8.5.

Kludi

- (348) Similarly, Kludi (...) the evidence put forward by the Commission in relation to Austria. Indeed, Kludi (...) that in the course of ASI meetings, percentages or ranges of percentages were exchanged between the competitors and that these exchanges related to future price increases.³⁹⁹

Dornbracht

- (349) Dornbracht submits that its German headquarters determined the prices for Austria before the respective meetings of ASI (in which the different price increase announcements were made). Dornbracht also claims that it never discussed the application of German prices in Austria and that it did not discuss a European price list. Furthermore, Dornbracht argues that it was never a member of rebate fixing discussions.⁴⁰⁰ Finally, it submits that there was no ensuing effect on the market from the arrangements in question, because only gross prices were exchanged at ASI meetings.⁴⁰¹
- (350) Dornbracht essentially submits that, notwithstanding its sustained participation in ASI meetings since 2001, it never actually used the price information exchanged during these meetings. At this stage, it must be underlined that Dornbracht confirms that it actively participated in the exchange of information on price increases at ASI meetings since 2001. In particular, it confirms that - during those meetings - it specifically communicated to competitors its intended price increases, while being informed about its competitors' respective price increases.⁴⁰² Such statements corroborate the Commission's assessment of price discussions within the framework of ASI. Section 5.2.4.1 discusses how the arrangements at issue have an anticompetitive object and constitute a cartel infringement. Contrary to Dornbracht's suggestions, the Commission considers that the undertaking could not have failed to take into account, directly or indirectly, the price information disclosed to it by competitors (or the pricing policies discussed with competitors) at those meetings. In fact, the Commission contends that it is for that reason that Dornbracht continued to attend and actively contribute at these meetings, in a systematic and sustained way for a number of years.

³⁹⁸ (...)

³⁹⁹ (...) Kludi also confirmed the Commission's findings in relation to the documents pertaining to price coordination in Austria (as contained in the Letter of Facts). However, it sought to clarify that (...) handwritten notes of 27 November 2000 recording the planned price increases of its competitors cannot properly be deemed to ensue from anticompetitive conduct. In this regard, the Commission observes that it has referred to the latter document in order to show that cartel participants also had supplementary bilateral contacts with a view to monitoring the implementation of their competitors' price increases.

⁴⁰⁰ Dornbracht reiterates this argument in its reply to the Letter of Facts. In particular, Dornbracht disputes that it coordinated its rebates on the occasion of the ASI meeting on 7 November 2002, pointing in particular to evidence suggesting that there was no consensus amongst producers on how to respond to the wholesalers' propositions in that regard.

⁴⁰¹ (...)

⁴⁰² (...)

(351) The notion that the price coordination at issue might somehow not have had an ensuing market effect or that it might not have been so effective in relation to end consumer prices does not alter the Commission's assessment. The evidence referred to in this Section attests to regular price coordination of list prices, often including additional pricing elements (for example rebates offered to customers and margins).⁴⁰³ Moreover, with regard to Austria in particular, the Commission's file includes additional evidence relating specifically to coordination of end consumer price lists, which further serves to highlight the intensity of price coordination amongst ASI members. Finally, it has not been contended that Dornbracht specifically discussed the application of German prices (or a European price list) in Austria. Nonetheless, the evidence in the Commission's file corroborates the Commission's thesis regarding the links between the respective arrangements in Germany and Austria. In particular, ASI members discussed their planned price increases, as well as the modalities of their price lists and other pricing policies having regard to corresponding developments in Germany (and very often with the view to specifically aligning Austrian prices with prices in Germany).⁴⁰⁴

Artweger

(352) In its reply to the SO, Artweger (...) disputes that the infringement was to the extent alleged by the Commission. In particular, Artweger states that price discussions did not occur regularly and that any agreements were limited to the Austrian market.⁴⁰⁵ Artweger also states that it did not participate in the board meeting of 22 January 2004 where price increases were discussed.⁴⁰⁶ Artweger further contends that the price increases/decreases at issue never related to specific products, while most price discussions at ASI meetings actually concerned price decreases. Finally, Artweger seeks to demonstrate that it had a relatively marginal role in the cartel arrangements (as compared with other attendees that were subsidiaries of German undertakings) and that it acted negligently.

(353) These arguments cannot be accepted. Artweger has actively participated in all relevant ASI meetings, in a systematic and sustained way over an extensive period of time (at least 10 years).⁴⁰⁷ Artweger did not, therefore, have a marginal role, nor can it be disassociated from the infringement. Its participation in the coordination arrangements at issue is not negated by the contention that it may have somehow deviated from the precise price target it was

⁴⁰³ As regards in particular the discussions pertaining to rebates/margins at the ASI meeting of 7 November 2002 (which Dornbracht refuses to have coordinated), both the official minutes and handwritten notes of the ASI meetings held that day clearly record manufacturers as discussing ways to recoup the rebates granted to wholesalers (on the occasion of a proposition by the wholesalers to introduce an increase of 1.5% in 2003 and split the ensuing profit 50:50 with the manufacturers). It is irrelevant that there were disagreements between ASI members on the appropriate way forward. The issue was discussed extensively in the context of ASI and the evidence in question further corroborates the Commission's findings as to the manufacturers' systematic efforts to act in a coordinated way on pricing issues vis-à-vis their customers. It is also irrelevant that Dornbracht, which participated in the relevant discussions, ultimately had to apply a different price increase in order to ensure that its prices in Austria are aligned to those in Germany (as required by the group's policy).

⁴⁰⁴ By way of example, please see recitals (321) in relation to the ASI meeting of 12 October 2000 and recitals (323) referring to emails in June 2001 and recital (318) referring the meeting of the taps and fittings subgroup of ASI on 10 May 2000.

⁴⁰⁵ In its reply to the SO, Artweger also disputes its individual involvement in a single and continuous infringement, as described in the SO, while pointing to a number of attenuating circumstances (justifying, in its view, at least a symbolic fine or a substantial reduction of the fine). These arguments, as well as those pertaining to the precise duration of their individual participation in the infringement, are further addressed in Part II below.

⁴⁰⁶ (...)

⁴⁰⁷ Annex 5 lists all ASI meetings in which Artweger participated. With respect to the ASI board meeting of 22 January 2004, it is accurate that Artweger was not present. However, Artweger attended the general assembly meeting of the same day (thus, the reference in the Annex).

communicating or discussing at ASI meetings. Furthermore, the argument that price coordination notably concerned gross prices or that it also involved gross price decreases does not in any way undermine the Commission's findings. The coordination of such prices can indeed be anticompetitive.⁴⁰⁸ In any event, the latter practice cannot be separated from the overall price coordination plan employed by Austrian manufacturers. As explained in the introductory part to this sub-section, the coordinated gross price reductions were targeted at eliminating the DIY-outlets, with a view to maintaining prices for manufacturers (ultimately, to the detriment of consumer choice). It is also noted that, contrary to Artweger's suggestions, shower enclosures manufacturers did agree on prices for specific products, notably shower enclosure products.

- (354) Artweger seeks to distinguish itself from competitors whose parent company was based in Germany, in an apparent attempt to diminish its role in the arrangements at issue. Artweger further contends that uniform prices for Germany and Austria would not have been possible because of differences in the distribution of bathroom fittings and fixtures products in Austria. It also submits that it has not participated in the meeting of 21 September 2001, where uniform prices in Germany and Austria were discussed.⁴⁰⁹
- (355) First, the Commission has not alleged that Artweger is a subsidiary of a German undertaking. The Commission's thesis is that Artweger equally and actively participated in the price coordination arrangements in Austria. Despite Artweger's attempt to minimize its role or present itself as a negligent participant, the evidence on the Commission's file establishes that it was very much an informed and willing participant. To this effect it is appropriate to draw attention to the following examples of evidence in the file (documents found during the inspection at the premises of Artweger): (...).⁴¹⁰ (...).⁴¹¹ (...).⁴¹²
- (356) Second, the Commission's file includes evidence attesting to links between the coordination arrangements in Germany and Austria, such as evidence relating to the discussion of price alignment between Germany and Austria in several meetings, in which Artweger also participated: for example, Artweger was present at a meeting as early as 12 October 1994; reference is also made to the meeting of 12 October 2000 (where a price increase for Austria was discussed, following a corresponding German price increase for shower enclosures).⁴¹³
- (357) In view of Artweger's submissions, the following additional examples from the file (documents found during the inspection at Artweger's premises) are of note: In June and July 2001 Artweger sent emails to its competing shower enclosures producers concerning the upcoming price increase as of 1 January 2002 (that is, several months prior to the start of the 2002 cycle), in which it is stated that correction measures would be necessary to align the prices of Austria and Germany.⁴¹⁴ (...).⁴¹⁵ Finally, an internal Artweger email dated 18 October 2002 shows that prices of Artweger in Austria were indeed aligned to those in Germany for the forthcoming price cycle (2003). The email further states that the undertaking's management should take a final decision on the prices once "*comparative data from the ASI*" ("*Vergleichsdaten vom ASI*")

⁴⁰⁸ For the sake of completeness, it is reiterated that price coordination among Austrian producers also extended to cover a variety of price lists, including price lists targeted specifically at end consumer prices.

⁴⁰⁹ (...)
⁴¹⁰ (...)
⁴¹¹ (...)
⁴¹² (...)
⁴¹³ (...)
⁴¹⁴ (...)
⁴¹⁵ (...)

were obtained.⁴¹⁶ Such evidence plainly contradicts Artweger's denial of any attempts by ASI members to align prices between Austria and Germany.

- (358) In its reply to the Letter of Facts, Artweger reiterates its argumentation (as put forward in its reply to the SO), contending in particular that the price coordination did not exhibit the degree of intensity or frequency suggested by the Commission and that its involvement was marginal and non-intentional.⁴¹⁷ (...) Moreover, Artweger argues that the price increases recorded in the minutes of the ASI meeting with wholesalers on 1 August 1996, the minutes of the ASI meeting on 14 March 2003 and its email to Kludi dated 29 October 2002 reflected (and/or ensued from) the wholesalers' attempt to pressurize or even intimidate the manufacturers in order to increase their profit margins. (...)
- (359) The Commission rejects Artweger's arguments. First, as regards the alleged non-binding or recommendable character of the price increase exchanges at ASI meetings, the Commission notes that these exchanges comprised exact price increase multiplication factors or narrow price ranges which were specifically discussed among the manufacturers (and often communicated thereafter in negotiations with the wholesalers). The price information exchanges at issue had an anti-competitive object and – for purposes of applying Article 101 TFEU – there is no requirement that they relate specifically to individual transaction or end-consumer prices (see, in particular, Sections 5.2.4.1, 5.2.4.2 and 5.2.4.3).⁴¹⁸ Second, it is irrelevant that price discussions between the manufacturers might have been somehow prompted by the wholesalers or otherwise designed/organised by the manufacturers as a response to buyer pressure (see further Section 5.2.4.2). In fact, Artweger's own submissions in that regard corroborate the Commission's case, as they attest to the manufacturers' coordinated attempts to form a united front in relation to their customers in order to retain control over prices within the three-tier distribution system and contain their pressure. Third, the Commission did not allege that Artweger participated in the collusive arrangements in Germany. The Commission pointed to Artweger's references to the alignment (or corrective measures) between prices in Germany and Austria in order to show that manufacturers indeed took into account German prices as a benchmark when setting their prices in other countries, notably in Austria. (...)

Laufen

- (360) In its Reply to the SO, Laufen submits that the alleged anticompetitive conduct was essentially an agreement to issue and apply the annually renewed catalogues and price lists on a certain date, as well as a commitment to provide wholesalers with these documents several weeks in advance.⁴¹⁹ Laufen argues that the group most responsible for originally arranging the price agreements or concerted practices at issue was the taps and fittings sub-committee, of which Laufen was not a member.⁴²⁰ Laufen also contends that gross prices do not allow undertakings to ascertain the precise price levels charged by their competitors and that exchanges of price increases are not relevant (notably due to heterogeneous nature of the ceramics sector). Laufen also cites a document in which (...) (from the ASI secretariat) states that – in relation to the Euro price increase – prices should not be discussed within ASI.⁴²¹

⁴¹⁶ (...)

⁴¹⁷ (...)

⁴¹⁸ It should be noted at the outset that, according to settled case-law, concertation on price objectives, target prices, list prices and other forms of announced prices can also constitute an infringement of Article 101 TFEU (see further Section 5.2.4.2)

⁴¹⁹ (...)

⁴²⁰ (...)

⁴²¹ (...)

- (361) Laufen reiterates these arguments in its reply to the Letter of Facts, underlining the general character of the price information exchanged, the fact that the price increases were very often the result of pressure by the wholesalers, as well as the fact that the gross price lists discussed were in fact recommended maximum prices (which were subsequently subject to negotiations with wholesalers on rebates to determine the final price list). As regards the email sent by (...) (ASI) to the ASI members summarising the meeting of 14 March 2003, according to Laufen, it may give the wrong impression. Laufen submits that it actually pertains to a broader discussion between manufacturers and wholesalers on the future model of price policy and conditions, and did not have the sole purpose of increasing the manufacturer's profit.⁴²²
- (362) With regard to the overall context of Laufen's submissions, the Commission refers to Section 8.8.4 concerning the assessment of applications pursuant to the Leniency Notice. Turning to the specific issue of price coordination of Austrian manufacturers, it is important to underline that the evidence adduced by the Commission notably pertains to planned price increases to be applied in forthcoming price cycles, which were discussed several weeks or months prior to their effective application. The agreements at ASI meetings were clearly not confined to the change of price lists on a certain date. There was an annual cycle of price setting in which prices were increased (or decreased) in a coordinated way. Attendees consistently took part in ASI meetings, with a view to aligning their understanding and conduct and adhering to common price practices, in a sustained way over a long period of time. Laufen was active in these arrangements for a period of 10 years. Regardless of whether contacts or negotiations between manufacturers and wholesalers may have been more structured in Austria (as compared with other Member States), the key issue is that competing manufacturers have been regularly discussing and agreeing on the date and content of such price lists within the framework of ASI. The coordinated and structured manner in which manufacturers engaged in subsequent contacts or negotiations with wholesalers does not in any way affect the Commission's findings. To the contrary, it corroborates and strengthens the Commission's account of the facts, as it exposes (yet again) the increased degree of coordination and interdependency amongst ASI members.
- (363) Laufen further seeks to demonstrate that price coordination somehow only concerned taps and fittings producers within ASI.⁴²³ This argument cannot be accepted. ASI is an umbrella association covering various product groups. Most of the evidence adduced by the Commission (unless otherwise indicated) pertains to ASI meetings of the General Assembly covering all three product groups concerned by this Decision. In addition to participating in such ASI meetings, Laufen has also been a board member of ASI (and, therefore, also attended ASI board meetings). Furthermore, the Commission has pointed to specific items of evidence concerning price coordination of ceramics producers, notably in the context of the ceramics sub-committee.⁴²⁴ That evidence corroborates (...) concerning price coordination amongst Austrian ceramics producers.⁴²⁵ In view of Laufen's submissions, the following example from the file (a document found during the inspection at the premises of ASI) is referred to, which readily corroborates Laufen's informed and willing participation in the price coordination at issue: in a letter dated 26 May 1997, from Laufen to the wholesalers' association, (...) stated: "*Within the product group ceramics we have unfortunately not managed to convince Keramag to a surcharge on the specialized distributor list of 1,30. Now the Vienna plumbers are dealing*

422 (...)

423 (...)

424 See, for example, recital (314) referring to information exchange between ceramics manufacturers in Austria between 1998–2000.

425 (...)

*with Keramag. Not really the sophisticated way but we have a free market and we stand behind this".*⁴²⁶

- (364) Laufen's argument that price coordination concerned gross prices or that it also involved gross price decreases does not undermine the Commission's findings.⁴²⁷ Nor is it relevant that it may not have been possible to know the exact final prices charged by manufacturers with certainty (in view of the heterogeneity of the market or otherwise). Similarly, the fact that the information exchanged related to the product categories economy, basic and luxury (as opposed to individual product groups) does not alter the Commission's assessment. All these arguments pertain to the object, likely effects or legal assessment of the arrangements at issue and, as such, are considered in detail in Part II (see in particular Sections 5.2.4.1, 5.2.4.2 and 5.2.4.3). It is nonetheless worth noting at the outset that the price discussions at issue had a plain anticompetitive object and constitute a cartel infringement.
- (365) Turning to the email sent by (...) (ASI) to the ASI members summarising the meeting of 14 March 2003 (as well as to similar communications with wholesalers, steered by ASI with a view to reducing the perceived gap between gross and net prices), it suffices to note that such evidence further corroborates the Commission's findings as to the coordinated and structured manner in which manufacturers engaged in negotiations with wholesalers on pricing issues. The implication of wholesalers does not in any way justify the price discussions amongst the producers, nor can it absolve them from any ensuing liability. To the contrary, it attests to the intensity of the price coordination arrangements in Austria. Finally, the contention that an increase in gross prices was contrary to the manufacturers' interests⁴²⁸ (or that (...) is reported as stating that prices should not be an ASI topic for discussion) is similarly not persuasive in the face of several items of evidence demonstrating that such price increases were indeed discussed and agreed upon at ASI meetings.

Sanitec (Keramag)

- (366) In its Reply to the SO, Keramag submits that the Commission attaches much weight to the leniency applications without conducting a proper analysis of the market. It further seeks to demonstrate that the market is not conducive to collusion and that no consumer harm could have resulted from the coordination of list prices (in view of rebates and other terms negotiated with wholesalers possessing strong bargaining power).⁴²⁹ Keramag also argues that it is a small player competing strongly on the Austrian market. As regards price discussions within the framework of ASI, Keramag contends that the employees who represented Keramag at ASI meetings have left the undertaking and it is therefore not in the position to comment on the Commission's allegations.
- (367) Moreover, Keramag contests specific items of evidence adduced by the Commission. In particular, it claims that the letter circulated by ASI on 25 March 1997, which contained the respective price increase dates and percentages, was sent out after decisions had been made within the undertakings concerned. With respect to the meeting of 3 February 1997, Keramag argues that the minutes only refer to a request of both the wholesalers' and the plumbers' associations and that no further comments can be made as its representative at the meeting has

⁴²⁶ (...) *"In der Produktgruppe Keramik ist es uns leider nicht gelungen, die Keramag zu einem Aufschlag auf die Fachhandeleinkaufsliste von 1,30 zu bewegen. Jetzt holt die Wiener Innung die Keramag vor den Vorhang. Nicht ganz die feine Art, aber wir haben einen freien Markt und dazu stehen wir auch".* (...)

⁴²⁷ See further in this regard the introductory remarks in this sub-Section, as well as the Commission's observations in response to similar arguments raised by Artweger.

⁴²⁸ (...)

⁴²⁹ (...)

since left the undertaking.⁴³⁰ For the same reasons, Keramag submits that it is not aware of alleged phone calls between manufacturers to discuss the rate for the forthcoming price increases (although it can assert that such contacts have not taken place since 2003). Similarly, Keramag states that it is unable to verify the Commission's findings regarding coordination of future price increases amongst ceramics producers during the period 1998 to 2000 (while pointing to Ideal Standard's contention that these coordinated prices were never applied).⁴³¹ Keramag also argues that evidence of bilateral contacts or meetings to which it did not participate cannot be used against it. Finally, Keramag contests that the document relating to a meeting of 22 January 2004 proves an agreement on price increases.⁴³²

- (368) Most of Keramag's arguments relate to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are considered in detail in Part II. It is nonetheless appropriate to clarify the following points. First, it is irrelevant that Keramag's employees who were present at the meetings have since left the undertaking. Keramag's active participation in ASI meetings has been verified by reference to the names of its representatives at the time of those meetings (as recorded at ASI minutes). The Commission can still use items of evidence pertaining to meetings in which Keramag was not present in order to expose the true nature of price exchanges at ASI meetings and the ensuing pattern of coordination amongst ASI participants. Furthermore, it is irrelevant that Keramag has a smaller size relative to other competitors. Keramag was an active participant in the arrangements at issue for an extensive period of time (almost 10 years) and, thus, it cannot be deemed to have had a minor or marginal role.
- (369) The Commission considers that the list circulated by ASI on 25 March 1997 corroborates the Commission's premise that ASI members took concrete steps to facilitate and monitor the coordination of price increases. It further indicates the intense and systematic cooperation amongst competing ASI members. It should be noted that the indicated price increases at issue concerned the forthcoming price cycle (as of 1 April). Some undertakings had already distributed their price lists, while others planned to do so. Contrary to Keramag's allusions, the survey was conducted at a critical period from the strategic perspective of participating undertakings – when members had every interest in removing, or reducing, uncertainty as to the future conduct of their competitors (in the context of negotiations with wholesalers or otherwise). Finally, as already indicated, the coordinated and structured way in which manufacturers engaged in contacts/negotiations with wholesalers corroborates the Commission's account of the facts.
- (370) The minutes of the meeting of 3 February 1997 do not only refer to requests by wholesalers and plumbers; they also specifically attest to price discussions regarding the forthcoming price increase (and even rebates towards wholesalers). For example, (...) (the representative of Duscholux) explained in detail which multiplication factor they would use at the next price increase.⁴³³ Turning to the coordination of future price increases amongst ceramics producers during the period 1998 to 2000, Keramag does not directly contest it (but simply indicates that the price increases may not have been applied). Indeed, during the ASI meeting of 6 September 1999, Keramag shared its precise prices and percentage increases in relation to WCs, sinks and shallow flushing toilets with competitors.⁴³⁴ Finally, the minutes of the meeting held on 22 January 2004 record intense price discussions (regarding *inter alia* the road toll pricing).

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432 (...)
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Although the document does not record a specific rate, it refers to the forthcoming annual price increase for 1 April.⁴³⁵ Moreover, the minutes of the ASI board meeting held on the same day report the price increase for 1 April to be definite ("*fix*").⁴³⁶

- (371) In its reply to the Letter of Facts, Keramag contests several of the Commission's findings on the basis that the wholesalers had initiated or were involved in the price discussions. In particular, Keramag contends that no anti-competitive conduct between the manufacturers can be inferred from the ASI-letter of 2 August 1996 or the minutes of the ASI meeting with wholesalers on 1 August 1996⁴³⁷, since the wholesalers were involved in the discussions.⁴³⁸ Similarly, Keramag contests that the manufacturers can be held liable for a price surcharge discussion of 1.5% at the meeting of 7 November 2002,⁴³⁹ which was made at the request of the wholesalers, because the manufacturers rejected the proposal of the wholesalers. Keramag further states that from the ASI report containing the minutes of the meeting of 16 November 2003, it cannot be inferred that a horizontal coordination between the manufacturers took place. According to Keramag, the manufacturers merely rejected the wholesalers' request to increase prices by 1.2% as a reaction to the introduction of the road toll. Furthermore, Keramag contends that the reference to a price increase of 2.5% to 3% does not lead to a conclusion that there was an agreement between the manufacturers on this amount of increase.⁴⁴⁰
- (372) In relation to the instances referred to in recital (371), Keramag fails to take into account the key consideration that manufacturers extensively discussed the proposal for this price increase amongst themselves, with a view to ensuring a uniform approach in relation to their customers. The fact that manufacturers ultimately rejected a proposal by the wholesalers, or that wholesalers initiated or took part in discussions, does not undermined the relevance and importance of the price discussions at issue in the continued price coordination arrangements undertaken by the ASI participants.
- (373) The fact that manufacturers fixed prices is underlined by the very evidence that Keramag questions: At the meeting of 7 November 2002 for example, manufacturers explicitly agreed on a surcharge of 1%. At the meeting of 16 November 2003, they discussed the increase they were prepared to grant, which clearly represents anti-competitive conduct.⁴⁴¹
- (374) Keramag maintains that Laufen's letter to wholesalers dated 26 May 1997 regarding the failure to convince Keramag to also apply a multiplication factor of 130 within the ASI ceramics subgroup, shows that Keramag was not involved in this anti-competitive conduct. The Commission contends that this letter reveals among other things, that intense price coordination discussions took place during ASI ceramics subgroup meetings. Moreover, the content of the letter is consistent with other items of evidence regarding the multiplication factor of 130 which was agreed between manufacturers in 1997.⁴⁴² The fact that in this letter, it is stated that Keramag did not want to agree on a particular price increase discussed cannot therefore

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438 (...) Keramag moreover refers to several pieces of evidence showing coordination among manufacturers in which it was not directly involved. However, the Commission may still rely on this evidence to strengthen its findings concerning the anti-competitive character of these contacts in general (without alleging specifically that Keramag participated therein).

439 (...)

440 (...)

441 See recital (329), (339).

442 See in this regard in particular the meeting on 15 October 1997 at which Keramag was present. (...)

diminish the ongoing participation of Keramag in the anti-competitive arrangements as set out in the description of facts.

(375) As regards the handwritten notes concerning the ASI ceramics sub-group meeting of 24 June 1999, Keramag contends that in the document, there is a question mark next to the date of the document. Moreover, Keramag alleges that the rebate rate exchanged was very general and would be of little value for other manufacturers.⁴⁴³ In this regard, the Commission observes that the document clearly record the manufacturer Villeroy & Boch as communicating its average rebates on its gross price lists. In addition, the document was prepared in *tempore non suspecto*, its content being entirely consistent with findings concerning other ASI meetings (including meetings of the ceramics sub-group). The fact that general discounts on gross price lists were communicated suffices for purposes of proving the Commission's case. The date of the meeting was confirmed (...).⁴⁴⁴ The fact that it was addressed by (...) under a section which it had named "information exchange" does not alter the assessment of the Commission, since it is not up to the leniency applicants to determine the exact classification of the nature of their conduct.

Villeroy & Boch

(376) In its reply to the SO, Villeroy & Boch contests the Commission's case in its entirety. It submits that the Commission has misunderstood the role of gross price lists in end consumer prices and further seeks to establish that the market is not conducive to collusion (see also Section 4.2.1.3 in relation to Germany). Villeroy & Boch claims that the Commission relies merely on (...) to support its allegations regarding ceramics.⁴⁴⁵ With regard to ASI's letter survey dated 25 March 1997 and the ASI meeting dated 3 February 1997, it argues that a price agreement cannot be said to have taken place because the relevant price lists had already been published.⁴⁴⁶ Similarly, Villeroy & Boch argues that it had already set its prices for 2000 at the time of the alleged ASI meeting of 6 September 1999.⁴⁴⁷ As regards the coordination of future price increases amongst ceramics producers during the period 1998 – 2000, Villeroy & Boch again argues that its internal price setting had already been concluded. Villeroy & Boch further claims that it was not present at the board meeting of 7 November 2002 and that, in any event, no price agreement can be deduced from the protocol of that meeting.⁴⁴⁸ Turning to the ASI meeting of 10 April 2003, Villeroy & Boch states that it was similarly not present and that no price increase discussion took place.⁴⁴⁹ Villeroy & Boch further reproaches to the Commission's "double utilization" of single items of evidence to establish different behaviors (for example with regard to the minutes of the meetings dated 10 April 2003). Moreover, it accuses the Commission of failing to take account of exonerating minutes taken at other ASI meetings.⁴⁵⁰

(377) Villeroy & Boch's submissions essentially revolve around three recurring themes. First, it seeks to discredit (...), in an apparent attempt to distinguish ceramics from all other product groups concerned by this Decision. Second, it systematically aims at recasting the Commission's case, with a view to diminishing the relevance and importance of coordinating list prices and,

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446 (...) In this regard, Villeroy & Boch submits internal correspondence, where the undertaking informs about its forthcoming price lists.

447 (...) Villeroy & Boch again submits internal correspondence to establish that prices for 2000 had been determined internally.

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ultimately, confounding the issues of object and effect. Third, it seeks to create the impression that the price discussions at issue somehow concerned "published" prices of no competitive significance (and, thus, unobjectionable). Moreover, Villeroy & Boch provides selective comments on evidence put forward by the Commission in relation to Austria.

- (378) The Commission addresses these recurring themes in Part II, as they are commonly referred to by several addressees and they mostly relate to the legal assessment of the case. However, the following preliminary observations are warranted. The Commission's case is based on documentary evidence (notably minutes of ASI meetings and other communications amongst ASI participants) (...). Most of the evidence adduced by the Commission pertains to general ASI meetings (unless otherwise indicated), thus covering all three product groups concerned by this Decision. Indeed, the form and pattern of coordination are similar with respect to all three product groups concerned by this Decision in all material respects. (...)
- (379) Contrary to Villeroy & Boch's allusions, the Commission is not required to establish proof of coordination specifically in relation to net or end-consumer prices. The coordination of gross prices (or other pricing policies, price elements and parameters or even recommended prices) can be equally anticompetitive. Similarly, the Commission's case is not premised on the idea that coordination of list prices within the framework of regular meetings of ASI systematically translated to uniform end-consumer prices in Austria. It is nonetheless apparent from the evidence in the Commission's file that price discussions amongst ASI members covered more than one price lists, as well as other price elements of competitive significance, such as rebates and customer margins. The Commission describes such price discussions and other exchanges in Austria, with a view to delineating the precise scope of the coordination arrangements at issue (thereby, exposing their intensity).
- (380) Moreover, the evidence adduced by the Commission notably refers to prices in connection with forthcoming price cycles, which were discussed weeks or months prior to them becoming effective. The contention that internal price setting deliberations within some participating undertakings may have progressed before certain relevant association meetings, or that the planned price increases may have sometimes already been communicated to customers, does not detract from the fact that these future price increases were specifically discussed amongst competitors within the framework of regular association meetings. Nor is their competitive significance undermined. As further explained in Section 5.2.4.1, from a strategic and planning point of view, participants had every interest in removing or reducing uncertainty about the future conduct of their competitors at the critical time period before the start of each price cycle. Moreover, they had every interest in ensuring that their competitors (including those who had not yet finalized their future pricing policy or had not yet communicated their forthcoming price lists to customers) adhered to the coordinated policies. Finally, they had every interest in reducing information asymmetry and aligning their understanding and conduct in the context of subsequent negotiations with customers (which were, in any event, conducted in a coordinated manner). In any event, any such instances cannot possibly be separated from several other discussions and exchanges, within the same pattern of price coordination arrangements, which occurred well in advance of any communications to customers.
- (381) In view of these considerations, the contention that Villeroy & Boch might have had communicated its planned price increases for the forthcoming price cycle before the meeting of 3 February 1997 (and before ASI's request of 25 March 1997) does not alter the Commission's assessment. Moreover, it is irrelevant that internal price setting deliberations within Villeroy & Boch may have progressed before the ASI meeting of 6 September 1999.⁴⁵¹ As regards

⁴⁵¹ (...)

Villeroy & Boch's non-presence in the board meeting of 7 November 2002, it is noted that Villeroy & Boch was present at the general ASI meeting of the same day, where discussions took place about the forthcoming price increase and rebates.⁴⁵² Moreover, the Commission can use items of evidence pertaining to meetings in which Villeroy & Boch was not present in order to establish the pattern of price coordination within ASI, particularly where the evidence concerns an ASI board meeting (that is, an overarching executive organ in ASI's institutional pyramid). Concerning the ASI meeting of 10 April 2003 (where Villeroy & Boch did not participate), the minutes record a strategic discussion in relation to pricing in relation to wholesalers (in addition to the discussions on the road toll). In this regard, the minutes of the meeting state: "*Gross prices should be kept stable, independent of German price lists. Therefore only reduce from bottom to top. Rebates should be more important for the industry, no increase of gross prices, wholesalers will be forced to bring back rebates. Then we would be able to control the rebates via the wholesalers*".⁴⁵³

- (382) In its reply to the Letter of Facts of 10 July 2009, Villeroy & Boch disputes the probative value of the evidence put forward by the Commission with respect to ceramics producers. First, as regards the ASI meeting of 1 August 1996, it explains the three levels of pricing in the industry (particularly regarding the Austrian market) and submits that the discussed price lists essentially ensued from the specific industry arrangements pertinent to the three-tier-distribution system, while the prices increases recorded in the minutes merely served as a basis for subsequent negotiations with customers.⁴⁵⁴ The Commission observes that Villeroy & Boch essentially seeks to justify or minimize the competitive significance of the agreed multiplication factor, without contesting the underlying facts. In the Commission's view, Villeroy & Boch's own submissions in fact corroborates the Commission's findings as to the intensity of the price coordination practices in Austria, which covered price lists corresponding to more than one level of the distribution chain (including price lists targeted specifically at fixing the margins of customers).
- (383) Turning to the notes of the ceramics sub-committee meeting of 4 February 2000 which contained references to bonuses, Villeroy & Boch argues that they do not specify what should be granted and under which circumstances.⁴⁵⁵ Moreover, all references to prices and rebates contained therein essentially relate to the gross price lists and, thus, obscure the fact that any resulting net prices varied significantly from customer to customer. The Commission reiterates that the case is not premised on the idea that coordination of list prices systematically translated to uniform end-consumer prices in Austria. Nonetheless, it suffices to note that the exchange of information about rebates and bonuses (notably during the critical period of negotiations with customers) can be deemed to aim precisely at the coordination of those end-consumer prices, regardless of their alleged aggregate or generalised nature.
- (384) With respect to the ASI meetings held on 7 November 2002, Villeroy & Boch seeks to clarify that the proposal for a price increase of 1.5% on the gross lists in exchange for a reduction of the rebate offered to wholesalers by 1% originated from the wholesalers and that manufacturers

⁴⁵² As the meeting of 7 November 2002 also pertained to an introduction of a cost surcharge (possibly combined with arrangements on the timing of the price cycle following the introduction of the Euro the previous year), the Commission also refers to its findings in Section 4.3.2.2.

⁴⁵³ (...) German text: "*Bruttopreise sollen stabil gehalten werden, unabhängig von den deutschen Listen. Daher nur von unten nach oben reduzieren. Die Rabatte sollen der Industrie wichtiger werden, Bruttopreisseitig nicht erhöhen, GH wird gezwungen, die Rabatte rückzuführen. Dann würde wir die Rabatte über den GH steuern können.*"

⁴⁵⁴ (...)

⁴⁵⁵ (...)

rejected the offer (also in view of antitrust concerns), without taking a vote on any suggested price increase.⁴⁵⁶ These arguments do not alter the Commission's assessment. The key consideration is that manufacturers discussed extensively the proposal for this price increase amongst them, with a view to ensuring a uniform approach in relation to their customers. The fact that the manufacturers ultimately rejected the proposal does not undermine the relevance and importance of the price discussions at issue in the continuum of price coordination arrangements undertaken by the ASI participants. Similarly, the contention that Villeroy & Boch may have already communicated to customers its price lists for 2003 cannot distract from the fact that the proposal concerned future pricing plans and was specifically discussed between the participants at the meeting.

- (385) The Commission also rejects the contention that Villeroy & Boch is entirely not concerned by the ASI email of 31 July 2003 to its members (on the basis that it was not specifically addressed to it).⁴⁵⁷ The email attests to the price coordination practices in all ASI product groups (including the ceramics product group) and corroborates the Commission's assessment as to the centralized organization and intensity of the cartel in Austria. Even if Villeroy & Boch was not a recipient of that specific email, the Commission may still use this evidence to further underpin its findings concerning the anti-competitive character of the said meetings in general.⁴⁵⁸
- (386) Villeroy & Boch further disputes the probative value of Laufen's letter dated 26 May 1997 to wholesalers regarding the failure to convince Keramag to also apply a multiplication factor of 130 within the ASI ceramics product group.⁴⁵⁹ The Commission maintains that this communication reveals *inter alia* that intense price coordination discussions took place in the context of the ASI ceramics product group. Moreover, the content of the letter is consistent with other items of evidence regarding the multiplication factor of 130 which was agreed by ASI members in 1997 (see, in particular, notes of ASI meetings held on 15 October 1997).
- (387) As regards the handwritten notes concerning the ASI ceramics product group meeting of 24 June 1999, the probative value of which Villeroy & Boch again disputes,⁴⁶⁰ the Commission observes that the document clearly records Villeroy & Boch as communicating its average rebates on its gross price lists. In addition, the document was prepared in *tempore non suspecto*, its content being entirely consistent with findings concerning other ASI meetings (including meetings of the ceramics product group). Moreover, the Commission did not suggest (nor did it attempt to prove) that the so communicated discounts were (or should have been) individualized by customer. Villeroy & Boch's contention that the price information at issue at best concerned average discounts on its gross price lists suffices for purposes of proving the Commission's case. The date of the meeting was confirmed (...).⁴⁶¹ Finally, the Commission observes that the notes in question are bound to differ from the minutes of the general ASI meeting held that same day, as the documents pertain to different meetings.
- (388) Finally, Villeroy & Boch attempts to escape liability by arguing that it stopped participating in the ASI ceramics product group in 2000, such that the alleged infringement in respect of it

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458 The same considerations apply with regard to the ASI ceramics sub-group meeting likely to have taken place in June 1998. Although the handwritten notes following that specific meeting are inconclusive as to Villeroy & Boch's own participation, the document again exposes the anticompetitive character of discussions within ASI (which often even extended to rebates and bonuses granted to customers).

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would now be time-barred in any event.⁴⁶² However, Villeroy & Boch continued to regularly participate in the ASI plenary meetings, where price coordination took place, such as – by way of example - the meetings of 21 June 2001,⁴⁶³ 19 September 2002,⁴⁶⁴ 7 November 2002,⁴⁶⁵ 23 January 2003⁴⁶⁶ or 26 June 2003⁴⁶⁷ and which had an impact on all the product groups in which Villeroy & Boch was at the time active.

(389) To conclude, the evidence in the Commission's file shows that Villeroy & Boch actively participated in price coordination in Austria (and, in that respect, several items also specifically attest to its contribution at ASI meetings).⁴⁶⁸

(390) Turning to Villeroy & Boch's argument of "double utilization", the Commission may rely on a single item of evidence to establish proof of one or more behaviors. This depends on the specific content and context of each document. The meeting of 22 January 2004 concerned pricing policy discussions, but also specific price discussions about the road toll. Finally, the argument that certain minutes of ASI meetings include a reference that each manufacturer had to make its own decision in relation to some pricing decisions does not in any way change the fact that prices were discussed at those meetings.

Duscholux

(391) Duscholux contests the facts adduced by the Commission in relation to price coordination in Austria.⁴⁶⁹ In particular, Duscholux disputes that (...) had a telephone conversation with Artweger on 9 October 2000, in which they discussed prices relating to shower enclosures. Duscholux submits that (...) cannot remember this conversation.⁴⁷⁰ Nonetheless, the note reads as follows: "*Telephone conversation with company DX, (...), Duscholux has increased per 1 January 2000 by 4.9%. Did not have problems. ADA has decided unanimously: 7.5%. Has already asked around: (...) wants to go along, he [apparently referring to (...)] between 5-6%, Artweger > 5% difficult, Lido not predictable*".⁴⁷¹ It can readily be ascertained from the text that the note relates to a telephone conversation between Artweger and Duscholux and that it concerns a future price increase.⁴⁷² Duscholux also alleges that the 7.5% increase of ADA was already known on the market. This is however, not the decisive issue: the two competitors had discussed the prospect of a future price increase in Austria and the note reflects contacts between shower enclosure producers in Austria (having regard to the corresponding price increase agreed in the context of the German association, ADA), in order to align their conduct.

(392) Duscholux also contests that a discussion has taken place between Artweger and Duscholux on 24 July 2001, as recorded in an internal email of Artweger. According to Duscholux, assuming the conversation took place, (...) did not have an influence on price settings. Moreover, Duscholux states that it had implemented a different price increase than that communicated to

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468 See, for example recitals (310) relating to the ASI meeting of 5 December 1996 or (304) relating to the ASI meeting of 16 November 1995.

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472 Contrary to Duscholux' submissions, the fact that a name was crossed out before writing "(...)" does not indicate that the note does not relate to a conversation with (...). All corrections made clearly concern a text previously noted on the paper and, subsequently, crossed out during the conversation with Duscholux.

Artweger.⁴⁷³ These arguments cannot be accepted. The said email was found during the inspection at the premises of Artweger and shows that a telephone conversation had in fact taken place. Regardless of whether (...) had the power to set prices, he communicated and discussed the intended price increases. He was apparently also perceived to act on behalf of Duscholux.⁴⁷⁴ In addition, the Commission's findings are not negated by the fact that Duscholux may have ultimately deviated from the precise price increase that it had previously communicated to Artweger. The information may indeed have been new to Artweger, because the phone conversation already took place in July (that is, several months prior to the forthcoming price cycle).

- (393) Duscholux states that it did not participate in the board meeting on 7 November 2002.⁴⁷⁵ It has generally been acknowledged that Duscholux was not a member of ASI from the second half of 2002 onwards and this is duly reflected in Annex 5 of the decision regarding participation of undertakings at ASI meetings. Nonetheless, the Commission maintains that Duscholux was present at the meeting of 7 November 2002, as shown in the participants' list of that meeting. Albeit Duscholux' contention that it did not engage in price coordination at the latter meeting, the evidence shows that price discussions indeed took place at the meetings (notably concerning the date of the next price increase, gross price reductions and rebates towards customers).⁴⁷⁶ The fact that one of the documents cites Duscholux as being "*sceptical*" does not alter the Commission's assessment. The reference only relates to the gross price decrease discussed and Duscholux still participated in all relevant discussions.⁴⁷⁷
- (394) As regards the meeting of 19 August 2003, Duscholux states that it was only present as "*a mere guest, represented by the director (...)*".⁴⁷⁸ It further contends that it did not participate in the coordinations at that meeting. However, Duscholux itself explains that it stated its position on the attempted gross price decrease at the meeting. Even if Duscholux stated at the meeting that it was "*sceptical*" towards a gross price decrease, it did in fact participate in the discussions on the issue in place. Furthermore, according to case-law, it is sufficient for the Commission to prove that an undertaking participated in a cartel meeting in order to prove its participation in the cartel, unless the undertaking demonstrates that it has indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs.⁴⁷⁹

4.2.2.4 Conclusion

- (395) Based on the considerations developed in Sections 4.2.2.1 to 4.2.2.3, undertakings active in the bathroom fittings and fixtures industry coordinated their prices in Austria, in a systematic and sustained way during the period from (...) July 1994 to November 2004. This coordination notably concerned price increases within the framework of regular meetings of ASI (and, often, additional pricing elements, such as margins and rebates to customers). Prices for the Austrian

⁴⁷³ (...) In addition, Duscholux states that (...) has merely confirmed that the prices will be increased on 1 January 2002 (as had already been agreed on at a previous ASI meeting). According to Duscholux, since the price increase was new information to Artweger, it is unlikely that price agreements were made within ASI.

⁴⁷⁴ The same considerations regarding (...) apply also in respect of the ASI meetings held on 24 June 1999 and 6 July 2000. Notwithstanding Duscholux' attempt to downgrade its presence (...), the official minutes of the meetings clearly record Duscholux as participating. Moreover, (...) is listed therein in his capacity as representative of Duscholux (...).

⁴⁷⁵ (...) Duscholux submits that most of the evidence adduced by the Commission concern a period in which the undertaking ceased its participation in ASI (post-July 2002) and, thus, cannot be used as evidence of anti-competitive conduct against it.

⁴⁷⁶ See recital (329) above.

⁴⁷⁷ (...)

⁴⁷⁸ (...) German text "*nur noch als Gast, vertreten durch den (...)*".

⁴⁷⁹ See for example Joined Cases C-403/04 P and C-405/04 P, *Sumitomo Metal Industries Ltd*, paragraph 47.

market were coordinated annually, with the date and rates of certain price lists specifically agreed upon.⁴⁸⁰ Furthermore, the evidence reveals that participants took concrete steps to monitor the implementation of the coordinated prices during the relevant period. The scope of the coordination covered all product groups concerned by this Decision, namely taps and fittings, shower enclosures and ceramic sanitary ware.

- (396) Undertakings involved in price coordination in Austria during the relevant period included: Masco (Hansgrohe/Hüppe), Grohe, Ideal Standard, Kludi, Hansa, Villeroy & Boch, Dornbracht, Artweger, Duscholux, Keramag and Roca (Laufen).
- (397) The coordination took place within a variety of settings, both at multilateral level in the framework of the industry association ASI, as well as at bilateral level.⁴⁸¹ Aside from the minutes and other documents pertaining to ASI meetings, the Commission's file comprises various examples of bilateral contacts, in the form of emails or notes of telephone conversations amongst ASI members.⁴⁸²

⁴⁸⁰ Austrian manufacturers also coordinated their pricing on the occasion of specific events, such as the introduction of the Euro, rising raw material prices, as well as the introduction of road toll and advertising surcharges. The Commission examines these occurrences in separate Sections (see Sections 4.3.1.2, 4.3.2.2, 4.3.3.1 and 4.3.4.1 with regard to Austria).

⁴⁸¹ (...)

⁴⁸² (...)

4.2.3. Italy

4.2.3.1 Chronology and pattern of meetings within the framework of industry association(s)

(398) Annexes [6] and [7] provide a comprehensive list of the Euroitalia and Michelangelo meetings, respectively, that took place. The Annexes are intended to provide an overview of the relevant meetings, with a view to complementing the statement of facts presented in the following in chronological order (while also illustrating the incidence and ensuing pattern of coordination amongst participants). It is noted that the total number of undertakings present at these meetings is often greater than the undertakings identified in the Annexes, as the Annexes only include those undertakings that are addressees of the Decision.

4.2.3.2 The facts identified by the Commission

(399) The Commission considers that the following considerations are helpful in understanding the context and nature of the price coordination arrangements in Italy. First, it is noted that the price cycles in Italy are generally more flexible (as compared with other Member States, notably Germany and Austria). Although price increases were generally introduced on 1 January each year, there were certain variations among undertakings with regard to the timing of announcement and implementation of their annual price increases (with prices for some producers becoming effective later in the year or being announced on the occasion of trade fairs). Furthermore, the key Italian industry associations (namely Euroitalia and Michelangelo) essentially consisted of informal groups of undertakings, with relatively laxer institutional features. In the absence of formal minutes, the Commission reconstructed the timeline of the meetings by combining a variety of sources, notably inspection documents and leniency submissions (including contemporaneous handwritten notes and invitations sent by the undertakings that took turns in organizing the meetings).

(400) The Commission considers that the following observations regarding the role of the key Italian associations are similarly useful in understanding the context of the price coordination arrangements in Italy. In this regard, the evidence on the Commission's file establishes proof of clear links between the respective arrangements in Italy and Germany.

(401) Euroitalia had its origins in the early-90s, when several key German manufacturers entered the Italian market and established contacts amongst themselves, with the view to forging "friendly" relationships with their key Italian counterparts (...).⁴⁸³ [Non-confidential summary: (...) It was set up by non-Italian suppliers (also referred to as the "*German Club*" (...)), notably Hansgrohe, Hansa, Grohe and Ideal Standard,] in order to exchange information about the Italian market, particularly in view of the fact that they did not manufacture in Italy.⁴⁸⁴ At the very inception of Euroitalia, the objective was thus to share information (...). (...).⁴⁸⁵ Euroitalia soon extended to include Italian manufacturers. (...), a sufficient level of "*loyalty and reliability*" among the members of Euroitalia was established and other operators joined the group, including Zucchetti, Teorema, Cisal, RAF Rubinetterie and Mamoli.⁴⁸⁶ (...), [Non-confidential summary: membership was not to be extended much further.]⁴⁸⁷ This account of

⁴⁸³ (...)

⁴⁸⁴ (...) the very first contacts leading to the creation of Euroitalia involved (...) (Hansgrohe) and (...) (Hansa); contact was subsequently made with (...) (Grohe).

⁴⁸⁵ (...)

⁴⁸⁶ (...)

⁴⁸⁷ (...) also provides examples of undertakings being excluded from joining, given their different activities and interests which rendered them less trustworthy.

Euroitalia's inception was also confirmed by several Italian undertakings in their replies to the SO and during the Oral Hearing held on 12 and 14 November 2007.⁴⁸⁸

- (402) The members of Euroitalia took turns in organizing the meetings, choosing the venue (either at their business premises or in hotels or in restaurants) and inviting participants by circulating an agenda for discussion.⁴⁸⁹ There was no regular order of speakers and the participants announced and discussed their upcoming price increases (and other sensitive market information) in a roundtable discussion. There were no official minutes of the meetings, but many attendees would keep notes. The meetings took place two to four times (in general, three times) a year during the period from at least July 1992 to October 2004.⁴⁹⁰ (...) summarized the pattern and scope of the Euroitalia meetings, as follows: at the beginning of each year (January, February), members discussed their year-end sales developments and informed each other on the extent to which they implemented the individual price increases they announced during the preceding session in autumn (by way of reviewing or monitoring developments in the preceding cycle); in spring (April, May, June), members discussed their year-to-date sales developments, estimates for the near future and general market trends; in the autumn meetings (September, October), participants discussed their planned individual price increases for the next year, as well as other sensitive price information.⁴⁹¹ The evidence in the Commission's file generally confirms these recurrences.
- (403) The evidence in the Commission's file exposes the true scope and content of the discussions within Euroitalia. In particular, discussions were not limited to the exchange of general views on market trends and conditions, but extended to include the coordination of future price increases (in relation to upcoming years/price cycles) and other sensitive pricing information (such as discounts/rebates offered to customers and minimum prices for specific products) in a sustained way over a long period of time. It is also notable that price coordination in Italy sometimes concerned the reduction of discounts as a means of implementing a price increase. In other words, price increases in Italy were mostly carried out by adjusting the price lists upwards, but also expressed in the form of reducing the rebates granted to customers.⁴⁹²
- (404) The price coordination arrangements within Euroitalia concerned at least two product groups covered by the Commission's investigation, namely taps and fittings and ceramics. Participants at Euroitalia meetings were predominantly producers of taps and fittings (particularly in view of the smaller independent Italian manufacturers), but there is no indication that the product scope of the association was otherwise limited. To the contrary, the evidence in the Commission's file attests to pricing discussions concerning also ceramic sanitary ware. Euroitalia members included the following undertakings that are pertinent to this Decision: Hansgrohe, Grohe, Hansa, Ideal Standard, Zucchetti, RAF, Cisal, Mamoli and Teorema.⁴⁹³

⁴⁸⁸ (...)

⁴⁸⁹ As the number of participants grew, Euroitalia meetings became more regular and formal invitations were circulated by the hosting undertaking. By way of example, (...) letters confirming the Euroitalia meeting of 28 October 2002, organised by Hansgrohe in Asti, including the agenda, which was circulated to RAF, Teorema, Mamoli, Ideal Standard, Hansa Italiana, Grohe, Cisal. (...) "*Previsioni andamento di mercato 2004 ; Aumenti listino prezzi 2004*": a letter from (...) Grohe to (...) Ideal Standard, dated 26 January 2004, postponing the planned Euroitalia meeting from 30 January to 6 February 2004, with an agenda attaching forecasts for performance in 2004 and price increases for 2004.

⁴⁹⁰ The first Euroitalia meeting for which there is evidence in the Commission's file was held on 9 July 1992 (...).

⁴⁹¹ (...)

⁴⁹² See, for example recitals (412), (413), (431), (438) and (451) below.

⁴⁹³ See Annex [6] below.

- (405) Turning to Michelangelo, the evidence shows that it was essentially an extension of Euroitalia. It had its origins in the mid-90s, when the leading members of Euroitalia set up an enlarged circle to address common issues faced by the entire sanitary industry.⁴⁹⁴ Michelangelo thus comprised members who covered a broader range of sanitary products.⁴⁹⁵ (...), the link between Michelangelo and Euroitalia is attested by the fact that Michelangelo's early meetings took place in the very context of Euroitalia meetings. In particular, the meetings of 16 October 1995, 12 March 1996 and 14 May 1996 had a two-fold agenda: Euroitalia-only participants met in the morning sessions, while additional suppliers of ceramics and heating boilers were also included for the afternoon sessions.⁴⁹⁶
- (406) The grouping took its name from the hotel "Michelangelo" in Milan, where participants first met at the end of 1995 and the beginning of 1996. Meetings were held three to five times per year. The last Michelangelo meeting took place on 25 July 2003. [Non-confidential summary: participants from Pozzi Ginori and Vaillant had left their companies and it was decided to stop the meetings.]⁴⁹⁷ Members of Michelangelo included the following undertakings that are pertinent to this Decision: Grohe, Ideal Standard, Hansa, Zucchetti, and Pozzi Ginori.⁴⁹⁸
- (407) As with Euroitalia, the evidence in the Commission's file exposes the true scope and content of the discussions within Michelangelo. Discussions were not limited to the exchange of general views on market trends and conditions, but extended to include the coordination of prices (in particular, planned price increases) in a sustained way over a long period of time. A document dated 22 January 1999, which was found during the Commission's inspections at Grohe's premises, is revealing in that respect, as it clearly sets out the group's mission ("*Mission Gruppo Michelangelo*"). This mission includes, as a first item, the "*Regular exchange of information on the Italian market at the level of: ..., b) price tendencies and short-term pricing policies...*".⁴⁹⁹
- (408) The Commission refers in the following to specific meetings and contacts identified during the course of the investigation in chronological order. The statement of facts in relation to Italy focuses on the period from 1993 to 2004.
- (409) (...).⁵⁰⁰ (...).
- (410) (...),⁵⁰¹ (...).⁵⁰² (...).⁵⁰³ (...).⁵⁰⁴ (...).⁵⁰⁵
- (411) (...).⁵⁰⁶ (...).

⁴⁹⁴ (...)

⁴⁹⁵ In addition to taps and fittings and ceramics, members also included producers of for example heating boilers, radiators, whirlpools that are not concerned by this Decision. The wider scope of Michelangelo has generally been confirmed (...) as well as by several Italian addressees (...).

⁴⁹⁶ (...) the morning session was reserved for the restricted group Euroitalia ("*gruppo 'ristretto' Euroitalia*"), while the afternoon session concerned the enlarged circle ("*gruppo 'allargato'*").

⁴⁹⁷ (...)

⁴⁹⁸ See Annex [7].

⁴⁹⁹ (...) ("*Scambio periodico di informazioni sul mercato italiano al livello di ...b) tendenza prezzi e politiche di prezzi a breve termine...*"). It is also stated that Michelangelo's objectives include *inter alia* the regular exchange of information on issues concerning mergers and acquisition between the producers, sales trends by volume and value, as well as distribution channels.

⁵⁰⁰ (...)

⁵⁰¹ (...)

⁵⁰² (...)

⁵⁰³ (...)

⁵⁰⁴ (...)

⁵⁰⁵ (...)

- (412) At the Euroitalia meeting of 15 March 1993, the participants discussed *inter alia* the implementation of each other's price increases for the year. The contemporaneous handwritten notes taken by (...) attest to the detailed nature of the pricing discussions and monitoring that took place at the meeting (notably, extending to cover discounts granted to customers). [Non-confidential summary: Teorema: increase of 7% by 1 February 1993, reduction of general discounts by 20%; Grohe: discount reduction of 5%; Ideal Standard: discount reduction of 10% ; Mamoli: discount reduction of 20%. RAF: increase of 5% by 1 February 1993, increase of discounts of 10%; Cisal: 6% price increase and 10% to 20% increase in discounts by 5 February 2003; Hansa: increase of approximately 11.5% by 1 February 1993 and a reduction of discounts by 10%. Zucchetti: reduction of discounts by [20-30]%.⁵⁰⁷ The notes also indicate turnover figures for various competitors, as well as instructions to (...) to “*archive this data*”.
- (413) An internal (...) memo dated 20 April 1993 provides a detailed report of the Euroitalia meeting that took place on 16 April 1993. At the beginning of the meeting, (...) of RAF informed the other participants as to his difficulty in persuading more Italian undertakings to join Euroitalia; the problem seemed to be that other Italian taps and fittings producers did not want to discuss with “*the Germans*”, because of the perception that the latter's extra power had resulted in the Italians being relegated to second tier. Discussions at the meeting then turned to price increases (some implemented at the beginning of the year and some planned for later that year), with Hansa reporting an increase of [10-15]% from February 1993; RAF an increase of [5-10]% also from February 1993; Mamoli a planned increase of [5-10]% from June or July 1993; Grohe a planned increase of [10-15]% from April 1993; Cisal an increase of [5-10]% from March 1993; Hansgrohe a planned increase of [5-10]% from April 1993, with a [5-10]% reduction of the discount in place since November 1992; and Teorema a planned increase of [5-10]% from April 1993. The participating undertakings then exchanged turnover figures for 1992, and indicated the year-on-year percentage change in turnover for the first quarter, with RAF, Cisal and Teorema also reporting on exports. Finally, they exchanged sensitive information on their respective backlogs as at 18 April 1993, ranging from 12 to 20 days (depending on the producer).⁵⁰⁸
- (414) At the Euroitalia meeting of 9 July 1993, participants discussed market developments, year-on-year changes in turnover for the first two quarters, as well as price lists and price increases. In particular, the handwritten minutes of the meeting record – under the heading “*Aumenti*” (“*increases*”) – price increases communicated by Mamoli, Ideal Standard, Hansa and Zucchetti.⁵⁰⁹ An internal (...) memo dated 12 July 1993 sheds more light into the discussions concerning prices, revealing the sustained price coordination and monitoring amongst participants: in his report, (...) referred to the meeting as “*the second meeting of the year for a verification of market developments*”. Under the section “*prices*”, it is stated that all participants confirmed the application of the new price lists, for example Mamoli would increase prices by 6% in July, while Zucchetti [0% in 1993].⁵¹⁰ Similarly, on 14 July 1993, (...) reported the intended price increases of his competitors in a fax to the (...) headquarters in (...) (Germany),

506 (...)

507 (...)

508 (...) This memo establishes further proof of the links between the respective arrangements in Italy and Germany, while also denoting the spiral of price coordination efforts rooted in Germany.

509 (...)

510 (...)

based on the discussions at the Euroitalia meeting of 9 July 1993. In addition to the price increases as set out in recital (413), he also reported that Ideal Standard applied a (...).⁵¹¹

- (415) Contemporaneous handwritten notes gathered by the Commission in the course of the inspections provide a detailed report of the price coordination that took place at the Euroitalia meeting of 22 March 1994. The discussions involved future price increases (in the course of the upcoming 3 to 4 months), as well as other elements of future price policies, such as rebates and other terms granted to customers. Hansgrohe communicated a price increase of [5-10]% from May. Hansgrohe, Grohe and Ideal Standard reported discounts for payments made within 30 days, of [0-5]%, [0-5]% and [5-10]% respectively. Mamoli communicated a [0-5]% price increase from June, Teorema a [0-5]% price increase from 1 April, and Cisal informed the others it had increased by [5-10]% in January. Hansa also reported a [0-5]% increase on 1 January for application as of 1 April 1994. RAF had increased its prices by [5-10]% in January 1993, but indicated that it would revisit its price list in June, with a view of applying a further [0-5]% increase. Grohe explained that its [10-15]% increase in turnover from 1992 to 1993 corresponded to its [10-15]% price increase. It also informed the others that it had increased prices by a further [5-10]% effective from March 1994.⁵¹²
- (416) At the Euroitalia meeting of 21 October 1994, members continued their (sustained) price coordination. In particular, contemporaneous handwritten notes gathered by the Commission in the course of the inspections attest to discussions *inter alia* on prices for the upcoming price cycle. By way of example, RAF communicated its intention of introducing a new price list with an increase of maximum 7% in January (1995). Referring to its intended 1 December 1994 price list, Grohe said that it was contemplating a 4% to 5% increase, "*always depending on what the others are doing*". Ideal Standard spoke of an increase of 4% (max. 5%) in its price list in April/May. Similarly, Cisal signaled that its 6% price increase would be announced after the Cersaie trade fair, to be applied from 1 January (1995). Zucchetti spoke of a [5-10]% price increase [from September]. Teorema confirmed that it had increased prices in 1994 by 4%, and that there would be a new price list in January 1995 with a price increase of 5% to 6%. Finally, Hansa reported on a price increase of 9% from 1 January (1995).⁵¹³
- (417) At the 19 July 1995 meeting of Euroitalia, those present reported on their turnovers in the first half of the year, with Teorema and Cisal providing a breakdown between sales and exports in Italy. Contemporaneous handwritten notes gathered by the Commission in the course of the inspections from two different sources (the premises of Zucchetti and Grohe) illustrate that participants monitored adherence to the coordinated prices, which were discussed in a sustained way at Euroitalia meetings. In particular, the undertakings reported on the implementation of their price increases for 1995 (which had already been discussed in 1994, for example at the Euroitalia meeting of 21 October 1994): Hansgrohe confirmed a [5-10]% increase in May 1995; Zucchetti an increase of [5-10]%; Ideal Standard confirmed that they had brought in a new price list in May 1995 but had not applied the [0-5]% increase; Teorema had increased prices by [5-10]% in February, as had Cisal; Hansa had increased prices by [5-10]%, while RAF had applied an increase by [5-10]% in January 1995.⁵¹⁴

⁵¹¹ (...) (fax dated 14/7/93 following the Euroitalia meeting of 9 July 1993, describing the situation of the competitors regarding price increases, mentioning Hansgrohe, Grohe, Ideal Standard, Hansa, Zucchetti, Cisal, Mamoli and Teorema). (...)

⁵¹² (...)

⁵¹³ (...) "*Listino 1° dicembre pensano di fare un 4 – 5% in più, sempre in relazione a quello che fanno gli altri.*" (...)

⁵¹⁴ (...)

- (418) At the Euroitalia meeting of 16 October 1995, coordination continued with regard to price increases for the following year/price cycle (1996). Handwritten minutes of the meeting (collected during the inspections at the premises of Zucchetti and Grohe) note *inter alia* that Grohe reported a planned increase of 5% to 6% in December, while Teorema planned a 5% increase from January (1996). Cisal said that it would introduce a 5% to 6% increase in January (1996), but possibly excluding the new product groups. Hansa said that it had applied a 10% price increase as from September 1995 and that it hoped that there would not be another during the course of 1996. Zucchetti also communicated price increases. The notes further suggest that Italian undertakings had regard to the price levels in Germany, France and other Member States when discussing prices in Italy: in particular, the handwritten notes include the reference: "*Grohe and Hansa in Germany and in France and in North Europe sales prices are 30% higher.*"⁵¹⁵
- (419) Contemporaneous handwritten minutes collected by the Commission in the course of the inspections from two different sources (the premises of Zucchetti and Grohe) reveal that the Euroitalia session of 12 March 1996 was yet another occasion where participants discussed their planned price increases.⁵¹⁶ Ideal Standard would introduce a 5% increase on 1 May 1996 (for taps and fittings), with a 6% increase on ceramics. Zucchetti communicated a (...). Teorema announced an increase of 2.5% from the M.C. (Mostra Convegno). Hansa said that there would be no price increases in 1996. Cisal announced a 4% increase on luxury products and a 2% increase on economic products on 1 February 1996 for application on 1 April. The notes also record a disagreement between Ideal Standard and Grohe about sales of Ceramix below the set minimum-price level in the Italian region of Emilia Romagna. The earliest invitation to a Michelangelo meeting in the Commission's file dates from 12 March 1996. As explained in the invitation letter circulated by Hansa, the morning session would be for the "restricted" Euroitalia meeting, and the afternoon session for the "enlarged" group.⁵¹⁷
- (420) At the Euroitalia meeting of 14 May 1996, Teorema reported a [50-60]% discount on their price list, and stated that for big clients they have had to reduce prices. Hansgrohe reported a big problem with payments taking an average of 90 days. Hansgrohe also said that it had increased prices by [5-10]% in April. Ideal Standard said that they contemplated a price increase by [5-10]%. Grohe confirmed that there had been an increase of [5-10]% at the start of the year. RAF said that their February price increase had come into force from April/May. Hansa said that they would increase prices in September, and that their clients were becoming more aggressive.⁵¹⁸ The Euroitalia session was followed by a meeting of the "Enlarged Group" (Michelangelo).⁵¹⁹
- (421) In the course of 1996, more meetings took place in the context of Euroitalia and Michelangelo.⁵²⁰ Evidence in the Commission's file (contemporaneous handwritten notes collected in the course of the inspections at Grohe's premises) show that – at the Euroitalia meeting of 14 October 1996 – Cisal, Teorema, RAF and Hansa communicated their intention not to increase prices in 1997.⁵²¹ The coordination of price increases in the context of the

⁵¹⁵ (...)

⁵¹⁶ (...) The participating undertakings also exchanged information on their 1995 turnover and performance year-to-date.

⁵¹⁷ (...)

⁵¹⁸ (...)

⁵¹⁹ (...)

⁵²⁰ Notes of the Euroitalia meeting of 18 July 1996 record discussions on sales, product development and market trends: (...). Similarly, handwritten minutes of the Michelangelo meeting held on 18 July 1996, following the Euroitalia meeting, record a discussion on sales figures by undertaking: (...).

⁵²¹ (...)

association meetings was complemented by bilateral contacts between the larger undertakings, such as between Hansgrohe and Grohe.⁵²²

- (422) Similarly, coordination of price increases (as well as coordination of price elements, such as rebates) continued in 1997. Handwritten notes discovered in the course of the Commission's inspections (at the premises of Grohe and Zucchetti) show that members of Euroitalia present at the meeting of 31 January 1997 continued to discuss the prospects for price increases in 1997.⁵²³ Teorema confirmed that it would not increase prices. RAF said that it would bring in a new price list in February, with a price increase of 3% to 5% (the higher increase to be on the economic range, and the lower increase on the top of the range products). Zucchetti said (...). Ideal Standard also confirmed that there would be no price increase in 1997 (either on taps and fittings or on ceramics). Grohe said that it would increase prices by an average of 4% from January 1997, and that the discount on the price list would be 45%, plus 1% to 8%. Cisal announced the introduction of a new price list for April/May, but confirmed that it would be maintaining prices on its economic range (with some adjustments to the high end product groups, up to a maximum of a 4% increase). Hansa also confirmed that there would be no price increase and that there would be a (rebate) reduction of 6%, of which 4% on planning bonuses (understood to mean bonuses for advance orders).
- (423) At the Michelangelo meeting of 26 February 1997, the handwritten notes collected by the Commission during the inspections evidence a discussion on contacts with groups of wholesalers (presumably, on policies or terms offered to specific customers), as well as on sales data by undertaking.⁵²⁴ The evidence on the Commission's file also reveals that participants at the Michelangelo meeting of 21 April 1997 discussed specifically their price increases.⁵²⁵ For example, Pozzi said that it would announce a 3 to 4% price increase in May, to be applied from September. Undertakings also exchanged details on sales (percentage changes in volume and value).
- (424) Similarly, at the Euroitalia meeting of 27 May 1997, Hansgrohe confirmed that there would be no price list before the Bologna trade fair, while Ideal Standard reported that it would be decreasing the price of its Ceramix range by 4% and increasing the price of its Idyll range by 6%. Cisal reported no change on the 1996 price list.⁵²⁶
- (425) Contemporaneous handwritten minutes collected in the course of the Commission's inspections from two different sources (the premises of Zucchetti and Grohe) also reveal that the Euroitalia autumn meeting of 22 September 1997 provided participants again with the opportunity to coordinate their upcoming price increases for the year 1998 (months prior to the announcement or implementation of the price lists):⁵²⁷ for example, Hansgrohe communicated that there would be a price increase of [0-5]% in January 1998, as did Cisal, who said that its list would be printed in December. RAF, Teorema and (...) said that they did not plan any price increases for 1998, while Hansa reported that it did not contemplate an increase, at least not for the first 6

⁵²² (...) (handwritten notes recording contact(s) between Grohe and Hansgrohe with regard to future price increases; (...).

⁵²³ (...) In the course of reporting on prices for the preceding term (1996), Teorema also said that it had reduced prices in France because Grohe had reduced its prices ("Riduzione prezzi in Francia ché Grohe ha ridotto"): (...). These references corroborate *inter alia* the common-sense notion that competitors in Italy had regard to pricing developments in other Member States (in this case, France) when setting their pricing policies.

⁵²⁴ (...)

⁵²⁵ (...)

⁵²⁶ (...) During the meeting, participants also discussed sales developments year-to-date.

⁵²⁷ (...) During the meeting, participants also discussed their sales. Grohe, in particular, updated its competitors on the relative performance of its taps and fittings and its shower product ranges.

months of 1998. Grohe reported that they were not planning a price increase, but that there might be a [0-5]% adjustment in the range. Also, it was communicated that the price of Grohe's new Europlus range would be [5-10]% higher than current prices.

- (426) Evidence on the Commission's file also confirm that, during the Michelangelo meetings of 23 September 1997 and 14 November 1997, contacts were not limited to the exchange of sales developments by undertaking or views on market trends, but also extended to include a discussion on price increases.⁵²⁸
- (427) Handwritten and typed minutes discovered by the Commission in the course of the inspections at the premises of both Zucchetti and (...) provide a detailed overview of the discussions that took place at the first Euroitalia meeting of 1998 (26 January 1998).⁵²⁹ Again, the evidence establishes that discussions were not limited to the exchange of general sales and market information, but included the monitoring of the implementation of the coordinated price increases for the preceding year in a systematic way. Moreover, it is evident that the meeting provided the opportunity for discussions focusing on additional sensitive pricing elements, such as rebates to customers for 1998. For example, Grohe announced that the new price list was published in December with an increase of [0-5]% to be applied from 1 January 1998. Hansa set out its bonus scale: "[50-60]% discount, + [0-5]% programme, + [0-5]% with respect to quarterly consignments, + [5-10]% max. at the end of the year, + [10-20]% on the excess with respect to the previous year's turnover".⁵³⁰ Hansa was not planning a price increase until April that year. Hansgrohe planned a [0-5]% increase from March 1998, with a [0-5]% increase for its Axor range. Cisal communicated that it would not increase prices of its economic range. RAF reported that its prices would remain unchanged in 1998. Ideal Standard had not budgeted a price increase in 1998. Teorema said that it would increase its price list in May by [0-5]%, while Zucchetti [0% in 1998].
- (428) At the Michelangelo meeting of 30 January 1998, the evidence shows that participants not only exchanged information on percentage turnover developments, but also discussed the implementation of price increases.⁵³¹ For example, Pozzi reported on the January implementation of its price increase.
- (429) The coordination of upcoming price increases was similarly one of the key topics at the Euroitalia meeting of 27 April 1998. RAF reported a new price list for 1 May with increases of 2 to 2.5% on normal range products and 10 to 12% on high range products. Cisal said that it would also have a new price list on 1 May, with an increase of 2%, as did Teorema. Hansa said

⁵²⁸ (...)

⁵²⁹ (...) During the meeting, participants also had their habitual discussion on turnover developments, often providing sales details by undertaking and specific product ranges (for taps and fittings, ceramics and shower enclosures, as relevant). It is also pertinent to mention that (...) reported developments in other Member States to its Italian competitors at the meeting. Moreover, he described (...)’s corporate objectives and explained that the objectives and global plan are not differentiated by Member State (which (...), however, considered to be a mistake). The latter references speak for the link between the business policies implemented in all Member States covered by the Commission's investigation. In this regard, (...) also stated that the 1997 results were considered bad for Germany, good for the United Kingdom, and less bad for France; (...) would be sent to France in 1998 to coordinate the work ("*Risultati 1997: male Germania, bene Inghilterra, meno peggio Francia dove quest'anno sarà inviato (...) per coordinare il lavoro*").

⁵³⁰ (...) "*sconto 51% + 4% programma + 3% rispetto delle consegne trimestrali + 6% max. fino anno (varia dall' & al 5/6%) + 10% sull'eccedenza rispetto al fatturato dell'anno precedente*".

⁵³¹ (...) Discussions on sales percentage changes in volume and value by undertaking also took place at the Michelangelo meeting of 17 April 1998: (...).

that it would increase prices on average by 3%, and that the new price list would be applied from September (although formally from May 1998).⁵³²

- (430) At the 8 July 1998 Michelangelo meeting, members had their usual discussion on market data and sales. However, the evidence also indicates that the discussions extended to include upcoming price increases, with Hansa reporting a 3% price increase to be announced in July, for application as of September that year.⁵³³
- (431) The Euroitalia meeting of 16 October 1998 provided members with another opportunity to coordinate their planned price increases for the upcoming year (1999). Furthermore, the evidence in the Commission's file establishes proof of detailed discussions on discount percentages and policies, minimum prices, as well as on other terms granted to customers.⁵³⁴ For example, Ideal Standard informed its fellow members of the minimum prices for a number of its brands in Italy (such as Cerasprint, Ceramix), and said that it offered a discount of [5-10]% at the counter and an average bonus of [0-5]%. Ideal Standard said that it was planning to reduce the bonus by [0-5]% from 1 November. It also communicated that from 1 January 1999 it would offer its Ceraplan and Euroeco sinks at a minimum price of Lit. 61000. Similarly, Grohe said that it would offer a minimum price of Lit. 63000. Moreover, Grohe said that it was planning a price increase of [0-5]% from December, with a 2-3 month grace period. In addition to the minimum price for Euroeco, Grohe said that for every 30 pieces bought, four would be complimentary (that is, only twenty-six would be paid for). It also said that its discount was [0-5]% at the counter, with an additional end-year bonus. Hansgrohe said that in Germany they would be increasing prices by [0-5]% from 1 January 1999, but that no increases were planned in Italy. Teorema, RAF and Zucchetti were not planning price increases for 1999. Cisal said that it would not increase prices until May 1999, when it might increase medium-high range prices; low range prices would be reduced with the introduction of the Euro. The notes of the meeting are also interesting in that they corroborate the notion that the prices and pricing policies of several participants active in Italy were determined with due regard to developments in other Member States (notably, Germany). In this respect, it is revealing that during the meeting both Ideal Standard and Grohe communicated specific prices of their product ranges in Germany (quoting prices in DM), while Hansgrohe also referred to its price increases in Germany.
- (432) Contemporaneous handwritten notes concerning the Michelangelo meeting of 6 November 1998 confirm the broad scope of the strategic discussions that took place in the context of the Michelangelo group.⁵³⁵ These included not only the exchange of information about sales developments by undertaking and market trends, but also price increases (due to enter into force in 1999), as well as payments and bonuses granted to customers. The discussions also pertained to an array of business issues of strategic importance, such as price tendencies, analysis of the wholesale distribution channel, development of other distribution channels such as DIY, mergers and acquisitions, sales networks, distributive structure, and attendance at trade fairs. Finally, it can readily be inferred from the handwritten notes that participants at the

⁵³² (...)

⁵³³ (...)

⁵³⁴ (...) The minutes taken by the representatives of Zucchetti and Grohe at the meeting bear slightly different dates (12 and 16 October 1998, respectively). A closer comparison of the notes, however, establishes that both minutes refer to the same meeting. The actual date of the meeting is more likely to be 16 October 1998, taking into account the date mentioned at the fax invitation sent by Teorema (organizer of that meeting) to Zucchetti (the fax invitation was also found during the inspections at the premises of Zucchetti).

⁵³⁵ (...)

meeting discussed the composition and enlargement of the group, but participation was reserved only for market leaders of each sanitary sector.

- (433) In the course of the Euroitalia meeting of 29 January 1999, the representative of Grohe took notes, recording *inter alia* a price increase of [0-5]% for Hansgrohe later that year (March or April) and a price increase of [0-5]% for Hansa in April or May.⁵³⁶ The undertakings present also discussed the performance of specific product groups, such as Ideal Standard's Ceraplan, and they also informed each other as to the average number of days before they receive payment from customers. Finally, as customarily for the first session of each year, participants discussed turnover developments in the year-to-date (providing also a breakdown of sales in Italy and exports).
- (434) In the course of the Euroitalia meeting of 7 May 1999, the notes taken by the representatives of Grohe and Zucchetti attest to discussions pertaining both to the monitoring of the implementation of price increases, as well as to the coordination of future price increases (notably, for 2000) and other prices terms.⁵³⁷ Hansgrohe confirmed that their price increase (an average of [0-5]%) communicated at the previous meeting was introduced on 1 April 1999, with a grace period until 1 July on orders placed before the end of March. Hansa said that it would not be increasing prices this year, although it would do so in January 2000 by an average of [0-5]% (also altering its conditions of sale). Teorema is recorded as saying that it would publish a new price list in October 1999 for application in 2000, with a [0-5]% increase. (...) Grohe announced an increase in prices of [0-5]% from April. Moreover, Hansgrohe detailed its payment terms for its Cromaset range: [40-50]% discount, [5-10]% bonus, and a promotion of 1 out of 20, for all Talis showers.
- (435) Contemporaneous handwritten minutes taken by the representative of Grohe at the Michelangelo meetings of 14 May 1999, 15 July 1999 and 22 October 1999 record discussions on sales and market developments.⁵³⁸ The minutes of the 15 July 1999 meeting also attest to discussions on price increases, with Zucchetti and Hansa reporting on the implementation of increases in their price lists.
- (436) The minutes of the Euroitalia meeting held on 15 October 1999 attest to discussions concerning planned price increases for the upcoming year (2000), as well as other sensitive price elements (such as minimum prices and discounts) and terms offered to customers, - in addition to discussions on sales developments and specific product ranges by undertaking.⁵³⁹ For example, Hansgrohe communicated price increases for February 2000 of [0-5]% for the Hansgrohe brand, [0-10]% for the Axor brand and [0-10]% for the Pharo brand. In the second half of 2000 there would be a unified Euro price list, with an increase of +/- 10% for all European markets. Ideal Standard reported that it would be increasing prices of ceramics products by [0-5]% and of taps and fittings by [0-5]% in November 1999. It is also reported as increasing the minimum price for its Ceraplan product range to Lit. 60000 before bonuses. Teorema said that its prices would go up by [0-5]% in January 2000 (with the official discount set at [50-60]%). Hansa is reported as stating that its new price list had already been announced, and that a [0-5]% average increase would be applied from January 2000. Hansa also provided details of its new system of discounts. Cisal said that there would be no price increase for its bathroom taps and fittings

⁵³⁶ (...)

⁵³⁷ (...) During the meeting, all undertakings present exchanged their turnover performance to-date (April 1999). Hansgrohe, RAF and Zucchetti reported improvements in value. Hansgrohe reported that turnover of Hansgrohe Germany was down by 2%. Comparative performances of sales in Italy and exports were also given.

⁵³⁸ (...)

⁵³⁹ (...) The contents and scope of this meeting corroborates *inter alia* the typology of the Euroitalia meetings held in autumn each year, as described at recital (402) above.

(unlike for its thermostats and kitchen taps and fittings). The notes further record a new average price increase of [5-10]% for Zucchetti, with the new price list planned for end-November and applied in February 2000. Grohe is reported as saying that it would increase prices by [0-5]% as from 1 March 2000.

- (437) Price coordination continued in 2000, within the framework of both Euroitalia and Michelangelo. On 14 January 2000, Michelangelo members met to discuss market developments, including percentage increases in sales in Italy and through exports (the contents and context of the discussions being typical of meetings held at the beginning of each year by way of reviewing or monitoring developments during the preceding period). However, the representative of Grohe at the meeting also noted a (...) increase for Zucchetti at (...). Similarly, Ideal Standard confirmed a 2 to 3% increase from February 2000.⁵⁴⁰
- (438) Similar discussions took place at the early-year meeting of Euroitalia (21 January 2000). The notes of the meeting reveal that the discussions were not limited to updates on turnover/sales developments of the preceding period (1999), but covered the monitoring of the implementation of the coordinated prices, as well as discussions on other price parameters (such as discounts and minimum prices for certain product ranges).⁵⁴¹ Both Ideal Standard and Grohe are also recorded as making specific proposals regarding minimum and average prices for their best-selling products. By way of example, Ideal Standard confirmed that its new price list came into effect in November 1999, with a [0-5]% increase on ceramics products and a [0-5]% increase on taps and fittings, to be applied mainly by February (and to [10-20]% of its clients at most by March 2000). Ideal Standard is also reported as proposing that its Ceramix model would be sold at no less than L 116000 in 2000, Ceraplan at no less than L 61000 and Cerasprint at no less than L 70000. Teorema confirmed that prices would increase by [0-5]% on orders received after 1 March 2000. Grohe confirmed that an average price increase of [0-5]% would be applied on orders received after 1 March 2000. The average price anticipated for its Eurosmart sink would be L 60000 before bonuses, and L 50000 with bonuses (including check-out discount).⁵⁴² RAF said that a [0-5] point reduction in the discounts on the current price list would be applied from 15 February 2000 (circa [5-10]%). Hansgrohe is also reported as communicating a minimum increase of [0-5]% on its Hansgrohe-branded products, and [5-10]% on its Axor-branded products. It is also pertinent to note that participants at the meeting discussed the possibility of introducing Mamoli and (...) at the next meeting.
- (439) Contemporaneous handwritten notes pertaining to the Michelangelo meetings of 16 March 2000 and 12 May 2000 indicate that participants mainly discussed turnover/sales developments by undertaking.⁵⁴³ However, Ideal Standard is also reported as confirming the 3% price increase in ceramics and the 2% increase for taps and fittings.
- (440) At the Euroitalia meeting of 18 May 2000, participants reviewed recent sales data by undertaking (often distinguishing between sales in Italy and exports), monitored the implementation of the coordinated price increases and also discussed details of their discount policies. For example, Teorema confirmed that it had increased prices by between [0-5]% from

⁵⁴⁰ (...)

⁵⁴¹ (...) During the meeting, Grohe also introduced its forthcoming product line Eurosmart, due out in 2001, and even provided information on its price positioning (slightly cheaper compared with other ranges). The minutes further show that Hansgrohe provided details on its turnover developments by brand (Hansgrohe, (...)), in value and volume, including for particular product lines.

⁵⁴² Grohe also communicated that the average net price for the Eurosmart sink in the European markets is between DM 47-50. Such statements corroborate the notion that prices were set by reference to European-wide price benchmarks (or with due regard to price levels in other leading European markets).

⁵⁴³ (...)

February 2000, although the "*increase was not accepted in Germany*". Grohe confirmed a price increase of [0-5]% in March. Grohe also confirmed the launch of its new Eurosmart series in September and that its Euroeco line was experiencing high growth. The price positioning of the latter would change slightly (to become more expensive) in January 2001, and Eurosmart would take its place at the low-end of the range. Hansgrohe confirmed an average price increase of [0-5]%, with discount conditions on the price list ranging from [40-50]%. RAF said that there was a [5-10]% price increase in May ([10-20]% for top of the range products), with discounts of [50-60]%, plus [10-20]%, plus a further [10-20]% according to a discount scale.⁵⁴⁴ (...) was not present at that particular meeting, but – in a follow-up communication – (...) (RAF) shared with (...) his own handwritten notes of the meeting, as well as related material, which notably included: figures and information relating to price increases, discounts, the launch of promotions on specific product groups and the export and sales performance of the undertakings that participated at the meeting. (...) acknowledged receipt and thanked (...) for his notes.⁵⁴⁵ This type of evidence confirms *inter alia* the intensive and systematic character of the coordination that took place within the framework of Euroitalia meetings.

- (441) At the Michelangelo meeting held on 20 July 2000, Ideal Standard confirmed its 3% price increase for ceramics and 2% for taps and fittings, to be applied on 1st September (or at least by the end of the year). Zucchetti announced that there would be a price increase by the end of the year, and Pozzi said that its new price list with a 4% increase would be published for the Cersaie trade fair, for application on 1 January 2001.⁵⁴⁶
- (442) The Euroitalia meeting of 18 October 2000 provided members with another opportunity to coordinate their planned price increases for the upcoming year (2001). [Non-confidential summary: According to the notes, nine undertakings (namely, Grohe, Hansa, Hansgrohe, Zucchetti, Cisal, Teorema, RAF, (...) and Mamoli) were planning to increase their prices by [0-5]%. The notes also mention when these increases were to be implemented (and grace periods, where applicable)].⁵⁴⁷ Moreover, the notes attest to discussions concerning the monitoring of price increases previously discussed and other sensitive business information (in addition to exchanges regarding sales developments year-to-date by undertaking). Similarly, the price increases for the upcoming cycle (January 2001) were one of the issues discussed at the Michelangelo meeting of 26 October 2000.⁵⁴⁸
- (443) Finally, the evidence on the Commission's file indicates that Grohe and Ideal Standard may also have exchanged price information on a bilateral basis during the same period.⁵⁴⁹
- (444) At the early Euroitalia meeting of 1 February 2001, participants monitored developments during the preceding period (regarding, notably, reported price increases) and discussed discounts offered to customers, while also reviewing turnover trends by undertaking. For example, Cisal confirmed that it had applied a [5-10]% price increase at the end of 2000. Mamoli confirmed its two price increases of 2000, namely [0-5]% in January and [5-10]% in October. Ideal Standard is reported as saying that it would increase prices by [0-5]% in April 2001 (with an [5-10]% discount to clients and possibly a [0-5]% bonus in average). RAF

544 (...)

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549 Handwritten notes (...) (dated 11 October 2000 and entitled "Ideal Standard") contain details of discounts (for example, the difference between public and restricted lists from 42-48%). The notes also refer to a 10% further discount on the restricted list for the wholesaler (on the invoice), with additional bonuses (including linked to possible advertising campaigns).

communicated an increase of [5-10]% to run from 1 February 2001, with discounts on the list price of [50-60]%, plus [10-20]%, plus [10-20]%. Grohe said that it had also increased prices by [5-10]% from 1 February, with some clients having one month's grace period. Grohe's list discount would go from [40-50]%, plus [10-20]% to a maximum of [50-60]%. Hansgrohe confirmed that it had increased prices by an average of [0-5]% from 1 January 2001 with a grace period until 15 February. Its list price discount was now set at [40-50]%. Teorema confirmed that it had applied a [5-10]% increase from 1 January 2001.⁵⁵⁰

(445) Latest sales developments by undertaking was also one of the topics discussed at the Michelangelo meeting of 9 March 2001,⁵⁵¹ at the Michelangelo meeting of 29 June 2001,⁵⁵² at the Michelangelo meeting of 14 September 2001⁵⁵³ and at the Euroitalia meeting of 1 June 2001.⁵⁵⁴ During the latter meeting, several participants further confirmed the implementation of price increases previously communicated and discussed amongst competitors. Participants also discussed their pricing policy in the course of 2001, with everyone agreeing that there would be a reduction in promotions linked to objectives, as it was inflationary and indigestible ("*tutti concordi nel prevedere una diminuzione delle promozioni con oggettistica, troppo inflazionata ed ingestibile*"). It is also notable that - during that meeting - Grohe already communicated a price increase of 4% from the beginning of 2002, as well as the introduction of a Grohe-branded line especially for DIY stores. Ideal Standard would also increase prices 2 to 3% by adjusting its price list. The smaller undertakings confirmed the price increases which they had previously applied. Finally, it should be noted that the larger undertakings updated others on the sales performance of their German parent undertakings. The handwritten notes of the Michelangelo meeting held on 14 September 2001 record *inter alia* Zucchetti communicating a discount (...).

(446) During the Euroitalia meeting of 28 September 2001 members discussed their planned price increases for the upcoming year (2002). Based on the notes taken by (...) at the meeting participants were reported as forecasting the following price increases: [non-confidential summary: Ideal Standard: price increase by [0-5]% on 15 October 2001 (for application by 1 November 2001), another [0-5]% in 2002. Grohe: [0-5]% increase in December 2001. Cisal: increase of [5-10]% in January 2002. Hansa: increase of [0-5]% in August 2001 and a further [0-5]% in January 2002. RAF: [0-5]% increase as of January 2002, Zucchetti a [0-5 % price increase as of October 2001]; Teorema: [0-5]% price increase as of January 2002; Mamoli: [0-5]% price increase from April 2002 (to be applied in June 2002). Hansgrohe: [0-5]% increase from January 2002, with 1 to 2 months for the increase to take effect. The information was passed on by email to (...)’s headquarters in Germany.]⁵⁵⁵ Similarly, contemporaneous handwritten notes of the meeting that were found during the inspections at the premises of (...) and Zucchetti attest to these discussions (and planned price increases).⁵⁵⁶ The notes also refer to elements pertaining to discount policies, while Hansa is reported as referencing the "price corridor" in Austria ("*On January 2002 new price list in Euro, with other increases ref. "Price*

⁵⁵⁰ (...) During the meeting, Ideal Standard, Grohe and Hansgrohe also gave detailed reports on the performance of particular product series.

⁵⁵¹ (...)

⁵⁵² (...) The agenda for the meeting included *inter alia* the following items: forecasts for the second half of the year, evolution of groups, and preparations for the Euro.

⁵⁵³ (...)

⁵⁵⁴ (...)

⁵⁵⁵ (...) During the meeting, members also discussed latest turnover/sales developments by undertaking.

⁵⁵⁶ (...) The latter notes, which are in many respects more detailed, are not always legible and do not bear a precise date. Nonetheless, they are clearly marked as pertaining to September 2001. More importantly, a comparison of their contents with the notes (...) confirms that they also refer to the Euroitalia meeting dated 28 September 2001.

corridor" (Austria). Ex.: Ronda and Star +15%"). Other participants also referred to the preparation of Euro price lists, with Hansgrohe reporting that its gross Euro price list should be the same for the Euro area (the prices to be charged by its subsidiaries being that of Germany, plus or minus 5%). Finally, the Commission's file includes evidence of follow-up bilateral contacts between Ideal Standard and Grohe, which further attests to the monitoring of the implementation of the coordinated price increases.⁵⁵⁷

- (447) At the beginning of 2002, members of Euroitalia and Michelangelo met again to discuss sales developments during the preceding period (as it was common for meetings held at the beginning of each year), to confirm the introduction of new price lists and price increases, as well as to inform others about planned price increases in the course of 2002. In particular, and in addition to year-end turnover figures for various product groups by undertaking, the handwritten notes of the Michelangelo meeting held on 25 January 2002 record Ideal Standard as saying that it had increased its price list by 3% in October 2001, for application on 2 February 2002. Grohe is reported as increasing prices by 4% in general (7% for spare parts), to be applicable for orders from 1 March 2002.⁵⁵⁸
- (448) Similarly, at the Euroitalia meeting of 31 January 2002, members gave the usual update on their turnover developments (often by specific product group), but also confirmed announced price increases, and discussed their planned pricing policy (price increases and discounts).⁵⁵⁹ For example, Hansgrohe is reported as confirming that it would increase prices by [0-5]%, with the grace period ending in February 2002. Discounts would be set at [40-50]% (plus [10-20], plus [0-5] on the Talis series). Hansa also confirmed that there had been an average increase by [0-5]% in January 2002 (the grace period ending on 1 March 2002. Discounts would be [40-50]%, plus [10-20]%. RAF said that it would bring out its new price list for the Mostra Convegno with an increase from [0-5]%, with a 30-day grace period. Grohe confirmed that it introduced a new price list effective from 1 March 2002, with an increase of [0-5]% ([5-10]% on spare parts). Ideal Standard communicated that it would bring in a new price list in March 2002, with an increase of [0-5]%. Zucchetti is reported as saying that it [0%]. The evidence on the Commission's file further attests to concrete steps taken to monitor the implementation of the coordinated prices. In particular, on 7 February 2002, Hansa sent a letter to Hansgrohe, attaching its 2002 price list pursuant to the preceding Euroitalia meeting.⁵⁶⁰
- (449) Euroitalia members met again on 18 June 2002. According to the notes of the meeting, participants discussed *inter alia* their future policy.⁵⁶¹ For example, Ideal Standard reported a 2.5-3% price increase rounded for the Euro, to be applied on 1 July 2002. Cital said that its average discount was 40%, plus 30%, plus 5% on the list price. Teorema confirmed that it had increased prices by 2.5% at the end of January (7% increase on luxury products), with a discount of 50%, plus 20% on the price list. Zucchetti said that it planned an increase (...). Moreover, RAF, Hansgrohe, Cital, Teorema, Mamoli, Ideal Standard, Zucchetti and Grohe all updated each other on their turnover developments in the year-to-date.

⁵⁵⁷ A letter from (...) attaching new price lists, dated 8 October 2001, was copied to (...). An internal (...) memo concerning price lists from (...) to the Direzione Generale, dated 17 October 2001, was faxed by (...) to (...), and was then copied to (...). The Commission considers that members routinely received copies of their competitors' price increases, by way of ensuring monitoring and adherence to the coordinated price policies.

⁵⁵⁸ (...)

⁵⁵⁹ (...)

⁵⁶⁰ (...) "Come da sua gentile richiesta durante l'incontro Euroitalia le inviamo il nostro listino prezzi 2002." (...) (Hansgrohe) then noted by hand on the letter an instruction for his colleague "(...)" to ask for the Euroitalia price lists and catalogues for a number of competitors: "(...) chiedere x listini e cataloghi Euroitalia [...]".

⁵⁶¹ (...)

- (450) Members of Michelangelo discussed again market developments, and each undertaking's sales performance in the year-to-date, at the meetings held on 12 April 2002⁵⁶² and 19 July 2002.⁵⁶³ During the latter meeting, there was a discussion on a project of the so-called "Focus Group", focused on distribution trends and evolutions by reference to a selected group of wholesalers (to be undertaken with the assistance of the market research company Data Bank). The meeting apparently also provided the opportunity for an update on members' pricing, as evidenced by Zucchetti's report on the introduction of a new price list with a (...).
- (451) The last Euroitalia meeting of the year took place on 28 October 2002. Contemporaneous handwritten minutes found during the Commission's inspections at the premises of both Zucchetti and Grohe again reveal that the meeting provided participants with the opportunity to coordinate their planned price increases for the upcoming year (2003) – generally, at the range of [0-5]%.⁵⁶⁴ In particular, the notes record Hansgrohe as saying that it would introduce a list dated 1 January 2003 with a [0-5]% increase (excluding its Stark and Talis S series). Hansgrohe also considered that, in general, the larger wholesalers would not easily accept an increase, but the medium and smaller-sized customers would not cause problems. Teorema reported a planned price increase of [0-5]% from 1 January 2003, by lowering the basic discount offered to customers. RAF envisaged an increase of [0-5]%, but was not yet sure about the modalities of its introduction. Ideal Standard clarified that no further increases were planned at that stage (given the [0-5]% increase half-way through 2002, and the [0-5]% increase in January 2002). Cisal said that it was planning an increase of [0-5]% from 1 January 2003 through a reduction in discounts (targeting its bigger clients and not the smallest ones). Grohe reported that they would, as usual, introduce a new price list in December 2002 with prices increased by [0-5]% (to be applied in February-March 2003). Grohe also specified that its Eurosmart and Eurostyle series would not be increased, but their promotions would be removed. Mamoli was planning an increase of [0-5]% towards March-April 2003. Zucchetti reported that it would introduce a new price list without any increases, but with some adjustments [probably reducing discounts by 0-5%]. The notes of the meeting further attest to the link between the arrangements in Germany and Italy (at least with regard to the foreign undertakings). In particular, Hansgrohe's representative specified that the request for the increase came from the parent company half-way through 2002 and that, according to him, it is considered necessary in order to increase the margins in global sales. Similarly, Hansa reported that its German headquarters had requested an increase of between [0-10]%. Hansa's Italian subsidiary did not want to introduce the requested increase, but they were still negotiating with headquarters.
- (452) During the Euroitalia meeting of 14 February 2003, discussions mostly involved a detailed account of sales performance by undertaking year-to-year (covering both taps and fittings, ceramics and shower enclosures, depending on the participant), participation in trade fairs and market trends. However, the evidence in the Commission's file establishes that discussions also covered the monitoring of reported price increases, as well as future pricing policies.⁵⁶⁵ For example, Ideal Standard said that it was still using the July 2002 price list, but was planning to introduce a new price list in April-May 2003 with a further [0-5]% increase (to be applied in the second half of the year). Zucchetti reported that [discount reduced by [0-5]% and increase of 0-5]% as of 1 March 2003]. Hansgrohe applied a new price list from 1 February 2003, with

562 (...)

563 (...)

564 (...) See also invitation to the meeting, including specifically as an agenda item the price lists for 2003: (...). During the meeting, participants also discussed, as usual, their sales performance with regard to taps and fittings and ceramics.

565 (...)

an increase of [0-5]%. Teorema confirmed the increase of [0-5]% through a reduction in the discount, but now as from 1 March 2003. Grohe confirmed that its 2003 price list would increase by [5-10]% on average and that it would remove the promotions applied to its Eurodisc or Eurostyle series. Prices for RAF would be increased by [0-5]% with the new price list in April 2003.

- (453) Similarly, participants at the Euroitalia meeting of 17 to 18 June 2003 had the opportunity to monitor developments (including in relation to previously reported price increases), while also discussing certain pricing plans for the future. By way of example, Zucchetti is reported to have confirmed the [0-5% price increase] and RAF to have specified that its April 2003 price increase was at the level of [0-5]% (as compared with a planned [0-5]% increase reported at the previous meeting). The notes of the meeting also record a [0-5]% increase for Teorema applicable as of June 2003 and an intended increase of [0-5]% for the following year, an increase of [0-5]% for Hansa for taps and fittings as of 1 January 2003 ([10-20]% increase on spare parts), and an average of [0-5]% for Hansgrohe as of 1 March 2003. Grohe confirmed an increase of [5-10]% as of March/April.⁵⁶⁶
- (454) The last Michelangelo meeting for which there is evidence on the Commission's file took place on 25 July 2003. Participants met for their regular exchange of market data and performance in the year-to-date. The information gathered by (...) from its competitors at the meeting was relayed in detail within (...) by email.⁵⁶⁷
- (455) The Euroitalia autumn meeting of the same year took place on 30 and 31 October 2003. The evidence on the Commission's file (contemporaneous handwritten notes found during the inspections at the premises of both Zucchetti and Grohe)⁵⁶⁸ demonstrate that participants exchanged details concerning their turnover (notably in terms of % increase on local sales and exports), their relationship with some clients,⁵⁶⁹ forecasts, as well as their market performance in specific regions or on specific product groups. More importantly, the evidence establishes that participants coordinated price increases for the upcoming year (2004) – several weeks or months before announcing them to customers or applying them. In this regard, the notes record *inter alia* a price increase of 2% on high-end products for Cisal, a 3% to 3.5% increase for Hansa as of 1 January 2004, a price increase of (...), a 4% increase on high-end products a 2% increase on the rest of the products for Teorema as of January 2004, and a 4% price increase for Mamoli as of 1 January 2004 (by means of reducing discounts, but excluding its cheap Rally series whose prices would not be increased). Grohe's 2004 price list would increase by an average of 4% (depending on product group) and would be applied "*as usual*" (that is, list to be announced in December and applied on orders received as of 1 February 2004). Ideal Standard reported as having increased prices of taps and fittings in September 2003 for most of its series (concerning orders received as of 1 October 2003); Ceramix clients faced an increase of 2% and Ceraplan clients an increase of 4%.

⁵⁶⁶ (...)

⁵⁶⁷ (...) (internal (...) email reporting on the meeting): the latter report again corroborates the notion that Michelangelo meetings were essentially considered an extension of Euroitalia meetings (and were, thus, valued in the context of the overall sustained coordination between the implicated undertakings). In particular, (...) noted that the meeting was held pursuant to the same approach used in Euroitalia (a scenario extended as to cover also participants in the heating market). Moreover, when reporting on Zucchetti, (...) specified that the information was consistent with the information previously communicated within the context of Euroitalia.

⁵⁶⁸ (...)

⁵⁶⁹ (...) Grohe's report of having big problems with the large distribution chains, specifically (...), concerning sales of Grohe products sold below price ("*Dice di aver avuto grossi problemi con la GDO, specificamente con (...), per i prezzi applicati ai privati su alcuni suoi prodotti offerti in promozione*").

- (456) In the course of their sustained cooperation, Euroitalia members often took concrete steps to monitor the implementation of the price increases, with a view to ensuring adherence to the coordinated prices. [Non-confidential summary: (...) not only the discussions on price increases at Euroitalia meetings, but competitors also directly sent it copies of their price increase announcements (when these became available)].⁵⁷⁰ This is indeed corroborated by the evidence in the Commission's file. By way of example, following the Euroitalia meeting held on 31 October 2003, Cisal communicated its 2004 price list to Grohe and Ideal Standard by letters dated 12 December 2003. The introduction to the letter is telling: "*in relation to what was discussed on the occasion of our Venice meeting [Subject: Euroitalia meeting of 31.10.2003] I attach, to the present, a copy of the circular relating to the price increase for 2004, which has been sent to all Cisal clients. As agreed, I am waiting to receive the copy of your communication of price increases sent to your clients*".⁵⁷¹ Similarly, a circular letter from Hansa to its clients dated 6 November 2003, informing them of a price increase with effect from 1 January 2004, was forwarded to Grohe on 20 January 2004.⁵⁷² Grohe sent a similar letter to Hansgrohe on 28 February 2002,⁵⁷³ Zucchetti to Grohe on 5 November 2003,⁵⁷⁴ and RAF to Grohe and Hansgrohe on 7 January 2004.⁵⁷⁵
- (457) Price coordination continued in the course of 2004. At the Euroitalia meeting held on 6 February 2004, participants provided a detailed account of their turnover/sales developments during the previous year (often referring to specific figures or % increases by product group and region). They also discussed budget forecasts for 2004 and price lists (by way of monitoring price increases previously reported), as well as other sensitive information (including in relation to discounts offered to customers).⁵⁷⁶ [Non-confidential summary: The agenda of the meeting specifically establishes that the meeting was called in order to discuss, among other things, the increases of list prices for 2004 ("*Aumento listini 2004*").] For example, Grohe confirmed an increase of [0-5]% (reduction in the discount from [50-60]% to [40-50]%) on 1 December 2003, to come into effect on 1 March 2004. Similarly, Mamoli confirmed a [0-5]% price increase as of 1 January 2004. Zucchetti's prices in 2004 [[0-5]% higher on average ([0-5]% for its Isy product)]. Hansa is reported as specifying that it had increased prices by an average of [0-5]% as of 1 January 2004. Hansgrohe is reported as planning to introduce a new price list with a [0-5]% increase from 1 April 2004 (effective as of 1 May 2004), applicable to approx. [30-40]% of its products. At the meeting, both Grohe and Ideal Standard also referred to reductions on payment discounts (with Grohe reported as trying to reduce the discount from [0-5]% to [0-5]% regarding payments within 18 days).
- (458) On 5 February 2004 (that is, one day before the Euroitalia meeting referred to in recital (457)), (...) sent an internal email within (...), reporting on his understanding of competitors' price

⁵⁷⁰ (...)

⁵⁷¹ (...) "*relativamente a quanto discusso in occasione della Riunione di Venezia [Oggetto: Riunione Euroitalia del 31.10.2003], allego, alla presente, copia della circolare relativa all'aumento dei prezzi per il 2004, inviata a tutti i Clienti CISAL. Come da accordi, resto in attesa di ricevere la copia della Vostra comunicazione di aumento prezzi inviata alla Vostra Clientela*". (...)

⁵⁷² (...)

⁵⁷³ (...) It is noted that the cover letter explicitly refers to a previous Euroitalia meeting where apparently the price lists at issue were discussed ("*in riferimento alla riunione Euroitalia, alleghiamo alla presente copia del catalogo figurato con listino prezzi 2001/2002*").

⁵⁷⁴ (...)

⁵⁷⁵ (...) RAF's letter, headed "*Notice of increase – effective as of 01/02/04*" ("*Circolare Aumento – decorrenza 01/02/04*"), was sent to Hansgrohe prior to Hansgrohe announcing its own price increase to customers in February 2004: (...).

⁵⁷⁶ (...)

increases.⁵⁷⁷ He specifically noted in the cover email that "*only tomorrow we will say you the final point on the competition. We'll see*". It can readily be inferred from that type of evidence that Euroitalia meetings taking place at the beginning (or mid-way) of each year had equally a critical and strategic importance in the context of the sustained coordination between the members (see also Section 5.2.4.1). The evidence presented so far demonstrates that they enabled participants *inter alia* to monitor the implementation of price increases and to eliminate any uncertainty about the market conduct of their competitors, thereby ensuring adherence to the coordinated pricing (see also Section 5.2.5).

- (459) During the Euroitalia meeting of 3 to 4 June 2004, participants discussed in detail their sales performance (often referring to exports and sales by region). Moreover, the meeting further provided participants with the opportunity to monitor pricing developments, with several undertakings confirming the implementation of price increases for 2004 previously communicated (as sometimes adjusted in the meantime) or reporting on new pricing plans.⁵⁷⁸ For example, Cisal confirmed its 2% increase on luxury products, while reporting a further 5% increase from 1 June 2004. Mamoli was now planning to communicate the 4% price increase by the end of June, for application in July. RAF is reported as having increased its prices by 2.5% from 1 January 2004, through a reduction in discounts by 5% as from the 19 April 2004. Grohe would increase prices by a further 3% by 1 July 2004. (...), Hansa, Hansgrohe, Teorema and Ideal Standard also reported on the implementation of their price increases for 2004. Finally, it is telling that the agenda of the meeting included *inter alia* the subject "*Course of action concerning costs, prices and lists*" ("*Andamento costi, prezzi e listini*"). Following the Euroitalia meeting, Cisal communicated its price list to Ideal Standard by letter dated 10 June 2004.
- (460) The last Euroitalia meeting for which there is evidence in the Commission's possession took place on 15 October 2004. The notes of the meeting reveal that participants had detailed discussions of their year-end sales performance (as compared with sales achieved during the preceding period). More importantly, discussions also involved the coordination of planned price increases for the upcoming cycle/year (namely 2005).⁵⁷⁹ For example, Grohe reported adjustments in its discount scheme and reported that its July 3% price increase would be followed by a price list increase of approx. 4% in January 2005. The notes also record a price increase of 3% to 4% for RAF and a 4% price increase for Zucchetti and Teorema for 2005. Ideal Standard reported a price increase of 3.5% on its November 2004 price list, to be applied as of January 2005. Mamoli is reported as saying that it was not planning any further price increases (given, notably, the 4% increase applied in July 2004). The notes further record an average price for single-lever-taps of EUR 50.50 for Grohe and EUR 47.70 for Ideal Standard. Following the meeting, the price lists of three Italian competitors were circulated within Grohe by internal email dated 18 October 2004.⁵⁸⁰

⁵⁷⁷ (...)

⁵⁷⁸ (...) (letter sent from Cisal to Ideal Standard on 10 June 2004, attaching a copy of Cisal's price increase circular and requesting Ideal Standard's circular in exchange, pursuant to what had been agreed at the Euroitalia meeting of 4 June 2004). With respect to the planned mid-year cost surcharge which was discussed at the meeting, see recital (709) in particular.

⁵⁷⁹ (...) It should be noted that the agenda of the meeting included *inter alia* the topic "*Exchange of commercial product lists and updating of conditions of sale*" ("*Scambio listini prodotti commerciali ed aggiornamento condizioni di vendita*").

⁵⁸⁰ (...) The email from (...) of Grohe to (...), with the subject of competitors' price lists ("listini concorrenza"), states: "*just to let you know that I have today given to (...) 3 price lists: Mamoli, Teorema, RAF, following the Euroitalia meeting in which (...) participated on 15 October 2004*" ("*solo per comunicarTi che in data odierna ho*

- (461) During the entire period of their sustained price coordination within the framework of regular meetings of associations, bathroom fittings and fixtures producers in Italy also exchanged commercial information regarding, in particular, turnover data, sales performance and recently achieved or estimated sales volumes, as well as information on the introduction or market positioning of particular products.⁵⁸¹ It is not always readily ascertainable whether all such information systematically and invariably qualifies as commercially sensitive information (particularly given the absence of official minutes and the fact that the Commission often based its analysis on handwritten notes gathered in the course of the inspections). Nonetheless, contrary to certain addressees' submissions, it is apparent that the turnover and sales information exchanged during those meetings was not sufficiently aggregated, nor sufficiently historic.⁵⁸² In particular, the information at issue was consistently linked to a particular producer and often broken down by product price segment or particular products, while also pertaining to recently-achieved (or year-to-date) sales.
- (462) The Commission considers that the regular exchange of this type of information thus helped members to continuously monitor developments pertaining to other participants, with a view to ensuring stability and maintaining their close ties of cooperation and interaction.⁵⁸³ In the specific context of this case (notably, a systematic and sustained price coordination extending over a long period of time) the exchange of this type of information also contributed to the establishment and furtherance of close relationships of loyalty and cooperation amongst participants. Moreover, as evidenced by reference to the notes of each meeting, communications relating to sales also formed the basis of discussions at the meetings, with attendees referring interchangeably to both their pricing and sales performance in a roundtable discussion. The Commission takes the view that it would be artificial to attempt to distinguish those exchanges from the overall scheme described in this section (as they can be deemed to support the primary price coordination plan concerned by this Decision).

4.2.3.3 The addressees' arguments in response to the SO and the Letter of Facts, and the Commission's findings

Masco

- (463) In its Reply to the SO, Masco (Hansgrohe) (...) the evidence put forward by the Commission regarding price coordination amongst Italian producers.⁵⁸⁴

Grohe

consegnata a (...) n. 3 listini: Mamoli, Teorema, RAF a seguito della riunione Euritalia cui [sic] ha partecipato (...) in data 15.10.04".

⁵⁸¹ The notes of all association meetings clearly record – to a larger or lesser degree – the exchange of such information. The Commission has attempted to identify above all those meetings where the exchange of such information is particularly evident, lengthy or detailed (by making a specific reference in the factual description of each meeting).

⁵⁸² The Commission considers that the exchange of information about the introduction or planned market positioning of particular products during the meetings can obviously be deemed to have a commercially sensitive character.

⁵⁸³ On the basis of such turnover/sales information participants were able to monitor the performance of their competitors and the development of market trends. Aside from the notes of each meeting, see – by way example – internal email from (...) to (...), dated 14 October 2004, attaching the “*modulo Euroitalia*” for the impending Euroitalia meeting (table with disaggregated sales data by area of Italy and by product, showing current invoices year-to-date, variation compared with the previous year, and variation of the average price compared with the previous year): (...).

⁵⁸⁴ (...) In its reply, Masco clarifies few factual points relating *inter alia* to its presence in the Italian market and to its participation in the Italian associations, (...). All other arguments raised by Masco regarding the nature and legal assessment of the arrangements at issue (as well as the precise duration of its own participation in the infringement) are addressed in Part II below.

(464) Similarly, Grohe (...) the facts presented by the Commission in this regard.⁵⁸⁵ Grohe points to several items of evidence submitted by it in the course of the proceedings, with a view to demonstrating that its leniency contribution was of considerable added value. The Commission considers that Grohe provided evidence of added value in relation to Italy. This is duly taken into account in the assessment of Grohe's reduction of fine pursuant to the Leniency Notice (see Section 8.8.2).

Ideal Standard

(465) In its Reply to the SO, Ideal Standard (...) the Commission's findings regarding price coordination within the framework of the Italian associations.⁵⁸⁶ It nonetheless contends that Euroitalia was not a forum for discussions about ceramics and that any observations about ceramics that Ideal Standard may have made during Euroitalia meetings were clearly intended as mere passing references without serving any anticompetitive purpose. As regards the taps and fittings product group, Ideal Standard first contends that the infringements were not so serious, because there was no retaliating mechanism against those members who did not implement the price increases reported or agreed to. It also submits that price coordination amongst participants at the meetings could not ultimately be very effective, given the ensuing negotiations of rebates and other reductions with customers (and the absence of evidence of systematic coordination on actual transaction prices). Finally, Ideal Standard submits that it had no leading role in the context of Euroitalia.

(466) The Commission notes that the price coordination activities taking place within the other associations (namely Euroitalia and Michelangelo) were already known to the Commission from a plethora of inspection documents (see, in particular, Section 8.8.8.1). Both Euroitalia and Michelangelo covered ceramics.⁵⁸⁷ Turning to taps and fittings, the arguments raised by Ideal Standard mostly refer to the likely effects of the arrangements at issue (as well as the precise duration of its own participation in the infringement) and, as such, they are addressed in Part II. However, the following considerations are pertinent. The notion that the price coordination at issue might not have been so effective in relation to final transaction prices is irrelevant. The Commission is not required to (nor does it seek to) establish that the coordination of list prices within the framework of regular meetings of associations (which is at the core of its investigation) systematically translated to coordinated final transaction prices (see also Section 5.2.4). The evidence adduced by the Commission attests to regular price

⁵⁸⁵ (...) In its reply, Grohe clarifies few factual points relating *inter alia* to its presence in the Italian market and to its participation in the Italian associations, (...). All other arguments by Grohe regarding the nature and legal assessment of the arrangements at issue (as well as the precise duration of its own participation in these arrangements) are addressed in Part II below.

⁵⁸⁶ (...) The latter issues are considered in Sections 8.8.3 and 8.8.8.1 below.

⁵⁸⁷ Contrary to American Standard BVBA's contentions, the references to ceramics attributed to it in the context of the Euroitalia and Michelangelo meetings cannot be described as "*mere passing references*" without anticompetitive purpose. It suffices to say that these ceramics-specific references equally involve regular price increases, as well as other pricing elements (such as minimum prices and discounts), in a way that is similar to, and entirely consistent with, corresponding references about taps and fittings made at the same meetings (see, by way of example, notes of the Euroitalia meetings held on 9 July 1993, 12 March 1996, 31 January 1997, 15 October 1999, 21 January 2000 and 14 February 2003; and notes of Michelangelo meetings held on for example 12 May 2000 and 20 July 2000). There is thus no reason to distinguish the undertaking's pursued objective when specifically communicating them (particularly taking into account their degree of detail and the overall context of discussions at those meetings). Moreover, the Commission observes that the regular communication of planned price increases of ceramics at the meetings is not in any way extraordinary, given the undertaking's leading position in that market segment in Italy (with shares far exceeding those of its nearest competitors) and its interest in maintaining an informed and integrated price-setting approach with respect to its products (both ceramics and taps and fittings).

coordination of list prices, often including additional pricing elements (for example minimum prices and discounts offered to customers) which further highlight the intensity of price coordination amongst participants. As admitted by Ideal Standard, the Commission's file also contains some evidence on coordination of transaction prices.⁵⁸⁸

- (467) The contention as to the absence of a specific retaliating mechanism against deviating attendees does not render the arrangements at issue any less serious or any less anticompetitive. Nonetheless, for the sake of completion, the Commission notes the following (see also Section 5.2.5): there is no evidence of attendees generally deviating from the coordinated prices. To the contrary, the participants took concrete steps to monitor the development of price increases, as evidenced from the continuous price reporting during meetings at the beginning or middle of each year. The issue of deterrence is intrinsically linked (and analogous) to the nature and intensity of the price coordination concerned by this Decision. In the specific context of this case (notably, a systematic and sustained price coordination extending over a long period of time), it is apparent that the participants had developed close relationships characterized by a sufficient degree of cooperation and interdependency, such that they had reduced incentives to deviate. This is indeed reflected in Ideal Standard's own leniency application, which specifies that a sufficient level of "*loyalty and reliability*" had been established amongst participants at Euroitalia meetings.⁵⁸⁹

Hansa

- (468) Hansa (...) the facts put forward by the Commission in relation to Italy.⁵⁹⁰ In both its reply to the SO and its reply to the Letter of Facts of 30 June 2009, Hansa further emphasizes the continuous and prompt cooperation it has provided throughout the process, while pointing to a number of leniency documents submitted by it which corroborate the Commission's findings. The latter arguments pertain to the assessment of the added value of Hansa's leniency submissions and, as such, they are further addressed at Section 8.8.5.

Italian independent producers (general comments)

- (469) In their Replies to the SO and during the course of the Oral Hearing, several Italian undertakings dispute their individual involvement in a single and continuous infringement, as described in the SO, and seek to demonstrate that they relatively had a marginal role or limited involvement in the cartel arrangements (as compared with larger multi-national undertakings rooted in Germany). Several Italian respondents also put forward arguments pertaining to the negligent conduct of their management or other attenuating circumstances (justifying, in their view, at least a symbolic fine or a substantial reduction of the fine). These arguments, as well as

588 (...)

589 (...)

590 (...) Similarly, in its reply to the Letter of Facts of 30 June 2009, Hansa (...) the Commission's findings. However, it argues that it has no record of its participation at the Euroitalia meeting of 28 October 2002 and notes that one item of evidence put forward by the Commission concerning that meeting should be deemed to show that Hansa was not present ("*Hansa Italia (non presente)*" (...)). Indeed, the typed minutes prepared internally by Zucchetti include a reference to that effect. Nonetheless, the three sets of the underlying contemporaneous handwritten notes do not include any such reference. To the contrary, they record extensively Hansa's contribution at the meeting (in separate parts of the notes which reflect the roundtable discussions held on different topics), even including details of Hansa's ambivalence as to the level of its price increase in Italy in view of instructions received by its German headquarters. Hansa further submits that Euroitalia did not maintain any official minutes and, therefore, the handwritten notes are the most credible source of information. Based on all the above considerations, there are no sufficient grounds to question Hansa's participation at the Euroitalia meeting of 28 October 2002. In any event, the Commission observes that Hansa (...) in the price coordination arrangements in Italy for the entire period concerned (as described by the Commission).

those pertaining to the precise duration of their individual participation in the infringement, are further addressed in Part II. This section mainly addresses the addressees' arguments directly relating to the facts presented by the Commission in relation to the Italian market.

Zucchetti

- (470) Zucchetti disputes that the discussions/exchanges at the Euroitalia and Michelangelo meetings amounted to a cartel. It describes both Euroitalia and Michelangelo as social gatherings which by no means exhibited the seriousness and professionalism observed with respect to some associations and groups active, for example, in Germany and Austria (Member States which, according to Zucchetti, were the centre of gravity of the infringement). It further submits that it did not enter into any agreements in relation to price increases, while also pointing to the fact that it may not have supported single elements of initiatives discussed at these meetings. Zucchetti also contests the likely anticompetitive effects of the coordination (pointing to the competitive conduct it has adopted on the market). In addition, Zucchetti contends that, based on the recollection of its personnel, the undertaking must have only attended nine out of twenty-five meetings at most.⁵⁹¹ Finally, Zucchetti argues that it has cooperated effectively with the Commission's investigation (outside the scope of the Leniency Notice), notably during the inspection at its premises.⁵⁹²
- (471) Most of Zucchetti's arguments pertain to the legal qualification or legal and economic context of the arrangements in question and, as such, they are considered in detail in Part II (legal assessment). It is nonetheless notable that Zucchetti actually confirms that "*inappropriate*" discussions may have occurred in the relevant association meetings (although "*its management was unaware of the fact that some of Zucchetti's representatives may have committed infringements of EC competition rules*").⁵⁹³ Zucchetti further admits that it may have communicated some of its planned pricing measures to competitors during those association meetings (although it may or may not have subsequently applied these price increases on the market).⁵⁹⁴
- (472) Contrary to Zucchetti's submissions, the Commission explains in the following that the arrangements at issue had an anticompetitive object and constitute a cartel infringement. Moreover, regardless of whether Zucchetti may or may not have fully applied all the price increases that it discussed at the meetings, it has undoubtedly taken an active role in organizing the meetings and it has actively participated in all relevant price discussions in the context of those meetings, in a systematic and sustained way over a very long period of time (exceeding 10 years). Zucchetti did not, therefore, have a marginal role, nor can it be disassociated from the infringement. The claim that Euroitalia and Michelangelo were more informal or exhibited fewer features of institutional character (as compared with associations in other Member States), does not render the object of the price discussions at those association meetings any less serious or any less anticompetitive.
- (473) Turning to Zucchetti's participation at Euroitalia and Michelangelo meetings, the Commission observes that general assertions relating to the alleged recollection of its employees does not suffice to disprove the documentary evidence in the Commission's possession. In particular, Zucchetti's sustained participation in cartel meetings over a period exceeding 12 years is established on the basis of contemporaneous handwritten notes which specifically attest to Zucchetti's own contribution to price discussions at these meetings – notably the

591 (...)
592 (...)
593 (...)
594 (...)

communication of Zucchetti's intended price increases, but also discounts and other pricing policies (see Section 4.2.3.2). It is further telling that several of those contemporaneous handwritten notes were actually found at Zucchetti's own premises during the inspections.

- (474) With respect to the procedural arguments raised by Zucchetti in relation to the Letter of Facts, the Commission refers to Section 5.4 (procedural arguments). Finally, as regards Zucchetti's cooperation during the inspections, the Commission refers to Section 8.5.2.3 (mitigating circumstances).

Cisal

- (475) In its Reply to the SO, Cisal (...) the facts put forward by the Commission.⁵⁹⁵ (...) Cisal further submits information with a view to explaining the context of Euroitalia meetings (arguing, in particular, that they had an informal character and that they were essentially dominated by the German and American participating producers).⁵⁹⁶ Cisal essentially reiterates these arguments in its reply to the Letter of Facts.⁵⁹⁷
- (476) Moreover, Cisal makes various observations aiming at substantiating its marginal role in the cartel, the negligent conduct of its management, as well as other circumstances, such as the distinctive character of Cisal's high-end product portfolio and the absence of likely anticompetitive effects (given the level of competition on the market and negotiations with wholesalers). Most of these arguments pertain to the legal qualification or legal and economic context of the arrangements in question and, as such, they are considered in detail in Part II (legal assessment).⁵⁹⁸ It should however be noted that Cisal has been equally and actively participating in all relevant price discussions at Euroitalia meetings, in a systematic and sustained way over a long period of time. The relatively more informal character of Euroitalia does not render the price coordination in Italy any less serious or any less anticompetitive.

Mamoli

- (477) Mamoli submits that it was essentially the victim of the foreign multi-national undertakings rooted in the German market, which – according to Mamoli – dominated the Italian associations and intentionally used the smaller Italian producers to serve their own commercial aims.⁵⁹⁹ Mamoli further claims that, bearing in mind the reality of the environment in which small Italian businessmen operate, knowledge or awareness of EU competition rules cannot be presumed. In this regard, the small size of the undertaking and its reduced organizational structure explain Mamoli's scarce knowledge of competition laws (which were applied much later in Italy than in other Member States). Mamoli further submits that exchanges of historic turnover and accounts data at Euroitalia meetings cannot be considered illegal. As regards the communication of price increases at those meetings, Mamoli argues that it had fixed its prices as communicated at the meetings autonomously and that it had no systematic instrument for

⁵⁹⁵ (...)

⁵⁹⁶ In addition to various Annexes providing information about the structure and prevailing conditions in the Italian market, Cisal also volunteers its notes of the Euroitalia meeting held on 31 October 2003 and letters addressed to its clients that were also sent to Euroitalia competitors (thereby further corroborating the evidence on the Commission's file): (...).

⁵⁹⁷ (...)

⁵⁹⁸ Cisal also draws a distinction between its so-called "*standard price list*" and its "*special price list*" (that is list destined to specific clients with products exclusively made for them to order). It claims that it did not discuss prices from the "*special price list*" at Euroitalia meetings and, therefore, the latter part of Cisal's activities remained outside of the agreed practices (with Cisal maintaining a totally competitive conduct). These arguments are further addressed in Section 8.4.2.

⁵⁹⁹ (...) With regard to the multi-national participants, Mamoli mostly focuses on the dominant position of Ideal Standard (notably in the area of ceramics) and the latter's ability to drive relationships with the wholesalers: (...).

monitoring the implementation of the increases communicated by other competitors at these meetings. According to Mamoli, the Commission should thus have considered whether the undertaking had sold its own products at prices lower than those communicated at Euroitalia meetings. Furthermore, Mamoli argues that the price increases communicated to competitors did not actually translate into real and effective increases on the market, while it only had a marginal role in the collusive arrangements.⁶⁰⁰

- (478) As with other Italian respondents, most of Mamoli's arguments pertain to the likely effects or legal assessment of the arrangements at issue and, as such, they are considered in detail in Part II. It should however be noted at the outset that Mamoli corroborates the Commission's finding as to the clear links between the coordination arrangements in Germany and Italy (already evident at the very inception of Euroitalia). Mamoli also corroborates that communication of future price increases amongst competitors took place at Euroitalia meetings.⁶⁰¹ The Commission explains in Section 5.2.2 that these exchanges had an anticompetitive object and constitute a cartel infringement. Its participation is not negated by the fact that Mamoli may have somehow deviated from the precise price target it was communicating at the meetings. Nor is ignorance of the law a justification for Mamoli's conduct, particularly where the anticompetitive intention by attending the meetings in a sustained way over a long period of time is unambiguous.⁶⁰² Regardless of the other participants' involvement (notably, that of larger multi-nationals rooted in Germany), Mamoli was an equally active participant in the association meetings since at least October 2000.

RAF

- (479) In its Reply to the SO, RAF disputes that the discussions/exchanges at the Euroitalia meetings constituted price coordination. RAF does not contest its participation at the meetings, but seeks to establish that the nature and content of the exchanges in those meetings was not such as to constitute an infringement of competition rules. RAF submits that Euroitalia meetings were informal, such that attendees were not in a position to agree common strategies or practices, while the topics discussed varied and reflected *inter alia* the producers' interest in maintaining high-quality for the benefit of consumers. According to RAF, there was no common line of action relative to the price increases, nor any guarantee of implementation: prices were determined by each undertaking autonomously and, although those undertakings deviating from what had been communicated faced criticism, there were never sanctions of any type.⁶⁰³
- (480) RAF also submits that discussions were limited to price information already taken. RAF further argues that it had a limited involvement and limited market presence in a fragmented Italian market, such that it could not have influenced the decisions of the other attendees.⁶⁰⁴ RAF also argues that it acted in absolute good faith (regardless of the intention of the larger participating multi-nationals that created Euroitalia): in this regard, it did not aim at setting prices to restrict competition, but was guided by the interest in the possibility of acquiring more recognition on the international market (thus diversifying itself from many Italian competitors).⁶⁰⁵

⁶⁰⁰ (...)

⁶⁰¹ (...)

⁶⁰² See further Section 8.6.2 (mitigating circumstances).

⁶⁰³ (...) RAF also raises several other arguments relating to the legal and economic context, or likely effects of the arrangements in Italy, which are considered in Part II below. In particular, RAF submits that every undertaking remained free to determine its own prices and that competition could not have been restricted (given the strong position of wholesalers in ensuing price negotiations, as well as other characteristics of the market for example oscillation of raw material prices).

⁶⁰⁴ (...)

⁶⁰⁵ (...)

(481) These arguments cannot be accepted. The notion that participants at Euroitalia meetings may have also been discussing market trends and general industry cannot possibly alter the fact that planned price increases and other price parameters were discussed at those same meetings. Moreover, notwithstanding RAF's allusions to the contrary, the evidence put forward by the Commission notably refers to planned price increases to be applied during forthcoming price cycles, which were discussed months prior to them becoming effective. Attendees consistently took part in those meetings, with the view to aligning their understanding and conduct, and adhering to common price practices, in a sustained way over a long period of time. Furthermore, they systematically monitored the implementation of those policies during the relevant period.⁶⁰⁶ The very contention that the undertakings who deviated from the prices they had communicated at the meetings subsequently faced criticism from other members, only serves to underline the Commission's findings as to the common anticompetitive objective and understanding pursued by the participants.⁶⁰⁷ Finally, regardless of the other participants' involvement (particularly regarding the circumstances of Euroitalia's inception), RAF has equally taken an active role in organizing the meetings and has actively participated in price discussions in the context of those meetings for a period exceeding 10 years.

Teorema

- (482) In its Reply to the SO, Teorema raises a number of procedural and substantive arguments to contest the evidence put forward by the Commission. First, it submits that its right of reply and defense was prejudiced, due to the way the Commission handled the procedure with regard to the undertaking (and in view of the fact that its premises were not inspected). These arguments are considered in detail in Section 5.4.⁶⁰⁸
- (483) Second, Teorema contends that it cannot confirm its participation at the meetings, as its representatives did not take notes. Moreover, as none of the handwritten minutes referenced by the Commission was materially drafted or undersigned by a representative of the undertaking, Teorema questions their veracity. Teorema also considers that its representative who attended meetings was not herself able to guarantee the actual application of the presumed agreements on prices and that the Commission presented no evidence of reporting by her to Teorema's commercial offices as they set prices. In any event, Teorema submits that it did not participate in the meetings of 15 March 1993 and 16 April 1993 and, thus, its participation should be limited to 9 July 1993 until 9 November 2004.⁶⁰⁹ Finally, in its written observations on the Commission's Letter of Facts,⁶¹⁰ Teorema acknowledges that it is plausible to conclude that the undertaking also participated in the Euroitalia meeting of 7 May 1999. However, due to the absence of internal records pertaining to the relevant period, the undertaking is not in a position to confirm or to deny its additional participation at the Euroitalia meeting of 16 October 1998.
- (484) Third, it accuses the Commission of relying heavily on the oral statements of the "leaders" of the cartel and of confusing mere participation at the meetings with adherence to a common price policy. According to Teorema, the lack of constitutional act or statute, as well as the absence of any burden, legal obligation or disciplining mechanism linked to the activities of

⁶⁰⁶ See Section 5.2.5.

⁶⁰⁷ (...)

⁶⁰⁸ (...) Part II also deals with various arguments by Teorema regarding the absence of likely anticompetitive effects (particularly given the level of competition and considerable fragmentation of supply), the legal assessment of the case or mitigating circumstances (for example negligence, limited involvement).

⁶⁰⁹ (...)

⁶¹⁰ (...)

Euroitalia, is indicative of the fact that there was no proper association, nor coordination on prices.⁶¹¹

- (485) Fourth, Teorema submits that its commercial conduct was in practice independent from the information reported at the Euroitalia meetings (based on a comparison between yearly average price increases in the Italian market and what Teorema is reported to have communicated at Euroitalia meetings), such that the collusive arrangements were not implemented.⁶¹² Finally, Teorema argues that it only had a secondary and limited role in the Italian arrangements at issue (particularly as compared with larger undertakings who orchestrated Euroitalia).⁶¹³
- (486) These arguments cannot be accepted. It is irrelevant that Euroitalia had no legal statutes or constitutional act. It is the very content of the price discussions at Euroitalia meetings that matters. It is also irrelevant that Teorema's premises were not specifically inspected by the Commission. The Commission could not have possibly ascertained the number of participants or the precise scope of the infringement prior to the inspections, nor would the Commission ever be in a position to inspect all potentially relevant undertakings and premises in all potentially relevant Member States.
- (487) The oral statements referred to by Teorema were obtained from different sources and their specific contents were juxtaposed and cross-checked. In addition, there is ample evidence in the Commission's file (by reference to each Euroitalia meeting), which is solidly based on contemporaneous handwritten, as well as typed, minutes of the meetings found during the Commission's inspections in different undertaking's premises. Even in those rare circumstances where there might be some variations in their details (reflecting the specific perception and/or interest of each author at the time they were taken), the nature and core content of price discussions at the Italian association meetings can readily, clearly and unambiguously be ascertained from those minutes: participants have been discussing *inter alia* their planned price increases in connection with upcoming years/price cycles (and often other elements of their pricing policies, such as minimum prices, discounts/bonuses and other terms granted to customers); they further monitored the implementation of the prices or pricing policies previously communicated at the meetings. Regardless of the role of larger multi-nationals at the inception of Euroitalia, Teorema had been equally playing an active role in organizing the meetings and contributing in price discussions at these meetings, for an extensively long period (exceeding 10 years). Thus, Teorema did not have a marginal and limited involvement. Nor is Teorema actually contesting its participation in general. It only raises some doubts as to its participation to specific meetings, while at the same time requesting that its participation be limited to 9 July 1993 until 9 November 2004.⁶¹⁴
- (488) In the latter regard, the following observations are pertinent with respect to those specific meetings questioned by Teorema:
- (i) Meetings of 15 March 1993, 22 March 1994, 19 July 1995, 14 May 1996, 31 January 1997, 29 January 1999, 28 September 2001 and 18 July 2002: Teorema seeks to persuade the Commission that it may not have participated in these meetings (albeit not affirmatively denying its participation), because there is no record of attendees, nor any reference of a name attributed to the undertaking. Yet the Commission notes that Teorema is specifically recorded as communicating its planned or implemented price increases at those same meetings – based on separate sets of notes taken by different attendees. Contrary to Teorema's allusions, no

611 (...)
612 (...)
613 (...)
614 (...)

competitor could have invented or otherwise known with sufficient certainty and readily provided the prices planned or applied by Teorema to the other attendees. This is particularly so when the references at issue exhibit a high degree of detail: for example the notes of the Euroitalia meeting on 15 March 1993 record Teorema's reduction of general discounts by 20%; the notes of the Euroitalia meeting held on 14 May 1996 record a 50% discount applied by Teorema on its price list; the notes of 31 January 1997 record Teorema as confirming that it would not increase prices; and the notes of 29 September 2001 record Teorema's planned increase of 3% (approximately 3 months prior to their becoming effective).

(ii) Meeting of 16 April 1993: the notes of the meeting (internal (...) memo) clearly record the presence of Teorema and its introduction of a 7% price increase from April. The notes exhibit a high degree of precision, while their contents have overall been corroborated by other evidence in the Commission's file.

(iii) Meeting of 9 July 1993: there is no contradiction in the notes referenced by the Commission. Teorema's overall turnover may well fall, even if there is an increase in exports (depending on Teorema's performance in the domestic market, which anyway represents the bulk of its sales).

(iv) Meeting of 16 October 1995: similarly, there is no contradiction in the inspection documents referenced by the Commission. Both the handwritten notes found at Zucchetti's premises and the handwritten notes found at Grohe's premises (that is, evidence from two different sources) record Teorema as participating and communicating a planned price increase of 5% from January 1996.

(v) Finally, as regards the meetings of 7 May 1999 and 16 October 1998, it suffices to note that Teorema did not produce any evidence to dispute the Commission's findings.

Moreover, any comparison (or ensuing discrepancy) between annual average price increases in the Italian market and what Teorema is reported to have communicated at Euroitalia meetings is irrelevant. Teorema's involvement is not negated by the fact that it may have somehow deviated from the precise prices it communicated at the meetings or from any average price benchmark (calculated ex-post for the Italian market).⁶¹⁵ Finally, the argument that (...) was somehow detached from commercial operations (which were supposedly managed exclusively by (...)) cannot be accepted. Teorema was a family-owned business (...). (...) was present at the meetings as a representative of Teorema and was undoubtedly capable of reporting back to the undertaking.

Pozzi Ginori

- (489) In its Reply to the SO, Pozzi Ginori contests the evidence put forward by the Commission and argues that the Commission attaches too much weight to the leniency applications without conducting a proper analysis of how the market actually works.⁶¹⁶ Pozzi Ginori further points to an economic report commissioned by RBB Economics, with a view to demonstrating that the market is not conducive to collusion and that no consumer harm could have resulted from coordination of the list prices (see further Section 5.5). It further submits that the arrangements at issue involve public price announcements determined by each competitor autonomously,

⁶¹⁵ As regards the implementation of the price coordination arrangements, see further Section 5.2.5.

⁶¹⁶ (...)

thus not constituting a *per se* infringement of Article 101 TFEU.⁶¹⁷ As regards its involvement in Federceramica (1990-1993), Pozzi Ginori argues that the Commission adduces no evidence that Federceramica infringements continued after 1993 and, therefore, the 5-year limitation period has already expired.⁶¹⁸ Finally, as regards its involvement in Michelangelo (1997-2003), Pozzi Ginori argues that there is no strong evidence that any infringements in ceramics took place in the Michelangelo meetings and that, in any event, Pozzi-Ginori had a minor role in the trade association. It is further implausible and unworkable that Pozzi and Ideal Standard would attempt to align their conduct, particularly given the competitive features of the market and the destabilizing power of the (...) producers.⁶¹⁹ According to Pozzi Ginori, the purported Michelangelo meetings of 12 March 1996 and 17 July 1996 were in fact Euroitalia meetings. Moreover, the undertaking points to the fact that it was absent from the meetings of 15 July 1999 and 14 January 2000, where – according to Pozzi Ginori – the notes adduced by the Commission appear indeed to record price discussions on list prices.⁶²⁰

- (490) Most of Pozzi Ginori's arguments pertain to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are considered in detail in Part II. It is nonetheless pertinent to clarify the following points. Contrary to Pozzi Ginori's submissions, the Commission has put forward ample evidence demonstrating that coordination also occurred within the framework of Michelangelo meetings. Despite Michaelangelo's informal structure and the absence of official minutes, the Commission was able to reconstruct the pattern of coordination within Michelangelo, based on (...) and documentary evidence (notably, inspection documents which include contemporaneous handwritten notes). In particular, the evidence on the Commission's file establishes that price discussions (similar to those adduced in relation to Euroitalia) also took place in the context of Michelangelo.⁶²¹
- (491) Pozzi Ginori's absence from two of these meetings (namely the meetings of 15 July 1999 and 14 January 2000) does not alter the fact that the undertaking participated actively at Michelangelo meetings in a sustained way for a long period (exceeding 5 years). Indeed, the notes of the Michelangelo meetings held on 21 April 1997, 30 January 1998, 8 July 1998 and 20 July 2000 specifically record Pozzi Ginori's own contribution to such price discussions. Pozzi-Ginori also exchanged sales information in the context of Michelangelo meetings during that period, regularly until at least 14 September 2001. The Commission further observes that the pattern of coordination at Michelangelo meetings is also corroborated by the fact that Michelangelo was essentially an extension of Euroitalia (conceived as an enlarged circle covering a broader range of products).⁶²² The nature and contents of price discussions at Michelangelo meetings can therefore properly be interpreted and assessed having due regard to

⁶¹⁷ (...) In this regard, see further Section 5.2.4.1 below.

⁶¹⁸ (...) In this regard, Pozzi Ginori also contends that there is no single and continuous infringement extending between its alleged action in the framework of Federceramica and its alleged conduct at Michelangelo meetings (see Section 5.2.3).

⁶¹⁹ (...)

⁶²⁰ (...)

⁶²¹ As regards, in particular, the level of detail of price communications within Michelangelo (as compared to exchanges within Euroitalia), the Commission further observes the following: the notes of Michelangelo meetings found during the inspections or submitted by leniency applicants are in general less detailed compared to the minutes of Euroitalia meetings. However, the nature of the price discussions at those meetings – resembling and following the pattern of coordination at Euroitalia meetings – can readily be ascertained by the evidence adduced. Such a conclusion is further consistent with the evidence attesting to the links between the two associations. Moreover, as already explained, documentary evidence (...) establishes that the core mission of Michelangelo indeed included "*the regular exchange of information on the Italian market at the level of: [...] b) price tendencies and short-term pricing policies*": see recital (407) above.

⁶²² See for example recital (405).

the body of evidence adduced in relation to Euroitalia meetings (assuming there might ever be a divergence of opinion in their interpretation).⁶²³

4.2.3.4 Conclusion

- (492) Based on the considerations developed in Sections 4.2.3.1 – 4.2.3.3, undertakings active in the bathroom fittings and fixtures industry coordinated their prices in Italy, in a systematic and sustained way during the period from (...) October 1992 to November 2004. This coordination notably concerned annual price increases within the framework of regular meetings of associations (and often additional pricing elements, such as minimum prices and discounts/bonuses offered to customers).⁶²⁴ Furthermore, the evidence reveals that the undertakings involved took concrete steps to monitor the implementation of the coordinated prices or pricing policies during the relevant period. The scope of the coordination covered at least the following product groups: taps and fittings and ceramic sanitary ware.
- (493) Undertakings involved in price coordination in Italy during the relevant period included: Masco (Hansgrohe), Grohe, Hansa, Ideal Standard, Zucchetti, RAF, Cital, Mamoli, Teorema and Pozzi-Ginori (part of Sanitec).⁶²⁵
- (494) In Italy, the coordination took place within a variety of settings, both at multi-lateral level within the framework of the industry groupings Euroitalia and Michelangelo, as well as at bilateral level.

⁶²³ The Commission also notes (...). In its reply to the SO, Pozzi Ginori does not substantially contest the Commission's findings as to the anticompetitive character of Federceramica meetings, but rather seeks to establish that there is no concrete link between Federceramica and Michelangelo. The Commission considers that Pozzi Ginori's prior conduct in the context of Federceramica is indicative of the undertaking's overall behavioral pattern.

⁶²⁴ Italian manufacturers also coordinated their pricing on the occasion of specific events, such as the introduction of the Euro and cost surcharges due to rising raw material prices. As previously noted, the Commission examines these occurrences in separate Sections (see Sections 4.3.1.3 and 4.3.2.3 with regard to Italy).

⁶²⁵ The precise duration of each undertaking's participation in these arrangements is addressed at Section 7.

4.2.4 Belgium

4.2.4.1 Chronology and pattern of meetings within the framework of industry association(s)

(495) Annexes [8], [9] and [10] provide a comprehensive list of meetings within Home Comfort Team, Amicale du Sanitaire and the Vitreous China group respectively. The Annexes are intended to provide an overview of the relevant meetings, with a view to complementing the statement of facts presented in this Section, in chronological order. It is noted that the total number of undertakings present at these meetings is often greater than the undertakings identified in the Annexes, as the Annexes only include those undertakings that are addressees of the Decision.

4.2.4.2 The facts identified by the Commission

2000-2004 Amicale du Sanitaire meetings

(496) Based on the evidence on the Commission's file and as confirmed in particular (...) ⁶²⁶ members of Amicale du Sanitaire (Saniclub) regularly discussed their planned price increases for the upcoming price cycle, ⁶²⁷ during the period from (...) 2000 to 2004. The discussions usually took place in the form of a roundtable (...). ⁶²⁸ This is confirmed by several contemporaneous handwritten minutes taken by members of the group, and in particular by (...) and (...), representatives of (...) and (...) respectively at Amicale du Sanitaire meetings.

(497) It is also noted that in the process of coordinating price increases within Amicale du Sanitaire, (...)’s subsidiary in Belgium would wait for the results of the coordination between Grohe and (...) in Germany, so that the German price increase would have an effect in Belgium. (...). ⁶²⁹

(498) Based on the evidence in the Commission's possession, price increase discussions within the framework of Amicale du Sanitaire took place from (...) the meeting of 21 September 2000 onwards. ⁶³⁰ In this regard, contemporaneous handwritten notes taken by (...) of Grohe (found at Grohe's premises in Belgium during the inspections) include *inter alia* the following references:

*'Increase of prices Frake +11%
Blanco +6%
Grohe +4%'*

(499) Manufacturers also coordinated their price increases at a meeting likely to have taken place on 20 September 2002. ⁶³¹ In this regard, (...) took the following contemporaneous handwritten notes: ⁶³²

*(...) [0-5] hg [0-5] Duscholux [0-5] (...) [0-5]
INFORM early enough of a possible increase'*

⁶²⁶ (...)
⁶²⁷ (...)
⁶²⁸ (...)
⁶²⁹ (...)
⁶³⁰ (...)
⁶³¹ (...)
⁶³² (...)

(...), this means that the addressees discussed their upcoming price increases and that (...), Hansgrohe and Duscholux signaled an increase of [0-5]%, while (...) planned an increase of [0-5]%.⁶³³

(500) Following the meeting of 20 September 2002, Amicale du Sanitaire members also met on 15 November 2002 at Grohe's premises⁶³⁴ to discuss their respective price increases for the year 2003. (...) and (...) both attended that meeting and took contemporaneous handwritten notes of the topics discussed.⁶³⁵ In that respect, both sets of notes establish proof that members exchanged and confirmed their intended price increases for the upcoming price cycle (2003). In particular, (...) noted:⁶³⁶

'Pricing 2003:

- Hg +[0-5]% with some exceptions'

Hansgrohe thus communicated that it would generally increase its prices by [0-5]% as from 2003, consistent with what had already been discussed at the meeting of 20 September 2002. Similarly, the notes taken by (...) indicate an increase of [0-5]% for Grohe.⁶³⁷

(501) Turning to the meeting of 10 June 2004, contemporaneous handwritten notes taken by (...) ⁶³⁸ and by (...) ⁶³⁹ show that the addressees discussed again their respective price increases. Some of these increases had already been communicated to the market. This was the case for Grohe and (...) which both indicated that they had increased their prices by 3%. However, it is also apparent that some other undertakings had not yet communicated their prices to the market. ⁶⁴⁰

(502) Members of Amicale du Sanitaire also monitored the actual implementation of the price increases discussed at the meetings. For example, at the meeting of 5 February 2001 at Grohe's premises, (...) of Grohe noted that the members confirmed their price increases, for example [0-5]% for Duscholux, [5-10]% for Kludi and [0-5]% for Grohe.⁶⁴¹

(503) Further, during the period 2000 – 2004, Amicale du Sanitaire members also shared business information on a regular and frequent basis,⁶⁴² the incentive being to remedy the perceived lack of reliability of market surveys made by (...), which were deemed to overstate the actual market position of the undertakings.⁶⁴³ This regular information sharing enabled the addressees to have an updated overview of each of their competitors' performance and thus helped to increase the market transparency as it included individualised and detailed data on their sales

⁶³³ (...)

⁶³⁴ (...)

⁶³⁵ Although there are differences in the structure and details of these two sets of notes, reflecting the individual perceptions and interests of the authors at the time, a close comparison of their contents establishes that they were taken at the same meeting and leaves not doubt as to the exchange of price increases during that meeting.

⁶³⁶ (...)

⁶³⁷ (...) in a fax dated 10 December 2002 (...), Grohe communicated to (...) (a wholesaler) the price increases to be implemented per competing supplier as from January 2003. The document contains the following information on future price increases: *'Hereby, a number of price increases for January: Sfinx [0-5]%; Dornbracht [0-5]%; Duscholux [0-5]; (...) [0-5]; (...) [0-5]; Hansgrohe [0-5]; I.S. Ecco and Astor [0-5]; I.S. (...) [0-5]; (...) [0-5]'*.

⁶³⁸ (...)

⁶³⁹ (...)

⁶⁴⁰ (...) increases might have been due to rising raw material prices. The Commission notes that there is no specific indication to that effect in the handwritten notes taken by (...) and (...). Regardless, this would not alter the Commission's findings as to the anti-competitive character of the coordinated price increase.

⁶⁴¹ (...)

⁶⁴² Examples of exchange of business information can be found in handwritten notes taken by members at almost every Amicale meeting, including in the following ones: (...).

⁶⁴³ (...)

growth, (...).⁶⁴⁴ Additionally, members occasionally shared information on their 'budget', that is, the projected sales increase or decrease for the coming year.⁶⁴⁵

(504) It is thus apparent that the turnover and sales information exchanged was neither sufficiently aggregated, nor sufficiently historic. Further, the Commission takes the view that this information sharing supported the primary price coordination plan concerned by this Decision, as the exchange took place at most meetings, in parallel with the discussions on price increases. Therefore, the Commission considers that it would be artificial to attempt to distinguish those exchanges from the overall scheme described in this section (as they can be deemed to support the primary price coordination plan concerned by this Decision).

2001-2004 VC meetings

(505) Based on the evidence in the Commission's file, discussions on prices were held regularly from 2001 to 2004 in the Vitreous China (VC) group, and were exclusively about ceramics. (...) participants typically discussed the evolution in their sales volume, their terms and conditions of sale and payment. In addition, during the meetings near the end of the year, they would discuss the percentage price increases that each manufacturer was planning to implement for the next year for the "basic", "economy" and "luxury" products, as well as the timing for such an increase.⁶⁴⁶ (...) the manufacturers had agreed not to mention discussions on prices and price increases in the minutes of the VC meetings.⁶⁴⁷ This would be in line with the concerns raised in the framework of the first VC meeting held on 28 August 2001,⁶⁴⁸ where the addressees wondered whether they could be found guilty of forming a cartel.

(506) (...) attended regularly the VC meetings where he used to take note of the discussions that took place. He was sometimes accompanied by (...).⁶⁴⁹ (...) had therefore a good knowledge of the market conditions in France, as well as in Belgium. The following recitals focus on the price discussions that took place in the framework of the VC group.

(507) The agenda of the meeting of 30 October 2001, which was held at Ideal Standard's premises, included itself the topic of pricelists and catalogues.⁶⁵⁰ At the meeting itself, members discussed the rebates offered to customers for prompt payment, with the view to coordinating their rate and conditions. In that respect, the contemporaneous handwritten notes of (...) record *inter alia* the following:⁶⁵¹

(...)

Sphinx: 2% discount for payment within 14 days, 30 days on invoice

V&B: 3% discount for payment within 10 days, or 4% for payment prior to delivery, 60 days on invoice

⁶⁴⁴ (...)

⁶⁴⁵ (...) By way of example, the contemporaneous handwritten notes taken by (...) and (...) in the framework of the meeting held on 10 June 2004 record an exchange of information on sales realized in the year-to-date, as well as estimates on their future sales growth. Indeed, Grohe indicated that, up to the meeting, it had realised an increase of [5-10]% and that it expected another increase of [5-10]% in the coming year. Further, Duscholux announced that it had increased its sales by [10-20]% and predicted an increase of [5-10]% in the coming year. Finally, Hansgrohe informed the others that it had increased its sales by [30-40]%, predicting an increase of around [10-20]% in the coming year.

⁶⁴⁶ (...)

⁶⁴⁷ (...)

⁶⁴⁸ (...)

⁶⁴⁹ (...)

⁶⁵⁰ (...)

⁶⁵¹ (...)

Duravit: 3% discount for payment within 10 days, 60 days on invoice
Keramag: 3% discount for payment within 10 days, 60 days on invoice'

- (508) Moreover, handwritten notes taken by (...) at that same meeting prove that the addressees also informed each other on the SFP's activities, that is, the activities of the Dutch manufacturers' association, and in particular its conditions of admission (toelatingstoetsing).⁶⁵² Information gathering on the situation in the Netherlands was made easier thanks to (...) at meetings held in the framework of both the VC group in Belgium and SFP in the Netherlands. (...).⁶⁵³
- (509) Price discussions also took place at the VC meeting held on 17 September 2002 (originally planned to take place on 2 September 2002).⁶⁵⁴ The invitation already listed the topic 'price increases 2003' among the agenda points to be discussed.⁶⁵⁵ At the meeting itself, members discussed in detail their intended price increases and coordinated them. In particular, (...) took the following contemporaneous handwritten notes:⁶⁵⁶

<i>'price increase 1/1/03</i>	<i>+2 → before end 09/02</i>
<i>V&B +3 +5</i>	<i>Saval & Alfuldi</i>
<i>Duravit +3 +5</i>	<i>Ondina & Duraplu</i>
<i>Keramag +3 +5 (+ strategic products =)</i>	<i>Delta & Bastia</i>
<i>Sphinx +3 +5 (luxury) (net prices)</i>	<i>Animo</i>
<i>(...)'</i>	

All members agreed on the price increases to be implemented as of 1 January 2003. According to (...), the three columns featured in (...) 's notes correspond to economy (+ 3%), luxury (+ 5%) and low-end products (+ 2%),⁶⁵⁷ with a different date of implementation for increases regarding low-end products, that is, before end-September 2002.

- (510) At the subsequent meeting held on 14 January 2003,⁶⁵⁸ participants confirmed that the price increases discussed on 17 September 2002 had been implemented. Indeed, the agenda attached to the invitation to the meeting, which was sent to the members, requested them to communicate their implemented price increases and to bring four copies of any newly available pricelists or documentation.⁶⁵⁹ Contemporaneous handwritten notes taken by (...) at that meeting establish that the member undertakings discussed the agenda points.⁶⁶⁰ In particular, they confirmed that the increase applied on low-end products was of 2%. Regarding economy products, the addressees also confirmed that they had increased their prices within a range of 3% to 4%. Finally, concerning luxury products, the increases had been implemented within a range of 3.5% to 6%.
- (511) The timing and range of price increases was monitored by the addressees. In this regard, contemporaneous handwritten notes taken by both (...) ⁶⁶¹ and (...) of Sphinx ⁶⁶² at the VC

652 (...)
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 654 (...)
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 656 (...)
 657 (...)
 658 (...)
 659 (...)
 660 (...)
 661 (...)
 662 (...)

meeting held on 28 and 29 April 2003⁶⁶³ record an exchange of price increases that were already implemented on the market (or close to be implemented). In particular, (...)’s notes include the following overview:

(...)	<u>Sphinx</u>	<u>Duravit</u>	<u>V&B</u>	<u>Keramag</u>
(...)	<i>Animo (+2)</i>	+2%	<i>Saval (2-2.5%)</i>	<i>Delta</i>
(...)	<i>Comina (0)</i>			<i>Bastia</i>
	<i>Luxury (5-10%)</i>			<i>Gen. +3%</i>
	<i>National new (+3)</i>			
	<i>From 1/1</i>	<i>from 1/5</i>	<i>from 1/3</i>	<i>from 1/1-1/3'</i>

This overview lists the VC members, their price increases per products, as well as their effective date of introduction. (...), most of the products concerned are low end products,⁶⁶⁴ although Sphinx also communicated increases for its luxury segment. The majority of these increases had already been implemented with the exception of Duravit's price increases that were planned for 1 May 2003.

- (512) In addition, at the same meeting on 28 and 29 April 2003, VC members also informed each other of the end-of-year bonuses (BFA, or *bonus de fin d'année*) intended for customers. In particular, contemporaneous handwritten notes taken by (...) record each participant communicating the following end-of-year bonuses to be granted to wholesalers:⁶⁶⁵

'	<u>BFA</u>
<i>Sphinx</i>	0
<i>Duravit</i>	3-3.5%
<i>Keramag</i>	8%
<i>V&B</i>	8%
(...)	(...)'

Such evidence further establishes that in addition to their price increases, members would also discuss rebates granted to their customers.⁶⁶⁶

- (513) Price discussions also took place at the meeting of 8 September 2003. In particular, contemporaneous handwritten notes taken by (...) demonstrate that a 3% price increase for 2004 was discussed. This increase was to be implemented by Sphinx-Keramag as of 1 January 2004, and by Duravit as of 1 June 2004.⁶⁶⁷ (...), representative of Sphinx both at the VC meetings in Belgium and at the SFP meetings in the Netherlands, attended this meeting.
- (514) A year later, at the VC meeting of 13 September 2004, participants discussed their planned price increases for 2005. In this regard, contemporaneous handwritten notes taken by (...) record the following intended rates of increase per member: Sphinx: +2% to 3%; Duravit +2% to 4%; Villeroy & Boch +2.5% to 4%.⁶⁶⁸ (...), a range of price increases such as the one given by Sphinx (namely 2% to 3%) meant that a 2% increase would be applied on prices for the economy products and that a 3% increase would be applied on prices for the luxury products.

663 (...)
 664 (...)
 665 (...)
 666 (...)
 667 (...)
 668 (...)

- (515) (...), in an email dated 30 September 2004 sent to (...) and Villeroy & Boch, Sphinx announced the launch of its new model in January 2005 and attached the results of a consultation it had done, that is, a table comparing net prices for various products such as wash basins, pedestals and toilets, for Sphinx, Keramag, Villeroy & Boch, Laufen, and (...).⁶⁶⁹ The email also indicated that Sphinx would in all likelihood increase its prices at the same time as the launch of this new product group and invited its colleagues from Villeroy & Boch and (...) to update the attached table in case of any change of their respective prices.⁶⁷⁰
- (516) Further, during the period 2001 - 2004, VC members also shared business information on a regular and frequent basis. In particular, they exchanged individualised and detailed data relating to their sales volumes. The information enabled the addressees to have an updated overview of each of their competitors' performance as it covered at least the period up to the month preceding the meeting at which it would be circulated, and thus helped to increase the market transparency. This information sharing system, initiated by (...), was introduced in reaction to market surveys made by (...), the reliability of which was deemed unsatisfactory by the manufacturers.⁶⁷¹
- (517) Therefore, at the first VC meeting held on 28 August 2001,⁶⁷² participants agreed (...).⁶⁷³ Since that meeting, (...) systematically collected the data from the members before each meeting and consolidated them into a table marked as confidential. The document was in turn circulated to every member.⁶⁷⁴ The table indicated per group, undertaking and even sometimes per brand the quantities of pieces sold, the percentage sales increase and the percentage turnover increase for a given period of time (that is, at least a year up to the month preceding the meeting). The data were collected under two headings, namely 'Real' corresponding to the real numbers given by the manufacturers and '(...)' corresponding to the numbers given on the market research.⁶⁷⁵ (...).⁶⁷⁶
- (518) The Commission takes the view that this information exchange supported the primary price coordination plan concerned by this Decision, as it would take place at most meetings, supporting the exchange of price increases. Further, it is apparent that the turnover and sales information exchanged was not sufficiently aggregated, nor sufficiently historic. The Commission considers that the regular exchange of this type of information thus helped members to continuously monitor developments pertaining to other participants, with a view to ensuring stability and maintaining their close ties of cooperation and interaction. Given these circumstances, it would be artificial to attempt to distinguish those exchanges from the overall scheme described in this section.

2003-2004 HCT meetings

⁶⁶⁹ (...)

⁶⁷⁰ (...)

⁶⁷¹ (...)

⁶⁷² (...)

⁶⁷³ (...)

⁶⁷⁴ (...)

⁶⁷⁵ (...) For instance, the agenda of the VC meeting of 30 October 2001 included a discussion on each manufacturer's volumes of sales in 2000 and 2001. Therefore, at the meeting itself, the representatives of the five member undertakings discussed the table comparing their volumes of vitreous china in 2000 and 2001 (...). In particular, they exchanged their numbers of pieces sold, in absolute terms as well as in percentage numbers, the latter corresponding to the increase of sales realised by each undertaking in 2001, up to 30 October (...).

⁶⁷⁶ (...)

(519) The evidence on the Commission's file, (...),⁶⁷⁷ establishes that regular price coordination took place within the framework of HCT in 2003 and 2004.⁶⁷⁸

(520) (...), discussions between HCT members on intended price increases took place at least once a year and sometimes more often.⁶⁷⁹ [Non-confidential summary: under the agenda item 'Marktinfo', the products concerned would be mostly taps and fittings. Upon request of the chairman, the participants discussed market conditions and communicated actual or planned price increases (rate and date of implementation). This information was sometimes recorded in the minutes.]⁶⁸⁰ The following items of evidence (notably official HCT minutes) corroborate the leniency submissions.

(521) At the meeting held on 10 March 2003,⁶⁸¹ participants discussed their planned price increases (prior to their actual communication to customers). In particular, the minutes of that meeting refer to price increases for taps and fittings as follows:

'Taps: Price increases: [0-5]% (...) Damixa

Dornbracht [0-5]% as from January TRES [0-5]% Aqua [0-5]%'

[Non-confidential summary: (...) (a manufacturer of taps and sinks for kitchens) and Damixa: both announced a price increase of [0-5]%; Dornbracht: [0-5]% as of January, [0-5]% for TRES products and [0-5]% for Aqua products.]⁶⁸² Subsequently, in a letter dated 12 August 2003, (...) confirmed to clients its price increase as of 1 September 2003.⁶⁸³

(522) Although Damixa, Hansa and Hüppe did not attend the HCT meeting of 8 December 2003, the minutes of that meeting attribute the following statement to (...), then representative of the firm (...) (a heating manufacturer): "(...): *Price adaptations/ increases for 01/01/2004 with 2.5% on all tariffs*".⁶⁸⁴ This statement constitutes further evidence that price increase discussions were held at HCT meetings. The same minutes also state that Dornbracht has a new price list, which again alludes to discussions on future price lists and price increases.

(523) Discussions aimed at coordinating price increases also took place during the year 2004 in the framework of HCT, primarily at the meetings held on 8 March,⁶⁸⁵ 19 April,⁶⁸⁶ 10 May⁶⁸⁷ and 14 June 2004.⁶⁸⁸ The evidence in the Commission's possession shows that price discussions during the course of 2004 mainly sought to address the issue of rising costs of raw materials. The Commission thus opted for presenting all items of evidence pertaining to price coordination at those meetings in Section 4.3.2. It is however noted at the outset that the coordination of prices in relation to the rising costs of raw materials forms an integral part of the overall multiform coordination concerned by this Decision. All items of evidence put forward in this respect corroborate the Commission's overall findings regarding the coordination of price increases with respect to taps and fittings in Belgium. This is notably because all such evidence is intrinsically linked to the pattern of price coordination within the

⁶⁷⁷ (...)

⁶⁷⁸ (...) the Commission focused its investigation on the HCT meetings that took place in 2003 and 2004. (...)

⁶⁷⁹ (...)

⁶⁸⁰ (...)

⁶⁸¹ (...)

⁶⁸² (...)

⁶⁸³ (...)

⁶⁸⁴ (...): "(...) *Prijzen aanpassing/verhogingen per 1/1/2004 met 2,5 % op alle tarieven*".

⁶⁸⁵ (...)

⁶⁸⁶ (...)

⁶⁸⁷ (...)

⁶⁸⁸ (...)

framework of regular meetings of associations. Further, during the period of 2003-2004, HCT members also exchanged information on their turnover and sales, as it is apparent from the minutes of the HCT meetings. The Commission takes the view that this information exchange supported the primary price coordination plan concerned by this Decision, as it would take place at most meetings, supporting the exchange of price increases. Further, it is apparent that the turnover and sales information exchanged was not sufficiently aggregated, nor sufficiently historic. The Commission considers that the regular exchange of this type of information thus helped members to continuously monitor developments pertaining to other participants, with a view to ensuring stability and maintaining their close ties of cooperation and interaction. Given these circumstances, it would be artificial to attempt to distinguish those exchanges from the overall scheme described in this Section.

4.2.4.3 The addressees' arguments in response to the SO and the Letter of Facts, and the Commission's findings

(a) Amicale du Sanitaire

Masco

(524) (...).⁶⁸⁹

Grohe

(525) (...).⁶⁹⁰ However, concerning the meeting of 21 September 2000, Grohe seeks to argue that the notes to which the Commission refers merely relate rumours on the market,⁶⁹¹ while on the contrary they reveal that price discussions were actually held at that meeting. More importantly, by stating that these increases were rumours, Grohe actually confirms that these discussions on price increases took place before their actual communication to the customers (and in particular to the wholesalers). Also regarding the meeting of 20 September 2002, Grohe denies to have followed the instruction to inform early enough of a possible increase.⁶⁹² However, this argument cannot be accepted as the handwritten notes taken by (...) at that meeting establish that coordination of price increases took place and that members of Amicale du Sanitaire had the will to inform each other as early as possible of any change in their prices.⁶⁹³ This interpretation is further confirmed by the various pieces of evidence cited in recitals (496) to (504) on Amicale du Sanitaire.

Duscholux

(526) Duscholux generally admits that it was a member of Amicale du Sanitaire and that it took part in the meetings, as put forward in the SO. Duscholux also recognises that price increases were exchanged in the framework of that association. However, it argues that discussions on prices always came at a time where these were already known on the market.⁶⁹⁴ This argument cannot

⁶⁸⁹ Masco also submits that Amicale du Sanitaire included heating and kitchen furniture suppliers and that, therefore, that association of undertakings could not necessarily be deemed to constitute compelling evidence for a single complex infringement of bathroom fixtures and fittings. That type of argument is addressed in Section 5.2.3 of the Decision regarding the single complex and continuous nature of the infringement.

⁶⁹⁰ Grohe nonetheless argues that the Commission's file contains evidence of its participation to price discussions at the Amicale only for the years 2001 and 2003 (...). This argument cannot be accepted, as Grohe was also present at the meeting held on 21 September 2000, where discussions extended to covered price increases.

⁶⁹¹ (...)

⁶⁹² (...)

⁶⁹³ (...)

⁶⁹⁴ (...)

be accepted. First, the Commission observes that price discussions in the context of Amicale du Sanitaire also took place before the announcement or communication of the price increases to the market.⁶⁹⁵ In any event, the Commission notes that the relevant price discussions took place at the horizontal multilateral setting of regular association meetings and notably concerned future price cycles (which were discussed prior to them becoming effective). The contention that internal price deliberations within some participating undertakings might have progressed before certain meetings, or that some of the attendees might have already disclosed their intended price increases to customers (or have done so at about the same time of those meetings) would not alter the Commission's assessment as to the anti-competitive object of the price information exchanges at issue (see, in particular, Section 5.2.4.1).

- (527) Duscholux also argues that none of the undertakings present at the Amicale du Sanitaire meetings were its competitors. The heterogeneous composition of the association thus leads to the conclusion that no exchange of price increases took place within the Amicale du Sanitaire.⁶⁹⁶ This argument must be rejected. Indeed, members of Amicale du Sanitaire did discuss their future price increases. The fact that membership covered more than one product group does not detract from the nature of such price discussions. Moreover, it corroborates the Commission's overall findings regarding the links between the product groups concerned by this Decision.
- (528) Duscholux also argues that its representative at Amicale du Sanitaire cannot remember that an announcement of a price increase by Grohe at the meeting held on 21 September 2000. Duscholux adds that it cannot be deduced from the reference to 3% in the handwritten notes taken by (...) of Grohe that it actually concerns prices.⁶⁹⁷ First, the increase referred to in the notes is of 4%. Second, the notes specifically refer to a price increase on behalf of Grohe. Lastly, as regards (...) and (...), although those two members of Amicale du Sanitaire are not addressees of this Decision, the Commission can use references attributed to participating undertakings that are not addressees of the Decision, in order to establish proof of the nature of discussions at Amicale du Sanitaire's meetings.
- (529) Duscholux admits that it announced its price increase at the Amicale du Sanitaire meeting dated 5 February 2001. However, Duscholux provides the Commission with a letter dated 3 November 2000 that was sent to (...), a wholesaler, in order to evidence that that increase was already known on the market.⁶⁹⁸ This argument cannot be accepted. The evidence at the focus of the Commission's investigation notably concerns price increases in connection with forthcoming price cycles. The fact that internal price setting deliberation may have progressed within an undertaking before certain association meetings, or that planned price increases may have sometimes already been communicated to customers, does not alter the fact that these price increases were specifically discussed at those association meetings. Nor is their competitive significance called into question (as explained in detail in Section 5.2.4.1).

⁶⁹⁵ See, for example recitals (498) and (499) above. The Commission further observes that Duscholux' own submissions corroborate the Commission's findings in that regard: in particular, in its reply to the Letter of Facts of 2 July 2009, Duscholux reiterates that its internal price-setting procedure for the following year usually commenced in late August or early September to be ultimately completed in early December with the communication of the price lists to customers. The evidence adduced by the Commission concerns several meetings that took place during the period from September to November. Thus, the price information exchanges in the context of Amicale du Sanitaire meetings often preceded the communication of the price lists to customers.

⁶⁹⁶ (...)
⁶⁹⁷ (...)
⁶⁹⁸ (...)

- (530) Duscholux argues that the allegation of price discussions held at the Amicale du Sanitaire meeting of 10 June 2004 cannot apply to it, as the notes do not specifically refer to Duscholux itself.⁶⁹⁹ However, it is not disputed that Duscholux was present at that meeting. Furthermore, two sets of contemporaneous handwritten notes show that price increase discussions indeed took place at the meeting. The fact that the handwritten notes may not specifically record the communication of a price increase by Duscholux itself does not put into question the Commission's overall findings as to the nature of the meeting.⁷⁰⁰
- (531) In its reply to the SO, Duscholux admits that the information sharing system described by the Commission took place within Amicale du Sanitaire. By way of example, Duscholux recognises that it communicated at the meeting of 3 June 2003 a decrease of 3% of its turnover for the first five months of 2003.⁷⁰¹ It was further shown that participants used to exchange information on the variation of their respective turnover (and sales growth) through percentages giving their proportional increase or decrease relative to preceding periods. It is thus not critical that no actual or specific sales figures were exchanged at Amicale du Sanitaire meetings.⁷⁰²

(b) Vitreous China

Ideal Standard

- (532) Ideal Standard (...) the Commission's account of the facts regarding price coordination within the VC group.⁷⁰³ However, Ideal Standard submits that discussions on prices only started with the VC meeting of 17 September 2002.⁷⁰⁴ This argument cannot be accepted, as discussions on prices and rebates took place as from 2001 within the VC group.⁷⁰⁵
- (533) Ideal Standard further states in its reply to the SO that '*the minutes of the second VC meeting of 30 October 2001 evidence the exchange of sensitive business information (including sales volumes and turnover information) in relation to the Belgian ceramics market. This exchange continued until September 2004.*'⁷⁰⁶ Aside from Ideal Standard's theory on the existence of a separate infringement concerning the ceramics market (which the Commission addresses in Section 5.2.3), this submission corroborates the Commission's assessment of the facts.

Duravit

- (534) Duravit (...) that price discussions took place in the framework of the VC group. Nonetheless, it argues that there was no ensuing effect on the market because only gross prices were exchanged⁷⁰⁷ and that price increases exchanged at the meetings were not implemented most of the time.⁷⁰⁸ Duravit also argues that the development of market shares in Belgium constitutes evidence against the existence of collusive practices⁷⁰⁹ and that only general price increases or ranges of price increases were exchanged at some VC meetings.⁷¹⁰ Duravit further contests that

699 (...)

700 The same considerations apply with respect to the meeting of 15 November 2002, where two sets of handwritten notes attest to the fact that price increase information was also exchanged at that meeting. The fact that Duscholux has no memory of the latter price discussions or cannot assign the recorded price increase number to any particular participant is not sufficient to negate the Commission's assessment. (...)

701 (...)

702 (...)

703 (...)

704 (...)

705 See Section on the VC group. (...)

706 (...)

707 (...)

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710 (...)

members of the VC group distinguished between the different product segments (namely low-end, middle and luxury) when they exchanged their price increases.⁷¹¹

- (535) These arguments mostly relate to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are considered in detail in Part II. It is nonetheless noted at the outset that the Commission considers these arrangements to have had an anticompetitive object, thereby constituting a cartel infringement. The coordination of gross prices or ranges of price increases (or even general pricing policies) equally suffice for purposes of establishing anticompetitive price coordination. It is not necessary to establish (nor does the Commission seek to establish in this particular case) that participants necessarily agreed on specific price increases per particular products or product segments, nor that the coordination of gross prices systematically translated into coordinated final prices.⁷¹²
- (536) Accordingly, discussions on prices in the VC group would have been of no interest for Duravit.⁷¹³ However, Duravit's alleged lack of interest cannot possibly detract from the evidence attesting to such discussions in the context of VC meetings.⁷¹⁴ Moreover, Duravit's submission corroborates the Commission's findings regarding the centralized pricing policies employed by multi-national and medium-sized participants, as well as the ensuing links between the respective arrangements in Germany and Belgium.
- (537) Duravit argues that no price coordination took place before the meeting of 17 September 2002.⁷¹⁵ This argument cannot be accepted, as discussions on prices and rebates took place as from 2001 within the VC group. Concerning the meeting of 28 August 2001, in particular, Duravit argues that payment conditions and discounts for prompt payment are not to be considered rebates.⁷¹⁶ This argument must be rejected. It is irrelevant how discussions on these elements may possibly be categorized in the industry parlance. Even if it were to be assumed that they did not constitute rebates in the strict sense perceived by the industry, the key issue is that they most apparently concerned elements or conditions with a clear pricing dimension and that they were specifically discussed at a roundtable discussion at the VC meeting of 28 August 2001.
- (538) Moreover, Duravit (...) that business information was exchanged in the framework of the VC group.⁷¹⁷ However, Duravit contends that that exchange of information had in any case a very limited effect on competition, as it enabled the addressees to have only an overview of the general tendencies on the market⁷¹⁸ and that the conditions established in the case law regarding anti-competitive exchange of information are not fulfilled in this case.⁷¹⁹ The Commission takes the view that this exchange of information supplemented or supported the regular coordination of price increases. Therefore, it would be artificial to treat both behaviours separately. Further, the Commission considers that this information sharing system further increased the market transparency. Lastly, contrary to Duravit's suggestions,⁷²⁰ the sales figures

⁷¹¹ (...)

⁷¹² For the sake of completion, it is noted that the file indeed contains evidence of price increase discussions relating to product segments, for example "economy" and "luxury" segments: see for example recitals (509), (511) and (514).

⁷¹³ (...)

⁷¹⁴ See the developments given above on price coordination within the VC group.

⁷¹⁵ (...)

⁷¹⁶ (...)

⁷¹⁷ (...)

⁷¹⁸ (...)

⁷¹⁹ (...)

⁷²⁰ (...)

exchanged in the framework of VC were not sufficiently historic, but rather contemporaneous, as they usually covered a period (generally a year or a semester) up to the month preceding each meeting.

Sphinx and Keramag (both undertakings of the Sanitec group)

- (539) Sphinx generally acknowledges that it was a member of the VC group, (...) only discussions about ceramics took place at the VC meetings.⁷²¹
- (540) (...).⁷²² (...).⁷²³
- (541) Sphinx and Keramag also submit that members of the VC group did not intend to "*form a front vis-à-vis customers*", as noted in the minutes of the first VC meeting held on 28 August 2001.⁷²⁴ Moreover, Sphinx and Keramag contest that prices were discussed at certain VC meetings. In particular, they submit that no price exchange took place before the VC meeting held on 17 September 2002.⁷²⁵ Sphinx and Keramag also refer to the handwritten notes taken by (...) at the VC meeting held on 17 September 2002 to argue that no uniform price increase was fixed by the addressees.⁷²⁶ Finally, they argue that there were no price discussions at the VC meeting held on 28 and 29 April 2003 and that, in any case, they would have been unable to fix their price increases for 2004 at that time of the year.⁷²⁷
- (542) Most of these arguments pertain to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, they are addressed in detail in Part II. Sphinx and Keramag have actively participated in VC meetings since the association's inception in 2001. The documentary evidence put forward regarding price discussions within VC clearly corroborates Ideal Standard's leniency submissions. Turning to the specific meetings referred to by Sphinx and Keramag, the following observations are relevant: the argument that no price coordination took place before the meeting of 17 September 2002 cannot be accepted, as discussions on prices and rebates took place as from 2001 within the VC group. Contrary to Sphinx' and Keramag's suggestions, price coordination does not necessarily entail, nor imply, that participants have to agree specifically on a fixed rate of increase to be applied uniformly by all participants. Regardless, in this particular case, it is apparent that the planned price increases discussed at the meeting of 17 September 2002 for the forthcoming price cycle (2003) are very much uniform and aligned, as each participant is recorded to apply an increase of "+3+5" (3% for economy and 5% for higher-end products). It is also apparent that these price increases were discussed months prior to them becoming effective. Price discussions also took place at the meeting of 28 and 29 April 2003, mostly with a view to monitoring the implementation of prices – a practice that also formed part of the overall coordination scheme amongst members. Moreover, Duravit's planned price increases had not yet been implemented at the time of their exchange of information on price increases at the meeting. Finally, the Commission has pointed to documentary evidence establishing that participants also discussed the end-of-year bonuses for wholesalers at that same meeting of 28 and 29 April 2003.
- (543) Sphinx and Keramag argue that it is not probable that a system of information exchange on turnover figures and sales data could have underpinned a system of regular coordination of

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722 (...)
723 (...)
724 (...)
725 (...)
726 (...)
727 (...)

price increases.⁷²⁸ In any case, the exchange of information within the VC group is very unlikely to have had effect on competition,⁷²⁹ as only information on the general trend of the market was provided.⁷³⁰ The Commission takes the view that this exchange of information supplemented or supported the regular coordination of price increases and, thus, forms part of the overall coordination scheme at issue.

- (544) Sanitec argues that the Commission did not prove that representatives of Sphinx and Keramag attended the VC meeting of 8 September 2003.⁷³¹ The Commission cannot accept this argument. Indeed, confirmed attendance of the meeting was listed in an email sent to all members on 4 September 2003.⁷³² Further, (...) took handwritten notes⁷³³ at that meeting, in which both Sphinx and Keramag are mentioned several times, including concerning their price increases, as well as their date of implementation. Therefore, it must be concluded that both Sanitec's subsidiaries attended that meeting.

Villeroy & Boch

- (545) Villeroy & Boch contests the Commission's findings in relation to the Belgian market. Overall, it submits that no anti-competitive behaviour and, in particular, no price agreement took place within the framework of the VC group. Villeroy & Boch also argues that it did not take part in the price discussions that took place within the VC group.⁷³⁴ It further states that its prices had already been decided at the time where most price discussions took place within the VC group, especially in relation to the meeting of 17 September 2002. In this respect, it also argues that the confirmation of the price increases discussed at the previous meeting of 17 September 2002 at the meeting held on 14 January 2003 would not prove anything to the contrary.⁷³⁵ With regard to the meeting held on 28-29 April 2003, Villeroy & Boch contends that no price discussion can be alleged against it. It further argues that (...) notes of the meeting are illegible.⁷³⁶ According to Villeroy & Boch, its gross price lists were already available on the market at the time and the data exchanged showed average increase ranges at best.⁷³⁷ Turning to the meeting of 13 September 2004, Villeroy & Boch argues that its prices had already been set internally at the time when the exchanges took place.⁷³⁸ Finally, Villeroy & Boch contests the anti-competitive nature of the business information exchange within the VC group.⁷³⁹

- (546) These arguments cannot be accepted. By way of general comment, Villeroy & Boch's response in relation to Belgium revolves around the same recurring themes previously developed by it in

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730 (...)

731 (...)

732 (...)

733 (...)

734 (...) Villeroy & Boch contests in particular having taken part in price discussions held at the meetings of 17 September 2002, 14 January 2003 and 28-29 April 2003. The Commission has nonetheless proven to the requisite legal standard the opposite in the developments given here above on price coordination within the VC group.

735 (...)

736 (...)

737 (...)

738 (...)

739 Villeroy & Boch generally acknowledges that information sharing took place within VC. However, it argues that this exchange of information was not impermissible and that the figures exchanged were sufficiently aggregated. Villeroy & Boch further argues that only details of the total number of sanitary ceramics products sold by undertaking and by brand were exchanged, and that a comparison with the previous year's figures was also inserted, but that no valuable information was provided that could have been used for strategic purposes. In this regard, the Commission refers to recitals (516) to (518).

relation to other markets (see recitals (283)-(285) and (376)-(390) regarding Germany and Austria respectively). In particular, Villeroy & Boch systematically aims at recasting the Commission's case, with a view to diminishing (or otherwise blurring) the relevance and importance of coordinating list prices and, ultimately, confounding the issues of object and effect. Moreover, it seeks to create the impression that the price discussions at issue somehow concerned "published" prices of no competitive significance (and, thus, unobjectionable).

- (547) The evidence adduced by the Commission notably concerns future price increases in relation to forthcoming price cycles, discussed prior to their implementation. The contention that internal price setting deliberations within some participating undertakings may have progressed (or allegedly settled) before certain relevant association meetings does not detract from the fact that these future increases were specifically discussed amongst competitors within the framework of regular association meetings before becoming effective. Nor is their competitive significance in any way undermined, notably because participants still had every interest in removing or reducing uncertainty about the future conduct of their competitors (see further Section 5.2.4.1). In any event, the coordination of gross prices can equally be anticompetitive. Moreover, the Commission's case is not premised on the idea that coordination of list prices within the framework of regular meetings of the VC group automatically and systematically translated to coordinated end-consumer prices in Belgium.
- (548) In view of these considerations, the contention that internal price setting deliberations within Villeroy & Boch may have progressed (or even settled) before the meetings of 17 September 2002 and 13 September 2004 does not alter the Commission's assessment.⁷⁴⁰ Based on the documentary evidence put forward, Villeroy & Boch actively participated and is specifically recorded to have contributed in the price discussions at those meetings. Moreover, contrary to Villeroy & Boch's suggestion, the confirmation at the meeting held on 14 January 2003 of the price increases discussed at the previous meeting of 17 September 2002 speaks for the continuum of coordination – the later meeting aiming at monitoring or ensuring the implementation of the previously coordinated prices.
- (549) Similarly, the price discussions at the meeting of 28 and 29 April 2003 mostly concerned price increases already introduced (as would be normal for meetings taking place in the earlier months of the year) with a view to monitoring their implementation of prices. This practice equally formed part of the overall coordination scheme amongst members. In any event, it should also be noted that Duravit's planned price increases had not yet been introduced at the time of their communication at the meeting. Villeroy & Boch is recorded to have communicated an increase of 2 to 2.5% for its Saval line of products as of 1 March 2003 (only few weeks prior to the meeting, and not as of January of that year). This is confirmed by handwritten minutes taken by (...), then representative of Sphinx, who took note of an equivalent increase for the same series of products concerning Villeroy & Boch.⁷⁴¹ To conclude, the evidence in the Commission's file shows that Villeroy & Boch actively participated in price coordination arrangements within the VC group and, in that respect, several items of evidence specifically attests to its contribution at VC meetings.

(c) HCT

Masco

⁷⁴⁰ The fact remains that the price exchanges at issue took place several months prior to their implementation.

⁷⁴¹ (...)

(550) Masco, the group to which Damixa and Hüppe belong, (...) the Commission's account of the facts in relation to HCT.⁷⁴²

Hansa

(551) Similarly, in its reply to the SO, Hansa (...) its involvement in the HCT meetings nor the Commission's findings in that respect. Nonetheless, Hansa raises the fact that its subsidiary in Belgium was only created in 1995 and that, as a result, no infringement in Belgium can be held against it before that date.⁷⁴³ As this Decision concerns the period of 2003-2004 with regard to coordination at HCT meetings, it is not necessary to address this argument.

4.2.4.4 Conclusion

(552) Based on the considerations developed in Sections 4.2.4.1 to 4.2.4.3, undertakings active in the bathroom fittings and fixtures industry regularly coordinated their price increases in Belgium during the period from (...) 2000 to 2004.⁷⁴⁴ The coordination took place within a variety of settings, notably in the framework of regular meetings of the industry associations Home Comfort Team (HCT), Amicale du Sanitaire (Saniclub) and Vitreous China group.⁷⁴⁵ The evidence also shows that the scope of the coordination covered all product groups, namely taps and fittings, shower enclosures and ceramic sanitary ware.

⁷⁴² (...), Masco also argues that HCT included heating and kitchen furniture suppliers. Therefore, this association of undertakings could not necessarily be deemed to constitute compelling evidence for a single complex infringement of bathroom fixtures and fittings (...). This argument is addressed in Section 5.2.3 of the Decision regarding the single complex and continuous nature of the infringement.

⁷⁴³ (...) Hansa reiterates these arguments in its reply to the Letter of Facts.

⁷⁴⁴ Belgian manufacturers also coordinated their pricing on the occasion of specific events, such as the rising raw material costs. The Commission examines these occurrences in separate Sections (see Sections 4.3.2.5 with regard to Belgium).

⁷⁴⁵ (...) the Commission ultimately focused its investigation on the period from 2000 to 2004 (and did not include such evidence in the SO addressed to the parties).

4.2.5 France

4.2.5.1 Chronology and pattern of meetings within the framework of industry association(s)

(553) Annexes [11] and [12] provide a comprehensive list of meetings within AFICS and AFPR. The Annexes are intended to provide an overview of the relevant meetings, with a view to complementing the statement of facts presented in the following in chronological order (while also illustrating the incidence and ensuing pattern of coordination). It is noted that the total number of undertakings present at these meetings is often greater than the undertakings identified in the Annexes, as the Annexes only include those undertakings that are addressees of the Decision.⁷⁴⁶

4.2.5.2 The facts identified by the Commission

(554) (...), that taps and fittings producers regularly discussed their prices (including planned price increases) within the framework of AFPR over a number of years. Documentary evidence in the Commission's possession pertaining to AFPR meetings and other bilateral contacts corroborate that taps and fittings producers coordinated their prices during the period from (...) 2002 to 2004.⁷⁴⁷

(555) Within the framework of AFPR, regular discussions on upcoming price increases were held under the recurring agenda items headings "Tour de table" or "Tour de table de la conjoncture" of each meeting.⁷⁴⁸ Exchanges of price information commonly took place orally.⁷⁴⁹ The corresponding official minutes of the AFPR meetings only provide a summary of the discussions held under these agenda items.⁷⁵⁰ These summaries commonly refer to the exchange of volume and value sales data by supplier and product segment, with a view to compiling AFPR-wide statistics and ascertaining market trends. However, the evidence reveals that the discussions were not limited to the exchange of the data identified (nor, simply, to general discussions regarding market trends), but in fact covered information on prices and, in particular, upcoming price increases. The roundtable discussions thus provided the forum for coordination of price increases with respect to taps and fittings.⁷⁵¹ (...), the Commission considers, on balance, that proof of infringement can properly be established with regard to price coordination arrangements during the period from 2002 to 2004.

⁷⁴⁶ It is noted that Hansgrohe and (...) were represented at AFPR meetings between 1998 and 2004 by their joint venture (...). The joint venture was dissolved on 30 June 2004.

⁷⁴⁷ Moreover, further corroborative evidence regarding, specifically, the introduction of the 2004 mid-year increase attests to the parties' regular coordination of prices increases (see Section 4.3.2.4)

⁷⁴⁸ Meetings of the AFPR Bureau and AFIR Conseil d'Administration both contained the agenda items "*Tour de table de la conjoncture*" / "*Tour d'horizon de conjoncture*": (...). The meetings of the building equipment sub-committee also included the regular agenda point "*Tour de Table*" or "*Conjoncture*": (...)

⁷⁴⁹ Since the beginning of 2003, standard templates were circulated so as to enable each participant to keep better track of the oral reports given by the other participants, while taking notes. The templates were supposedly intended to record volume and value sales data by supplier and product segment: (...) The scope and content of the roundtable discussions within AFPR-Section Robinetterie Bâtiment/Sanitaire have evolved over time as to include the coordination of upcoming price increases.

⁷⁵⁰ See by way of example, the official minutes of the meeting on 26 November 1996, which summarise the roundtable discussion as follows: « *La synthèse dégagée après ce tour de table sur la conjoncture économique de 96 fait apparaître les tendances suivantes : dans l'ensemble 1996 pour la robinetterie sanitaire, le volume réalisé en nombre de pièces par rapport à 1995 est partout en baisse dans une fourchette de -1% à -10%. Le chiffre d'affaires est moins contrasté mais cependant également en recul de -1% à -5% [...]* ».

⁷⁵¹ Even if the gathering of volume/value data and their subsequent exchange and discussion at the AFPR roundtables were originally aimed at facilitating the compilation of reliable industry market information, it is apparent that the practice gradually evolved, as to include the coordination of prices or price increases on an increasingly systematic way. (...)

(556) With regard to AFICS, (...), that ceramics producers regularly discussed prices or price increases took place over a number of years.⁷⁵² (...), these meetings were held at least two or three times per year. At the AFICS meetings held in September of each year, the participants made a "tour d'horizon" in which they informed the others about the evolution and expected upcoming price changes.⁷⁵³ However, as (...) are not very detailed and direct documentary evidence in the Commission's possession only corroborates that ceramics producers coordinated their minimum prices during the AFICS meeting held on 25 February 2004, the Commission only finds that prices would have been coordinated in that meeting.

(557) The Commission refers in the following to specific meetings and contacts identified during the course of the investigation in chronological order. The statement of facts in relation to France focuses on the period from 2002 to 2004.

AFPR (2002-2004)

(558) At the roundtable discussion of the AFPR meeting dated 10 December 2002 (Section Robinetterie Bâtiment/Sanitaire), the participants discussed and exchanged specific information about their price increases for the year 2003. (...) took handwritten notes at the meeting, which included *inter alia* the following account of upcoming price increases (as reported orally by participants during the meeting):⁷⁵⁴

"Roca: PPHT 2003 [public price tax excluded]: +[0-5]% basics, +[0-5]% [unreadable] increase effective as of 1st February

SAS: PPHT 2003: +[0-5]% [...]

(...): PPHT '03: +[0-5]% effective as of 1st February '03

Grohe: PPHT 2003: +[0-5]% on average [...]

(...): PPHT '03: +[0-5]% [...]"

(559) These handwritten notes are undated. However, both the text and (...) confirm that they relate to price increases for 2003. More importantly, a comparison with another document (...) establishes that these price discussions and exchanges took place at the last AFPR meeting of the preceding year, on 10 December 2002. In particular, an email communication dated 12 December 2002 by (...) (Grohe France) was circulated internally within Grohe with a view to summarizing the "tour de table" discussion of the meeting of 10 December 2002. That email records information about upcoming price increases for 2003 by supplier that is identical to the handwritten notes submitted by (...).⁷⁵⁵ Moreover, it is noted that each of these documents (originating from different sources) contains information both on upcoming price increases and on the sales performance of each participant by volume/value and product segment. Therefore, it is evident that price coordination took place on the occasion of the AFPR roundtable discussions (so-called "tour de table" or "conjoncture"), which supposedly had the "benign" objective of facilitating the exchange of merely historic sales data with a view to compiling AFPR-wide statistics.

(560) (...).⁷⁵⁶ In particular, (...) ((...) for Grohe France) contacted AFPR by phone at the end of April to ask whether other members were also considering a mid-year increase. According to the information the AFPR had received from other suppliers, most competitors would consider

⁷⁵² (...) Roca France, attended the meetings organized by AFICS since 1993. The other participants typically included: Allia/(...) (Sanitec), Ideal Standard ((...)), Duravit and Villeroy & Boch.

⁷⁵³ (...)

⁷⁵⁴ (...)

⁷⁵⁵ (...) Hansa and (...) were not present at that meeting: (...).

⁷⁵⁶ (...)

such a price-increase. (...), subsequently, at the meeting of 11 May 2004, the participants exchanged information on their plans to increase prices. Each representative reported whether his undertaking would increase its prices or not, or whether they had not yet decided to do so. This is reflected in the handwritten notes taken by (...) at the meeting (which, for the avoidance of any doubt, resemble those of (...) representative and chair of that same meeting).⁷⁵⁷

- (561) Similarly, at the roundtable discussion of the AFPR meeting dated 11 May 2004 (Section Robinetterie Bâtiment/Sanitaire), the participants discussed and exchanged specific information about their upcoming price increases. (...), who was also acting as a chair of the Section, took handwritten notes in the margins of the standard template (itself intended to record the sales performance of each supplier by product segment).⁷⁵⁸ These notes contain *inter alia* the following account of upcoming price increases (as reported orally by participants during the meeting):⁷⁵⁹

*"Grohe: increase +[0-5]% as of 1 July 2004 [...]
(...): +[0-5]% of net price [...]
(...): [...] +[0-5]% in September 2004
Roca: ditto Sanifrace
(...): increase envisaged for July 2004: [0-5]% - ditto SAS
(...): price increase of [0-10]% between June and September"*

(...) also noted: "*Attention to raw materials price increases*".

- (562) The agreement to increase prices was subsequently reflected in an email entitled "price increase" that was circulated internally within (...) on 4 June 2004. It was sent by (...) and (...) to colleagues, including (...):⁷⁶⁰

*"For information, the entire profession has decided to apply a price increase of 3.5-4.5% on taps and fittings, hydrotherapy and accessories.
(...) will apply an increase of 3.5% for the (...) and (...) brands as from 1 August [2004].
Please find attached a copy of the correspondence that we are addressing to our clients". (...)*

- (563) An email communication dated 2 July 2004 by (...) to (...), and copied to (...), corroborates the notion that price information for future coordination purposes was exchanged by way of routine in the context of AFPR.⁷⁶¹ (...) communicated a 3.5% price increase for taps and fittings (within the % range previously agreed upon), with effect from 1 September 2004 for deliveries, and 15 July for orders (the letter announcing this increase to (...)’s clients being just sent in June 2004). In doing so, (...) expected that (...) would inform him about the price increases contemplated by other AFPR members. He specifically stated that, in return, he counted on (...) to transmit the same information to him as provided to the other AFPR members.

- (564) At the AFPR meeting of 10 September 2004 (Section Robinetterie Bâtiment/Sanitaire), the participants also exchanged specific information about their upcoming price increases. In

⁷⁵⁷ (...)

⁷⁵⁸ The agreement to standardise the reporting of volume and value sales data (by supplier and product sub-group) with the use of a standard template was taken at the AFPR meeting of 10 December 2002,(...).

⁷⁵⁹ (...)

⁷⁶⁰ "(...) *Pour information; l'ensemble de la profession a décidé d'appliquer une hausse entre 3.5 et 4.5 % sur la robinetterie, hydrothérapie et accessoires. (...) appliquera une hausse de 3.5 % pour les marques (...) et (...) à dater du 1^{er} août.*"

⁷⁶¹ (...)

particular, the handwritten notes taken by (...) during that meeting record *inter alia* the following:⁷⁶²

"Grohe +[0-5]% PPHT [public price tax excluded] as from 15/07
Hansgrohe: [unreadable]
Roca [0-5]% as of 1/09 (cast iron [0-5]%, steel +[5-10]%)
(...) [5-10]% on steel products [?] as of 1/09 and [0-5]% on [...]
(...)[5-10]% on buildings as of 1/09 and +[0-5]% global products [...]
(...) +[0-5]% as of 1/09."

- (565) The evidence presented in recital (564) exposes the true scope and content of the roundtable discussions within AFPR-Section Robinetterie Bâtiment/Sanitaire. It also establishes a clear link between those roundtable discussions and the coordination of price increases in relation to taps and fittings in France. Additional bilateral contacts between competitors further complement (and corroborate) this pattern of coordination.
- (566) More specifically, (...) provided a detailed account of his contacts with competitors regarding the price increases for 2005 (that took place in the course of 2004).⁷⁶³ The first contact was with (...) (Grohe) on 15 September 2004, on the occasion of a client meeting organised by (...).⁷⁶⁴ (...) they discussed *inter alia* the forthcoming 2005 price increase. Taking into account the preceding mid-year increase, they both considered at the time that it might be difficult to implement a new increase in 2005 and that this would be in the region of 0-2%, on average 1.5%.
- (567) (...).⁷⁶⁵ (...) called (...) on or around 29 October 2004 to find out what was on the agenda of the next committee meeting that was scheduled to take place the first week of November 2004. During that telephone conversation they discussed the upcoming 2005 price increase (some days before communicating it to their clients). (...) told (...) that (...) was going to increase prices by 5% on ceramics and 0% to 2% on taps and fittings. In turn, (...) told (...) that Roca France would increase ceramic prices by 3% to 5% and prices of taps and fittings by 1.5%.
- (568) Information obtained by (...) from such direct contacts with competitors was used internally during discussions on price increases. An exchange of emails between (...) and (...) on 13 October 2004 illustrates this: "After re-discussing with (...) today, please find below the % increases foreseen for 2005. The idea would be to apply the same % for Ideal Standard."⁷⁶⁶
- (569) Additional items of evidence in the Commission's possession attest to further contacts regarding, notably, the mid-year price increase in 2004.⁷⁶⁷ In particular, (...) that discussions regarding the mid-year increase also took place during the cruise organized by (...) in May 2004, that is, weeks or months prior to the implementation of the surcharge by certain suppliers.⁷⁶⁸ The evidence also shows that (...) followed-up bilateral contacts with (...), with a

⁷⁶² (...)

⁷⁶³ (...)

⁷⁶⁴ (...)

⁷⁶⁵ (...)

⁷⁶⁶ (...) "Après rediscussion ce jour avec (...), vous trouverez ci-dessous les % de hausse prévus pour 2005. L'idée serait d'appliquer pour IS les mêmes %."

⁷⁶⁷ These specific items of evidence corroborate the pattern of regular coordination between suppliers in France, but they can also be deemed to relate, more specifically, to the cartel participants' response to the rising prices of raw materials in mid-2004 (in the intervening time of the ordinary cycle of annual price increases). As such, there are analysed more fully in Section 4.2.3.4.

⁷⁶⁸ (...)

view to confirming the introduction of the cost surcharge and thus ensuring a coordinated response to the rising prices of raw materials.⁷⁶⁹

- (570) During the relevant period (2002-2004), AFPR continued to compile statistics on sales of taps and fittings (...), based on information transmitted regularly (usually, on a quarterly or yearly basis) by its members.⁷⁷⁰ In this context, the addressees often exchanged volume and value sales data for taps and fittings by supplier and product sub-category (indicating a percentage change compared with corresponding sales during the previous reporting period).⁷⁷¹ On other occasions, the data exchanged included average prices for three main families of products (two types of mixers⁷⁷² and thermostats) on an aggregate basis.⁷⁷³ On the basis of the information exchanged and discussed during the meetings, AFPR members were thus able to monitor the general progression of prices.⁷⁷⁴ The Commission considers that the regular exchange of this type of information thus enabled members to continuously monitor developments pertaining to other participants, with a view to ensuring stability and maintaining their close ties of cooperation and interaction.
- (571) Standard templates were often circulated so as to enable each participant to keep better track of the oral reports given by the other participants, while taking notes.⁷⁷⁵ This information formed the basis for the AFPR roundtable discussions (denoted as "tour de table" in the AFPR minutes). However, the discussions were not limited to the exchange of the data identified in this Section (nor, simply, to general discussions regarding market trends), but in fact covered information on prices and, in particular, upcoming price increases. This link is readily established on the basis of contemporaneous documents identified at recital (570), where the handwritten notes concerning price increase exchanges were made in the margin of the standard templates. The roundtable discussions thus provided the forum for coordination of price increases with respect to taps and fittings. Therefore, the Commission considers that it would be artificial to attempt to distinguish the information exchanges at issue from the overall price coordination scheme described in this Section for the period 2002 - 2004.

AFICS

- (572) (...) AFICS attendees coordinated the minimum prices of some of their products. In particular, (...) - at the AFICS meeting of 25 February 2004 - participants discussed a chart which was prepared by (...) AFICS, (...), showing the minimum and maximum prices applied on the market for six standard products. The study provided the minimum and maximum prices for six products, but did not give the names of the undertakings applying such prices. The attendees, including Allia, Ideal Standard, Duravit, Roca France and Villeroy & Boch, discussed these figures and all agreed that the minimum prices were too low and that they should be increased. They then agreed to apply a 3% increase in the catalogue prices of all products.⁷⁷⁶ Written documents were not circulated and there is no record of the discussion in the minutes of the meeting. (...) the increase was nonetheless discussed and agreed under the agenda point

⁷⁶⁹ (...)

⁷⁷⁰ (...)

⁷⁷¹ (...)

⁷⁷² That is, "*mélangeurs, mitigeurs*".

⁷⁷³ (...)

⁷⁷⁴ By way of example, the minutes of the AFPR meeting dated 8 March 2004, which was attended by Grohe, Ideal Standard France, Roca, and (...), among others, state that the permanent members of the AFPR need to make some checks as the AFPR price increases appear to be bigger than those of the market. (...)

⁷⁷⁵ (...)

⁷⁷⁶ (...) It is noted that the relevant AFICS meeting is sometimes referred to as the meeting of 24 February 2004, instead of 25 February 2004. For the avoidance of doubt, all relevant references refer to the same meeting.

“Catalogue” (which was duly listed in the agenda of that same meeting).⁷⁷⁷ (...)’s representative at AFICS meetings, subsequently drew up a table setting out the minimum and maximum price brackets for the six standard products for internal use, based on his best recollection of the information provided at the meeting.⁷⁷⁸ (...) also informed the Commission of the existence of a detailed exchange of information. It gave, in particular, tables showing an exchange of information relating to the sales during summer 2004.⁷⁷⁹

- (573) This information was confirmed in substance by (...). (...) AFICS members shared the perception that the prices of these low-end range products (...) were too low and that it was desirable to limit their progressive price decrease.⁷⁸⁰ In general, low-end products represented an important share of the sales of certain producers and AFICS members were considering possible alternatives to reverse this situation. In particular, attendees were contemplating two possibilities: either (i) increase the minimum prices for those specific low range products, for example by 3%, or (ii) apply a minimum price (“prix plancher”), for example, a minimum price of Euro 15 for washbasins at a certain point in time. (...), the discussions on minimum prices, which occurred two or three times between 2002 and 2004, were essentially prompted by the rapid growth of Chinese imports. (...) also provided further tables containing exchanges of information on sales covering the year 2004.
- (574) Further, members of AFICS have been exchanging confidential information on prices and sales for a number of years. To the extent that such exchange was carried out after the meeting of 25 February 2004, the Commission takes the view that this information exchange supported the primary price coordination plan concerned by this Decision. It is apparent that the turnover and sales information exchanged was not sufficiently aggregated, nor sufficiently historic. On the basis of this detailed information (in particular, percentage changes in comparison with the preceding reference period) participants were often able to calculate market shares.

4.2.5.3 The addressees' arguments in response to the SO and the Letter of Facts, and the Commission's considerations

- (575) This Section addresses the addressees' arguments regarding regular coordination of price increases in taps and fittings, within the framework of AFPR meetings and through bilateral contacts (during the period 2002-2004).⁷⁸¹ It also addresses the addressees' arguments in relation to the coordination of minimum prices for low-end ceramics products at the AFICS meeting of 25 February 2004.

AFPR

Masco

- (576) In its Reply to the SO, Masco (Hansgrohe) (...) the evidence put forward by the Commission regarding regular price coordination of price increases for taps and fittings during 2003 and 2004.⁷⁸²

⁷⁷⁷ (...)

⁷⁷⁸ (...)

⁷⁷⁹ (...)

⁷⁸⁰ (...)

⁷⁸¹ The parties' arguments pertaining specifically to the 2004 mid-year increase regarding taps and fittings are considered in more detail in Section 4.3.2.4. (...). It is thus not necessary to address in detail those parties' arguments on the issue.

⁷⁸² (...) In its reply, Masco clarified few factual points relating *inter alia* to the French market, (...).

Grohe

- (577) Similarly, Grohe's reply to the SO (...) Commission's findings, (...) the evidence put forward by the Commission in this regard (while also pointing to the added value of its leniency submissions).⁷⁸³

Ideal Standard

- (578) Ideal Standard's reply to the SO (...) Commission's findings regarding regular price coordination of price increases for taps and fittings during 2003 and 2004.⁷⁸⁴

Roca

- (579) In its reply to the SO, Roca France disputes the evidence put forward regarding regular coordination of price increases in taps and fittings, within the framework of AFPR meetings and through bilateral contacts.⁷⁸⁵ According to Roca France, the term "tour de table" or "conjoncture" denotes general discussions on market trends, and not only on prices. If prices were discussed, the topic was tackled from an aggregated macroeconomic perspective or from a past perspective. Roca France further attempts to qualify the evidence in the Commission's file by distinguishing between, on the one hand, discussions on future price increases that had already been communicated to customers and, on the other hand, discussions on future price increases that had not yet been communicated to customers. It then submits that there is only one exceptional case of exchange of future price increases not already communicated to customers, namely the mid-year price increase that was discussed *inter alia* at the AFPR meeting of 11 May 2004.⁷⁸⁶ With regard to the remaining items of evidence, Roca France states that it had already communicated its price increases to clients and that, generally, the undertaking is not aware of its managers having communicated its intended price increases in AFPR meetings before having communicated them to wholesalers.⁷⁸⁷ Finally, Roca France submits that the price information reported in the AFPR meetings referred to the increase rate for the whole category of taps and fittings, without distinguishing between products or series and without including details about discounts, rappels or target prices for certain customers.
- (580) With respect to the context of Roca France's submissions, the Commission refers to Section 8.8.4 concerning the assessment of applications pursuant to the Leniency Notice. First, Roca France labels the coordination of the 2004 mid-year increase as exceptional, while attempting to distinguish it from the pattern of regular price coordination within AFPR. However, the evidence put forward by the Commission in this respect does not merely attest to the cartel participants' response to the rising prices of raw materials in mid-2004 (in the intervening time of the ordinary cycle of annual price increases). It also corroborates the regular coordination of price increases with respect to taps and fittings in France. This is because the evidence is intrinsically linked to the pattern of regular price coordination within the framework of AFPR. The AFPR meeting of 11 May 2004 readily establishes proof of that very link. Moreover, the coordination of that price increase cannot be deemed to be any less serious or any less anticompetitive.

⁷⁸³ (...) Grohe nonetheless submitted that the Commission's file does not contain proof of participation by it in coordination of price increases prior to 2003. However, it is not necessary to address these arguments in further detail, given the Commission's findings regarding proof of regular coordination of price increases within the framework of AFPR prior to 2002.

⁷⁸⁴ (...)

⁷⁸⁵ (...)

⁷⁸⁶ (...)

⁷⁸⁷ Roca reiterates this argument also in relation to the notes of the of the AFPR meeting of 10 December 2002, cited in the Commission's Letter of Facts: (...).

- (581) Second, the price discussions at issue cannot be qualified as exchanges of "past price increases", even if certain addressees (including Roca France) had communicated their gross price lists to customers.⁷⁸⁸ The evidence clearly refers to increases to be applied during the following year (next price cycle), which were communicated months or weeks prior them becoming effective.⁷⁸⁹ As explained in Part II, from the organizational and strategic perspective of the participating undertakings, the period referred to by Roca France (two-three months prior to the following year/price cycle) is mostly critical (see, in particular, Section 5.2.4.1). In particular, this is precisely the period where the participants had every interest in removing, or substantially reducing, uncertainty as to the future competitive conduct of their competitors.
- (582) Finally, the claim that regular coordination of price increases covered more pricing details in other Member States (as compared with France) does not make the coordination in France any less serious or any less anticompetitive.

AFICS meeting of 25 February 2004

Ideal Standard

- (583) (...) Ideal Standard (...) the coordination of minimum prices at the AFICS meeting of 25 February 2004. Ideal Standard also (...) that the discussions on price regarding the low-range products referred to by Roca are in fact the discussions previously reported by it ((...)).⁷⁹⁰

Duravit

- (584) Duravit contests the regular occurrence of the exchanges within AFICS regarding coordination of minimum prices, (...). Nonetheless, (...) discussions about minimum prices took place on one occasion, namely at the AFICS meeting of 25 February 2004 (...).⁷⁹¹ Duravit (...) the discussion at that meeting indeed concerned low-end products. Finally, it states that it had no particular interest in the discussion, given its focus on higher-end products.

Allia (Sanitec) and Villeroy & Boch

- (585) Allia (Sanitec) and Villeroy & Boch consider that the coordination of minimum prices regarding low-end products within the framework of AFICS (both during the period identified by (...), and in the specific context of the AFICS meeting of 25 February 2004) cannot be proven.⁷⁹² Villeroy & Boch also states that, given its activities on the high-end segment of the market, it would have no interest in such discussions in any event. Allia submits in turn that the chart setting out the minimum and maximum price brackets for the six products, which was drawn up by (...) following that meeting (...), cannot be considered as corroborating contemporaneous document. Finally, Allia considers that it is unrealistic to conclude that manufacturers would have agreed on prices of low-end products, when those products are in fact the most competitive on the market.

Roca

⁷⁸⁸ This is a recurring theme raised also by other parties challenging the Commission's findings with respect to certain price coordination meetings. As such, it is addressed in more detail in Section 5.2.4.1.

⁷⁸⁹ In this regard, it is apparent that the email of 2 July 2004 by (...), which pertained to a mid-year price increase, was also communicated prior to Roca France. applying the price increases (in fact, already two months prior to the envisaged effective date for deliveries and two weeks prior to the envisaged effective date for orders).

⁷⁹⁰ (...)

⁷⁹¹ (...)

⁷⁹² (...)

- (586) Roca France provides a contradictory account of the facts. (...) it also attempts to discredit (...), with a view to concluding that the Commission should reconsider whether proof of coordination of minimum prices can be established.⁷⁹³ In particular, Roca France claims that the description of (...) as to the coordination of minimum prices at the meeting of 25 February 2004 has not been confirmed (...). Moreover, it states that the chart submitted by (...) cannot be relied upon as conclusive. According to Roca France, this evidence points at a possible confusion of (...) between the practices that took place in France and the practices that took place in Italy (as indicated by the fact that the document is in Italian).
- (587) The following considerations are pertinent with regard to the arguments raised by the addressees. First, there is no reason to question (...)’s detailed account of the facts in relation to the AFICS meeting of February 2004. In particular, (...) itself describes the practice of discussing minimum prices for low-end products over a period of 2 years (2002-2004), (...).⁷⁹⁴ (...) exemplifies that said practice, by reference to a specific meeting. In parallel, Duravit, which generally disputes the Commission’s findings, on this occasion confirms that exchanges about minimum prices took place precisely in the context of that same AFICS meeting (...). Moreover, there is no doubt that (...) refer to coordination regarding minimum prices for the same type of product, namely low-range ceramics. Thus, (...) (from different sources) substantially corroborate the content and context of the discussion on minimum prices for low-end products during the AFICS meeting of February 2004.
- (588) Second, the Commission has not claimed that the chart (...) qualifies as contemporaneous document. It represents, nonetheless, (...)’s attempt to provide the most detailed account of the facts explained in its submission. Even if this item of evidence were to be discounted, proof of coordination of minimum prices at the AFICS meeting of February 2004 can be established on the basis of the three leniency submissions.
- (589) Finally, the fact that the discussion on minimum prices might have been of more direct interest to Ideal Standard and Roca France (or that Villeroy & Boch and/or Duravit largely focused its activities in the high-end segment of the market) does not mean that participants allegedly focusing on high-end products were not concerned by the discussions on minimum prices for low-range products meeting (see further Section 5.2.4.4). Nor is it relevant that the low-end segment of the market may exhibit a higher degree of competition (relative to other segments).

4.2.5.4 Conclusion

- (590) Based on the considerations developed in Section 4.2.5.1 to 4.2.5.3, undertakings active in the bathroom fittings and fixtures industry coordinated their prices in France during the period from (...) 2002 to 2004. This coordination notably concerned future price increases within the framework of regular meetings of taps and fittings producers within the industry association AFPR.⁷⁹⁵ In the area of ceramics, manufacturers also coordinated their minimum prices for low-end products in the context of the industry association AFICS.
- (591) Undertakings involved in price coordination in France during the relevant period included: Masco, Grohe, Ideal Standard, Roca, Sanitec and Villeroy & Boch. The coordination took place

⁷⁹³ (...)

⁷⁹⁴ (...)

⁷⁹⁵ Taps and fittings producers also coordinated their pricing on the occasion of specific events, such as rising raw material prices in the course of 2004. The Commission examines this occurrence in Section 4.3.2.4.

within a variety of settings, both at multilateral level in the framework of the industry associations AFPR and AFICS, as well as at bilateral level.

4.2.6 *The Netherlands*

4.2.6.1 Chronology and pattern of meetings within the framework of industry association(s)

(592) Annex [13] provides a comprehensive list of meetings within SFP. The Annex is intended to provide an overview of the relevant meetings, with a view to complementing the statement of facts presented in the following in chronological order. It is noted that the total number of undertakings present at these meetings is often greater than the undertakings identified in the Annex, as the Annex only includes those undertakings that are addressees of the Decision.

4.2.6.2 The facts identified by the Commission

(593) Based on the evidence on the Commission's file and as confirmed by (...), SFP members exchanged annually their intended price increases for the following year,⁷⁹⁶ (...) from 1994 to December 1999.⁷⁹⁷ The coordination usually took place at the meeting preceding the price increase announcement to the wholesalers. [Non-confidential summary: intended increases were usually expressed as a range of percentages.]⁷⁹⁸ (...) explained that a price increase range such as 4% to 7% usually meant that a 4% increase would be applied to the low-end products and that a 7% increase would be applied to the luxury products.⁷⁹⁹ Further, the addressees would also inform each other on the subsequent implementation of their increases.⁸⁰⁰

(594) Although the discussions on price increases never appeared on the agenda of SFP meetings,⁸⁰¹ the topic was sometimes mentioned in the minutes of the meetings, either under the section called 'rondvraag' ('tour of questions'), or under the section 'marktafstemming' ('market harmonisation') or 'marktontwikkeling' ('market development').⁸⁰²

(595) It is noted at the outset that, because SFP was an umbrella association, the items of evidence presented in this section generally record price discussions held between manufacturers active in all three product groups covered by this Decision.⁸⁰³

(596) The first piece of evidence in the Commission's file specifically attesting to price increase discussions within the SFP is dated 28 September 1994. Indeed, at the meeting held on that date, the addressees shared their concerns about the increase of raw materials prices and concluded that they would increase their own prices as a result. In particular, the minutes of the meeting record the following price increases per undertaking: '*Duscholux: ca 5-10% as of 1 January 1995; Sphinx: ca 4-7% as of 1 April 1995 [...] Grohe:??; (...):?; Ucosan:?*'.⁸⁰⁴

(597) Further, the official minutes of the meeting held on 30 November 1994⁸⁰⁵ record under the heading "Rondvraag" (tour of questions) that (...) of Hansgrohe asked the following question:

⁷⁹⁶ (...)

⁷⁹⁷ As this Decision is adopted after 31 December 2009, the infringement is time-barred insofar as it relates the cartel meetings in the Netherlands within the framework of SFP. The Commission considers that there is a legitimate interest in finding that part of the infringement, as it is part of a wider overall infringement, and therefore helps explain the true scope and consistency of the anticompetitive behaviour. See Section 8.2 below.

⁷⁹⁸ (...)

⁷⁹⁹ (...)

⁸⁰⁰ (...)

⁸⁰¹ (...)

⁸⁰² (...)

⁸⁰³ (...)

⁸⁰⁴ (...)

⁸⁰⁵ (...)

'When and which price increases are or have been applied by SFP members?'⁸⁰⁶ A roundtable discussion followed and every participant communicated its price increases. These increases were not recorded in the official minutes. However, contemporaneous handwritten notes of the price increases communicated at the meeting, likely taken by (...) of Duscholux, record *inter alia* the following:⁸⁰⁷

'Grohe 1 April [0-5]%
[0-5]% Kludi
3% [name of undertaking is illegible]
4% [name of undertaking is illegible]
[0-5]% Ucosan from 1 Jan. 1995'

These handwritten notes also establish proof that SFP members did not always record their discussions (in particular discussions concerning prices) in the official meeting minutes.

- (598) Participants also exchanged their price increases at the meeting of 26 November 1996. In this regard, the official minutes of the meeting record that several manufacturers would increase their prices within a range of 2% to 6% as of January 1997.⁸⁰⁸ This discussion took place in the framework of the 'rondvraag' (tour of questions), after (...) asked whether there would be price increases.
- (599) At SFP meeting of 13 May 1998, the members followed a presentation on competition law given by lawyers specialised in the field.⁸⁰⁹
- (600) Nonetheless, they again exchanged their price increases at the meeting of 20 January 1999. Although the official minutes do not include these discussions, contemporaneous handwritten notes taken at that meeting⁸¹⁰ and found at Hansgrohe's premises record the following increases per member as of 1 April 1999:

'VB [0-5]%
SP [0-5]%
Ucosan [0-5]%
Grohe [0-5]%
Hansa [0-5]%
[Hüppe [0-5]% as of 1/6/1999]

This discussion on price increases took place months before their actual implementation, (...) that it even communicated its increases to the wholesalers in September 1999 only.⁸¹¹ Further, the discrepancy between the handwritten notes and the official minutes (which do not mention at all the discussions on price increases at all) establishes that SFP members knew that their conduct was illegal and intended to conceal it by excluding any sensitive issue from the official minutes.

⁸⁰⁶ (...) "(...): Wanneer en welke prijsverhogingen worden/werden door de SFP leden toegepast? hierna volgt een rondje met opgaven." (...)

⁸⁰⁷ (...)

⁸⁰⁸ (...). As already explained above, a range of price increase such as 2-6% indicated that there would be an increase of 2% applied to the products of the low segment and an increase of 6% applied to the luxury products⁸⁰⁸. In addition, (...), the minutes of that meeting also state that further price increases would be implemented in the course of the year. However, the minutes do not contain more details on that regard.

⁸⁰⁹ (...)

⁸¹⁰ (...) Although these handwritten notes are undated, a close comparison of their contents with the official minutes of the meeting of 20 January 1999 (...) clearly show that the handwritten notes refer to the same meeting. This is further corroborated by the fact that the handwritten notes and the official minutes were both drafted by (...).

⁸¹¹ (...)

- (601) (...) ⁸¹² the Commission ultimately decided to focus its investigation on SFP on this time span and considers that price coordination took place in the Netherlands from 1994 to 1999.
- (602) The price coordination was also supplemented throughout the infringement period by a detailed and very organized system of information exchange, maintained in the form of comprehensive tables with indexes. The information was collected by the member in charge of the drafting of the minutes or, by default, by (...) of Grohe. ⁸¹³ The given numbers represented individual turnover information in the form of an index indicating how sales had developed in comparison with a given preceding period ⁸¹⁴ (which was considered as a point of reference of 100%). ⁸¹⁵ For instance, if a manufacturer had increased its sales by 5% in the low-end segment, it would give an index of 105%. On the contrary, if the results were negative as compared to the preceding period (a diminution of 2% for example), the given index would be of 98%. ⁸¹⁶ This exchange of information took place several times a year and was made compulsory to all members, which were also bound by an obligation of secrecy. ⁸¹⁷
- (603) The reliability of the indexes provided by each member could be easily checked with the 0.4% advertising surcharge due to the SVS by each of them. ⁸¹⁸ Indeed, manufacturers and wholesalers had agreed in the context of the SVS to apply an advertising surcharge (called "*branche-toeslag*") that was directly passed on the final consumers. Their purpose was to have a common advertising and promotion of the plumbing sector with the funds collected via the surcharge. Because it was applied on each invoice, the surcharge amounted to 0.4% on the total turnover of each undertaking. ⁸¹⁹ Therefore, a undertaking's turnover could be easily deduced on the basis of the final amount paid to the SVS, and SFP members were in turn able to check the accuracy of the sales information collected at each of their meeting thanks to the SVS advertising surcharge. ⁸²⁰ This is further confirmed by the SFP meeting of 19 March 1996, at which the addressees agreed that the advertising surcharge would be used to calculate the index figures. ⁸²¹
- (604) The tables regrouping the index were either included in the SFP minutes or attached as an annex. ⁸²² The tables identified each SFP member and included the following information per member: ⁸²³
- (i) The first column ('standaard') listed the indexes for the low-end segment (standard products);
 - (ii) The second column ('Luxe') listed the indexes for the high-end segment (luxury products);

812 (...)

813 (...)

814 (...)

815 (...)

816 (...)

817 As imposed in SFP's code of conduct ('gedragscode'). (...) For example, members who did not attend the SFP meeting held on 28 September 1994 were requested to send their indexes to the person in charge of the minutes by fax or by post. (...)

818 (...)

819 The surcharge was indeed compulsory for every SFP member. (...)

820 (...)

821 (...)

822 The members also often exchanged comments on the index, such as justifications or explanations on the trends of the market. For example, the parties would put forward the influence of a strike held in the building sector, or would emphasise that their sales to a given wholesaler would have diminished or increased. Lastly, they would also occasionally discuss certain customers. (...)

823 (...)

(iii) The third column ('Top 5' or 'Top 6') listed the indexes for each firm's 5 or 6 largest customers (namely the wholesalers) which was of interest as the members knew each other's largest buyers,⁸²⁴

(iv) The fourth column ('totaal') listed the global indexes (total evolution of the turnover);

(v) The fifth column ('budget') listed the expected total indexes for the forthcoming period (that is for the following year or the following months).⁸²⁵

(605) This detailed information sharing system enabled participants constantly to monitor the market position of each SFP member and calculate the evolution of their respective market shares, with a view to supporting the price coordination scheme and ensuring market stability. It was collected in a systematic way and pertained to recent, present and even forward-looking sales data, broken down by competitor, product category and top customers. It was further organized in the context of a market which was already rendered more transparent, because of the coordination of price increases. Overall, contrary to the addressees' suggestions, the information sharing system at issue cannot thus possibly be portrayed as of benign historic value. Nor can it be disassociated from the price coordination scheme concerned by this Decision, as both the sales data sharing and the price increase exchanges in question were taking place at the same SFP meetings. The level of detail, frequency and organization of the information sharing system further attests to its significance for SFP members (and suffices to disprove any contentions to the contrary). Therefore, the Commission takes the view that it would be artificial to attempt to distinguish this exchange of sensitive information from the overall price coordination scheme concerned by this Decision).

4.2.6.3 The addressees' arguments in response to the SO and the Letter of Facts, and the Commission's findings

(606) (...) the Commission's investigation regarding SFP is focused on the period 1994 to 1999.

Masco

(607) In its reply to the SO, Masco (...) the Commission's findings.

Grohe

(608) Similarly, in its reply to the SO, Grohe (...) the Commission's findings. Nonetheless, Grohe argues that it considerably helped the Commission in its investigation, notably concerning the division of the index figures into five categories.⁸²⁶ (...).⁸²⁷

⁸²⁴ In 1994, the parties decided to broaden the top 5 to a top 6, as this is indicated below in the same Section. (...) even though the top 5 customers could vary from one undertaking to another, the parties knew who the others' largest clients were. This statement is corroborated by further evidence. For example, when the parties broadened the top 5 to a top 6, they explained that this was done in order to take into account another wholesaler, namely (...). In addition, in a letter dated 27 April 1994 (...) provided (...) with index figures relating to sales to specific (...) customers in 1993 and 1994 (January and February), based on the assumption that the 1992 index amounted to 100%. An index was also provided for total sales by Standaard and Luxe products. In particular, the letter mentioned that the indexes were given per 'big wholesaler' and listed the five of them, that is (...). Therefore, the SFP members knew the identity of the other members' largest customers.

⁸²⁵ (...) The parties would also occasionally exchange more particular turnover information. For example, in a letter dated 23 June 1994 from (...) to SFP members, (...) requested the other members to provide turnover information regarding Belgium at the meeting to be held on 30 June 1994.

⁸²⁶ (...)

⁸²⁷ (...)

Ideal Standard

- (609) According to Ideal Standard, the Commission cannot prove that discussions on price increases took place among ceramics producers at SFP meetings only on the basis of the declarations given by (...) only, as those declarations were made on behalf of an undertaking that is not a ceramics producer. This argument cannot be accepted. The Commission's findings on price increase discussions are not solely founded on a leniency statement, but have been further corroborated by additional items of evidence. In addition, it should be again stated that SFP is an umbrella organisation in which undertakings that are active in all three product groups covered by this Decision met and discussed prices together, with no distinction as to specific products.⁸²⁸ Therefore, a tap manufacturer would, in any case, have followed discussions between ceramics manufacturers.
- (610) Ideal Standard also argues that the addressees did not monitor the implementation of price increases and that they did not try to conceal their anti-competitive behaviours. These two arguments would indicate that they did not view their conduct as particularly pernicious.⁸²⁹ However, these arguments are not credible since, as developed in Section 4.2.6.2, the addressees were aware of the illegality of their behaviour since at least 1998. In any event, Ideal Standard's arguments are not relevant either, since the Commission does not have to demonstrate that the addressees were aware of the unlawfulness of their actions.
- (611) Ideal Standard submits that the letter dated 23 June 1994 from (...) to SFP members⁸³⁰ should not be taken into account as it requested SFP members to prepare their index information for a meeting to be held on 30 June 1994 that finally did not take place.⁸³¹ This argument cannot be accepted. Indeed, this letter is overall indicative of the fact that the addressees gave importance to turnover and sales figures and that these indices enabled participants to better analyse their situation on the market.
- (612) Finally, Ideal Standard argues that the indices exchanged by the addressees covered product scopes that were too broad or too general to constitute useful information. Ideal Standard further adds that this was confirmed by (...).⁸³² These arguments cannot be accepted. The document to which Ideal Standard refers,⁸³³ in which (...) declared that the indices were used as indications, must be assessed in the context of his overall declaration. Indeed, in a later statement, (...) confirms that the indices were useful as general guidance to gauge the market and that they permitted an undertaking to determine its actual performance on the market.⁸³⁴ Further, due to the price increase coordination, the market was already rendered transparent. As a result, the Commission considers that this exchange of information complemented and facilitated the coordination of price increases.

Villeroy & Boch

- (613) In its reply to the SO, Villeroy & Boch contests being a member of an association that would also include taps and fittings manufacturers. It states that, in the Netherlands it was a member

⁸²⁸ This is visible from the minutes of every meeting of the SFP but also from the SFP's conditions of admission ('toelatingstoetsing') that specifically confirm this assertion in their first paragraph. (...)

⁸²⁹ (...)

⁸³⁰ (...)

⁸³¹ (...)

⁸³² (...)

⁸³³ (...)

⁸³⁴ (...)

of SFP, a ceramics manufacturers association.⁸³⁵ This argument must be rejected. As explained, SFP was an umbrella organisation covering all product groups and in which the members would discuss together their price increases, with no distinction as to the products.

- (614) Regarding the SFP meeting held on 30 November 1994,⁸³⁶ Villeroy & Boch argues that the minutes do not indicate which undertaking replied to (...)’s question on what the price increases would be and from when they would apply. Villeroy & Boch adds that it was not present at that meeting.⁸³⁷ These arguments cannot be accepted. Indeed, the Commission notes in that regard that the minutes of that meeting indicate precisely that every undertaking replied to (...) as it is stated that, following his question, a roundtable discussion took place where everyone collaborated.
- (615) Villeroy & Boch also states that the range of price increases indicated in the minutes of the meeting held on 28 September 1994 is too broad (5% to 10%) and that it does not permit any conclusion on the price increases that would be applied per product group. Villeroy & Boch concludes that these price discussions did not concern ceramics manufacturers.⁸³⁸ This argument must be rejected. Indeed, a range of 5% to 10% meant that a price increase of 5% would be applied to the low-end products and that an increase of 10% would be applied to luxury products. Further, discussions on prices within SFP involved manufacturers of the three product groups. Therefore, ceramics manufacturers also took part in price discussions. This is also confirmed by the fact that Sphinx, another ceramics manufacturer, also exchanged its price increase at that meeting.⁸³⁹ The Commission further reiterates that it is not required to prove that the price increases exchanged amongst participants consisted or translated to individualized net prices.⁸⁴⁰
- (616) Villeroy & Boch also submits that the Commission does not prove that price discussions were held before their transmission to wholesalers. In that regard, Villeroy & Boch also refers to (...)’s submissions according to which SFP members exchanged information on whether they had actually implemented their price increase announcements.⁸⁴¹ This argument cannot be accepted. The evidence at the focus of the Commission’s investigation (including, in particular, notes relating to the SFP meetings of 28 September 1994, 30 November 1994, 26 November 1996 and 20 January 1999) notably concerns price increases in connection with forthcoming price cycles (to be applied usually as of 1st April of each year). The fact that internal price setting deliberations may have progressed within an undertaking before certain association meetings, or that planned price increases may have sometimes already been communicated to customers pending their put into effect, does not alter the fact that these future price increases were specifically discussed at the association meetings in question. Nor is their competitive significance called into question (see further details in Part II, notably Section 5.2.4.1).⁸⁴²

835 (...)

836 (...)

837 (...)

838 (...)

839 (...)

840 (...)

The same considerations apply with respect to Villeroy & Boch’s contention that the price increases communicated at SFP meetings (including at the meetings of 30 November 1994 and 20 January 1999) should not be deemed anticompetitive as they actually concerned average gross price increases: see for instance Villeroy & Boch reply to the Letter of Facts of 10 July 2009. For the sake of completion, it is noted at the outset that the coordination of gross/list prices equally constitutes an infringement of competition rules.

841 (...)

842 (...)

The same considerations apply also with respect to Villeroy & Boch’s arguments that the price increase exchanges at the SFP meetings of 30 November 1994 and 20 January 1999 were not objectionable, given that Villeroy & Boch had already determined its price lists internally or announced them to customers: (...)

- (617) Villeroy & Boch argues that none of the minutes of SFP meetings can be used as evidence of price discussions. In particular, it submits that it cannot be considered liable for Ucosan's attendance at SFP meetings (certainly for the period prior to 1999). Villeroy & Boch also states that (...)’s declarations on price discussions among ceramics manufacturers have no evidentiary basis.⁸⁴³ These arguments cannot be accepted. First, the Commission notes that (...) ⁸⁴⁴ (according to which ceramics manufacturers Sphinx, Keramag, Villeroy & Boch and Ideal Standard also discussed cross-border pricing during SFP meetings) is corroborated by (...) (according to which SFP members used to discuss their price increases⁸⁴⁵). As regards SFP meetings in general, the Commission observes that Villeroy & Boch has been a regular participant from at least 1994 to 1999.⁸⁴⁶ In particular, Villeroy & Boch was present at the SFP meeting of 28 September 1994, 26 November 1996 and 20 January 1999 where price increases were discussed amongst participants.⁸⁴⁷ Furthermore, it consistently contributed to the exchange of sensitive business information within SFP during the relevant period (see meetings listed in Annex 14 of the Decision).⁸⁴⁸
- (618) Finally, Villeroy & Boch submits that liability for the alleged anticompetitive conduct in the context of SFP meetings would be, in any event, time-barred. The Commission does not share this view and further develops its observations in Section 8.2 (on limitation periods).

Sanitec

- (619) Sanitec argues that the Commission has not demonstrated that the addressees discussed their prices within SFP.⁸⁴⁹ This argument cannot be accepted. SFP members exchanged their price increases on several occasions between 1994 and 1999.
- (620) Sanitec also argues that the table indicating the recurrence and attendance of SFP meetings is not reliable, as for some meetings, the Commission indicated the presence of only one undertaking.⁸⁵⁰ The reason is that the minutes or agendas of the concerned meetings did not indicate who was present but only the name of the undertaking that hosted the meeting or of the one that drafted the minutes. Therefore, the Commission did not attempt to guess attendance where it was not clearly referred to in a document concerning the meeting.

Sphinx and Keramag (both part of Sanitec)

843 (...)

844 (...)

845 (...)

846 The Commission's assessment is based on Villeroy & Boch's own participation at the said meetings. In addition, Villeroy & Boch acquired 100% of Ucosan in November 1999 (previously holding 50% of the shares since 1989). Ucosan also participated in some SFP meetings (see for example SFP meetings of 21 February 1995, 4 April 1995, 23 April 1996, 25 July 1996 and 5 March 1998). In its reply to the Letter of Facts of 10 July 2009, Villeroy & Boch seeks to clarify that only Ucosan participated in the latter meetings and, thus, liability cannot be imputed on Villeroy & Boch. As regards liability for Ucosan's conduct, the Commission refers to its conclusions in Section 6.2.8 below. It is nonetheless noted at the outset that Villeroy & Boch attended, in its own capacity, several other SFP meetings during the relevant period.

847 (...)

848 This includes the SFP meetings of 13 June 1995 and 31 January 1996, for which Villeroy & Boch contests that they were anticompetitive despite its attendance. The evidence in the Commission's file indicates that the latter meetings similarly involved the exchange of sensitive business information (for example in the form of turnover indices, as described in Section 4.2.6.2).

849 (...)

850 (...)

- (621) Sphinx and Keramag argue that the only evidence provided by the Commission in support of its findings that price increases were discussed at SFP meetings is based on the leniency applications.⁸⁵¹ This argument must be rejected. Indeed, the evidence relied on by the Commission comes from various sources and includes inspection documents.⁸⁵²
- (622) Sphinx and Keramag also argue that no price discussions took place within SFP and that the Commission provides no reliable evidence of such discussions.⁸⁵³ Keramag (...) further refer to the table in the SO listing SFP meetings and state that evidence of price discussions cannot be found in the minutes of every meeting.⁸⁵⁴ These arguments must be rejected. Indeed, as already established, regular price discussions took place from 1994 to 1999 in the framework of SFP.⁸⁵⁵ Further, as for Table [13] listing SFP meetings, this table refers to meetings in which any relevant conduct took place, including those at which business information was shared. Finally, Keramag is mistaken in alleging that no minutes contain evidence of price discussions. The Commission specifically refers to minutes of SFP meetings in which there is clear evidence of price increase discussions at recitals (593) to (600).⁸⁵⁶
- (623) Sphinx and Keramag also submit that, if there were price discussions within SFP, they did not include ceramics manufacturers.⁸⁵⁷ This argument cannot be accepted. Indeed, as established at recitals (593) to (605), price discussions held in SFP involved undertakings active in the three products groups and the fact that membership covered more than one product group does not detract from the nature of such price discussions. Moreover, it corroborates the Commission's overall findings regarding the links between the product groups concerned by this Decision.
- (624) Concerning the exchange of business information, Sphinx and Keramag state that sometimes a forecast of potential turnover in the next quarter was included.⁸⁵⁸ As indicated in recitals (602) to (605), this did not occur occasionally but rather on a regular basis and the forecast could have covered more than the next quarter, for example the following year.⁸⁵⁹
- (625) Sphinx and Keramag submit that the Commission did not demonstrate the anti-competitive effect of the exchange of information within SFP.⁸⁶⁰ However, as explained in recitals (602) to (605), this exchange of information took place at the same meetings as the exchange of price increases and therefore facilitated discussions on prices, on a market that was already rendered artificially transparent.
- (626) In its reply to the Letter of Facts, Sphinx also contests that any anti-competitive exchange took place at the meetings of 13 September 1996, 26 November 1996 and 22 April 1997. However, Table 13 illustrates how regularly the manufacturers met in the Netherlands. Further, the participants exchanged information on their sales at those meetings which, as described in recitals (602) to (605), supported the price increase coordination.
- (627) Sphinx also argues in its reply to the Letter of Facts that the price increases exchanged at SFP meeting of 26 November 1996 were already public knowledge, as they would have been

851 (...)

852 See in this regard the developments given in recitals (597) and (600).

853 (...)

854 (...)

855 See above, all the developments given in Section 4.2.6.2. on regular coordination of price increases.

856 (...)

857 (...)

858 (...)

859 See development given above in this Section regarding the Dutch market and exchange of sensitive business information.

860 (...)

transmitted to customers at that point in printed catalogues. The Commission notes however that Sphinx has not provided any evidence to substantiate this allegation. Further, Sphinx also states that, because the meeting took place at (...) premises and (...) was not an addressee of the SO, the only possible conclusion is that none of (...) actions were deemed anti-competitive by the Commission. As a result, a meeting held at (...) premises could not be deemed anti-competitive either. This argument cannot be accepted, as the minutes of that meeting clearly show that the addressees, including Sphinx, discussed their price increases.

- (628) Finally, as regards the SFP meeting of 20 January 1999, Sphinx argues that it did not take part in any price increase discussion, as no indication of such discussion appears on the minutes of that meeting. The Commission cannot accept this argument. As explained at recital (600), the handwritten notes taken at that meeting by Hansgrohe clearly indicate price increases planned by several manufacturers, including Sphinx. Further, these increases in price were clearly exchanged before the end of the meeting, as they appear in the handwritten notes under the point "rondvraag", but before the final comments made by the manufacturers. Therefore, all attendants had the opportunity to follow the exchange. Lastly, a close comparison of those notes with the official minutes of the meeting shows that the contents of both documents are identical, with the exception of the exchange of price increases, which can easily be explained by the addressees' awareness of the unlawful nature of their conduct, as they were told at the SFP meeting of 13 May 1998.

Hansa

- (629) In its reply to the SO, Hansa denies being a member of SVS.⁸⁶¹ This argument must be rejected. As developed in Section 2.2, an undertaking could not become a member of SFP without being a member of the SVS. Moreover, (...) represented SFP at SVS meetings, and therefore all the members of SFP, including Hansa.⁸⁶²

4.2.6.4 Conclusion

- (630) Based on the considerations developed in Sections 4.2.6.1 to 4.2.6.3, undertakings active in the bathroom fittings and fixtures industry coordinated their price increases on an annual basis in the Netherlands (...) from 1994 to December 1999.⁸⁶³(...)⁸⁶⁴ The evidence also shows that the scope of the coordination covered every product group, namely taps and fittings, shower enclosures and ceramic sanitary ware.
- (631) Undertakings involved in regular coordination of price increases in the Netherlands during that period included: Villeroy & Boch, Sphinx, Grohe, Hansgrohe, Ideal Standard, Duscholux, Keramag, Hansa and Hüppe.
- (632) Coordination took place within a variety of settings at a multilateral and a bilateral level in the framework of SFP.

⁸⁶¹ (...) Similarly, in its reply to the Letter of Facts dated 30 June 2009, Hansa (...) the Commission's findings and points to a number of corroborating documents submitted with its leniency application. The latter arguments pertain to the assessment of the added value of Hansa's leniency submissions and, as such, they are further addressed at Section 8.8.5 below.

⁸⁶² (...)

⁸⁶³ Although the last exchange of price increases is dated 20 January 1999, the relevant date of termination in the Netherlands shall be deemed 31 December, as the price discussed at the SFP meeting of January were to have effect in the Netherlands until at least 31 December of the same year. (...)

⁸⁶⁴ (...)

4.3 Specific events for which prices were fixed or coordinated

4.3.1 The introduction of the Euro

(633) The Commission considers that the coordination on the occasion of the introduction of the Euro is an extension of the regular coordination of annual price increases, with participants focusing their coordinative efforts particularly on the timing and other transitional arrangements of the 2002 price lists. Indeed, issues relating to the modalities of the Euro introduction were discussed in conjunction with the planned price increases for the 2002 price cycle (within the same framework of regular association meetings). Although the relevant facts set out in this Section mainly relate to the timing of the price increases on the occasion of the Euro introduction, the Commission considers that they attest to the operation of the annual price coordination cycles (and should be assessed in the overall context of the price coordination scheme concerned by this Decision).

4.3.1.1 Germany

The facts identified by the Commission

(634) In Germany, participants attempted to find a common approach on the timing of price changes due to the introduction of the Euro at the level of the IFS, the umbrella association covering all product groups addressed by this Decision. In this regard, a letter sent by IFS to (...) on 29 June 2001 included a plan for the implementation of the price increase connected to the Euro:

*"Dear (...), according to the conclusions at hand here the IFS members themselves also intend to implement the following plan in the matter mentioned above: 1. announcement of the price increase in Euro for 31. July 2001, differentiated according to goods- and product-groups. 2. Validity of the price lists from 01.10.2001, 3. Validity of price increases from 1. January 2002 on. Some undertakings of the sanitary business have already informed their wholesaler customers."*⁸⁶⁵

(635) That IFS letter was sent to various undertakings, including Hansgrohe, Grohe, Ideal Standard, Kludi, Hansa and Dornbracht.⁸⁶⁶ However, since manufacturers and wholesalers ultimately disagreed as to the exact timing of the introduction of the surcharge, IFS members did not finally agree on a common approach.⁸⁶⁷

(636) The manner in which the entire industry sought to align its conduct regarding the Euro introduction is further evident from an ADA meeting on 23 June 2001. The minutes of that meeting record discussions about the decreasing prices in the shower enclosures segment and also state:

⁸⁶⁵ (...) the template letter by AGSI dated 22 June 2001 where (...), the Chairman of both AGSI and IFS, sets out the details for the implementation of the new Euro prices. A similar letter was sent by (...), dated 29 June 2001(...). German text: "*Sehr geehrter (...), nach dem hier vorliegenden Erkenntnissen beabsichtigen auch die IFS-Mitglieder selbst in o.g. Angelegenheit durchgängig folgenden Umsetzungsplan: 1. Bekanntgabe der Preiserhöhung in Euro zum 31. Juli 2001, differenziert nach Waren- und Produktgruppen. 2. Gültigkeit der Preislisten ab 01.10.2001. 3. Wirksamkeit der Preiserhöhungen zum 1. Januar 2002. Einige Unternehmen der Sanitärbranche haben ihre Großhandelskunden bereits entsprechend informiert.*"

⁸⁶⁶ (...): the address list and the copies of the letter. Discussions on the timing of the introduction of the Euro among the producers had already taken place during a meeting of the DSI, the predecessor of the IFS, on 5 October 2000, where it was stated that the prices for 2002 should be submitted to the wholesalers in August 2001: (...). Similarly, the Euro pricing and its timing had already also been a topic at the IFS meeting on 23 May 2001 (...), and was also discussed at the meeting on 14 November 2001, (...).

⁸⁶⁷ (...)

*"In connection with the pending conversion of DM to Euro a lively discussion arose, how one could reconcile the legal requirements and the urgently required price alignments on the other hand and bring this all then also in accord with the view of the wholesalers. The model as suggested by AGSI / IFS got general consent, at the same time possible problems regarding the implementation in practice were pointed out. It was determined that (...) would take up contact with (...) (AGSI/IFS) and (...) with (...) in order to determine how the discussions with the wholesalers should be conducted and which result has been achieved. The members of the ADA would then follow this approach."*⁸⁶⁸

(637) The matter was therefore dealt with at the level of the various product-specific associations. Nonetheless, an internal email of (...) shows when making the decisions, the discussions held in the various product groups were taken into account:

"I have had some telephone conversations with colleagues in the sanitary business in order to get a feeling for the price situation 2002:

Planned price increases:

- of the shower enclosure manufacturers: approx. [0-5]%

- of the ceramics producers: approx. [5-10]%

*On the one hand, the increased competition leads to cheap products, on the other hand the cost spiral is increasing. As a consequence, we also have to increase by [0-5]%. ... Due to the Euro-change at the end of the year the price increase cycle should be moved to an earlier point in time. The wholesalers expect price increase information until 31 July 2007."*⁸⁶⁹

(638) Shower enclosure manufacturers agreed to exceptionally deviate from the usual schedule of implementation of price discussions on the occasion of the introduction Euro in 2002.⁸⁷⁰ As early as 18 October 2000, ADA members determined how to deal with the introduction of the Euro at a joint meeting with wholesalers. They agreed in particular that all changes would be integrated into the price list of October 2000, which would be valid for 2001. The price lists for 2002 would be communicated by the end of August 2001.⁸⁷¹

(639) On 5 December 2000, ADA members confirmed their position as described in recital (638), as stated in the following handwritten notes:

⁸⁶⁸ (...): minutes of the ADA meeting of 23 June 2001, *"In Zusammenhang mit der bevorstehenden Umstellung von DM auf Euro ergab sich eine rege Diskussion darüber wie man einerseits die gesetzlichen Vorgaben und andererseits die dringend erforderlichen Preisanpassungen unter einen Hut und das Ganze dann auch noch in Einklang mit den Vorstellungen des Großhandels bringen könne. Das von AGSI/IFS vorgeschlagene Modell fand zwar grundsätzlich Zustimmung, gleichzeitig wurde aber auch auf die möglichen Probleme bei der Umsetzung in die Praxis hingewiesen. Es wurde festgelegt dass (...) mit (...) (AGSI/IFS) und (...) mit (...) Kontakt aufnehmen sollen um festzustellen wie die Gespräche mit dem DGH verlaufen bzw welches Ergebnis erzielt worden ist. Die Mitgliedsunternehmen des ADA werden sich dann dieser Vorgangsweise anschließen."*

⁸⁶⁹ (...) German text: *"Ich habe in den letzten Tagen einige Telefongespräche mit Kollegen der Sanitärbranche geführt um ein Gefühl für die Preissituation 2002 zu bekommen: Geplante Preiserhöhung; - der Duschabtrenner: ca. [0-5]%; - der Keramikhersteller: ca. [5-10]%; Einerseits führt der verschärfte Wettbewerb zu preiswerten Produkten, andererseits steigt aber auch die Kostenspiralle. In der Konsequenz müssen auch wir zu einer Preiserhöhung zwischen [0-5]% kommen. ... Wegen der Euro-Umstellung am Jahresende soll die Preiserhöhungsrunde diesmal vorgezogen werden. Der Großhandel erwartet eine Preiserhöhungsinformation bis 31.07.01."*

⁸⁷⁰ (...)

⁸⁷¹ (...)

"new price list 10/2001 + TZ (standing for the German word *Teuerungszuschlag*, meaning cost surcharge, remark added) in DM (standing for *Deutsch Mark*) August sent out".⁸⁷²

(640) In addition, at the ABD meeting in Vienna on 9 and 10 August 2001, ABD members agreed upon a surcharge of 5.5% for the year 2002, to be valid for 15 months.⁸⁷³ At the same meeting, the code "Vienna blood" was again used to ensure a coherent approach between the manufacturers. The minutes also record specific ranges of increases:

"1.1. Validity of prices:

- important: cost surcharge to the plumbers from 1.10.

- text on invoices: passing on of the prices with 5.6% cost surcharge to the plumber increase of trade mark at 1 January.

optional 1 February,

- increase of own series 1 March,

- increase GC 1 April,

"Vienna Blood".⁸⁷⁴

(641) That agreement was again confirmed by the same undertakings during the subsequent meeting held on 18 September, where it was stated that the decision taken at the Vienna meeting would stand.⁸⁷⁵

(642) Turning to AGSI, the specific arrangements on price increases in the year 2001 is developed at recitals (208)- (212). In relation to the special timing and the modalities of the price increase on the occasion of the introduction of the Euro, a table in preparation of the AGSI meeting of 31 May 2001 sets out the timing arrangements coordination of the taps and fittings manufacturers:⁸⁷⁶

Table A Overview of timing for planned price increases 2001 in AGSI:

⁸⁷² (...) ("*neue Preisliste 10/2001 + TZ August aussenden*"). The wholesalers requested that prices be effective from 1 January 2002 to end of March 2003 so that all prices would be expressed in euros in 2002 (normally, the wholesalers would have a "grace period" per year to end of March in which they could still apply the old prices), (...).

⁸⁷³ (...)

⁸⁷⁴ (...) German text: ("*Gültigkeit der Preise:- Wichtig: TZ zum Inst. Ab 01.10; - Text auf Rechnungen: Weitergabe der Preise mit 5,6 % TZ zum Installateur; - Erhöhung der Marke zum 01.01; Optional 01.02; - Erhöhung der Eigenserien 01.03; - Erhöhung GC 01.04.; "Wiener Blut"*), (...).

⁸⁷⁵ (...)

⁸⁷⁶ (...) The German text reads as follows (the term WS in Table A in recital (642) stands for wholesalers, whereas in the original document in German, the abbreviation GH stands for *Großhändler*; DGH is a German wholesalers association):

Was	Wann	Wie
Preiserhöhung Ankündigung GH TZ zum 1.10 (DM)	31.07.01	Papier Linear (Wunsch DGH)
EURO Preise für Lieferprogramm → differenziert	15.09.01	CD Data Elektronischer Datenträger
Print liste EURO → GH	Ab 01.11.	Post
Faktura EURO	01.01.02	
Gutschrift für 4. Quartal 01	1.Monat 02	

<i>What</i>	<i>When</i>	<i>How</i>
<i>Price increase Announcement WS Cost surcharge as of 1.10 (DM)</i>	<i>31.07.01</i>	<i>Paper Linear (wish DGH)</i>
<i>EURO Prices for delivery program → differentiated</i>	<i>15.09.01</i>	<i>CD Data Electronic data carriers</i>
<i>Print list EURO → WS</i>	<i>From 01.11.</i>	<i>Post</i>
<i>Invoice EURO</i>	<i>01.01.02</i>	
<i>Bonus for 4. quarter 01</i>	<i>1. month 02</i>	

(643) Table A also appears in the meeting minutes of the AGSI steering committee held on the previous day, namely on 30 May 2001.⁸⁷⁷

(644) Regarding ceramics manufacturers, FSKI members stated at their meeting held on 13 July 2001 that the date of the new price increase on the occasion of the introduction of the Euro would be different than usual. New prices would be applicable as of 1 January 2002. The minutes record: "*The price increase which will be submitted to the trade is definitely valid as of 01.01.2002.*" ("*Die dem Handel zugehende Preiserhöhung gilt fest ab 01.01.2002.*").⁸⁷⁸

The addressees' arguments in response to the SO, and the Commission's considerations

Kludi

(645) (...).

Villeroy & Boch

(646) Villeroy & Boch submits in its reply to the SO that no coordination with regard to the price increase on the occasion of the introduction of the Euro took place. Villeroy & Boch cites meetings of the taps and fittings sector at which it was not present in order to reiterate that it was not a participant of agreements of taps and fittings manufacturers.⁸⁷⁹ In its reply to the Letter of Facts of 10 July 2009, Villeroy & Boch further argues that the proposal regarding the timing of the agreed price increase, which was discussed at the IFS meeting of 14 November 2001, was not subsequently implemented. However, the key consideration is that producers extensively discussed the issue over the course of several meetings. Although no common approach was ultimately agreed upon in the context of IFS, the issue was taken up by the same producers in the context of the product-specific associations. As regards ceramics in particular, the minutes of the FSKI meeting of 13 July 2001 establish that manufacturers including Villeroy & Boch had in fact agreed to change prices as of 1 January 2002. Although the relevant contacts mostly relate to the timing arrangements of price increases on the occasion of the Euro introduction, they still attest to the operation of the annual price coordination cycles and must be assessed in the overall context of those arrangements.

Duscholux and Koralle

877 (...)
878 (...)
879 (...)

(647) Duscholux and Koralle submit that they did not participate in an anticompetitive agreement relating to the introduction of the Euro.⁸⁸⁰ However, the evidence in the Commission's file reveals that both undertakings participated in a meeting on 9 and 10 August 2001, at which the timing of the price increases for 2002 was agreed. Shower enclosure manufacturers even agreed on the "Vienna blood" code in order to ensure compliance with the agreement relating to the timing. The decision to apply new price lists as of October 2001 was reached as early as 5 December 2000. Reference is at this point also made to recital (640).

Keramag

(648) Keramag contests any allegation of in any agreement on price increases relating to the introduction of the Euro, as well as the receipt of a letter distributed by the IFS relating to the Euro. It further denies that the IFS meeting minutes or the FSKI meeting minutes support a price fixing agreement on the occasion of the Euro. Additionally, it states that internal (...) emails cannot be attributed to Keramag.⁸⁸¹ The Commission observes that, even if Keramag was not an addressee of the said letter distributed by IFS, it nevertheless participated in the coordination with regard to the timing of the price lists issued, as is evident from the minutes of the FSKI meeting held on July 2002, cited at recital (644). The internal (...) email relied on by the Commission in order to expose the true nature of price exchanges at association meetings and the ensuing pattern of coordination among the manufacturers in Germany.

4.3.1.2 Austria

The facts identified by the Commission

(649) The issue of the introduction of the Euro in relation to the price lists was first discussed at the ASI meeting of 23 November 2000. Members agreed in particular to increase the prices of the existing price lists by a cost surcharge effective as of 1 December 2001 and to adopt a parallel Euro price list as of 1 January 2002.⁸⁸²

(650) The issue arose again at the meeting of 2 March 2001, at which the participants decided to discuss the price increases at the ASI level, rather than within the various product groups. In addition, it was stated that a further price increase (5% to 7% as of 1 January 2002) would be discussed with the wholesalers at a meeting on 24 April 2001.⁸⁸³

(651) Further, an internal email found at Kludi's premises shows that Kludi had decided to hold further contacts with competitors, such as Keramag, Hansa and Hansgrohe, in order to find out the content and timing of their respective actions. Indeed, once the German price list would be fixed, Kludi would have to be ready to react in Austria:

*"As soon as the German price list exists – as you know on 1 July 2001 the wholesale has to have the data – we have to react for Austria as well. Therefore I ask you to interview again 2 – 3 competitors, e.g. (...) – Keramag, (...) – Hansa, (...) – Hansgrohe and to ensure dates at which something will now be definitely implemented."*⁸⁸⁴

880 (...)

881 (...)

882 (...)

883 (...)

884 (...) "Sobald die deutsche Preisliste vorliegt – wie Sie wissen müssen am 01.07.2001 die Daten dem Großhandel zur Verfügung stehen – müssen wir für Österreich ebenfalls reagieren. Ich bitte Sie deshalb, noch einmal 2-3 Wettbewerber zu interviewen, z.B. (...) – Keramag, (...) – Hansa, (...) – Hansgrohe und sich zu vergewissern, zu welchen Daten nun definitiv was umgesetzt wird."

(652) At the ASI meeting of 21 June 2001, members confirmed that the planned price increase for 2002 would not go into effect on 1 April, as usual, but on 1 January 2002 (...). That meeting was an ASI plenary meeting, that is, a meeting including undertakings active in the three sub product groups covered by this Decision (taps and fittings, shower enclosures and ceramic sanitary ware).⁸⁸⁵ Moreover, manufacturers received a summary of the decisions taken at that meeting that confirmed that prices would be increased, that the new prices would be communicated to the wholesalers on 1 October 2001, and that they would receive the new lists on 1 January 2002.⁸⁸⁶ ASI members again confirmed the agreement reached at the meeting held on 21 September 2001,⁸⁸⁷ at which at least 27 participants agreed on this approach. These undertakings notably included Masco (Hansgrohe and Hüppe), Grohe, Ideal Standard, Hansa, Dornbracht, Artweger, Keramag, (...), Kludi and Villeroy & Boch.⁸⁸⁸ The adjustments agreed on were implemented. For instance, in an email dated 13 September 2002 (...) stated that concerning the "*price increase 2002*", January had been chosen as the date of implementation of the increase, because of the introduction of Euro.⁸⁸⁹

The addressees' arguments in response to the SO, and the Commission's findings

Kludi

(653) (...).⁸⁹⁰

Artweger

(654) Artweger claims in its reply to the SO that a Euro surcharge was never agreed.⁸⁹¹ Artweger also submits that the alleged coordination in relation to the Euro in fact only concerns a decision to move the annual price increase date from 1 April 2002 to 1 January 2002. The Commission does not deny that the coordination on the occasion of the introduction of the Euro was focused on the timing and other transitional arrangements of the 2002 price lists. However, it considers that the coordination of these timing and other transitional elements on that occasion corroborates the Commission's overall findings as to the regular cycle of price increase coordination (while further attesting to the intensity of contacts amongst manufacturers in order to ensure a common approach in relation to their customers).

Laufen

(655) Laufen claims in its Reply to the SO that it does not even understand what the Commission is challenging with regard to the introduction of a surcharge on the occasion of the Euro introduction. Laufen firstly argues that the minutes of the ASI meetings of 21 June 2001, and 21 September 2001 are not evidence of a price agreement; second, Laufen argues that (...) proves only that the date of the price increase was agreed upon, third, that Laufen contends that it was not present at the ASI meeting of 23 November 2000 and that the minutes of the ASI meeting of 2 March 2001 prove that there could not have been a price increase agreement.⁸⁹²

(656) These arguments cannot be accepted. Generally, as stated in reply to Artweger's arguments, the Commission does not deny that the coordination on the occasion of the introduction of the Euro

885 (...)
886 (...)
887 (...)
888 (...)
889 (...)
890 (...)
891 (...)
892 (...)

was focused on the timing and other transitional arrangements of the 2002 price lists. However, it considers that the coordination of timing and other transitional elements corroborate the Commission's overall findings as to the regular cycle of price increase coordination (while further attesting to the intensity of contacts amongst manufacturers in order to ensure a common approach in relation to their customers). These findings correspond to the minutes of the ASI meetings of both 21 June 2001 as well as 21 September 2001, at which Laufen was present. Moreover, (...) confirms this (...).⁸⁹³ The fact that Laufen was not present in the ASI meeting of 23 November 2000 cannot alter the Commission's findings in this regard, as it was represented at all other meetings in which the Euro pricing was discussed in Austria, from which the arrangements were sufficiently clear.

Keramag

- (657) Keramag claims that the Euro discussions were only related to the transition following its introduction. (...).⁸⁹⁴ This argument cannot be accepted, since it was explicitly stated in the minutes of the meeting on 2 March 2001 that the manufacturers would negotiate on a price *increase* for 1 January 2002. This shows that a coordinated approach to the price increase on the occasion of the Euro was taken.⁸⁹⁵ The fact that the wholesalers may have requested a certain conduct of the manufacturers cannot relieve them from the responsibility of engaging in anti-competitive conduct with their competitors. In any event, in this Section, the Commission focuses on the coordinated timing with regard to the price changes in the industry.

Villeroy & Boch

- (658) Villeroy & Boch states that the fact that the date of the price increase for 2002 was introduced on 1 January instead of 1 April does not entail a distortion of competition and that it was the pressure of wholesalers that led the industry to do this.⁸⁹⁶ This argument cannot be accepted. The Commission is in possession of evidence that shows that a price increase would be applied in a coordinated manner on 1 January 2002 instead of 1 April 2002 in anticipation of the introduction of the Euro.⁸⁹⁷ Although the evidence adduced in this Section mostly relate to the timing arrangements of the price increases on the occasion of the Euro introduction, they still attest to the operation of the annual price coordination cycles and must be assessed in the overall context of the scheme concerned by this Decision. The issue of wholesaler pressure is addressed in particular at Section 5.2.4.2. It is nonetheless noted that, by stating that the price increase was due to the pressure of the wholesalers, Villeroy & Boch actually admits that price increase coordination took place at that time.

893 (...)
894 (...)
895 (...)
896 (...)
897 (...)

4.3.2 Cost surcharges due to rising raw material prices

4.3.2.1 Germany

The facts identified by the Commission (2000 surcharge)

(659) In addition to their regular price increases described at recital (201), ADA members agreed on a surcharge on 11 August 2000 due to rising raw material costs. The minutes of the ADA meeting state that there would be a surcharge of [0-5]% uniformly applied at least by Hüppe, Duscholux, Koralle and others, to be effective as of 15 October 2000.⁸⁹⁸ Added to the regular price increase of [0-5]%, this resulted in an overall increase of about [5-10]%. (...) confirms that the cost surcharge and the annual price increase were both agreed at the same meeting. The wholesalers were informed about this and they were told to use stickers to change the prices for shower enclosures in their own price list (thus the name "*sticker cost surcharge*").⁸⁹⁹ A document relating to a telephone conversation of 9 October 2000 between the Austrian representatives of Artweger and Duscholux mentions the following regarding the cost surcharge: "*ADA has decided: [5-10]% unanimously*".⁹⁰⁰

The addressees' arguments in response to the SO, and the Commission's considerations

Duscholux

(660) Duscholux states in its reply to the SO that the minutes of the meeting of 10 and /11 August 2000 are no evidence of an agreement on a cost surcharge. However, it is unclear how Duscholux reached that conclusion: although the official minutes of the meeting directly refer to the surcharge, the handwritten minutes leave no doubt as to the agreement. The fact that no reference is contained in the official minutes of the meetings does not prove that no surcharge was agreed. On the contrary, it tends to show the undertakings' awareness of the illegality of their conduct. Furthermore, the minutes of the Austrian ASI meeting cited at recital (659) that refer to the unanimous ADA decision to apply an increase of 7.5% confirm the existence of the agreement on the surcharge.

Koralle

(661) Koralle states in its reply to the SO that regarding the raw material prices and road toll, macroeconomic forces drove all manufacturers to apply a similar price increase. In addition, it highlights the argument that the official minutes of the meeting do not contain a reference to the agreement. Koralle states that it would not have been logical for it to do so with Masco due to different raw materials used.⁹⁰¹ Koralle also states that the evidence in relation to the price agreement of 7.5% in 2000 cited by the Commission, namely a meeting of the Austrian association ASI, does not apply to it because it was not a member of ASI.⁹⁰²

(662) The first argument raised by Koralle mostly relates to the economic context, likely effects or legal assessment of the arrangements at issue and, as such, is considered in detail in Part II. Koralle's argument that the raw materials used to make taps and fittings and shower enclosures

898 (...)

899 (...)

900 (...) (note taken by Artweger of a telephone conversation with Duscholux, dated 9 October 2000): "*ADA hat beschlossen: einstimmig [5-10] %*".

901 (...)

902 (...)

are different⁹⁰³ cannot serve to disprove the Commission's analysis, since the agreement to prices increase by 3.5% was made for the shower enclosure manufacturers separately.

- (663) In addition, the evidence relating to ASI makes an explicit reference to the German ADA having agreed on a price increase. Since Koralle was a member of ADA, it does not have to be a member of the ASI itself in order for this evidence to be used against it.

The facts identified by the Commission (2004 surcharge)

- (664) The surcharge agreed in 2004 by the taps and fittings manufacturers in response to rising costs of copper and brass was discussed at the AGSI meeting held on 29 March 2004. In particular, it is apparent from the minutes of the meeting taken by Kludi that the manufacturers planned to coordinate their conduct concerning the rising raw material costs:

*"Due to the lack of material, the price of copper/brass has enormously increased in the past. Thus, an extraordinary price increase probably cannot be avoided. The firms Viega, Seppelfricke etc. have already announced an extraordinary price increase in the market. This should be valid for orders as of 01.05.04. Due to the use of material, the manufacturers have announced different increases. The present persons agree in the sense that on Thursday, 08.04.04 a vote per telephone as regards the extraordinary price increase will be taken. An increase between 2.5% and 3.5% is being aimed at. Each member should make an internal research until that date, how high the increase has to be for its undertaking."*⁹⁰⁴

- (665) Handwritten minutes of the same meeting further attest to the fact that Grohe, as opposed to other competitors, planned not to issue a new price list. The minutes further read: "*Price alignment not uniform – until 08.04 Feedback. Corridor 2.5 – 3.5% ... by telephone*". The term "*by telephone*" is further highlighted by an arrow in the form of a lightning, emphasizing the importance of the alignment to take place in that manner.⁹⁰⁵ In addition, contemporaneous handwritten minutes of the same meeting show that undertakings had to inform the VDMA ((...)) about whether they intended to take part in the agreement.⁹⁰⁶

- (666) This is further corroborated by internal minutes of Hansa of the same AGSI meeting, which show that the AGSI members would take a uniform approach on the matter. The minutes state that (emphasis added):

"a further point on the agenda were the dramatic developments on the raw materials market. In this regard, we are currently discussing a possible price increase, a cost surcharge or a new print of the price lists 2004. The reaction in the business is very different.... The undertakings Friedrich Grohe, Hansgrohe and Dornbracht answer very reluctantly: one has secured the prices long term on the metal stock exchange and

⁹⁰³ (...)

⁹⁰⁴ (...): minutes taken by Hansa during that meeting, recording a surcharge in the range of 2.4 % - 2.9 %; and (...): according to Kludi's minutes of the same meeting the range was from 2.5 % to 3.5 % (...). German text: "*Aufgrund der Materialverknappung ist der Preis für Kupfer/Messing in der Vergangenheit enorm gestiegen. Daher ist wahrscheinlich eine außergewöhnliche Preiserhöhung nicht zu umgehen. Die Firmen Viega, Seppelfricke usw. Haben bereits eine Preiserhöhung im Markt angekündigt. Diese soll für Aufträge ab 01.05.04 in Kraft treten. Aufgrund des Materialeinsatzes sind seitens der Hersteller unterschiedliche Erhöhungen bekannt gegeben worden. Die Anwesenden einigen sich dahingehend, dass am Donnerstag, dem 08.04.04 eine telefonische Abstimmung bzgl. Der außergewöhnlichen Preiserhöhung vorgenommen wird. Es wird eine Erhöhung zwischen 2,5 % und 3,5 % angestrebt. Jedes Mitglied soll bis zum vorgenannten Termin intern recherchieren, wie hoch die Erhöhung für sein Unternehmen ausfallen muss."*

⁹⁰⁵ (...): "*Preisabstimmung uneinheitlich, bis 08.04 Feedback. Korridor 2,5 – 3,5 % ... telefonisch*".

⁹⁰⁶ (...): minutes taken by Hansa during that meeting, recording a surcharge in the range of 2.4 % - 2.9 %; and (...): according to Kludi's minutes of the same meeting the range was from 2.5 % to 3.5 % (...)

*does not consider a necessity to react (but one would follow the majority). For the classic sanitary taps there is a price increase of 2.4% to 2.9%. (...) asks the specific members for an answer in this issue until the 08.04.2004."*⁹⁰⁷

(667) (...), the matter was taken up within the umbrella association IFS after AGSI had failed to agree on a cost surcharge.⁹⁰⁸ Indeed, the matter was discussed at the IFS meeting of 27 April 2004 with regard to all product groups. Shower enclosures and ceramics manufacturers did not see a necessity to increase prices, while taps and fittings manufacturers were more affected by the price increase. At the meeting, the cost surcharge was discussed by Grohe, Ideal Standard and Hansgrohe, and an agreement was reached to increase prices by [0-5]% as of 1 June 2004.⁹⁰⁹ The handwritten minutes of the meeting record the following:

*"TZ? ~[0-5]% 1.6.04 Announcement beginning of May"
("TZ? ~[0-5]% 1.6.04 Ankündigung Anf. Mai").*⁹¹⁰

(668) This is confirmed by notes found during the inspection at (...) which read: *"Different possibilities to increase prices: cost surcharge, price increase → 1 June cost surcharge [0-5]%, from October as price increase."*⁹¹¹

(669) It should be stated that none of the information cited in recitals (664) to (668) was contained in the "official" typed minutes of the IFS meeting, which merely include the increase of the copper prices and the fact that the participants at the meeting complained about that increase.⁹¹² This shows that participants were well aware of the illegality of their conduct and deliberately did not include such discussions in the official minutes.

(670) The minutes of the AGSI Erfa meeting of 28 April further corroborate that agreement:

*"Taps and fittings TZ [0-5]% of 1 June 2004" ("Armaturen TZ [0-5]% zum 1.6.2004").*⁹¹³

(671) Further, at the AGSI meeting of 29 April 2004, members had the following discussion (as recorded in the minutes):

*"Due to the drastic development of copper prices an irregular price alignment seems inevitable. From the Italian sanitary taps industry one can hear announcements of around [5-10]%. The German manufacturers are rather reluctant with a range of [0-5]%. Announcements already made should become effective as of 1 June 2004. Reactions from the wholesalers mostly show understanding."*⁹¹⁴

⁹⁰⁷ (...) German text: *"...ein weiterer Tagesordnungspunkt waren die dramatischen Entwicklungen im Rohstoffmarkt. Hier diskutiert man aktuell eine mögliche Preiserhöhung, einen TZ- oder gar einen Neudruck der Preislisten 2004. Die Reaktionen in der Branche sind äußerst unterschiedlich.... Die Firmen Friedrich Grohe, Hansgrohe und Dornbracht antworteten sehr zurückhaltend: man habe sich nach eigenen Aussagen langfristig über Abschlüsse an der Metallbörse die Preise gesichert und sieht aktuell keinen Handlungsbedarf (würde sich aber der Mehrheit anschließen.) Für die klassischen Sanitärarmaturen wurde hier eine Preiserhöhung von 2,4 % bis 2,9 % angesetzt. (...) bittet in dieser Sache bis zum 08.04.2004 um telefonische Rückmeldung der einzelnen Mitglieder."*

⁹⁰⁸ (...)

⁹⁰⁹ (...)

⁹¹⁰ (...)

⁹¹¹ (...) German text: *"Verschiedene Möglichkeiten, die Preise zu erhöhen: Teuerungszuschlag, Preiserhöhung → 1.6. TZ [0-5]%% ab Okt. als Preiserhöhung."*

⁹¹² (...)

⁹¹³ (...)

⁹¹⁴ (...) German text: *"Aufgrund der drastischen Kupferpreisentwicklung erscheint eine unterjährige Preisanpassung unumgänglich. Aus der italienischen Sanitärarmaturenindustrie hört man Ankündigungen, die um die [5-10] %*

(672) The minutes of the AGSI steering committee meeting held on 29 April 2004, state under the heading "*copper prices*" ("*Kupferpreise*") that undertakings active in the field of taps and fitting in the Italian market would, exceptionally, increase their prices by approximately [5-10]%. However, undertakings would be more moderate for the German market with a "*corridor of [0-5]%*" ("*Korridor zwischen [0-5]%*").⁹¹⁵

(673) Additionally, on 3 May 2004 (...) Austria asked (...) Germany by email for his recommendation concerning the surcharge, as some German undertakings had already announced that they would apply a surcharge, and Grohe and Kludi were already prepared to introduce the surcharge:

"In A [standing for Austria, remark added], the raw materials that become increasingly expensive are more and more a topic. Some D (standing for the German word Deutschland, meaning Germany, remark added) enterprises have already announced, that this has to be compensated by an extraordinary price increase, for instance by a TZ (Standing for Teuerungszuschlag, the German word for cost surcharge, remark added). Please let me know, since this must be a topic also in D, how we should behave and if an increase in price is also to be expected with us. In Austria, Grohe and Kludi are already ready to proceed".

(...) replied that a surcharge of [0-5]% would be implemented in Germany.⁹¹⁶

(674) (...) AGSI (...) visited the AGSI members that were still sceptical about the introduction of the surcharge at their stands on the occasion of a trade fair that took place between 21 and 23 April 2004 in Nuremberg, and tried to convince them to introduce it.⁹¹⁷

(675) (...) on 18 May 2004, (...) Hansgrohe called ((...) IFS and AGSI) and (...) Grohe and informed them that Hansgrohe would not apply a cost surcharge.⁹¹⁸ One day later, AGSI forwarded this information to at least its competitors Kludi⁹¹⁹ and (...).⁹²⁰ (...), Grohe and Kludi then announced a surcharge of [0-5]%,⁹²¹ and [0-5]% respectively.⁹²² Dornbracht as well as other members applied a surcharge of 3.1%, 3.0% and 2.9% respectively.⁹²³ In an email also dated 18 May 2004, AGSI informed Dornbracht that Hansgrohe said they would not apply a surcharge after all. Following this, AGSI asked Dornbracht: "*What are we going to do now (Was machen wir jetzt?)*"⁹²⁴

(676) At the meeting of 14 July 2004, however, the manufacturers participating at the meeting exchanged the surcharge amount that they intended to apply in percentages:

liegen. Deutsche Hersteller orientieren sich nach ersten Erkenntnissen eher zurückhaltend in einem Korridor zwischen [0-5] %. Bereits mitgeteilte Anpassungen sollen zum 1.6.2004 greifen. Reaktionen aus dem Großhandel lassen überwiegend Verständnis erkennen".

915 (...)

916 (... German text: "*in A werden immer teurer werdende Rohstoffe immer mehr zum Thema. Einige D Firmen haben bereits angekündigt, dass diese über eine außerordentliche Preiserhöhung, z.B. über einen TZ, abgegolten werden müssen. Bitte gib mir Bescheid, da dies in D ja auch ein Thema sein muß, wie wir uns verhalten sollen und ob eine Teuerung auch bei uns zu erwarten ist. In Österreich stehen Grohe als auch Kludi schon in den Startlöchern.*".

917 (...)

918 (...)

919 (...)

920 (...)

921 (...)

922 (...)

923 (...)

924 (...)

"(...)"⁹²⁵

Most manufacturers finally decided not to implement the price increases.⁹²⁶

The addressees' arguments in response to the SO, and the Commission's considerations

(677) (...) ⁹²⁷

(678) (...) ⁹²⁸ However, in its reply to the Letter of Facts, Kludi sought to clarify that no specific anticompetitive conduct can be deduced from the internal (...) email dated 3 May 2004. In response, the Commission observes that the internal (...) email at issue shows that (...) must have had contacts with Kludi in Austria with a view to introducing the cost surcharge in 2004. The document was prepared in *tempore non suspecto* and there is no reason to question the reliability of (...) who was reporting to his headquarters in Germany (particularly as the content of the email is consistent with the Commission's overall findings as also admitted by Kludi).

4.3.2.2 Austria

Surcharge agreed upon in 2000 for 2001

(679) In the course of a telephone conversation held on 9 October 2000, Artweger and Duscholux discussed the price increase of 7.5% agreed within ADA. It is apparent from the contemporaneous handwritten minutes of the conversation that either Duscholux or Artweger had been informed on the price increases to be applied by other competitors (see recital (320)).⁹²⁹ Artweger had also received a letter from Duscholux relating to the German market in which Duscholux informed its customers about the price increase of 7.5% due to rising raw material costs.⁹³⁰

(680) Subsequently, a survey was carried out at the ASI meeting of 12 October 2000 in reaction to the planned price increases agreed in Germany for 1 January 2001 because of the rising costs of raw materials and energy (see also recital (321)).⁹³¹ Each undertaking presented its planned price changes and in particular the minutes of the meeting record the following:

" (...) increases as of 1.1.2001 in Germany by 7.5% (range 0.3) due to the Euro one will have to count on similar data in Austria. Survey in the plenum shows: Artweger > 6, [...], Duscholux Showers 6.9, tubs 5, [...] Grohe between -12 and + 6%, Euro pricing not completed, depending on lines, Hansa 5 (?), (...), Keramag between 5 and 7, [...]; Kludi between 3.9-5.9, line-specific, (...) 4-7, depending on group, V & B ? depending on collection".⁹³²

(681) Further, as evidenced in a letter faxed from Grohe to Hansgrohe, Ideal Standard, Kludi and Hansa on 27 November 2000, a surcharge of [0-5]%, to be implemented as of 1 January 2001 was agreed within the taps product group. In the letter Grohe confirmed that it would apply the

925 (...)

926 (...)

927 (...)

928 (...)

929 (...)

930 (...)

931 The cause of the increase (namely rising raw material and energy costs) had been mentioned at the board meeting of October 2000. (...)

932 (...) German text: "Preiserhöhungen: (...) erhöht ab 1.1.2001 in Deutschland um 7,5 % (Bandbreite 0,3) Aufgrund des EURO wird man in Österreich mit ähnlichen Werten rechnen müssen. Umfrage im Plenum ergibt: Artweger > 6 ... Duscholux Duschen 6,9 Wannen 5 ... Grohe zwischen -12 und +6 Euro-pricing noch nicht abgeschlossen... Hansa 5 (?), (...) Keramag zwischen 5 und 7 ...; Kludi zwischen 3,9-5,9, serienspezifisch, (...) 4,7, gruppenabhängig, V&B ? Kollektionsabhängig."

agreed surcharge and described how it would introduce it, which was by applying an overall [0-5]% surcharge. Grohe also asked the other competitors to inform Grohe how they would organize the surcharge for the first quarter of 2001.⁹³³

(682) (...).⁹³⁴

Surcharge in 2002

(683) The issue of a surcharge for 2003 was initially raised and discussed between Hansgrohe, Ideal Standard, Hansa, Dornbracht and others during the meeting of the ASI subgroup for taps and fittings held on 11 September 2002⁹³⁵. Subsequently, on 19 September 2002, within the framework of the ASI, participants agreed that all product groups would apply a cost surcharge as of 1 January 2003. In this regard, the minutes of the meeting record the following: "*price increase per 1 January 2003 with linear surcharge, without rounding; 1.4.2003 regular list*".⁹³⁶ Members taking part in the ASI meeting covering all product groups held on 19 September 2002 at which this decisions was taken included: Masco (Hüppe), Grohe, Ideal Standard, Artweger, Dornbracht, Duscholux, Hansa, Keramag, Kludi, Laufen and Villeroy & Boch. ASI members were requested not to discuss the issue outside ASI.⁹³⁷

(684) Later, both Hansgrohe and Kludi announced a cost surcharge of [0-5]% in a letter to their customers dated 26 November 2002.⁹³⁸ In that respect, ASI members also monitored the implementation of the surcharge by the wholesalers as the minutes of the meeting of 23 January 2003 record that "*all wholesalers, also the small ones, have communicated the cost surcharge*".⁹³⁹

(685) As described in an email sent by Artweger on 8 November 2002, ASI members decided at the meeting of 7 November 2002 that there would be a surcharge applicable from 1 January 2003 until 1 April 2003, when official price lists would be released. Artweger also stated in its email that the industry would only pass the increase on to the wholesalers as from 15 February, so that the "*additional earnings would be split between the wholesalers and the industry as between brothers*". The surcharge was said to have been agreed in the shower enclosures product group between Duscholux, (...) and (...) and was between 2.5% and 3%. Artweger also indicated in its email that more talks between the competitors would follow after the 7 November 2002 ASI meeting among the manufacturers.⁹⁴⁰ The email also shows that ASI members were aware of the anti-competitive and illegal nature of their activities within ASI, since it states that, due to cartel law, the surcharge issue should not be an ASI topic because it is far too dangerous to discuss openly.

(686) At the ASI meeting of 7 November 2002, participants refused to accept the further 1.5% surcharge initially proposed by wholesalers, because manufacturers feared that the price increase would not remain at the wholesalers' level and would therefore – as they stated - "*go into the market*".⁹⁴¹ When the topic was raised at the meeting, ASI members saw the issue as problematic with regard to competition (cartel) law ("*kartellrechtlich gefährlich*").⁹⁴²

933 (...)

934 (...)

935 (...)

936 (...) German text: "*1.1. mit TZ linear, ungerundet oder 1.4. mit Liste*".

937 (...)

938 (...) see the two letters dated 26 November 2002 sent to wholesalers.

939 (...) German text: "*Alle GH, auch die kleinen, haben den TZ kommuniziert*".

940 (...) German text: "*... der GH und die Industrie die Mehrerträge brüderlich teilen*".

941 (...) German text: "*landen sie im Markt*".

942 (...)

(687) [Non-confidential summary: ASI members and wholesalers reached an agreement: the manufacturers would announce the cost surcharge from 1 January 2003. The wholesalers would pay the increased price as of 1 May 2003, allowing them to pass on the surcharge in the interim]. ASI members had (...) per 1 January 2003, the purpose being to guarantee that the wholesalers would charge the prices from then on, as demonstrated by an email from (...) Austria to (...) Germany.⁹⁴³

Surcharge for 2004

(688) In Austria, manufacturers of taps and fittings also agreed to introduce a surcharge in 2004. Nonetheless, that surcharge was essentially adopted on a bilateral basis (either by telephone or by email) because of its urgency.⁹⁴⁴

(689) After Kludi had been informed of a [0-5]% price increase applied to taps in Germany as of 1 July 2004, it suggested in an email to Hansgrohe, Grohe, Ideal Standard, Kludi, Dornbracht and others to increase prices on the same date in Austria as well. Kludi wanted to introduce the price increase for all products and suggested that all prices be increased by [0-5]% on average (the reason being that a higher increase would have led to "*complications on the market*") ("*Komplikationen im Markt*").⁹⁴⁵ Following the email, Hansgrohe Austria referred the matter to its parent company (Hansgrohe Germany) which ultimately instructed all its subsidiaries not to apply a cost surcharge in 2004.⁹⁴⁶ (...) confirmed that the surcharge was initiated by German manufacturers and that it was transferred to Austria.⁹⁴⁷

(690) At the meeting of 5 May 2004 attended by Kludi and Artweger, some producers raised the need of a price increase in response to the rising raw material costs. They referred to the situation in Germany, where such increases had already been implemented within a range of [0-5]%. Regarding Austria, Kludi announced a price increase of approximately [0-5]% as of 1 June or 1 July. Further, it was stated that Grohe and Hansgrohe would take part in the surcharge, while it was stated that Hansa would not participate.⁹⁴⁸

(691) After agreeing on the increase, the manufacturers (Hansgrohe, Grohe and Kludi) immediately sent announcement letters to their customers regarding the application of the new surcharge.⁹⁴⁹

The addressees' arguments in response to the SO, and the Commission's findings

Masco

(692) Masco argues in its Reply to the SO that it is not evident that the cost surcharge coordination for 2000 is related to a specific event or rather to the regular annual price increase⁹⁵⁰. However, the minutes of the respective meeting state that the increase is made as a consequence of the price increase of ADA⁹⁵¹. In addition, the board meeting minutes of the same day state that the German increase was due to increasing raw material and energy prices⁹⁵². Therefore, the Commission concludes that this increase is an irregular price increase as a reaction to the increase of raw material prices rather than the regular price coordination. In any event, it is

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noted that the characterisation of this specific price increase as a cost surcharge serves organizational purposes and does not in any way alter the Commission's assessment as to its anticompetitive objective.

- (693) Masco states that it is not clear whether the 2002 surcharge constituted a surcharge or an annual price increase. The evidence in the Commission's possession indicates that this specific increase constituted a surcharge outside the scope of the annually coordinated price increase (see recital (683). In particular, the internal (...) email sent on the occasion of the surcharge for 2003 clearly states that ASI insisted on a 'cost surcharge'.⁹⁵³ For the avoidance of doubt, the Commission observes that the characterisation of this specific price increase as a cost surcharge serves organizational purposes and cannot be deemed to have an effect on the gravity of the anti-competitive conduct.

Ideal Standard

- (694) (...).⁹⁵⁴

Artweger

- (695) In its Reply to the SO and its reply to the Letter of Facts, Artweger argues that the shower enclosure manufacturers did not agree on a surcharge for the years 2000 and 2002.⁹⁵⁵
- (696) For the year 2000, Artweger states that the survey carried out at the meeting of 12 October 2000 did not amount to an agreement and that the percentages communicated were vague. This argument mostly relates with the legal assessment of the infringement at stake and is dealt with in Part II. The Commission considers that an exchange of price increases such as the one referred to by Artweger constitutes by its object an infringement of competition rules.
- (697) Artweger further claims that no precise percentage of price increase was commonly agreed on at the meeting of 19 September 2002. Similarly, in its reply to the Letter of Facts, Artweger contends that the minutes of the ASI meeting on 23 January 2003 do not record any agreement on a specific level of the cost surcharge. These arguments must be rejected. It suffices to note that an explicit vote took place at the meeting of 19 September 2002 on the introduction of an additional increase as of 1 January 2003. Artweger attended this meeting. It is irrelevant that the surcharge introduced by Artweger was not [0-5]%. Based on Artweger's own record of the discussions between manufacturers for the introduction of the cost surcharge (see recital 679), Artweger agreed on a surcharge within a range of [0-5] % with Duscholux, (...) and (...) for 2003 (see recital (685)).⁹⁵⁶ Turning to the ASI meeting of 23 January 2003, the Commission does not claim that the 2003 cost surcharge was agreed at that meeting. As also acknowledged by Artweger, the Commission maintains that the cost surcharge was the subject of intense discussions which had been initiated at least as early as September 2002. The Commission simply referred to the ASI meeting of 23 January 2003 to demonstrate that manufacturers continued to discuss (and monitor) the implementation of the cost surcharge as of the agreed introduction date (namely January 2003).

Laufen

- (698) Laufen argues that it did not participate in a cost surcharge agreement for the year 2001.⁹⁵⁷ This argument cannot be accepted. Although the surcharge was stated to apply for taps and fittings

953 (...)
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955 (...)
956 (...)
957 (...)

producers, Laufen nevertheless participated in the survey on price increases due to raw material costs that took place at the meeting of 12 October 2000.⁹⁵⁸ As explained in recital (681), the letters cited therein only related to the implementation made after the price increases were exchanged and by chance related to taps manufacturers.

- (699) Laufen further cites a statement of Artweger in order to underpin its argument: "*Price increase 2001: "In autumn 2000 we received a communication that the German producers in ADA would carry out a price increase of 7.5% (+/- 0.3%) as of 1.10.2000 due to greatly increased materials' prices [...]. In Austria, the dates of the price increases took always place three months later (as of 1.1. or 1.4.) so that it became an ideal reference value in order to calculate how the German producers would behave in Austria. At the meeting of ASI's board of 12.10.2000 a discussion in the plenary on the approach was encouraged. At the plenary, the discussion resulted in a rough estimate, as all the Austrian producers were familiar with the issue at this point. The position of Artweger was included in handwriting."* Although some producers would not implement a surcharge as high as the German one, a survey was nevertheless carried out and each undertaking presented its estimations for the future increase to be made. Therefore, even if Laufen was not involved in any extra agreement with regard to the surcharge, it nonetheless participated in the meeting at which planned price increases in percentages were exchanged.
- (700) The statement of Laufen's (...) that he was not aware of surcharge agreements in the ceramics subgroup is irrelevant, as Laufen's participation in the survey is established and could well have taken place without the sales manager's knowledge.
- (701) In relation to the price agreement of 2002, Laufen also submits that the surcharge was organized and coordinated by the taps sub-committee, that Laufen did not apply the surcharge and that the surcharge was only in place for a limited amount of time.⁹⁵⁹ (...) Its arguments essentially relate to the legal assessment and likely effects of the coordination. In this regard, the Commission considers that the fact that the amount of the increase could vary from one undertaking to another does not alter the existence of a coordination on the occasion of the introduction of a surcharge, which as such has to be considered as infringing competition rules, as developed in Part II.
- (702) In its observations to the Commission's Letter of Facts, Laufen reiterated its arguments, in particular seeking to establish that the 2002 surcharge was agreed only under the pressure and for the sole benefit of the wholesalers, who actively promoted and participated in the agreement.⁹⁶⁰ The Commission notes that the implication of wholesalers does not in any way justify the price agreement amongst the producers, nor can it absolve them from any ensuing liability. To the contrary, Laufen's own submissions attest to the coordinated and structured manner in which manufacturers engaged in negotiations with wholesalers on pricing issues.

Villeroy & Boch

- (703) Villeroy & Boch states that it did not participate in the 2000 surcharge. In addition, it argues that it has not communicated its actual price increases during the meeting of 12 October 2000.⁹⁶¹ However, Villeroy & Boch participated in the meeting of 12 October and took note of the price increase announcements by its competitors. The contention that it was unable to provide more specific information to its competitors on that day does not rebut the allegations

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959 (...)
960 (...)
961 (...)

of the Commission. To the contrary, it highlights Villeroy & Boch's strategic interest in obtaining the information from its competitors, with a view to determining its own policy. The argument that it was not the addressee of some of the emails cited, or that it was not part of the agreements of the shower enclosure manufacturers,⁹⁶² cannot detract from the fact that Villeroy & Boch also took part in anti-competitive practices in a sustained manner.

- (704) In its reply to the Letter of Facts of 10 July 2009, Villeroy & Boch also disputes its involvement in a cost surcharge agreement for 2002 in Austria. In particular, it claims that the reference to a cost surcharge ("TZ") in the minutes of the ASI meeting 23 January 2003, which the Commission interprets as an indication that ASI members monitored the implementation of the cost surcharge, can only be attributed to the wholesalers and cannot be deemed to ensue from price coordination between the manufacturers.⁹⁶³ The Commission does not share these views. The document at issue is meant to illustrate that the application of the price increase was monitored and must be assessed together with the other pieces of evidence pertaining to the ASI meetings and follow-up communications taking place during autumn 2002. Although the ASI meetings held in September and November 2002 apparently addressed various issues (also relating to the timing re-adjustment of the price cycle and the regular price list as of 1st April of 2003), manufacturers have specifically contemplated and discussed the introduction of a cost surcharge as of 1st January, in addition to the regular price increase as of 1st April 2003.⁹⁶⁴ In any event, even if the said communications implied only adjustments to the regular price cycle for 2003, the legal assessment would be the same.

Duscholux

- (705) Duscholux claims that no anticompetitive conduct took place at the meeting held on 7 November 2002 since the members only discussed a suggestion by wholesalers to increase prices which was not subsequently implemented.⁹⁶⁵ These contentions are irrelevant. The key consideration is that manufacturers discussed the possibility of an increase together, in a coordinated manner, rather than autonomously deciding on their conduct. The Commission further observes that Duscholux' arguments as to the role of wholesalers in relation to the cost surcharge corroborates the Commission's overall findings regarding the producers' willingness to form a united front in relation to the wholesalers.

4.3.2.3 Italy

The facts identified by the Commission

- (706) The evidence in the Commission's file (comprising (...) and inspection documents from different sources) demonstrates that – in the context of their sustained price coordination –

⁹⁶² (...)

⁹⁶³ Villeroy & Boch further submits that any alleged anticompetitive discussions related to the timing arrangements for the 2003 price cycle (which had to be re-adjusted following last year's particular arrangements for the Euro) and that ASI participants had in any event rejected at their meeting of 7 November 2002 the wholesalers' proposal for a cost surcharge.

⁹⁶⁴ In the latter regard, the Commission points in particular to the minutes of the ASI meeting of 19 September 2002, Artweger's email of 8 November 2002 (reporting on the ASI meeting of 7 November 2002) and (...)’s internal email 5 May 2003 – see Section 4.3.2.2 above. Villeroy & Boch claims in its reply to the Letter of Facts that it was not given access in particular to the internal email exchanged within (...). However, as established in Section 4.3.2.2. above, Villeroy & Boch attended the ASI meeting of 19 September 2002 at which the 2003 surcharge was discussed, as established in the minutes of that meeting, to which Villeroy & Boch had access. (...)

⁹⁶⁵ (...)

bathroom fittings and fixtures producers in Italy also coordinated their pricing specifically on the occasion of a mid-year cost surcharge in 2004 (due to rising raw material costs).

- (707) (...) ⁹⁶⁶ (...) contacted (...) and other competitors, in order to agree on a common cost surcharge in 2004 in view of raw material price increases. He communicated by phone that Grohe needed to raise prices and requested the other producers to do the same.
- (708) An internal email circulated by (...), dated 9 May 2004, reflects the ongoing deliberations on the subject within (...) at the time, notably in view of corresponding developments in Germany (and having regard to the undertaking's centralised strategic planning for Europe). The following quote from the email is similarly telling as to the coordinative efforts amongst competitors in Italy to implement the mid-year surcharge: "*In Italy, they would sit down with Grohe and others in the weeks to come, in order to discuss whether and what was to be done [...]*". He added that they would not take solitary action in South Europe (which would be bound to be unsuccessful anyway), "*if our competitors do not participate (as in Germany)*". ⁹⁶⁷
- (709) The issue was further discussed at the Euroitalia meeting on 4 June 2004 in Castagnetto, where (...) again asked the other members to introduce the cost surcharge. ⁹⁶⁸ (...) recalls a real debate about the surcharge as some undertakings did not want initially to apply it. ⁹⁶⁹ An internal (...) email of 14 June 2004 confirms that a price increase of [0-5]% was agreed on as it states: "*Referred to the price increase of [0-5]% discussed with Italians and foreign competitors (Grohe, Ideal Standard, Hansa, Zucchetti, Mamoli, Cisal, Teorema, Raf), (...) The application of this increase has been agreed for the second half of 2004, and some competitors already informed the clients.*" ⁹⁷⁰
- (710) To (...) surprise, the parent company in Germany instructed him not to apply the surcharge. ⁹⁷¹ The Commission believes that this decision was taken due to Masco's preparation of its leniency application (...). Nonetheless, as (...) had agreed the [0-5]% increase with his competitors and the surcharge had been communicated internally, there were follow-up communications by the Italian subsidiary aiming at persuading the German headquarters to revise their position. ⁹⁷² An internal email by (...) to (...), dated 14 June 2004, explained why the surcharge was necessary: "*...this is the one opportunity that the market will accept without any discussion due to the fact that the price increase of raw material prices affect everybody. We nail down. The competitors already made the communication to the clients.*" ⁹⁷³ It is most telling that (...), presumably annoyed by his German colleague, further specified: "*It is clear that no document has been written or signed between the competitors and us. We are astonished when you remind us the risks of this situation, not even a baby should make a*

⁹⁶⁶ (...)

⁹⁶⁷ (...) "*In Italien setzen wir uns mit GROHE und anderen in den nächsten Wochen zusammen, um zu besprechen, ob und was zu tun ist. [...] Wir werden in Südeuropa auf keinen Fall alleine lospreschen (hätte auch wenig Erfolgsaussichten) wenn unsere Wettbewerber nicht mitmachen (wie in D) und auf gar keinen Fall können wir die Neueinführung Focus mit einem TZ versehen.*"

⁹⁶⁸ (...) (see handwritten notes taken during Euroitalia meeting which was held in Castagnetto on 4 June 2004). See also recital (459).

⁹⁶⁹ (...)

⁹⁷⁰ (...) email dated 14 June 2004, sent by (...) Italy to (...) Germany, reporting the outcome of the agreement made during the Euroitalia meeting held on 4 June 2004). Copies of the announcements of cost surcharges to their clients were sent to (...) by Mamoli, Grohe, Cisal, and Hansa: (...).

⁹⁷¹ (...)

⁹⁷² (...)

⁹⁷³ (...)

*similar error. We know what the law says and until now we have always proceeded using the 'head'.*⁹⁷⁴

- (711) (...) the chain of events described at recitals (706) to (710).⁹⁷⁵ In May 2004, Grohe announced a mid-year price increase to its customers. (...) then called some competitors in order to inform them of Grohe's planned mid-year price increase. In particular, he spoke to (...) (Hansgrohe) and (...) (Ideal Standard) to ask whether they also intended to increase prices due to the higher raw materials costs. Similarly, at the Euroitalia meeting of 4 June 2004, (...) informed the other participants of his plan to increase prices mid-year, and asked whether other undertakings planned to do the same. In the minutes of this meeting found at Grohe's premises, (...) notes that he should circulate a copy of Grohe's price increase letter (to its competitors).⁹⁷⁶
- (712) Finally, it is relevant to state that, based on an internal Zucchetti memo relating to an ANIMA (Industria Nazionale Italiana Meccanica e Affini) meeting of 25 March 2004, it would appear that the decision to apply a cost surcharge reverberated across various industry sectors.⁹⁷⁷ Similarly, a few months later, an internal Zucchetti email dated 2 November 2004 summarized the key points expressed by all participants in another ANIMA gathering (that of 29 October 2004), indicating "*an increase in price lists or decrease of discounts for 2005 between 3 and 5%*".⁹⁷⁸

The addressees' arguments in response to the SO, and the Commission's findings

- (713) In its reply to the SO, Teorema argues that price increases communicated between the competitors were not intended to achieve a common agreement by manufacturers and moreover corresponded to the increases in raw material prices during the respective period.⁹⁷⁹ This argument cannot serve to alter the findings of the Commission since the key consideration in this regard is the fact that manufacturers discussed the increases, in a coordinated manner, rather than autonomously deciding on their conduct. Equally, it is irrelevant if the price increases followed the increases of raw material prices for the same reason.

4.3.2.4 France

The facts identified by the Commission

- (714) The evidence demonstrates that cartel participants also coordinated the introduction of a cost surcharge in France during 2004 (prompted by the rising prices of raw materials).⁹⁸⁰

⁹⁷⁴ (...)

⁹⁷⁵ (...)

⁹⁷⁶ (...) Grohe announced a mid-year price increase of 3% to its customers, with effect from 1 July 2004, by letter dated 21 May 2004: (...).

⁹⁷⁷ (...): an internal memo by (...) on 25 March 2004 summarises a meeting of the ANIMA (Industria Nazionale Italiana Meccanica e Affini) [probably AVR] group, at which 23 undertakings were represented. (...) was recorded as having described a number of economic and political factors which had together contributed to increased costs of production for members of the ANIMA group, which therefore led to a proposal to decide on a price increase at the level of the association. Following a tour of members present, (...) specified the increases to be applied.

⁹⁷⁸ (...): "*Infine ognuno ha espresso il suo punto di vista sul mercato e sulle performance delle proprie aziende. In breve: [...] Aumento prezzi listino o diminuzione degli sconti per il 2005 tra il 3 ed il 5 %.*"

⁹⁷⁹ (...)

⁹⁸⁰ Certain items of evidence presented in this Section also attest to the regular coordination of annual price increases in France (being intrinsically linked to the pattern of regular price coordination within the framework of AFPR). To that extent, they have also been mentioned in Section [4.2.5]. Moreover, an exceptional surcharge in France may have also been agreed during the course of 2000 in relation to ceramics: (...). However, the evidence in the Commission's file is mostly inconclusive in this regard.

- (715) According to the evidence in the Commission's possession, the discussion of the 2004 surcharge in France started at the end of April when (...) Grohe France contacted AFPR by phone to inquire whether other members were also considering a mid-year increase.⁹⁸¹ [Non-confidential summary: AFPR had received information from other suppliers according to which most competitors would contemplate such a price increase.] (...), subsequently, at the meeting of 11 May 2004, the participants exchanged information on the rates (increases) they planned to apply. This is reflected in the handwritten notes taken by (...) at the meeting.⁹⁸²
- (716) (...) confirmed that the participants to the roundtable discussion at the AFPR meeting of 11 May 2004 (Section Robinetterie Bâtiment/Sanitaire) discussed and exchanged specific information about their upcoming price increases. (...) took handwritten notes in the margins of the standard template (itself intended to record the sales performance of each supplier by product segment). These notes contain *inter alia* the following account of upcoming price increases (as reported orally by participants during the meeting):⁹⁸³
- "Grohe: increase +[0-5]% as of 1 July 2004 [...]
 (...): +[0-5]% of net price [...]
 (...): [...] +[0-5]% in September 2004
 Roca: ditto Sanifrace
 (...): increase envisaged for July 2004: [0-5]% - ditto SAS
 (...): price increase of [0-10]% between June and September".

(...) also noted in the margins: "*Attention to raw materials price increases*". Overall, it can firmly be inferred from these citations that the price increases in question at the time were linked to the rising prices of raw materials and were due to take place mid-year 2004 (in the intervening time of the ordinary cycle of annual price increases).⁹⁸⁴

- (717) (...), during the same period (May 2004), (...) organised a cruise for its top 100 suppliers (including manufacturers of bathroom fittings and fixtures).⁹⁸⁵ The cruise provided a forum for discussing various issues of the industry, including the mid-year cost surcharge. In particular, there had been some market speculation at the time about introducing a cost surcharge in view of the increased prices for raw materials. During that cruise, (...) was approached by ((...)) Grohe) with respect to a possible cost surcharge to be applied mid-2004. (...) volunteered the information that Grohe would increase its prices by 4% in July 2004. (...), he further explained that Grohe, as market leader, should "show the direction" to others. Indeed, Grohe introduced an increase in mid-July (15 to 17 July 2004).
- (718) (...) the cruise took place and that the relevant discussions included *inter alia* the introduction of a mid-year price increase.⁹⁸⁶ During the cruise, (...) became aware that Grohe would introduce a surcharge. As Grohe was considered to be the leader in taps and fittings, (...) sought to confirm the planned introduction of the surcharge. In particular, (...) called ((...)) Grohe) (...), to confirm the information on Grohe's intended price increase which had apparently been discussed during the cruise. (...) confirmed to (...) that he was going to

981 (...)

982 (...) (handwritten notes taken (...) during the AFPR meeting held on 11 May 2004). The same topic was again discussed after the introduction of the surcharge, namely at the AFPR meeting held on 10 September 2004 (...)

983 (...)

984 For the avoidance of any doubt, the handwritten notes taken by (...) 's representative at the meeting of 11 May 2004, resemble those of (...) 's representative (...).

985 (...)

986 (...)

increase prices by (...) in July 2004. (...) did not specify any particular date at the time, but Grohe's price increase took place only a few days later (mid-July 2004). Armed with this information, (...) also introduced an increase of (...), which was envisaged for August 2004 but effectively applied in September 2004.⁹⁸⁷ (...) discussions regarding the 2004 cost surcharge also took place during the cruise organized by (...) in May 2004, that is, weeks or months prior to the implementation of the surcharge by certain suppliers.

- (719) The agreement to increase prices to take account of the rising prices of raw materials is further reflected in an internal email entitled "price increase" which was circulated within (...) on 4 June 2004. It was sent by (...) ((...) and (...)) to colleagues, including (...):⁹⁸⁸

"For information, the entire profession has decided to apply a price increase of 3.5-4.5% on taps and fittings, hydrotherapy and accessories.

(...) Please find attached a copy of the correspondence that we are addressing to our clients".

- (720) Similarly, earlier email communications within (...) (emails dated 31 May and 1 June 2004) reflect the internal discussions on the introduction of the surcharge, pursuant to the exchanges that took place at the AFPR meeting of 11 May 2004 and other contacts with Grohe.⁹⁸⁹ As regards contacts with Grohe in particular, (...) Grohe's planned increase would apply to showroom and over the counter products (that is, products retailed directly to customers), but not to building projects.⁹⁹⁰ (...) used this information in an email of 1 June 2004 addressed *inter alia* to (...) and (...), to support a planned (...) price increase on the basis that Grohe's increase was generally applicable.⁹⁹¹

- (721) In an email dated 2 July 2004 by (...) to (...) (AFPR) and copied to (...), (...) communicated a 3.5% price increase for taps and fittings with effect from 1 September 2004 for deliveries, and 15 July for orders (the letter announcing this increase to (...) 's clients being just sent in June 2004). (...) stated that, in return, he counted on (...) (AFPR) to transmit him the same information as the one provided by the other AFPR members.

The addressees' arguments in response to the SO, and the Commission's considerations

Masco

- (722) In its reply to the SO, Masco (Hansgrohe) (...) the evidence put forward by the Commission regarding the 2004 cost surcharge with respect to taps and fittings in France.

Grohe

- (723) Similarly, Grohe's reply to the SO (...) the Commission's findings, without disputing the evidence put forward by the Commission in this regard (...).⁹⁹²

Ideal Standard

- (724) Ideal Standard's reply to the SO (...) the Commission's findings regarding the 2004 cost surcharge with respect to taps and fittings in France.(...).

⁹⁸⁷ (...)

⁹⁸⁸ (...) "Pour information; l'ensemble de la profession a décidé d'appliquer une hausse entre 3.5 et 4.5 % sur la robinetterie, hydrothérapie et accessoires.

⁹⁸⁹ (...)

⁹⁹⁰ (...)

⁹⁹¹ (...)

⁹⁹² However, Grohe sought to clarify that it did not play a leading role with respect to the mid-year increase in 2004. In particular, Grohe further submits that the behavior of ((...) Grohe) on the cruise organized by (...) in May 2004 does not constitute evidence for Grohe having played a ringleader role in relation to that price increase.

(725) Moreover, Ideal Standard argues that in assessing the gravity of this infringement the Commission should take into account the fact that the mid-year increase in 2004 was an "irregular" one-off occurrence driven by rising costs, thus constituting a "minor infringement". Similarly, Roca France labels the coordination of the 2004 cost surcharge as exceptional, while attempting to distinguish it from the pattern of regular price coordination within AFPR. In this regard, it is necessary to clarify the following points: first, the evidence put forward regarding the coordination of the cost surcharge does not merely attest to the cartel participants' response to the rising prices of raw materials in mid-2004, but also corroborates the regular coordination of price increases with respect to taps and fittings in France. This is because the evidence is intrinsically linked to the pattern of regular price coordination within the framework of AFPR (the AFPR meeting of 11 May 2004 readily establishing proof of that very link). Second, the categorization of the anticompetitive activities in this Decision serves organizational purposes and does not reflect any classification as to the gravity of the anti-competitive conduct. The totality of the evidence demonstrates that prices were coordinated by the cartel participants. In any event, the coordination of the 2004 mid-year price increase as such cannot be deemed any less serious or any less anticompetitive. These considerations apply also with regard to the cost surcharges applied in other Member States (Sections 4.3.2.1, 4.3.2.2, 4.3.2.3 and 4.3.2.5).

Roca

(726) Finally, Roca France claims that it indicated at the AFPR meeting of May 2004 that it would not apply any price increase and that it did not participate in the cruise organized by Saint-Gobain. However, by participating in the AFPR meeting in May, as well as in the sustained exchanges of information of price increases on a regular basis within AFPR, Roca France was bound to take the information exchanged into account when determining its conduct on the market. Indeed, Roca France communicated a mid-year increase in the summer of the same year.⁹⁹³ The evidence in the Commission's file is unambiguous as to Roca France's implication (regardless of whether it also participated in the cruise organized by Saint-Gobain or not).

4.3.2.5 Belgium

The facts identified by the Commission

Home Comfort Team

(727) The evidence on the Commission's file proves that, in the year 2004, HCT members discussed the need to increase their own prices on several occasions, notably in response to rising raw material prices. The members also exchanged information on that topic. For instance, they would discuss how the raw material manufacturers would adapt their prices to the increase of costs that they would face.⁹⁹⁴

(728) Concerns about rising raw material prices were already raised at a meeting held on 16 February 2004.⁹⁹⁵ In the context of that meeting, a huge increase of raw material prices was feared (between 20 and 30%). The minutes state that this increase also concerned steel and copper. As further developed in this Section, HCT members coordinated their price increases in subsequent meetings.

(729) The first introduction of surcharges in response to rising raw material prices took place at the meeting held on 8 March 2004.⁹⁹⁶ The minutes record that the undertakings (and in particular

⁹⁹³ (...): email communication dated 2 July 2004 by (...) to (...) (Secretary-General of AFPR), and copied to (...).

⁹⁹⁴ For an illustration see the minutes of the HCT meeting held on 8 March 2004 (...)

⁹⁹⁵ (...)

⁹⁹⁶ (...)

Hüppe of Masco and Hansa) discussed the issue of rising costs of raw materials (in particular steel, metal and copper), as well as their corresponding price increases. [Non-confidential summary: Damixa (another subsidiary of Masco) is recorded as planning an increase of [0-5]% as of 1 May onwards: (...).]⁹⁹⁷

- (730) In the course of that same meeting, HCT members exchanged information on how manufacturers of raw materials adapted their prices to the rising costs, that is, on the basis of contract clauses enabling them to adapt their prices in case of extreme increases. Finally, the minutes indicate that the steel and metal manufacturers were now confronted with an increase of 30% to 40%. This exchange of information further illustrates that participants were generally keen to have in-depth discussions on evolution of prices and market conditions.
- (731) [Non-confidential summary: At the meeting held on 19 April 2004, it became apparent that most HCT members had already applied a surcharge, following the increasing prices of raw materials. Some considered another price increase.⁹⁹⁸ On that point, handwritten notes taken by (...) onto the agenda of the meeting refer to price increases in response to rising raw material prices (and in particular steel).⁹⁹⁹ The notes state that two to three price increases within a range of 4% to 10% were to be applied by the HCT members in 2004 ('two to three times a year, 4-10%'). Following the meeting, (...) informed (...) 's headquarter in Germany, by an email dated 20 April 2004 that tap and heating manufacturers announced at the HCT meeting that they were going to raise their prices by up to 10% in two phases in order to account for increasing raw materials prices.]¹⁰⁰⁰
- (732) [Non-confidential summary: Subsequently, at the HCT meeting held on 10 May 2004,¹⁰⁰¹ (...) Dornbracht (...) stated that, due to the increase of steel prices, they would have to apply a cost surcharge: 3 EUR per shower and 4 EUR per bath. (...) also added that the prices would increase by 5% in September. At the same meeting, (...) of (...) explained the best way to communicate price increases without having to print new price lists, which was to send out stickers with the price increase to the clients.]
- (733) Finally, the minutes of the HCT meeting held on 14 June 2004 indicate that (...) announced that Dornbracht would not implement the planned price increase of 3.5%.¹⁰⁰² (...) recalls that this information provided by (...) was in response to the chairman's question about whether some members had planned a price increase. (...) also recalls that several participants answered the Chairman's question. However, at the HCT meeting of 9 August 2004, (...) informed the participants that Dornbracht would eventually introduce a cost surcharge of 3.1%.¹⁰⁰³

The addressees' arguments in response to the SO, and the Commission's findings

Home Comfort Team

Masco

- (734) Masco (...) the Commission's findings.

⁹⁹⁷ (...)

⁹⁹⁸ (...)

⁹⁹⁹ (...)

¹⁰⁰⁰ [Non-confidential summary: The email dated 20 April 2004 is a further illustration of the pricing system applied by (...) in Belgium. Indeed, as confirmed by (...), (...) 's headquarters in Germany makes general decisions on pricing. The terms and conditions for individual clients in Belgium are also coordinated between (...) Belgium and the area sales manager responsible for Belgium at (...) 's headquarters, (...). (...).]

¹⁰⁰¹ (...)

¹⁰⁰² 'Dornbracht voert geplande 3.5% stijging niet door'. (...).

¹⁰⁰³ (...)

(735) Regarding the meeting held on 19 April 2004, Masco argues that the relevant minutes do not identify which products were covered by the price increase.¹⁰⁰⁴ This argument cannot be accepted. [Non-confidential summary: As developed in this Section (...),¹⁰⁰⁵ (...) informed (...) by email dated 20 April 2004¹⁰⁰⁶ that taps and heatings manufacturers announced at the HCT meeting that they were going to increase their prices by up to 10% in two phases to take into account increasing raw materials prices.]¹⁰⁰⁷ This leaves no doubts as to the products covered by this price increase, which included taps and fittings.

1004 (...)
1005 (...)
1006 (...)
1007 (...)

4.3.3 Road toll surcharge

4.3.3.1 Austria

The facts identified by the Commission

- (736) When the road toll for carriers was introduced in Austria in 2002, bathroom fittings and fixtures manufacturers collectively decided to introduce a road toll surcharge in order to pass the additional cost on to the customers.¹⁰⁰⁸ The subject was repeatedly discussed,¹⁰⁰⁹ and ASI proposed to introduce the surcharge in 2002 before the regular annual price increase.¹⁰¹⁰
- (737) However, as no agreement was reached following ASI's first proposal, the issue was raised again several times, mainly at ASI meetings.¹⁰¹¹ In particular, as a preparation of the meeting of 20 November 2003, (...) circulated an email in which reference was made to Germany surcharging 0.2% to 0.4%.¹⁰¹²
- (738) Subsequently, at the meeting held on 20 November 2003, a maximum surcharge of 0.2 % was unanimously agreed upon,¹⁰¹³ notably by Artweger, Dornbracht, Grohe, Hansa, Ideal Standard, Keramag, Kludi and Laufen. The minutes of the meeting state in particular that exceeding the upper limit "*would not be good*".¹⁰¹⁴ Therefore, a 0.6% rate for the surcharge, which had previously been suggested by ASI members, was rejected.¹⁰¹⁵ However, the minutes of the board meeting of the same day record the following statement: "*we have the one-time chance to put a transport surcharge into the market*". Although ASI members had consulted lawyers on the issue and stated that they could not take a decision but only give a recommendation, an upper limit of 0.2% was nevertheless set.¹⁰¹⁶ The ASI members communicated their decision to the wholesalers.¹⁰¹⁷
- (739) Following these discussions, Villeroy & Boch was (...) ¹⁰¹⁸ openly criticised by the other ASI members for exceeding the maximum surcharge by applying 0.4% instead of 0.2%.¹⁰¹⁹
- (740) Later, during ASI workshops with wholesalers, the issue was raised again and the wholesalers asked the manufacturers to agree on a 0.6% surcharge.¹⁰²⁰ However, the manufacturers maintained the 0.2% surcharge.¹⁰²¹
- (741) As for the ASI meeting of 22 January 2004 at which several issues were discussed, the members confirmed concerning the "road pricing" that it would remain within the 0.2% range.¹⁰²²

1008 (...)
1009 As it was in Germany (within IFS, AGSI and FSKI); (...). Nevertheless, the undertakings did not agree on a uniform surcharge in Germany.
1010 (...)
1011 (...)
1012 (...)
1013 (...)
1014 (...)
1015 (...)
1016 (...)
1017 (...)
1018 (...)
1019 (...)
1020 (...)
1021 (...) in bilateral contacts between Artweger and (...) of Kludi (in his function as ASI chairman), (...) stated that although the road toll surcharge suggested by the wholesalers was too high, on should apply a minimum limit of 0.2 %.
1022 (...)

The addressees' arguments in response to the SO and the Commission's findings

Kludi

(742) Kludi (...) the Commission's findings concerning the road toll surcharge.¹⁰²³

Artweger

(743) In its reply to the SO and its reply to the Letter of Facts, Artweger claims that the surcharge in response to the road toll was only a recommendation and not an agreement between the manufacturers. This argument cannot be accepted. It is noted that ASI members determined through a vote the maximum level of the surcharge that they could apply by vote. The fact that they may have named their resolution a "recommendation" is not determinative in relation to its competitive assessment. The key consideration is that the manufacturers coordinated the introduction of the surcharge (and discussed extensively its appropriate maximum level) in the context of ASI.

(744) Furthermore, Artweger's contention that it was supposedly not aware of the anti-competitive character of the cost surcharge agreement which was confirmed at the meeting of 20 November 2003 cannot be accepted. The email correspondence between Kludi and Artweger itself contradicts Artweger's submission. In particular, Kludi had written to Artweger that while, the amount suggested by the wholesalers was too high, one should have a minimum limit, that is a minimum 0.2% surcharge. Artweger replied that it was dangerous from a legal point of view to continue with the discussion (which had however already begun in the ASI). Artweger was thus aware of the anti-competitive nature of the discussion, since it expressed its discomfort that it had become an ASI topic.¹⁰²⁴

(745) Artweger additionally states that the surcharge was not monitored. This argument cannot be accepted. It suffices to note that ASI members were openly criticized when they did not keep their prices within the agreed range, adherence to which was monitored during the ASI meetings (see recitals (738), (739) and (741)).

Laufen

(746) Laufen states that the road toll surcharge agreement was reached purely in response to the pressure from the wholesalers and that no profit was made as a result of the surcharge.¹⁰²⁵ However, Laufen's arguments in that regards are irrelevant. The surcharge was made in a coordinated manner in order to charge it on to the customer, as stated explicitly in a meeting with wholesalers, at which Laufen was also present.¹⁰²⁶ Similarly, the contention that the surcharge was not binding, does not alter the Commission's assessment. There is evidence that

¹⁰²³ (...) In its reply to the Letter of Facts, Kludi also sought to clarify that in the context of its bilateral communication with Artweger on the road toll surcharge (email correspondence of 18 November 2003), it was Kludi and not Artweger that terminated the discussions because of concerns regarding compliance with competition rules. Regardless, the Commission observes that both parties were aware of the anticompetitive character of their contacts.

¹⁰²⁴ (...)

¹⁰²⁵ (...) In particular, Laufen points to specific items of evidence in the Commission's file (Artweger's email of 26 September 2003 and Kludi's email of 18 November 2003) establishing – it its view – that the road toll surcharge was due to unavoidable pressure from the wholesalers and that, in any event, was intended merely as a recommendation subject to negotiations with the wholesalers. These arguments do not alter the Commission's assesment. First, even if the surcharge agreement was indeed prompted or steered by the wholesalers, this cannot distract from the fact that the producers subsequently coordinated its introduction. Second, Laufen's own submissions confirm the Commission's findings as to the manufacturers' intense pricing coordination efforts vis-à-vis the wholesalers.

¹⁰²⁶ (...)

Villeroy & Boch was criticized for exceeding the agreed margin, as well as evidence that the surcharge was unanimously agreed upon and subsequently monitored. ASI was kept informed about which undertaking had stayed in the range of 0.2% and which had not.¹⁰²⁷ Moreover, the argument that Laufen had only implemented the surcharge as a reaction to wholesalers' pressure is addressed in Section 5.2.4.2. At this stage, it is pertinent to note that Laufen's argument as to the role of wholesalers in relation to the road toll surcharge corroborates the Commission's overall findings regarding the producers' willingness to form a united front in relation to the wholesalers.

Keramag/Sanitec

- (747) As regards the introduction of the road toll, Keramag submits that the evidence put forward by the Commission does not demonstrate that the alleged coordination was driven by or for the profit of the manufacturers.¹⁰²⁸ First, the Commission notes that the issue of whether an undertaking's conduct was (or can be considered *ex post* to be) economically rational, profitable, of commercial interest or otherwise sustainable is irrelevant in assessing whether or not that undertaking participated in the infringement. Second, the manufacturers even sought to minimise any incurring costs or losses: in a meeting between the wholesalers and notably Ideal Standard, Laufen, Artweger and Keramag, all manufacturers present agreed that the costs of the road pricing would have to be borne by the end consumer.¹⁰²⁹
- (748) Keramag states that the surcharge was not applied in a uniform manner by the manufacturers and that the minutes of the ASI meeting of 10 April 2003 show that the undertaking would take a decision on its own. Keramag also states that it was not present at the board meeting of 22 January 2004.¹⁰³⁰ This argument is irrelevant as the Commission does not allege that a uniform surcharge was applied by the manufacturers, but that a maximum surcharge was agreed among them. Even if Keramag was not present at the meeting of 22 January 2004, it was present at the general ASI meeting on 22 January 2004, where road pricing was also discussed (see recital (741)).
- (749) (...)¹⁰³¹
- (750) (...).

Ideal Standard

- (751) Ideal Standard (...) that the road toll surcharge was agreed on. However, Ideal Standard also states that the surcharge does not have an appreciable effect on competition.¹⁰³² In this regard it has to be noted that the fixing of the road toll surcharge constitutes anticompetitive price fixing.

4.3.3.2 Germany

The facts identified by the Commission

- (752) Discussions with a view to passing the extra costs caused by the road toll on to customers took place at the IFS meeting of 20 November 2002, where it was stated that the road toll costs should be indicated on the invoice.¹⁰³³

1027 (...)
1028 (...)
1029 (...)
1030 (...)
1031 (...)

1032 (...)
1033 (...)

(753) The producers of ceramics also discussed the issue separately at the FSKI meeting of 17 January 2003, in the minutes of which it is stated:

*"... the opinion is that such costs, which have neither been produced by the sanitary ceramics industry and which cannot be influenced by it have to be passed on via the prices"*¹⁰³⁴

(754) The issue was also discussed in the ceramics meeting on 4 July 2003, where it was stated in relation to the introduction of the road toll:

*"The participants agree that this additional burden, which amounts to a tax increase, cannot be borne unilaterally by the industry, however the passing-on to the trade has to be done cautiously, since the factual additional burden for the undertakings of the sanitary ceramics is according to the statements of the participants only between 0.2 and 0.4% of the turnover."*¹⁰³⁵

(755) In the area of shower enclosures, the road toll was also discussed during the ADA/ABD meeting held on 12 May 2003:

*"Due to the road toll valid as of 31 August 2003, the freight costs will be increased by 10 to 15% according to first estimations. A passing on to the customers is not possible according to the law in force. This means that until a possible price increase, the costs will have to be borne by the senders. It was determined that all participants in the committees will ask for more information relating to the road toll increase in their undertakings and for summary submit this to the secretariate. Date: 31. May 2003."*¹⁰³⁶

(756) At the AGSI meeting held of 10 July 2003, the manufacturers discussed the implications of the new road toll. It was stated that the additional costs caused by the road toll would be subject to the new regular price increase, the 2004 price round.¹⁰³⁷

The addressees' arguments in response to the SO, and the Commission's considerations

Duravit

(757) Duravit is of the opinion that since no agreement on the application of a surcharge was reached among the competitors no anti-competitive behaviour can be established by the Commission.¹⁰³⁸ However, the evidence in the Commission's file shows that FSKI members (including Duravit) decided to incorporate the costs for the road toll into a price increase, so in order to pass on any additional burden to customers in a coordinated manner. Moreover, manufacturers also discussed the issue extensively in the umbrella IFS meetings, so that a

¹⁰³⁴ (...) German text: "...wird vertreten dass solche, von der Sanitär-Keramischen Industrie weder erzeugte noch beeinflussbare Kosten über die Preise weitergegeben werden müssten".

¹⁰³⁵ (...): Die Teilnehmer sind sich einig dass diese Mehrbelastung, die einer Steuererhöhung gleichkommt, nicht einseitig von der Industrie getragen werden kann, die Weitergabe an den Handel aber behutsam angegangen werden muss, zumal die tatsächlichen Mehrbelastung für die Unternehmen der Sanitärkeramik laut Aussagen der Teilnehmer nur zwischen 0,2 bis 0,4 % Anteil am Umsatz darstellen."

¹⁰³⁶ (...) The same information was again exchanged between them on 16 May 2003, at the founding meeting of the ABD, (...): "Durch die ab dem 31. August 2003 gültige LKW-Maut werden sich nach ersten Schätzungen die Frachtkosten zwischen 10 und 15 % erhöhen. Eine Weitergabe an die Kunden ist offenbar entsprechend der Gesetzeslage nicht möglich. Das bedeutet, dass bis zu einer möglichen Preiserhöhung die Kosten von den Versendern zu tragen sind. Es wurde festgelegt, dass alle Ausschussmitglieder in ihren Unternehmen weitere Infos im Bezug auf die Frachtkostenerhöhung in Erfahrung bringen und zur Zusammenfassung an die Geschäftsstelle melden sollen. Termin: 31. Mai 2003."

¹⁰³⁷ (...)

¹⁰³⁸ (...)

common approach to pass on any additional costs arising from the surcharge would be followed across product groups. Finally, the Commission observes that the issue of the road toll surcharge must be assessed in the context of the overall price coordination arrangements concerned by this Decision, notably within the association FSKI.

PART II – LEGAL ASSESSMENT

5. APPLICATION OF ARTICLE 101 OF THE TFEU AND ARTICLE 53 OF THE EEA AGREEMENT

5.1. Applicability and jurisdiction

- (758) The arrangements described in Section 4 cover six Member States, namely Austria, Belgium, France, Germany, Italy, and The Netherlands.¹⁰³⁹ The products concerned by this Decision were sold by cartel participants in all those six Member States. For the reasons explained in Sections 2.5 and 5.2.6, the cartel arrangements at issue affected competition in the internal market and trade between Member States.
- (759) With respect to Austria, the following qualification is pertinent. The cartel arrangements in Austria began before the date of its accession to the Union (on 1 January 1995). Prior to its accession, Austria was a Contracting Party to the EEA Agreement. The EEA Agreement, which contains provisions on competition analogous to the TFEU, came into force on 1 January 1994. Therefore, the EEA Agreement (primarily Article 53 thereof) also applies to the arrangements concerned by this Decision.
- (760) Insofar as the arrangements at issue affected competition in the internal market and trade between Member States, Article 101 TFEU applies. As regards the operation of the cartel arrangements in Austria (prior to its accession to the Union) and its effect upon trade between Member States and Austria since 1 January 1994, Article 53 of the EEA Agreement applies.
- (761) In this case, the Commission is the competent authority to apply both Article 101 TFEU and Article 53 of the EEA Agreement (based on Article 56 of the EEA Agreement), since the cartel had an appreciable effect on trade between Member States and between Member States and Contracting Parties to the EEA Agreement (as further described in Section 5.2.6).¹⁰⁴⁰

5.2. Application of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement

5.2.1 Article 101 TFEU and Article 53 of the EEA Agreement

- (762) Article 101(1) TFEU prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.
- (763) Article 53(1) of the EEA Agreement (which is modeled on Article 101(1) TFEU) contains a similar prohibition. However, the reference in Article 101 TFEU to trade "between Member States" is replaced by a reference to trade "between contracting parties" and the reference to competition "within the territory covered by the [EEA] Agreement".

¹⁰³⁹ For the precise duration of each addressee's participation in these arrangements, see Section 7 below.

¹⁰⁴⁰ On that basis, the Commission rejects arguments raised by some parties, such as Artweger, Grohe and Duscholux, according to which the Commission does not have jurisdiction in relation to the arrangements in Austria prior to 1 January 1995: (...).

5.2.2 The nature of the infringement – agreements and concerted practices

5.2.2.1 Principles

- (764) Article 101(1) TFEU and Article 53(1) of the EEA Agreement prohibit agreements between undertakings, concerted practices and decisions of associations of undertakings.¹⁰⁴¹
- (765) An agreement can be said to exist when the addressees adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action on the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the conduct of the addressees. Furthermore, it is not necessary, in order for there to be an infringement of Article 101(1) TFEU, for the participants to have agreed in advance upon a comprehensive common plan. The concept of an *agreement* under Article 101(1) TFEU would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.¹⁰⁴²
- (766) In its Judgment in *HFB Holding* case,¹⁰⁴³ the Court of First Instance, referring to settled case-law, stated that in order for there to be an agreement within the meaning of Article 101(1) TFEU it is sufficient that the undertakings in question expressed their joint intention to conduct themselves on the market in a specific way. The Court further reiterated that this is particularly the case where a gentlemen's agreement is reached between a number of undertakings representing the faithful expression of such a joint intention concerning a restriction of competition. Taking into account the facts at hand, the Court of First Instance stated that "*it is apparent from the series of meetings at which market-sharing was discussed that, at least at a certain time, the undertakings in question expressed their joint intention to conduct themselves on the market in a specific manner*". In such circumstances, there is no need to examine whether the undertakings considered themselves bound – legally, factually or morally – to adopt the behaviour agreed between them.
- (767) An agreement for the purposes of Article 101 TFEU does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term "agreement" can properly be applied not only to any overall plan or to the terms expressly agreed upon, but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose. As the Court of Justice has pointed out in *Commission v Anic Partecipazioni SpA*¹⁰⁴⁴ (upholding the judgment of the Court of First Instance), it follows from the express terms of Article 101(1) TFEU that an agreement may consist not only of an isolated act, but also of a series of acts or a course of conduct.
- (768) Although Article 101 TFEU draws a distinction between the concept of "concerted practices" and that of "agreements between undertakings" or of "decisions by associations of

¹⁰⁴¹ The principles set out in this Section are equally pertinent in the context of Article 101(1) TFEU and in the context of Article 53(1) of the EEA Agreement.

¹⁰⁴² Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and others v Commission*, [2002] ECR II-1487.

¹⁰⁴³ Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and others v Commission*, [2002] ECR II-1487, paragraphs 199 to 207; see also joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), [1999] ECR II-931, paragraph 715.

¹⁰⁴⁴ Case C-49/92P *Commission v Anic Partecipazioni SpA* [1999] ECR I - 4125, at paragraph 81.

undertakings", the object is to bring within the prohibition laid down in that provision a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.¹⁰⁴⁵

- (769) The criteria of coordination and cooperation laid down by the case-law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the TFEU relating to competition, according to which each economic operator must determine independently the commercial policy which he intends to adopt in the internal market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.¹⁰⁴⁶
- (770) Thus conduct may fall within the scope of Article 101(1) TFEU as a concerted practice even where the addressees have not explicitly subscribed to a common plan defining their action on the market, but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial conduct.¹⁰⁴⁷ Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the market may well also (depending on the circumstances) be correctly characterised as a concerted practice. The case law further states that the condition of reciprocity of a concerted practice is met where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it.¹⁰⁴⁸
- (771) Although the concept of a concerted practice requires not only concertation, but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed – subject to proof to the contrary – that undertakings taking part in such a concertation and remaining active on the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period of time.¹⁰⁴⁹

¹⁰⁴⁵ See, for example Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619, paragraph 64.

¹⁰⁴⁶ Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663, paragraphs 173-174. In that case, the Court of Justice therefore rejected arguments that there was no concerted practice because the evidence could supposedly indicate that parties knew of each other's commercial policies and had independently adopted their own policies accordingly. See also Joined Cases T-202/98 etc. *Tate & Lyle v Commission* ECR [2001] II-2035, paragraph 56.

¹⁰⁴⁷ See also Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 255-256.

¹⁰⁴⁸ Joined cases T-25/95 etc. *Cimenteries CBR and others v Commission* ("Cement"), [2000] ECR II-491, paragraph 1849.

¹⁰⁴⁹ See for example Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-167; and Case C-49/92P *Commission v Anic Participazioni SpA*, [1999] ECR I-4125, paragraph 119-121; Case T-303/02, *Westfalen Gassen Nederland BV v. Commission*, [2006] ECR II-4567, paragraph 133. See also more recently, Case C-8/08 *T-Mobile Netherlands & others v Raad van bestuur van der Nederlandse Mededingingsautoriteit*, Judgment of 4 June 2009 (not yet reported), paragraphs 51-62: in so far as the undertaking participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertaking on that market, even if the concerted action is the result of a meeting held by the participating undertakings on a single occasion. Moreover, that presumption cannot be discharged merely by pointing to evidence suggesting that participants did not ultimately follow the same pricing policies: see for example Joined Cases T-25/95 etc. *Cimenteries CBR and others v Commission* ("Cement") [2000] ECR II-491, paragraph 1912.

- (772) Furthermore, in *Tate & Lyle* the Court of First Instance reiterated that participants in meetings at which information was exchanged amongst competitors concerning, inter alia, the prices which they intended to adopt on the market not only pursued the aim of eliminating in advance uncertainty about the future conduct of their competitors, but also could not fail to take into account, directly or indirectly, the information obtained in the course of those meetings in order to determine their future commercial policy.¹⁰⁵⁰ This conclusion also applies where the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their competitors. In addition, the systematic participation of the undertakings in the meetings at issue allowed them to create a climate of mutual certainty as to their future pricing policies.¹⁰⁵¹
- (773) In addition, if an undertaking attends meetings at which the addressees agree on certain behaviour on the market, it may be held liable for an infringement even where its own subsequent conduct on the market does not comply with the conduct agreed.¹⁰⁵² It is indeed well established case-law that “*the fact that an undertaking does not abide by the outcome of meetings which have a manifestly anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed in the meetings*”.¹⁰⁵³ Such distancing should take the form of an announcement by the undertaking, for instance, that it would take no further part in the meetings (and therefore did not wish to be invited to them).
- (774) Moreover, the exchange of information in support or pursuance of an unlawful practice is to be considered itself unlawful. In *Trefilunion*,¹⁰⁵⁴ the Court of First Instance held that the disclosure by an undertaking of information to its competitors in preparation for a cartel constitutes a prohibited concerted practice that falls within the application of Article 101(1) TFEU. In addition, the exchange between undertakings, in pursuance of a cartel falling under Article 101(1) TFEU, of information concerning their respective deliveries, which not only covers deliveries already made but intended to facilitate constant monitoring of current deliveries in order to ensure that the cartel is sufficiently effective, constitutes a concerted practice within the meaning of that article.¹⁰⁵⁵
- (775) It is not necessary for the Commission to characterize the conduct as one or other of these forms of illegal behaviour only, particularly in the case of a complex infringement of long duration. The concepts of agreement and concerted practice are fluid and may overlap. Indeed,

¹⁰⁵⁰ Joined Cases T-202/98 etc. *Tate & Lyle v Commission* ECR [2001] II-2035, paragraph 58. Similarly, see Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraphs 460-463. See also Case T-7/89 *Hercules v Commission* [1991] ECR II-1711 and Case T-1/89 *Rhône Poulenc v Commission* [1991] ECR II-867 – all confirming that concerted actions were intended to influence the participants' conduct on the market and could not fail to have done so. Similarly, see Joined cases T-25/95 etc. *Cimenteries CBR and others v Commission* (“Cement”), [2000] ECR II-491, paragraph 1896, where the Court concluded that the disclosure of pricing information in the context of the concerted practice between Buzzi and Ciments Français' had the effect on Buzzi of, at the very least, reducing in advance uncertainty as to Ciments Français' pricing policy in the market concerned.

¹⁰⁵¹ Joined Cases T-202/98 etc. *Tate & Lyle v Commission* ECR [2001] II-2035, paragraph 60.

¹⁰⁵² See for example T-334/94 *Sarrió v Commission* [1998] ECR II-01439, paragraph 118; and Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraphs 335-336.

¹⁰⁵³ *Ibid.* See also Case T-141/89 *Tréfileurope Sales v Commission* [1995] ECR II-791, paragraph 85, Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 232, and case T-25/95 *Cimenteries CBR v Commission* [2000] ECR II-491, paragraph 1389.

¹⁰⁵⁴ Case T-148/89 *Trefilunion v Commission* [1995] ECR II-1063 at paragraph 82.

¹⁰⁵⁵ See, in this sense, judgments of the Court of First Instance in Cases T-147/89 and T-148/89 *Société Métallurgique de Normandie v Commission* and *Trefilunion v Commission* and *Société des treillis et panneaux soudés v Commission*, respectively, [1995] ECR II-1057/1063 at paragraph 72.

it may not even be possible to make any such distinction, as an infringement may simultaneously present the characteristics of each form of prohibited conduct, while considered in isolation some of its manifestations could accurately be described as one rather than the other. The anticompetitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would thus be analytically artificial to subdivide what is clearly a continuing common enterprise having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time.¹⁰⁵⁶ In *PVC II*, the Court of First Instance stated that "(i) in the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event, both those forms of infringements are covered by Article (81) of the Treaty".¹⁰⁵⁷

(776) According to case-law, the Commission must show precise and consistent evidence to establish the existence of an infringement of Article 101 TFEU. It is not, however, necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient for the body of evidence relied on by the Commission, viewed in its totality, to meet that requirement. It is in fact normal that agreements and practices prohibited by Article 101 TFEU assume a clandestine character and that associated documentation is fragmentary and sparse. In most cases therefore, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of competition rules.¹⁰⁵⁸

5.2.2.2 Application of the principles in this case – the addressees' arguments and the Commission's appraisal

(777) The facts described in Section 4 demonstrate that the addressees subject to the present proceedings were involved in collusive activities concerning the trade of bathroom fittings and fixtures, notably by coordinating their prices and pricing policies in a systematic and sustained way within the framework of regular meetings of national industry associations in Germany, Austria, Italy, Belgium, France and The Netherlands. In particular, the anticompetitive conduct identified by the Commission comprised the following collusive arrangements forming part of an overall price coordination scheme:

- The regular coordination of annual price increases within the framework of regular meetings of industry associations across the six Member States concerned (see Section 4.2). In several cases, the coordination also covered additional pricing elements, such as the fixing of minimum prices and rebates;
- The coordination of pricing on several other occasions connected to specific events, for which price increase rates were often fixed, in particular the increase of raw material costs, the introduction of the Euro and the introduction of road tolls (see Section 4.3); and

¹⁰⁵⁶ See Case T-7/89 *Hercules v Commission* [1991] II-1711 at paragraph 264.

¹⁰⁵⁷ Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij and Others v Commission* (PVC II) [1999] ECR II 931 at paragraph 696.

¹⁰⁵⁸ Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v Commission*, [2004] ECR I-123, paragraphs 53-57 and joined cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP and T-61/02 OP *Dresdner Bank AG and Others v Commission*, Judgment of 27 September 2006 (not yet published), paragraphs 59-67. See also joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), [1999] ECR II-931, paragraph 696.

- The additional disclosure and exchange of sensitive business information which supported the overall price coordination scheme across the six Member States concerned (see Section 4.2).¹⁰⁵⁹

(778) As explained in the SO at recitals (384) to (400) and maintained by the Commission in this Decision, the arrangements identified at recital (777) can jointly be described as forming part of an overall plan to restrict competition among the addressees of this Decision, which determined the lines of their actions in the bathroom fittings and fixtures sector and limited the commercial autonomy of each participant. By engaging in these arrangements, the addressees of this Decision expressed their joint intention to conduct themselves on the market in a specific way. Instead of determining their respective policies independently, the addressees of this Decision regularly met and discussed their intended price increases for the forthcoming price cycles (as well as other pricing elements, such as minimum prices and rebates) within the framework of industry association meetings, in a systematic and sustained way over a long period of time (which, for several addressees, exceeded 10 years and lasted from 1992 to 2004).¹⁰⁶⁰ These arrangements took place following an established recurring pattern, which was consistent in all six Member States covered by the Commission's investigation.

(779) In particular, it has been established in Section 4 that – in the course of regular association meetings throughout the period covered by the Commission's investigation – bathroom fittings and fixtures producers systematically communicated their respective planned price increases for the forthcoming price cycle in precise percentages or narrow percentage bands in a roundtable discussion. Subsequently, they systematically discussed the price increases actually introduced on the market. In the same context of those association meetings, participants often discussed additional price elements, such as the fixing of minimum prices and rebates. In all cases, participants have at least shared concrete and sufficient details of their pricing strategy so as to provide competitors with explicit information regarding price developments or future policies. The addressees reached a common understanding that participants would apply the price increase rates communicated within the course of the regular industry association meetings. This common understanding is also implicit in the conduct of the undertakings concerned and readily reflected in their sustained participation in the relevant meetings, which typically included – as recurring agenda items – discussions on intended price increases for the forthcoming price cycle or discussions on the actual price increases introduced on the market (depending, each time, on the specific date of a meeting within the price cycle).¹⁰⁶¹ The

¹⁰⁵⁹ Section 4.2 (regular coordination of price increases) also includes evidence pertaining to the exchange of commercially sensitive information among cartel participants which facilitated or supported the overall price coordination scheme. As evidenced by reference to the notes of several meetings in all Member States covered by the Commission's investigation, discussions relating to the members' sales performance often formed the basis of discussions on prices, with attendees referring to both topics during the same association meetings. The Commission thus points to the exchange of such commercially sensitive information when describing the price coordination taking place at specific association meetings. In addition, Section 4.2 includes an overview description of the Commission's findings regarding the exchange of commercially sensitive information by Member State: see recitals (236) to (238) with respect to Germany; recitals (340) to (341) with respect to Austria; recitals (461) to (462) with respect to Italy; recitals (503) to (504) and (516) to (518) with respect to Belgium; recitals (570) to (571) and (574) with respect to France; and recitals (602)-(605) with respect to The Netherlands.

¹⁰⁶⁰ As demonstrated in Section 4, the Commission's file further includes bilateral contacts amongst participants in furtherance of the same arrangements and objectives.

¹⁰⁶¹ As demonstrated in Section 4 above, depending on the date of each association meeting, price discussions amongst participants typically pertain to either their intended future price increases for the coming price cycle (for example during meetings taking place in autumn of each year for the price cycle commencing in January of the following year), or to the price increases previously communicated at meetings and since introduced into the market (for example during meetings taking place at the first months of each price cycle) by way *inter alia* of monitoring their implementation. See also Section 5.2.4.1 below.

systematic participation of the undertakings concerned in the association meetings at issue also enabled them to develop relationships of mutual trust and interdependency, and allowed them to create a climate of mutual certainty as to their future pricing policies.

- (780) These price coordination arrangements have been identified with respect to the entire product range of bathroom fittings and fixtures concerned by this Decision (namely taps and fittings, shower enclosures and ceramics).¹⁰⁶² Similarly, this pattern of arrangements has been established in all six Member States covered by the Commission's investigation (see also Section 5.2.3).
- (781) Within this scheme, participants also coordinated their pricing on several other occasions connected to specific events, for which price increase rates were often fixed, notably agreements on the introduction of surcharges due to rising raw material costs, agreements on the occasion of the introduction of the Euro, as well as agreements on road tolls. As demonstrated in Section 4.3, these agreements also included clear rules on the cartel participants' market conduct, as well as the means for monitoring and implementation. Some of them covered the entire range of bathroom fittings and fixtures concerned by this Decision, while other agreements pertained to one or more product groups in one or more Member States.
- (782) Additionally, the addressees to this Decision regularly exchanged commercially sensitive market information in the same context of industry association meetings, including their respective sales developments (usually in percentage increases or decreases compared to a preceding reference period) and, often, sales forecasts for the coming months. In the Commission's view, the systematic and sustained exchange of this type of information within the same framework of regular association meetings helped to increase transparency about the market and contributed to the establishment and furtherance of close relationships of loyalty and cooperation among the member undertakings. Based on the minutes or handwritten notes of the meetings, the exchanges at issue further formed the basis of price discussions amongst participants – with attendees often referring to both their pricing and sales performance at the same time in a roundtable discussion. Overall, it would thus be artificial to attempt to distinguish those exchanges from the overall scheme described in this Decision (as they can be deemed to support the overall price coordination plan between cartel participants).
- (783) Based on the foregoing considerations (Sections 5.2.2.1 and 5.2.2.2), the Commission considers that the anticompetitive conduct described in Section 4 therefore presents all the characteristics of an agreement or concerted practice within the meaning of Article 101(1) TFEU. Furthermore, as elaborated in Sections 5.2.3 and 5.2.4, the Commission takes the view that all collusive arrangements so identified can jointly be described as forming part of an overall multi-form cartel, consisting of various actions that can be classified either as agreement or concerted practice, within which the competitors knowingly substituted practical co-operation between them for the risk of fair competition.¹⁰⁶³

¹⁰⁶² Based on the evidence gathered in the course of the investigation, proof of infringement can be established with regard to all product sub-groups in the six Member States concerned, with the exception of shower enclosures in Italy and France. The precise duration of each undertaking's individual participation in the cartel arrangements is addressed at Section 7 below (based on the product scope of each undertaking's activities and its presence in each of the six Member States concerned, as well as the time span of the evidence establishing proof of infringement that is available in the Commission's file by Member State).

¹⁰⁶³ Contrary to some parties' submissions (...), it is thus not necessary for the Commission to characterize the conduct as exclusively an agreement or a concerted practice. Furthermore, there is no requirement that the agreement be in writing or subject to contractual sanctions or other formalities to be perceived as of "binding" nature (...). Nor is it necessary that there be a "precise" agreement on a specific price increase to be applied by the adherent parties uniformly (...).

5.2.3 *Single and continuous infringement*

5.2.3.1 Principles

- (784) An infringement of Article 101 TFEU may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves and taken in isolation an infringement of that provision. When the different actions form part of an ‘overall plan’, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.¹⁰⁶⁴ This conclusion is not at odds with the principle that responsibility for such infringements is individual in nature, nor does it neglect an individual analysis of the evidence adduced or the applicable rules of evidence, nor does it infringe the rights of defence of the undertakings involved.¹⁰⁶⁵
- (785) As the Court of First Instance stated in *BASF*, the concept of single infringement has two dimensions: “[it] can be applied to the legal characterisation of anti-competitive conduct consisting of agreements, of concerted practices and of decisions of associations of undertakings [...]. The concept of single infringement can also be applied to the personal nature of liability for the infringements of the competition rules.”¹⁰⁶⁶
- (786) The Court of First Instance points out, *inter alia*, in the *Cement* cartel case that the concept of ‘single agreement’ or ‘single infringement’ presupposes a complex of practices adopted by various addressees in pursuit of a single anti-competitive economic aim.¹⁰⁶⁷ The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The reference to an “overall plan” does not mean that such a ‘plan’ must have been drawn in advance, or that there must be necessarily an overall decision-making structure in the infringement which unifies its different elements. The notion of a single infringement covers precisely a situation in which several undertakings participated in an infringement in which continuous conduct in pursuit of a single economic aim was intended to distort competition, and also individual infringements linked to one another by the same object (all the elements sharing the same purpose) and the same subjects (the same undertakings, who are aware that they are participating in the common object).¹⁰⁶⁸ The existence of synergies and the complementarity between the different lines of conduct are objective indicia of the existence of such an overall plan.¹⁰⁶⁹
- (787) It would be artificial to treat such a series of actions or continuous conduct, characterised by a single purpose, as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in agreements or concerted practices. Indeed, as the Court of First Instance stated in *BASF* “[i]t appears that, in the cases which the case-law envisages, the existence of a common objective consisting in distorting the

¹⁰⁶⁴ Joined Cases C-204/00 etc. *Aalborg Portland et al.* [2004] ECR I-123, paragraph 258.

¹⁰⁶⁵ See Case C-49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraphs 78-81, 83-85 and 203.

¹⁰⁶⁶ See Case T-101/05 etc. *BASF v. Commission*, not yet reported, paragraph 159-160.

¹⁰⁶⁷ Joined Cases T-25/95 etc. *Cimenteries CBR and Others v. Commission* [2000] ECR II-491, paragraph 3699.

¹⁰⁶⁸ See for example Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 484.

¹⁰⁶⁹ Joined Cases T-109/02, T-118/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, *Bolloré SA v Commission*, ECR [2007], II-947, paragraph 424; Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 482.

normal development of prices provides a ground for characterising the various agreements and concerted practices as the constituent elements of a single infringement."¹⁰⁷⁰

- (788) Although a cartel is a joint enterprise, each participant in the arrangement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries, or cheating may even occur, but will not however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 101 TFEU where there is a single common and continuing objective.
- (789) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.¹⁰⁷¹
- (790) The fact that an undertaking concerned did not participate directly in each of the constituent elements of the overall cartel cannot relieve it of responsibility for an infringement of Article 101 TFEU. Such a circumstance can nevertheless be taken into account when assessing the seriousness of the infringement which it is found to have committed. As stated by the Court of Justice in *Commission v Anic Partecipazioni*, the fact that an undertaking has not taken part in all aspects of an anti-competitive scheme or that it played only a minor role in the aspects in which it did participate must be taken into consideration when the gravity of the infringement is assessed and if and when it comes to determining the fine.¹⁰⁷² Moreover, the existence of a single infringement may also be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of such single infringement.¹⁰⁷³
- (791) Finally, the Commission is entitled to base its description of the relevant market in cartel cases on the conduct of the participating undertakings. At paragraph 90 of its Judgment in *Tokai Carbon and others v Commission*,¹⁰⁷⁴ the Court of First Instance stated that: "*It is not the Commission which arbitrarily chose the relevant market but the members of the cartel in which [the Applicant] participated who deliberately concentrated their anti-competitive conduct on [the identified] products.*" The mere fact that the products to which the infringement relates belong to different markets does not call into question the qualification of a certain conduct as a single infringement. It is the assessment of the objective features of the behaviour in question, which will determine if there is the necessary link between the different elements that the

¹⁰⁷⁰ See Case T-101/05 etc. *BASF v. Commission*, not yet reported, paragraph 179.

¹⁰⁷¹ In Case 49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 83, the Court of Justice ruled that: "*an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk.*"

¹⁰⁷² See Case 49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 90.

¹⁰⁷³ Case T-53/03, *BPB v Commission*, ECR [2008], p.II-1333, paragraph 249 – 250.

¹⁰⁷⁴ Joined Cases T-71/03, T-74/03, T-87/03 and T-93/03 *Tokai Carbon and others v Commission* [2005] ECR II-10, paragraph 90.

Commission finds to constitute a single infringement. The Commission equally recalls that following the consistent jurisprudence of the courts of the European Union¹⁰⁷⁵ the Commission was, in the circumstances, under no duty to define the relevant market, given that the agreements or concerted practices in question were liable to affect trade between Member States and had as their object the restriction and distortion of competition within the internal market.

(792) The Commission considers that such a continuous and integrated scheme, characterized by a single economic aim and following a consistent pattern, has also been identified with respect to the bathroom fittings and fixtures sector (see Sections 5.2.3.2 and 5.2.4).

5.2.3.2 Application in this case – the addressees' arguments and the Commission's appraisal

(a) Introduction

(793) In this case, the Commission considers that the arrangements described in Section 4 present the characteristics of a single and continuous infringement. Taken as a whole, the activities of the cartel form part of an overall plan that determined the cartel members' policies on the market and limited their commercial freedom. In particular:

- Scope: the cartel covered three product groups, namely taps and fittings, ceramic sanitary ware and shower enclosures, and concerned (...) the six Member States with undertakings investigated by the Commission, namely Germany, Austria, Italy, Belgium, France and the Netherlands.¹⁰⁷⁶
- Duration: the cartel covered the entire period from (...) 16 October 1992 until 9 November 2004 (the first day of the Commission's unannounced inspections).
- Common objective and conduct: the cartel consisted of a series of actions that can be qualified as agreements or concerted practices, which demonstrated a continuous course of action with the common objective of restricting competition on prices within the bathroom fittings and fixtures sector. This was achieved notably by means of annual cycles of coordination of price increases in the framework of regular meetings of associations. It was further supplemented by specific agreements on price increases on the occasion of specific events and by the additional exchange of sensitive business information in support of the overall price coordination scheme.
- Participation (contribution to, and awareness of, the collusive conduct): based on the evidence adduced in Section 4, the Commission considers that at least a core of groups of undertakings (Masco, Grohe, Ideal Standard, Hansa, Sanitec, Villeroy & Boch, Duscholux, and Duravit) were directly, decisively and continuously involved in the cartel.

(794) The Commission considers that it would be artificial to break down this continuous behaviour with a single object by considering that it consists of a number of separate infringements, while

¹⁰⁷⁵ See for example Case T-38/02 *Groupe Danone v Commission*, [2005] ECR II-4407, paragraph 99, and Case T-48/02 *Brouwerij Haacht NV v Commission*, [2005] ECR II-5259, paragraph 58 and the jurisprudence cited in these paragraphs.

¹⁰⁷⁶ The cartel concerned (...) the six Member States investigated by the Commission, that is, Austria, Belgium, France, Germany, Italy and the Netherlands. Although the cartel could have had a broader (even EU-wide) geographic dimension, the Commission focussed its investigation on these six Member States and, thus, the evidence in support of the Commission's findings specifically relates to those Member States.

the relevant conduct in reality constituted a single infringement in the form of a series of anticompetitive practices throughout the period when the cartel operated.

(795) This Section is organised as follows: first, the Commission outlines the key considerations supporting a single and continuous approach in this case. Second, the Commission explains in more details its findings regarding each of the constituent elements of a single and continuous infringement, namely (i) the existence of an overall plan in pursuance of a single economic objective and (ii) the awareness of that overall plan by the participants involved. Third, the Commission addresses the arguments raised by addressees in the course of their replies to the SO and during the Oral Hearing.

(b) Key considerations outlined

(796) The collusive arrangements described in Section 4 and Section 5.2.2.2 formed part of an overall anticompetitive scheme in pursuance of a single objective. This is demonstrated by a number of common features, which attest to the cross-country and cross-product scope of the cartel arrangements at issue. In particular:

- Central group of undertakings: The participants to the single and continuous infringement formed a central group of undertakings (Masco, Grohe, Ideal Standard, Hansa, Sanitec, Duscholux, Duravit and Villeroy & Boch) which were involved in the cartel in several Member States, while also participating in several association meetings with cross-product scope.
- Umbrella associations/cross-product associations: eight associations included manufacturers from at least two product groups (hereinafter referred to as "cross-product associations"), while four of them concerned all three product groups (hereinafter referred to as "umbrella associations"). Furthermore, even in the context of associations concerning one product group, participants often discussed developments relating to the other product groups.
- Common structure and modalities of distribution: the wholesalers, who constituted the common customer base of the manufacturers concerned, grouped all three product groups together (as also required by the plumbers within the context of the three-tier distribution system) and further prepared yearly price catalogues regrouping these products. The manufacturers thus had a strong interest to coordinate (and did in fact coordinate) their conduct in relation to the wholesalers through recurring annual price coordination cycles, in order to respond more effectively to negotiations with wholesalers taking place each year in each Member State.
- Common pattern and mechanisms: the cartel arrangements followed the same recurring pattern and used the same mechanisms (in particular the systematic exchange of annual price increases in the framework of regular meetings of associations), for all relevant Member States and product groups, consistently throughout the period concerned by this Decision.
- Commonality of supplementary practices: the coordination of yearly price increases was further supplemented by anticompetitive agreements on the occasion of specific events (in particular raw material price increases) and the additional disclosure of sensitive business

information. These supplementary practices took place in a similar manner in several of the Member States concerned;

- Other cross-country links and trade flows: Undertakings involved in meetings of the national associations regularly referred to developments in other Member States. In addition, significant trade flows between the Member States concerned by this Decision show that cross-border trade played an important role in the industry and show that the arrangements in different Member States were to some extent complementary.
- Central pricing of multi-national undertakings: the majority of multi-national undertakings applied centralised pricing policies, in which prices were essentially controlled by the headquarters of each group. The national subsidiaries of these groups in turn reported the outcome of cartel meetings to their headquarters. This centralised pricing (and the ensuing two-way flow of information between parents and national subsidiaries) facilitated the coherent organisation of the cartel across Member States and product groups.
- Objective product links: the three product groups together form part of what is considered to be general bathrooms equipment comprising "products before the wall" ("*Produkte vor der Wand*"). The addressees acknowledge that the three product groups are complementary, thereby confirming the very existence of such objective links.
- Stability over time: the cartel arrangements continued (following the same recurring design) even when some members ceased their participation.
- Participation, mobility and scope of responsibilities of executive staff: a number of representatives moved between undertakings or had responsibility for more than one Member State or more than one product groups or participated in cartel meetings of different associations and in different Member States.

(c) The Commission's findings

Central group of undertakings

- (797) First, the vast majority of addressees, and certainly those with the strongest presence on the market, namely Masco, Grohe, Ideal Standard, Hansa, Sanitec, Villeroy & Boch, Duravit and Duscholux were involved in the cartel arrangements in all or several of the Member States investigated by the Commission. In addition, all of these undertakings participated in at least one umbrella association covering all product groups.¹⁰⁷⁷

Umbrella associations and cross-product scope coordination

- (798) Second, the Commission observes that numerous associations included manufacturers from all three product groups (taps and fittings, shower enclosures and ceramic sanitary ware), or from at least two product groups, who engaged in anti-competitive conduct. Indeed, various trade associations included representatives from all three product groups. These umbrella

¹⁰⁷⁷ Masco, Grohe, Duscholux, Villeroy & Boch, Sanitec, and Hansa participated in meetings of the umbrella associations IFS in Germany, ASI in Austria, and SFP in the Netherlands. American Standard was a member of IFS and ASI. Duravit participated in meetings of IFS in Germany. Furthermore, Masco, Grohe and Duscholux were members of the cross-product association Amicale du Sanitaire in Belgium. Grohe, American Standard and Sanitec were also members of Michelangelo in Italy. Masco, Grohe, American Standard and Hansa were also members of Euroitalia in Italy.

associations were IFS (formerly DSI) in Germany, ASI in Austria and SFP in the Netherlands.¹⁰⁷⁸ In addition, various other associations involved manufacturers from at least two product groups, namely Euroitalia and Michelangelo in Italy, as well Amicale du Sanitaire and HCT in Belgium.¹⁰⁷⁹ The Commission's file further contains evidence of an attempt within HCT to extend its product scope so as to cover all three products at issue.¹⁰⁸⁰ Lastly, even in the context of product-specific associations, participants often discussed developments (notably prices or sales) pertaining to other product groups (see recital ((813))). As evident from the enumeration of the umbrella and cross-product association, manufacturers in all Member States covered by the investigation (except France) opted for coordinating their pricing within the framework of umbrella or cross-product associations.

- (799) The existence of price coordination meetings extending to all three product groups attests to the fact that manufacturers considered it necessary (for purposes of ensuring the effectiveness of the scheme or otherwise), as well as of commercial interest, to coordinate their respective price increases in a common setting. Indeed, based on the evidence adduced in Section 4, participants from all three product groups coordinated various aspects of their pricing policy in the context of DSI/IFS meetings in Germany,¹⁰⁸¹ ASI meetings in Austria,¹⁰⁸² as well as the SFP meetings in the Netherlands.¹⁰⁸³ All undertakings concerned (with the exception of the smaller independent Italian manufacturers) participated in such anti-competitive meetings of umbrella associations.¹⁰⁸⁴
- (800) The cross-product scope of the infringement is further corroborated by the existence of several cartel meetings at which price coordination covered at least two product groups. Indeed, Euroitalia meetings concerned at least taps and fittings and ceramics. Similarly, Michelangelo

¹⁰⁷⁸ See the description of these associations provided at recitals (86) to (87), (95) to (96) and (112) to (115) of this Decision respectively.

¹⁰⁷⁹ See the description of these associations provided at recitals (97) to (98), (99) to (100), (101) to (102) and (105) to (107) of this Decision respectively.

¹⁰⁸⁰ The minutes of the HCT meeting of 8 December 2003 (...) demonstrate that contacts with ceramics manufacturers took place, with the view of extending the membership of this association as to specifically include them. Moreover, the Commission notes that Euroitalia was an extension of the German cooperation (see recital (401)) and Michelangelo in turn was an extension of the cooperation within Euroitalia (see recital (405)).

¹⁰⁸¹ See for example recitals (203), (221) and (224), with the references to the following meetings and instances: An internal note made by (...) shows that at the DSI meeting of 5 October 2000, price increases were discussed for all three product sub-groups. The same considerations apply as to the IFS meeting of 20 November 2002, at which manufacturers of all sub-product groups explored ways to determine end-consumers prices by agreeing with wholesalers on a uniform fixed multiplier. In addition, at the IFS meeting of 2 April 2003, representatives of IFS, ABD and AGSI discussed price formation across product ranges and further sought to allocate coordination responsibilities between the umbrella and the specialised associations. This issue was subsequently discussed during the IFS plenary meeting held a week later. The Commission considers that such evidence attests to the links between the single-product German associations (AGSI, ADA and FKSI) and the umbrella German association (IFS).

¹⁰⁸² See for example recitals (301) in relation to the ASI meeting of 29 November 1994 and the discussions on the so called gross price reduction, ((307)) in relation to the ASI meeting of 23 April 1996 and recital (309) in relation to the ASI meeting of 6 September 1996 and the uniform multiplication factor applied in the respective price lists, recital (311) in relation to the joint meeting of ASI and the wholesalers/plumber of 19 December 1996, recital (313) in relation to the ASI meeting of 15 October 1997, recital (317) in relation to the ASI meeting of 24 January 2000, recital (321) in relation to the ASI meeting of 12 October 2000 and recital (322) in relation to the ASI meeting of 21 June 2001.

¹⁰⁸³ See for example recitals (596) in relation to the SFP meeting of 28 September 1994, recital (598) in relation to the SFP meeting of 26 November 1996 and recital (600) in relation to the SFP meeting of 20 January 1999.

¹⁰⁸⁴ In this regard, Masco participated in IFS, SFP and ASI; Grohe in IFS, ASI and SFP; American Standard in IFS and ASI, Roca in ASI; Hansa in IFS, ASI and SFP; Dornbracht in ASI; Sanitec in IFS, ASI and SFP; Villeroy & Boch in IFS, ASI and SFP; Duravit in IFS; Duscholux in IFS, ASI and SFP; (...) in IFS, ASI and SFP; Kludi in IFS and ASI and Artweger in ASI.

comprised *inter alia* taps and fittings and ceramics.¹⁰⁸⁵ Cross-product coordination also took place at Amicale du Sanitaire meetings between taps and fittings and shower enclosures manufacturers,¹⁰⁸⁶ as well as at HCT meetings between taps and fittings and shower enclosures manufacturers.¹⁰⁸⁷ The Commission considers that such joint meetings equally attest to the links between the product groups and further serve to disprove the addressees' contention that they allegedly had no incentive, nor any interest, to coordinate with manufacturers who were not active in their particular product area. The majority of undertakings concerned participated in such anti-competitive meetings of cross-product associations.¹⁰⁸⁸

(801) The Commission's file also includes various examples of association meetings of manufacturers focussing on one product group, at which prices or sales for the other products were also discussed. For instance, the minutes of the AGSI meeting of 15 May 2002 record that taps and fittings manufacturers considered the possible consequences that sales developments in the area of ceramics on their business.¹⁰⁸⁹ Similarly, in the context of AGSI meetings participants also discussed price increases applied by Ideal Standard on ceramics.¹⁰⁹⁰ With regard to the introduction of the Euro, members of ADA expressed their intention to follow the approach adopted by AGSI members.¹⁰⁹¹ Similarly, ADA communicated the intention of IFS (the umbrella association in Germany) to achieve a uniform approach for the entire sanitary industry as regards the Euro-pricing list to its members.¹⁰⁹² Equally, Euroitalia members focused in their discussions on taps and fittings, but sometimes would also exchange information on ceramics.¹⁰⁹³ The Commission considers that such evidence equally exposes the links between the three product groups.

(802) Additional evidence in the Commission's file, notably bilateral contacts and other internal communications, further confirm the close links between the three product groups, as well as the wider perception of the bathroom fittings and fixtures market held by the manufacturers (which was taken into account for price determination purposes).¹⁰⁹⁴ (...).¹⁰⁹⁵

¹⁰⁸⁵ For such meetings in Euroitalia or Michelangelo see for example recital (414) in relation to the Euroitalia meeting of 9 July 1993, recital (422) in relation to the Euroitalia meeting of 31 January 1997, recital (428) in relation to the Michelangelo meeting of 30 January 1998, recital (423) in relation to the Michelangelo meeting of 26 February 1997, recital (439) in relation to the Michelangelo meetings of 16 March 2000 and 12 May 2000 and recital (436) in relation to the Euroitalia meeting of 15 October 1999.

¹⁰⁸⁶ See for example recitals (499) to (501) in relation to the Amicale du Sanitaire meetings of 20 September 2002, 15 November 2002 and 10 June 2004.

¹⁰⁸⁷ See for example recital (731) in relation to the HCT meeting of 19 April 2004.

¹⁰⁸⁸ In this regard, Masco participated in meetings of Euroitalia, Amicale du Sanitaire and HCT; Grohe participated in meetings of Euroitalia, Amicale du Sanitaire and Michelangelo; American Standard in Euroitalia and Michelangelo; Sanitec in Michelangelo; Hansa in Euroitalia, Michelangelo and HCT; Dornbracht in HCT; Duscholux in Amicale du Sanitaire as well as the smaller Italian independent undertakings which were active in Euroitalia or Michelangelo.

¹⁰⁸⁹ See for example recital (218) in relation to the AGSI meeting of 15 May 2002.

¹⁰⁹⁰ See for example recitals (230) in relation to the AGSI meeting of 10 July 2003, (189) in relation to the AGSI meeting of 2 October 1998 and recital (219) in relation to the AGSI meetings in August 2002.

¹⁰⁹¹ See recital (636) in relation to the ADA meeting of 23 June 2001.

¹⁰⁹² (...)

¹⁰⁹³ (...)

¹⁰⁹⁴ See for example recital (179): internal note of (...) dated 12 October 1994 attesting to the fact that that taps and fittings manufacturers had an interest in following price developments pertaining to the other product sub-groups (ceramics and shower enclosures) and, indeed, took such future pricing information into account when determining their own prices; recital (210): (...), a taps and fittings producer, had contacts as early as June 2001 with manufacturers of ceramics and shower enclosures for purposes of advancing its own price-setting internal deliberations concerning price increases for the upcoming 2002 price cycle. See also recital (213): (...) maintained a list of addressees of its price increase announcements which included manufacturers of taps and fittings, shower

Common structure and modalities of distribution

- (803) Third, the functioning of the industry and, in particular, the role played by the wholesalers at the distribution chain further attest to the objective links between the three product groups covered by the Commission's investigation (as well as to the broader geographic scope of the cartel arrangements).¹⁰⁹⁶ The key feature characterizing the distribution of bathroom fittings and fixtures in all Member States concerned by this Decision is the so-called “three-tier distribution system”, which is used to denote the three main participants in the distribution of bathroom products to the end consumer: 1) manufacturers, 2) wholesalers, and 3) installers or plumbers.¹⁰⁹⁷ The wholesalers constitute the common customer base of the addressees of this Decision. They usually offer the relevant product range in its entirety, in that no matter which products they source from particular manufacturers, they display and sell in their showrooms a full set of bathroom fittings and fixtures products, as also required by their customers.¹⁰⁹⁸ Furthermore, the wholesalers prepared price catalogues regrouping taps and fittings, ceramics and shower enclosures (products from all three product groups and from of all manufacturers) for resale purposes further down the distribution chain.¹⁰⁹⁹
- (804) As a result, manufacturers of all three product groups had a strong incentive to coordinate their overall conduct and pricing policies in relation to the wholesalers, which constituted their joint customer base in each Member State. The cartel arrangements for all three product groups notably concerned the regular coordination of price increases in relation to those joint customers in each Member State. Moreover, all participating undertakings were aware that they were engaging in annual cycles of price coordination directed towards the same customers, pursued in the context of impending negotiations with those same customers and attuned to the same modalities of distribution (notably the three-tier distribution system). It is therefore not surprising that the price coordination arrangements at issue generally exhibited a recurring pattern (see also recitals (806) to (809)).
- (805) As the wholesalers with which all manufacturers had to interact were also predominantly established (and organised) at national level, the coordination had to be implemented at that level to ensure the effectiveness of the scheme. Similarly, the price coordination scheme had to be organised along the lines of recurring annual cycles, so that manufacturers could respond more effectively to negotiations with wholesalers taking place each year in each Member State (having due regard to changing market conditions, variations in the wholesalers' demand mix and volumes). These considerations equally applied with regard to all three products and all

enclosures, as well as ceramics (all indicated in the list as competitors). See also recital (209), internal email of (...) dated 25 May 2001 which attests to taps and fittings manufacturers taking account of the practices of ADA as regards the timing and pricing of the price increases in 2002.

¹⁰⁹⁵

(...)

¹⁰⁹⁶

The role of the wholesalers and the modalities of distribution so described above are generally not disputed by the parties. To the contrary, the addressees in general (regardless of the product sub-group(s) in which they are predominantly active) highlight the role and negotiating strength of the wholesalers within the three-tier distribution system, with a view to justifying their conduct or otherwise attenuating its gravity (essentially seeking to establish that it was the wholesalers who determined the key parameters of competition or induced manufacturers to engage in the arrangements at issue). The Commission deals with these arguments in Section 5.2.4 (see, in particular, Section 5.2.4.2).

¹⁰⁹⁷

See Section 2.4.2. This system was in place in all Member States concerned by this Decision, (...).

¹⁰⁹⁸

(...)

¹⁰⁹⁹

See for example recital ((168)). The document referred to therein reflects that in Germany, at a joint meeting between manufacturers and wholesalers, dates of communication of price increases were agreed. Further, the document clearly mentions the wholesalers' price catalogue regrouping all products from all manufacturers.

Member States covered by the Commission's investigation. The Commission's file further contains several examples illustrating the manufacturers' willingness to jointly defend their interest and to form a united front in relation to the wholesalers (regardless of each manufacturer's particular product focus).¹¹⁰⁰

Common pattern and mechanisms

- (806) Fourth, the cartel arrangements described in Section 4 were generally made in the same way and at the same time – comprising the same type of conduct, following the same recurring pattern and using the same methods/mechanisms throughout the entire period concerned by the Decision. These common features are identified with regard to all Member States and products covered by the investigation. Despite the organisation of the cartel at national level and the diversity of association meetings and participants involved, the Commission considers that the cartel arrangements exhibited a remarkable degree of similarity. The typology of the cartel notably concerned annual price coordination cycles taking place in parallel and following an established recurring pattern, consistently during the infringement.
- (807) In particular, as set out in Section 4, manufacturers across all Member States and across all product groups had established a common practice of systematically exchanging their respective intended price increases (in percentages) with their competitors for the upcoming price cycle (generally before communicating those prices to their customers and before they were in effect). This was habitually carried out in the context of the regular association meetings throughout the duration of the cartel, where participants communicated their respective price increases in a roundtable discussion (otherwise referred to as "tour de table" in France: for example recital (559); "Rondvraag" in the Netherlands: for example recital (594)) and took notes of their competitors' planned prices. There was a common understanding that prices were to be increased each year on that basis.¹¹⁰¹
- (808) There is evidence in the Commission's possession that in the majority of Member States concerned by this Decision, namely Germany, Austria, France and the Netherlands, manufacturers generally aimed at aligning the timing of their price coordination efforts within

¹¹⁰⁰ For instance, in Germany, at the IFS meeting of 20 November 2002, participants reflected about the issue of the current pricing system, whereby wholesalers determined the resale price charged to end consumers. In that regard, they considered ways to determine end consumers prices by agreeing with wholesalers on a uniform fixed multiplier (recital (221)). In Austria, the minutes of the ASI meeting dated 5 May 1999 report on a meeting with wholesalers and record the industry as declaring that the competence for price determination ("*Kompetenz der Preisgestaltung*") would remain with the manufacturers (accepted without objections by the wholesalers) Handwritten notes pertaining to another meeting in the framework of the ASI held the following day (6 May 1999) leave no doubt as to what this really meant: manufacturers determined the prices, including the net and the gross prices: "*Power of pricing; i.e. determination of the industry, which prices: calculation and gross*" (recital (315)). In Austria, (...) ASI, wrote an email *inter alia* to Laufen, Grohe, American Standard, Grohe and Kludi on 31 July 2003 stating that it had been decided together with the wholesalers that in relation to the pricing policy, a common approach had to be taken for each product group. The different sub-groups were therefore asked to hold a meeting in order to decide on an envisaged gross price decrease and modus of implementation (recital (333)). See also recitals (299) with reference to an ASI meeting with wholesalers on 17 August 1994, recital (311) with reference to a joint meeting of 19 December 1996 between ASI and wholesalers/plumbers, recital (328) with reference to an ASI meeting of 7 November 2002, recital (335) with reference to bilateral correspondence in Austria of 31 July 2003, recital (450) with reference to a Michelangelo meeting of 19 July 2002, recital (451) with reference to a Euroitalia meeting of 28 October 2002, recital (512) with reference to a VC meeting of 28-29 April 2003.

¹¹⁰¹ See on this modalities of the price exchanges in the cartel the various descriptions per Member State in Section 4. (...)

the year¹¹⁰² (having also due regard to the modalities of the three-tier-distribution system – see recitals (803)- (805)). They then announced their price increases to wholesalers at the same point in time during each year. In turn, negotiations with wholesalers would be conducted in parallel and price increases would usually enter into force at the same time each year. As regards, for example, Germany, Austria, Italy and Belgium there is evidence that, after the price increases were implemented, manufacturers would meet again in the context of the same associations to inform each other of price increases actually introduced on the market (again by way of a roundtable discussion). This served, as explained in Section 5.2.5, as a monitoring mechanism.¹¹⁰³

- (809) There were thus annual cycles of price coordination established, which presented the same key features consistently throughout the period concerned. On the one hand, there were first exchanges between participants concerning their future prices in the context of regular association meetings, followed by the communication of those prices to customers, a uniform implementation date on the market, as well as further exchanges among participants within the same associations regarding their implemented prices by way of monitoring. On the other hand, there were price discussions amongst participants concerning their intended future price increases for the upcoming price cycle which took place in meetings culminating in the last months of the preceding annual cycle (for example in autumn of each year for the prices to be introduced in January of the following year). Subsequently, there were price discussions amongst participants concerning the implemented price increases which took place during meetings in the first months of each new price cycle (for example in spring of each year for the prices introduced in January of that year). The price coordination cycles for all relevant products groups and Member States followed this recurring pattern each year.

Commonality of supplementary practices

- (810) Fifth, the annual price coordination cycle was supplemented, for several Member States or product groups, by anticompetitive agreements on the occasion of specific events (see Section 4.3) and the additional disclosure of sensitive business information. These practices took place at the same time and in a similar manner, in several associations which were also situated in different Member States. The Commission considers that the very fact that such

¹¹⁰² Some timing variations by Member State or product sub-group pertained to the start and end dates of the price coordination cycle within a calendar year, without affecting the component features of the cycle as described above. For example, in Germany, price increases of taps and fittings manufacturers and ceramics manufacturers were introduced in 1 January of each year and were announced to the wholesalers towards the end of the previous year. Manufacturers thus focused their coordinative efforts in September/October of each year (see recital (168)), for AGSI see specifically recital (171), for FSKI see recital (175); shower enclosures manufacturers would usually announce their prices to the trade earlier in autumn and, thus, price coordination also took place earlier, between May and July of each year (see recital (173)). In Austria, price increases were becoming effective as of 1 April each year (see recital (293)). Nonetheless, members were again fully aware of the "internationally common date" of 1 January each year (see recital (317)). In Italy manufacturers followed the German model and price increases were usually introduced in 1 January (see in this regard numerous association meetings cited in Section 4); according to Grohe, the Euroitalia meetings followed a certain pattern during each year where in each "autumn meeting" in September or October, members would announce the individual price increases to their competitors for the next year. (...) submitted that price increases in the Netherlands were implemented in April of each year, (...). For France, it seems that the price increases took place in January or February of each year, (...).

¹¹⁰³ See for example in this regard for Germany recitals (188) AGSI meeting of 6 March 1998, (194) AGSI meeting of 9 March 1999, (207) AGSI meeting of 7 March 2001, for Austria recitals (306) ASI meeting of 23 January 1996, (312) ASI Meeting of 3 February 1997, (331) ASI meeting of 23 January 2003, for Italy see recitals (412) Euroitalia meeting of 15 March 1993, (427) Euroitalia meeting of 26 January 1998, (434) Euroitalia meeting of 7 May 1999, (440) Euroitalia meeting of 18 May 2000, (444) Euroitalia meeting of 1 February 2001, for Belgium recitals (502) Amicale du Sanitaire meeting of 5 February 2001, (510) Amicale du Sanitaire meeting of 14 January 2003.

supplementary acts had been coordinated on an *ad hoc* basis essentially highlights the operation of the regular annual price coordination cycles, while further attesting to the intensity and stability of the cartel.

- (811) In particular, there is evidence that on several occasions, cartel participants would consult each other when they planned a price increase outside the scope of the regular price coordination cycles. Particular reference is made to a rise in raw material prices in 2004, which led manufacturers to coordinate their pricing in Austria, Germany, France, Belgium and Italy. In view of the introduction of the Euro, the manufacturers also coordinated the timing of the new price lists for 2002 in Austria and Germany. The Commission considers that these arrangements formed part of the overall price coordination scheme concerned by this Decision. First, they were conceived and implemented by the same cartel participants. Second, they were made within the same framework of association meetings as the regular price coordination arrangements. This applies to all price coordination activities identified in Section 4.3. Third, they had the potential of influencing the timing or rates of the annual coordinated price increases (which further explains, to a large extent, why participants sought to organise them within the same overall framework).
- (812) Similarly, there was an additional exchange of sensitive business information, which supplemented (and supported) the overall price coordination scheme, across all Member States and all product groups pertinent to this Decision. In turn, common features of this information exchange system were that the information covered recent sales data, usually in percentage increases/decreases compared to a preceding reference period and, often, sales forecasts for the coming months. The Commission considers that such additional exchange of sensitive business information also formed part of the overall price coordination scheme concerned by this Decision. First, it involved the same cartel participants. Second, they were made within the same framework of association meetings. Based on the minutes or handwritten notes of the meetings, the exchanges at issue often formed the basis of price discussions amongst participants – with attendees often referring to both their pricing and sales performance at the same time in a roundtable discussion. Third, as explained in Sections 5.2.2.2 and 5.2.4.5, the systematic and sustained exchange of this type of information within the same framework of regular association meetings helped to increase transparency about the market and contributed to the establishment and furtherance of close relationships of loyalty and cooperation among the cartel participants.
- (813) The Commission observes that such exchanges of sales information at the meetings very often corroborate the links between the product groups concerned by this Decision. The file contains various examples of meetings within the framework of product-specific associations, where participants also discussed market and sales developments in connection with other product groups.¹¹⁰⁴ Similarly, in the context of the umbrella association meetings, manufacturers exchanged data for all three product groups. For example, in SFP, the information exchange system comprised manufacturers from all three product groups.¹¹⁰⁵ Similarly, at IFS¹¹⁰⁶ and

¹¹⁰⁴ In relation to 2003, see for example: FSKI meeting of ceramics producers on 17 January 2003, where sales data for shower enclosures and taps and fittings were also exchanged: (...); FSKI meeting of 4/5 July 2003, where sales data in relation to shower enclosures were also discussed: (...); AGSI meeting of taps and fittings producers on 30 January 2003, where sales forecasts for ceramics were also mentioned: (...).

¹¹⁰⁵ See in this regard recital (604) and the references therein, such as minutes of SFP meeting of 29 March 1994 (...). Minutes of SFP meeting of 4 April 1995; (...). Minutes of SFP meeting of 13 September 1996; (...). Minutes of SFP meeting of 22 April 1997; (...). Minutes of SFP meeting of 5 March 1998, (...). Minutes of SFP meeting of 20 January 1999, (...).

ASI¹¹⁰⁷ meetings, manufacturers of all three sanitary product groups exchanged information on their sales (notably domestic and export sales developments, but also sales forecasts).

Other cross-country links

- (814) Sixth, the discussions or exchanges among participants at national association meetings further attest to the cross-country links between the cartel arrangements at issue (and the broader geographic scope of the cartel).
- (815) Price discussions in one Member State sometimes also triggered discussions on price increases in other Member States. For instance, the anti-competitive agreement on a cost-surcharge by the German association ADA triggered a coordination of prices in the Austrian association ASI in the year 2000.¹¹⁰⁸ The discussion on a surcharge was triggered in Austria in 2004 because undertakings had heard of undertakings implementing a price increase in Germany.¹¹⁰⁹ Similarly, the German price increase agreed between taps and fittings manufacturers in 2004 triggered discussions on a coordinated surcharge in Italy.¹¹¹⁰
- (816) In addition to these references to anti-competitive conduct in one Member State triggering similar behaviour in another Member State, the evidence in the Commission's possession also reveals that the market conditions in the different Member States were in fact interlinked.
- (817) In Austria for instance, attempts to align the prices to the German price level are clearly proven. Indeed, in 2001, in the context of bilateral contacts, shower enclosure manufacturers acknowledged the necessity of "*correction measures*" in order to align in a coordinated way the Austrian price level to the German price level.¹¹¹¹ Moreover, (...) most undertakings active in Austria were subsidiaries of German undertakings and generally followed the German pricing (with Austrian prices levels evolving in parallel).¹¹¹² Similarly, taps and fittings manufacturers in Austria attempted to align their prices to the German price level as early as October 1994.¹¹¹³ The board of the Austrian association ASI had also referred to a coordinated practice in Germany as a response to a wholesalers' request.¹¹¹⁴ Austrian manufacturers also reacted to price changes in Italy, as discussed in the ASI meeting of 1 September 1995.¹¹¹⁵
- (818) In Italy, the coordination within Euroitalia was essentially an extension of the German price coordination model.¹¹¹⁶ In addition, there are various examples of meetings in Italy at which participants referred to price increases in other Member States, notably Germany and Austria;

¹¹⁰⁶ (...) See for example the minutes of the IFS meeting on 10 November 1998: (...); minutes of the IFS meeting on 5 October 2000, (...); handwritten minutes of the IFS meeting on 4 July 2002, (...); minutes of the IFS meeting on 15 October 2003, (...); minutes of the IFS meeting on 27 April 2004, (...).

¹¹⁰⁷ See for example ASI meeting of 23 January 2003, (...), ASI meeting of 22 January 2004, (...).

¹¹⁰⁸ See recital (320) to (321).

¹¹⁰⁹ See recital (689) to (690) with the reference of the email of Kludi to competitors of May 2004, and (...) confirming that the price increase was initiated by German manufacturers and transferred to Austria.

¹¹¹⁰ See recital (708). It is notable that the manufacturers in France also agreed on a surcharge in this year (see recitals (714) to (721)).

¹¹¹¹ See recital (323), Email correspondence between Austrian shower enclosure manufacturers in June 2001.

¹¹¹² (...)

¹¹¹³ See recital (300), ASI meeting of 12 October 1994.

¹¹¹⁴ See recital (329), ASI meeting of 7 November 2002.

¹¹¹⁵ See recital (303), ASI meeting of 1 September 1995.

¹¹¹⁶ See, in particular, recital (401).

such as the Euroitalia meeting of 16 October 1992¹¹¹⁷, the Euroitalia meeting 16 October 1995 or the Euroitalia meeting of 28 September 2001.¹¹¹⁸

- (819) In the Netherlands, a discussion on the various price structures in force in several Member States took place at the SFP meeting of 28 October 1998. It was stated that the independent position of the Dutch market was shifting in the direction of other Member States, and in particular Germany.¹¹¹⁹ SFP members also noted the negative results of the Belgian market at the SFP meeting of 10 June 1994.¹¹²⁰
- (820) In Belgium, addressees considered a diminution of the ADA turnover by 15% at the HCT meeting of 14 September 2003.¹¹²¹ Participants also discussed the distribution system in Belgium, the Netherlands, France and Germany at their HCT meeting of 8 March 2004.¹¹²² Handwritten notes taken by (...) of the VC meeting of 30 October 2001 further show that participants discussed general market situation in Belgium, the Netherlands and Germany.¹¹²³
- (821) Pricing developments in other Member States were also discussed at association meetings in Germany. For example, in the context of an extra-ordinary surcharge due to an increase in raw material prices participants considered the price increase on the Italian market as notes of the AGSI meeting of 29 April 2004 show.¹¹²⁴ Within FSKI, participants had discussed how to react in a coordinated manner to an "extraordinary" price increase on the French market.¹¹²⁵
- (822) Further, there is evidence that subsidiaries of large undertakings based in Germany communicated their groups' planned strategy on the market to their competitors during cartel meetings. In other words, they did not only communicate the prices for the Member State of the national association in which the meeting took place, but also for other Member States where the group was active.¹¹²⁶ More generally, the meetings in IFS were used to exchange of views on the state of market not only in Germany, but also generally in other Member States in Europe, in particular as participants communicated the variations in export figures to each other

¹¹¹⁷ See recital (411)

¹¹¹⁸ See recitals (418) and (445).

¹¹¹⁹ (...)

¹¹²⁰ (...)

¹¹²¹ (...)

¹¹²² (...)

¹¹²³ (...)

¹¹²⁴ See recital (672).

¹¹²⁵ See recital (200), minutes of the FSKI meeting of July 2000.

¹¹²⁶ See for example the Euroitalia meeting of 1 June 2001, see recital (445), 16 October 1998 (recital (431)) or Euroitalia meeting of 28 September 2001, see recital (445). In the Netherlands, evidence attests to the fact that the meeting participants took into account the international strategy of the larger undertakings: (...) (of Hansa) asked at the SFP meeting of 13 March 2003 whether there was a policy modification coming from the German parent companies regarding the timing of enforcement of price modification, (...). Furthermore, when discussions on the guarantee system took place at the SFP meeting of 13 June 1995, the members decided that all representatives of German parent companies in the Netherlands should check how they deal with the system in force in Germany, (...). For Germany see the bilateral meetings of shower enclosure producers on 15 September 1994 and 25 September 1995, recitals (178) to (180); also the bilateral contacts in December 2000, see recital (204) and on 2 July 2001 of (...), see recital (205).

in percentages.¹¹²⁷ This is explained by the fact that Germany was the largest market, but also because most major players had their headquarters in Germany.¹¹²⁸

- (823) Finally, there are instances in the Commission's file that manufacturers sought to obtain pricing information from their competitors relating to other Member States. For instance, (...) obtained confidential price increase information from competitors pertaining to all Member States concerned by this Decision.¹¹²⁹

Trade flows

- (824) The existence of cross-country links (as well as that of central pricing) may be explained in particular by the existence of significant trade flows. Their existence has not been seriously contested, even if certain addressees have claimed that their own sales are insignificant. Evidence in the Commission's file (...) ¹¹³⁰ (...) ¹¹³¹, corroborates that significant trade flows took place between the Member States concerned by this Decision, especially for taps and fittings (...) and ceramics. The Commission refers to (...) the year 2003 (...) , covering the last year of the infringement.
- (825) [Non-confidential summary: In Germany, taps and fittings for a value of EUR 110-140 million had been imported from the other Member States concerned by this Decision. This accounted for 45-50% of the overall imports of taps and fittings into Germany.¹¹³² Exports of taps and fittings from Germany to Member States concerned by this Decision were valued at EUR 270-280 million. This accounted for 40-50% of Germany's overall exports in this area.]¹¹³³
- (826) [Non-confidential summary: In the area of ceramics, imports into Germany account for 70-80% of domestic consumption.¹¹³⁴ Imports from the five other Member States concerned by this Decision amounted to EUR 80-90 million. This accounted for 45-50% of the entire imports of ceramic sanitary ware into Germany.¹¹³⁵ Exports of ceramics from Germany to all other five Member States amounted to EUR 90-100 million, accounting for 50-60% of the overall exports from Germany.]¹¹³⁶
- (827) [Non-confidential summary: In Austria, taps and fittings for a value of EUR 45-50 million had been imported from Member States concerned by this Decision, accounting for 70-80% of its overall imports.¹¹³⁷ As regards the exports of Austria in the area of taps and fittings, a value of EUR 15-20 million was exported to Member States concerned by this Decision, which accounted for 60-70% of Austria's overall exports of taps and fittings in 2002.¹¹³⁸ Regarding ceramics, EUR 20-25 million had been imported in the year 2002 from Member States

¹¹²⁷ See for example the minutes of the IFS meeting on 10 November 1998: p. 17503 (p. 143829) inspection documents; (...) minutes of the IFS meeting on 5 October 2000, (...); handwritten minutes of the IFS meeting on 4 July 2002, (...); minutes of the IFS meeting on 15 October 2003 (...); minutes of the IFS meeting on 27 April 2004, (...).

¹¹²⁸ Villeroy & Boch explains that its annual pricing process was "*driven by German market conditions, volume and value-wise the most important single market for V & B*" (...).

¹¹²⁹ See recital (205). Furthermore, it had established comparisons of prices for several of these Member States (see, for example, a comparison between the Netherlands, Belgium and France: recital (204)).

¹¹³⁰ (...)

¹¹³¹ (...)

¹¹³² (...)

¹¹³³ (...)

¹¹³⁴ (...)

¹¹³⁵ (...)

¹¹³⁶ (...)

¹¹³⁷ (...)

¹¹³⁸ (...)

concerned by this Decision, accounting for 70-80% of its overall imports in 2002.¹¹³⁹ (...) Austria exported ceramics in the value of EUR 5-10 million to Member States concerned by this Decision, accounting for 20-30% of its overall exports of ceramics in 2002.]¹¹⁴⁰

- (828) [Non-confidential summary: In Italy, taps and fittings for a value of EUR 80-90 million had been imported from Member States concerned by this Decision, accounting for 60-70% of its overall imports.¹¹⁴¹ As regards the exports of Italy in the area of taps and mixers, a value of EUR 190-200 million was exported to Member States concerned by this Decision, which accounted for 30-40% of Italy's overall exports of taps and fittings.¹¹⁴² In Italy, regarding ceramics, EUR 15-20 million had been imported from Member States concerned by this Decision accounting for 30-40% of its overall imports.¹¹⁴³ As regards the exports of Italy in the area of ceramics, a value of EUR 30-40 million was exported to Member States concerned by this Decision which accounted for 15-20% of Italy's overall exports of ceramics.]¹¹⁴⁴
- (829) [Non-confidential summary: In Belgium, taps and fittings for a value of EUR 70-80 million had been imported from Member States concerned by this Decision, accounting for 80-90% of its overall imports.¹¹⁴⁵ As regards the exports of Belgium in the area of taps and fittings a value of EUR 5-10 million was exported to Member States concerned by this Decision, which accounted for 50-60% of Belgium's overall exports of taps and fittings.¹¹⁴⁶ Regarding ceramics, EUR 30-40 million had been imported from Member States concerned by this Decision, accounting for 70-80% of its overall imports.¹¹⁴⁷ Exports of ceramics from Belgium to Member States concerned by this Decision amounted to EUR 15-20 million, accounting for 80-90% of the entire exports of ceramics from Belgium.]¹¹⁴⁸
- (830) [Non-confidential summary: For the area of taps and fittings, a value of EUR 200-210 million from Member States concerned by this Decision had been imported into France (accounting for 70-80% of its overall value of imports of taps and fittings).¹¹⁴⁹ As regards the exports of France in the area of taps and fittings, a value of EUR 20-30 million was exported to other Member States concerned by this Decision, which accounted for 20-30% of its overall exports.¹¹⁵⁰ Regarding ceramics, EUR 40-50 million had been imported in the year 2002 from other Member States concerned by this Decision, accounting for 30-40% of its overall imports.¹¹⁵¹ As regards exports of France in the area of ceramics, a value of EUR 70-80 million, accounting for 50-60 % of the overall exports of ceramics from France, was exported to other Member States subject to this Decision.]¹¹⁵²
- (831) [Non-confidential summary: For the area of taps and fittings, a value of EUR 50-60 million had been imported into the Netherlands by Germany, Belgium, France and Austria, accounting for 60-70% of the overall imports of taps and fittings into the Netherlands.¹¹⁵³ As regards the

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exports of the Netherlands in the area of taps and fittings, a value of EUR 5-10 million was exported to Germany, which accounted for 60-70% of its overall exports in this area.¹¹⁵⁴ Regarding ceramics, EUR 30-40 million had been imported from Member States concerned by this Decision, accounting for 80-90% of its overall imports.¹¹⁵⁵ As regards exports of the Netherlands in the area of ceramics, a value of EUR 1-5 million, accounting for 40-50% of the overall exports of ceramics from the Netherlands was exported to Member States concerned by this Decision]¹¹⁵⁶.

- (832) These significant trade flows show that inter-state trade played an important role in the industry. The data furthermore attests to the fact that the implementation of the arrangements would create synergies, as it was more effective for the undertakings to coordinate their conduct in several Member States. This is corroborated by the several instances, in which price increases in one Member State triggered events in other Member States, illustrating the existence of some degree of reciprocal influence of the price levels.
- (833) The existence of complementarity or synergies is not negated by the mere fact that duration in different Member States may be different, or that there is not enough evidence that the infringement may have extended to all six Member States investigated during certain years. It is important to underline that the existence of complementarity or synergies is not premised on the fact that for there to be an infringement all elements of a single infringement had to be committed at the same time, so that each element of the infringement cannot be implemented without the other. What is relevant is whether the facts actually found do complement each other objectively.¹¹⁵⁷

Central pricing

- (834) Seventh, the majority of multi-national undertakings applied centralised pricing policies, in which prices were essentially controlled by the headquarters of each group. In particular, the headquarters of those multi-nationals were responsible for setting the initial prices, with price corridors within which the national subsidiaries could adapt their prices to reflect their knowledge of their competitors at national level. The national subsidiaries were steered by this central pricing policy, which in turn had an impact on the prices of the smaller competitors in the national markets. On the other hand, price information obtained by other cartel participants (in the context of the association meetings) was reported back to the headquarters, such that the group could take it into account and adapt accordingly. This centralised pricing (and the ensuing two-way flow of information between parents and national subsidiaries) facilitated the coherent organisation of the cartel across Member States and product groups.
- (835) Within Hansgrohe, (...).¹¹⁵⁸
- (836) (...).¹¹⁵⁹ Evidence shows that Hüppe representatives in the cartel meetings reported to the head office in Germany.¹¹⁶⁰

1154 (...)

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1157 For example, price fixing and market share may coexist in an infringement, and are often considered to be complementary (see, for example, Judgment of 8 July 2008, *Lafarge v Commission*, T-54/03, paragraphs 480-482), but the mere fact that parties collude on prices does not mean that one must reasonably foresee that the same parties are also colluding as regards market shares, since the two, while being complementary, are not intrinsically linked (see, for example, Case T-311/94 *Kartonfabriek de Eendracht v Commission* [1998] ECR II-1129, paragraphs 235-238).

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- (837) (...) ¹¹⁶¹
- (838) (...) ¹¹⁶² (...) ¹¹⁶³ (...) ¹¹⁶⁴
- (839) (...) ¹¹⁶⁵
- (840) Within Villeroy & Boch, all business decisions relating to pricing were generally taken by the headquarters in Germany. ¹¹⁶⁶ (...) ¹¹⁶⁷ This is further illustrated by the minutes of the ASI meeting of 10 April 2003 which stated: "*Price lists from Germany are taken over 1 : 1 by: ... V&B, Keramag ...*". ¹¹⁶⁸
- (841) (...) ¹¹⁶⁹ (...) ¹¹⁷⁰
- (842) As regards the Sanitec group, within Sphinx, the headquarters in Maastricht, Netherlands, took principal decisions concerning pricing for all three product groups centrally. ¹¹⁷¹ (...) ¹¹⁷²
- (843) This central price setting of the majority of large international players on the market influenced the entire cartel across all product groups in all Member States concerned. The headquarters of international groups determined the prices centrally for the entire group. At the meetings of national associations covering one or more product groups, their subsidiaries communicated their price increases to their competitors. Smaller independent undertakings participating at the meetings were influenced by the exchanges on prices at the association meetings (which, with regard to the larger multinationals, reflected their pricing that was determined centrally). Large international undertakings active in two or more product areas concerned by this Decision and that were represented in cross-product associations (such as ASI in Austria or IFS in Germany, Michelangelo in Italy or SFP in the Netherlands) could take account of the information received in these association meetings centrally for all geographic areas and for all their products. The influence of cross-product association meetings thus extended across geographical borders. It is hardly conceivable in such setting that national infringements would be totally independent of each other.
- (844) The Commission's findings are corroborated by evidence demonstrating that national subsidiaries of larger multi-national undertakings reported the outcome of cartel meetings to their headquarters in Germany. ¹¹⁷³

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1165 (...) : "*Hansa non sa cosa fare. Germania richiede aumento dal 4/6 %.*"
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1168 (...) : "*Preislisten aus Deutschland übernimmt 1 : 1: ... V&B, Keramag ...*"
1169 (...) Prices for the Netherlands and Belgium were even directly billed to Duravit Germany (...).
1170 (...)
1171 (...)
1172 (...) In relation to the Sanitec corporate headquarters in Finland, since June 2002, they directly influenced production capacity, production allocation, approval of budget and capital expenditures and review of production results have; before that, quarterly and monthly reporting obligations also existed within the group, (...).
1173 See by way of example recital (315) regarding a report of (...) in Austria to its parent company in Germany containing the intended price increases of its competitors in December 1999, recital (414) regarding a report of (...) in Italy to (...) Germany containing the intended price increases of its competitors in July 1993. In Belgium, (...) even waited for the results of the coordination in Germany before determining its own strategy (see recital (497)). In Italy, (...) communicated the agreement on a [0-5]% surcharge in 2004 to its parent company in Germany (see recital (710)). (...).

Objective links

- (845) Eighth, there are objective links between the three product groups (taps and fittings, shower enclosures and ceramics), which together form part of what manufacturers and customers consider to be general bathrooms equipment comprising "*products before the wall*" ("*Produkte vor der Wand*").¹¹⁷⁴ Further illustrating this point, (...).¹¹⁷⁵ The Commission considers that such links are readily implied in the context of those association meetings covering at least two or three product groups (see recitals (798) to (802)), as well as in the context of the manufacturers' relationship with their joint customer base (see recital (803)).
- (846) Finally, the Commission observes that the addressees acknowledge that the three product groups are complementary, thereby confirming the very existence of such objective links.

Stability of price coordination scheme over time

- (847) Ninth, the Commission observes that there are instances where the cartel arrangements continued (following the same recurring pattern) even when some members dropped out.¹¹⁷⁶

Participation, mobility and scope of responsibilities of executive staff

- (848) Tenth, the Commission's file contains various examples of executives (including participants attending association meetings) moving from one undertaking to another, as well as examples of representatives that had responsibility for more than one Member State. The file also includes examples of executives attending cartel meetings of different associations or in different Member States. Such attendances and executive staff moves (between Member States and product groups) or cross-country assignments further corroborate the Commission's findings as to the broader geographic and product scope of the cartel. They also attest to the flow of information concerning the cartel arrangements amongst the relevant addressees.
- (849) By way of example, (...) represented Sphinx (of Sanitec) at cartel meetings of SFP in the Netherlands, as well as at cartel meetings of the VC Group in Belgium. This position enabled him to inform other manufacturers on the market situation, as well as on the discussions held between competitors in both Member States, as illustrated by the discussion held at the VC meeting of 30 October 2001, at which he gave an explanation on the Dutch trade associations that were active in the sanitary sector, including SFP.¹¹⁷⁷ (...) represented Ideal Standard at ASI, participating in both the ceramics and the taps and fittings subgroups.¹¹⁷⁸ (...) who was responsible for the sales and pricing of both ceramics and taps and fittings, was attending AFPR and AFICS meetings.¹¹⁷⁹ Moreover, there are numerous examples of executives moving

¹¹⁷⁴ (...): letter of ASI of 20 March 1998 mentioning the advertising surcharge to be applied to all "*products before the wall*" ("*Produkte vor der Wand*").

¹¹⁷⁵ (...) It is further notable that, as regards the broad composition of the Michelangelo group in Italy (which included producers of taps and fittings, ceramics, but also producers of heating boilers).

¹¹⁷⁶ For example, Hansa stopped participating in Michelangelo in 1999 (although it continued to participate in Euroitalia); Dornbracht started its participation in ASI in 2001; Mamoli interrupted its participation in Euroitalia from 1994 - 2000.

¹¹⁷⁷ (...)

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¹¹⁷⁹ (...)

from one undertaking to another and examples of undertakings' representatives being responsible for more than one Member State within their respective undertakings.¹¹⁸⁰

Awareness of the overall collusive scheme by the participants

- (850) In order to attribute liability for the whole single and continuous infringement, even when an undertaking personally participated only in a part of anticompetitive arrangements, it is sufficient to show that the undertaking intended to contribute, by its own conduct, to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives, or that it could reasonably have foreseen it and that it was prepared to take the risk.¹¹⁸¹ The awareness of the participants has to extend to cover "*the general scope and the essential characteristics of the cartel as a whole*".¹¹⁸² There is thus no need to demonstrate that the addressees were aware of all details concerning bilateral communications between the other addressees. According to case-law, even facilitating the attainment of the cartel is enough to share responsibility for the overall cartel.¹¹⁸³
- (851) It must be said at the outset that where participants in cartel meetings have contacts with their (equally) large international competitors active in other Member States for a very long period of time, it is "*scarcely conceivable*" that, while participants "*rubbed shoulders*" with competitors participating in the entire territory of the cartel in the cartel meetings, they were unaware of the broader geographic scope of the arrangements.¹¹⁸⁴
- (852) In line with these principles, it is the Commission's view that the facts described in Section 4 of this Decision establish the awareness of the overall collusive conduct by the following undertakings: Masco, Grohe, Ideal Standard, Sanitec, Hansa, Villeroy & Boch, Duscholux and Duravit. These addressees knew (or could have reasonably foreseen) that the overall cartel covered at least the three product groups concerned by this Decision, notably because they were members of at least one umbrella association (and, often, members of several other cross-product associations). Furthermore, these addressees knew (or could reasonably have foreseen) of the wider geographic scope of the cartel, as they were themselves represented in three or more Member States and national associations where they engaged in contacts with other international undertakings, which were in turn active in the cartel in several Member States concerned by this Decision.¹¹⁸⁵

Masco, Grohe, Ideal Standard and Sanitec

¹¹⁸⁰ (...)

¹¹⁸¹ See Case C-49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 83 and 87. It is enough to have "a body of objective and consistent evidence" to that effect, see, for example Judgment of 8 July 2008, *Gyproc v Commission*, Case T-50/03, paragraph 63.

¹¹⁸² See Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich AG v Commission*, ECR [2006] II-5169, paragraph 193.

¹¹⁸³ See in this sense Case T-36/05 *Coats Holdings Ltd v. Commission* (not yet reported), paragraph 119-122.

¹¹⁸⁴ See Joined Cases T-109/02, T-118/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, *Bolloré SA v Commission*, ECR [2007], II-947, paragraph 215.

¹¹⁸⁵ The Commission considers that the organisation specific to this cartel entailed the discussion of prices in the respective national organisation of each Member States. The large international undertakings then used this information in their central price determination so that the discussions at national level had an effect throughout the geographical territory covered by the cartel. Thus, the fact that price discussions at the said meetings notably related to the coordination of national prices is not capable of undermining this finding, as it is fully in line with the cartel's general system of organisation (see for example Joined Cases T-109/02, T-118/02 etc. *Bolloré SA and Others v Commission* [2007] ECR II-947, paragraph 217).

(853) Masco, Grohe, and Sanitec participated – through their national subsidiaries – in cartel meetings of associations in all the six Member States concerned. They were thus undoubtedly aware of the wider geographic scope of the cartel, as they were directly involved in the cartel arrangements in the six Member States investigated by the Commission, namely Germany, Austria, Italy, Belgium, France and the Netherlands. Moreover, all of them participated in cartel meetings of at least one umbrella association (and, often, of several other cross-product associations) and were directly involved in the cartel to the maximum extent of their product activities. In particular, Masco was a member of the umbrella associations IFS (formerly DSI), ASI, SFP and SVS, which covered all three product groups concerned (namely taps and fittings, ceramics and shower enclosures). Masco was also a member of the cross-product associations Euroitalia, HCT and Amicale du Sanitaire, which covered at least two product groups. Similarly, Grohe participated in meetings of the umbrella associations IFS (formerly DSI), ASI, SFP and SVS, as well as in meetings of the cross-product associations Euroitalia, Michelangelo, and Amicale du Sanitaire. Finally, Sanitec participated in meetings of the umbrella associations IFS (formerly DSI), ASI, SFP and SVS, as well as in meetings of the cross-product association Michelangelo. Therefore, the Commission concludes that Masco, Grohe, Ideal Standard and Sanitec were aware (or should have reasonably been aware) of both the product and geographic scope of the cartel

Ideal Standard

(854) Since Ideal Standard only acquired its current subsidiary in the Netherlands in 2001, it cannot be held liable for the infringement in the Netherlands, where the anti-competitive conduct stopped in 1999. However, it directly participated in the anti-competitive conduct in all the other five Member States for all of which collusive contacts have been proven at least as of 2000 (Germany, Belgium, Italy, Austria, and France). Before 2000, it could reasonably have foreseen that anticompetitive activities were taking place in the Netherlands too, where it was already active.¹¹⁸⁶ There were significant trade flows between the Member States concerned as set out in recitals (824) to (833), which show that the anti-competitive arrangements for Ideal Standard were more effective if pursued in several Member States.¹¹⁸⁷ In addition, the undertakings participating in meetings of the Dutch SFP, namely Villeroy & Boch, Sanitec, Grohe, Masco, Duscholux, Keramag and Hansa, were also present in other associations in which Ideal Standard was in turn a member. Finally, Ideal Standard, as most of the main players within the Union, applied a central pricing system (see recital (834) to (844)). Since such central pricing systems were not limited to the five Member States where Ideal Standard is found to have directly participated in anticompetitive meetings, it was reasonably foreseeable to conclude that such anticompetitive practice could have also taken place in other Member States, and in particular in the Netherlands, which was neighboring Belgium and Germany. Moreover, it also participated in cartel meetings of two umbrella associations (and, often, of several other cross-product associations).

(855) For these reasons, the Commission concludes that Ideal Standard could not have been unaware of the general scope and essential characteristics of the cartel.

(856) Ideal Standard Nederland B.V., which was part of Ideal Standard as of 2001, was member of an umbrella association (SFP), and therefore it was clearly aware of the product scope of the cartel. Although indicia that it could have been aware of cartel activities in other Member

¹¹⁸⁶ It certainly acquired knowledge of such activities at the latest in 2001, when it acquired Ideal Standard Nederland B.V.

¹¹⁸⁷ See Joined Cases T-109/02, T-118/02 etc. *Bolloré SA and Others v Commission* [2007] ECR II-947, paragraph 247.

States are not lacking, on balance, the Commission concludes that Ideal Standard Nederland B.V. should not be deemed to have been aware of the overall cartel, but only of the respective collusive conduct in the Netherlands.

Hansa

- (857) Hansa was primarily a taps and fittings producer throughout the period of the infringement. Nevertheless, Hansa was in fact aware (or could reasonably have foreseen) of the entire product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella associations ASI in Austria, IFS in Germany, as well as SFP in the Netherlands. At meetings of these associations, manufacturers of all three product groups engaged in anti-competitive conduct. Their practices either affected all product groups across the board¹¹⁸⁸ or entailed the communication of price increases by manufacturers of several or all three product groups.¹¹⁸⁹ Hansa furthermore participated in the cross-product association HCT in Belgium, where manufacturers of taps and fittings and shower enclosures engaged in anti-competitive conduct.
- (858) As regards Hansa's awareness of the geographic scope of the cartel, the Commission notes that Hansa participated in cartel meetings in the five Member States where an infringement is found up to 2002, namely Germany, Austria, Belgium, Italy and the Netherlands, being a member of IFS and AGSI in Germany, ASI in Austria, Euroitalia and Michelangelo in Italy, SFP and SVS in the Netherlands as well as HCT in Belgium. As regards France, where (...) the Commission concludes that there was an infringement as of 2002, Hansa ceased to participate in AFPR in 2002. (...),¹¹⁹⁰ and Hansa has not contested the facts relied upon by the Commission in the SO.¹¹⁹¹ (...).¹¹⁹²
- (859) Moreover, due to the fact that Hansa was initially an AFPR member and that it continued to meet its competitors Grohe, Ideal Standard and Roca in associations of other Member States concerned by this Decision, Hansa could reasonably have foreseen that anticompetitive activities would not be limited to five Member States only. All undertakings that were members of the French associations AFICS and AFPR were present in at least one (and often several) of the other national associations in which Hansa was also a member. There were also significant trade flows in the area of taps and fittings between the Member States concerned as set out in recitals (824) - (833), which show that the anti-competitive arrangements for Hansa were more effective if pursued in several Member States.¹¹⁹³ Finally, Hansa, as most of the main players in the Union, applied a central pricing system.¹¹⁹⁴ Since such central pricing systems were not

¹¹⁸⁸ This was the case in Austria, see for example the ASI meeting on 23 April 1996, at which Hansa was present and in which ASI agreed on a uniform multiplication factor for all product groups (see recital (307)).

¹¹⁸⁹ Hansa attended the SFP meetings of 26 November 1996 (see recital (598)) and 20 January 1999 (see recital (600)) at which taps and fittings manufacturers, shower enclosures manufacturers and ceramics manufacturers discussed prices. In addition, Hansa attended the HCT meetings of 10 March 2003 (see recital (521)), 8 March 2004 (see recital (729)), 19 April 2004 (see recital (731)), 10 May 2004 (see recital (732)) and 14 June 2004 (see recital (733)) at which taps and fittings manufacturers and shower enclosures manufacturers discussed prices. Hansa was moreover present at several AGSI meetings in which certain undertakings communicated their increases for other product groups, in particular ceramics, for example the AGSI meeting on 2 October 1998 (see recital (190)), the AGSI meeting on 27 August 2002 (see recital (219)), the AGSI meeting of 10 July 2003 (see recital (230)) and the AGSI meeting on 27 February 2002 (see recital (216)).

¹¹⁹⁰ (...)

¹¹⁹¹ (...)

¹¹⁹² (...)

¹¹⁹³ See Joined Cases T-109/02, T-118/02 etc. *Bolloré SA and Others v Commission* [2007] ECR II-947, paragraph 247.

¹¹⁹⁴ See recital (839) with reference to (...).

limited to the five Member States where Hansa is found to have participated in anticompetitive meetings, it was reasonably foreseeable to conclude that such anticompetitive practice could have also taken place in other Member States, and in particular in France, which was neighbouring Belgium, Germany and Italy.

- (860) For these reasons, the Commission concludes that Hansa could not have been unaware of the general scope and essential characteristics of the cartel.

Villeroy & Boch

- (861) Villeroy & Boch was a ceramics and shower enclosures producer throughout the period of the infringement. Nevertheless, Villeroy & Boch was in fact aware (or could reasonably have foreseen) of the entire product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella associations ASI¹¹⁹⁵ in Austria and SFP¹¹⁹⁶ in the Netherlands, which covered all three product groups. It also participated in cartel meetings of DSI/IFS in Germany. It could therefore not have been unaware that the infringement covered not only ceramics and shower enclosures, but also taps and fittings

- (862) As regards Villeroy & Boch's awareness of the geographic scope of the cartel, the Commission notes that Villeroy & Boch participated in cartel meetings in five out of the six Member States concerned by this Decision, namely Germany, Austria, Belgium, France and the Netherlands. Lack of participation in Italian associations may be explained by the fact that Villeroy & Boch considers its activities in Italy as "*not appreciable*",¹¹⁹⁷ (...).¹¹⁹⁸ Villeroy & Boch met its competitors Masco, Grohe, Ideal Standard, Hansa and Sanitec, which were also participants in the infringement in Italy, in associations of other Member States concerned by this Decision. It is unlikely that Villeroy & Boch would have considered that anticompetitive activities would be limited to five Member States only, and would not extend to other Member States where Villeroy & Boch's activities were not appreciable. Moreover, there were significant trade flows between the Member States concerned as set out in recitals (824) to (833) which show that the anti-competitive arrangements for Villeroy & Boch were more effective if pursued in several Member States.¹¹⁹⁹

- (863) (...).¹²⁰⁰ (...).¹²⁰¹ (...),¹²⁰² (...),¹²⁰³ (...).

¹¹⁹⁵ In particular, Villeroy & Boch participated in the ASI meeting on 16 November 2003, in which ASI reported to the wholesalers the price increases planned for all three product groups (see recital (339)), the meeting on 23 April 1996, in which ASI agreed on a uniform multiplication factor for all product groups (see recital (307)), the meeting of 5 November 1996 (see recital (309)), in which a decision was taken to uphold this factor for all product groups and at the meeting of 15 October 1997, in which a factor of 130 for all product groups was confirmed (see recital (313)).

¹¹⁹⁶ Villeroy & Boch attended the SFP meetings of 28 September 1994, 30 November 1994, 26 November 1996 and 20 January 1999, at which taps and fittings manufacturers, shower enclosures manufacturers and ceramics manufacturers discussed prices; see in this regard recitals (596), (597), (598) and (600) respectively.

¹¹⁹⁷ (...) (German text: "*nicht spürbar*").

¹¹⁹⁸ (...)

¹¹⁹⁹ See Joined Cases T-109/02, T-118/02 etc. *Bolloré SA and Others v Commission* [2007] ECR II-947, paragraph 247.

¹²⁰⁰ See recital **Error! Reference source not found.** (...)

¹²⁰¹ (...)

¹²⁰² (...)

¹²⁰³ (...)

(864) For these reasons, the Commission concludes that Villeroy & Boch could not have been unaware of the general scope and essential characteristics of the cartel.

Duscholux

(865) Duscholux was primarily a shower enclosures producer throughout the period of the infringement. Nevertheless, Duscholux was in fact aware (or could reasonably have foreseen) of the entire product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella associations IFS¹²⁰⁴ in Germany, SFP¹²⁰⁵ in the Netherlands and ASI¹²⁰⁶ in Austria which covered all three product groups. Furthermore, it participated in the meetings of Amicale du Sanitaire in Belgium, which covered the product groups taps and fittings and shower enclosures.¹²⁰⁷ Duscholux thus could not have been unaware of the product scope to which the cartel extended.

(866) In particular, Duscholux participated in the infringement in the majority of Member States concerned by this Decision, namely Germany, Austria, the Netherlands and Belgium, being a member of IFS and ABD in Germany, ASI in Austria, SFP in the Netherlands and Amicale du Sanitaire in Belgium throughout its participation in the infringement. Regarding its awareness of the geographic scope of the infringement, it should be noted that even though Duscholux was not present at the meetings of national associations within France and Italy, it seems scarcely conceivable that it was unaware of the broader geographic scope of the infringement. First, undertakings involved in the infringement in many of the Member States where Duscholux was involved in the cartel arrangements, were present in the infringement in France or Italy. In particular, evidence shows that Masco, Grohe, Ideal Standard, Hansa, Sanitec, Roca, Duravit and Villeroy & Boch were part of the infringement in France or Italy while they also met Duscholux in meeting of associations in the Member States where Duscholux was active. [Non-confidential summary: evidence also shows that Duscholux had in fact already in 1994 and 1995 met its competitor (...) to discuss the price increases for several Member States.¹²⁰⁸ Although Duscholux was not a regular participant in association meetings in Italy and France, there had been an exchange of price information for these two markets with its competitors early on in the time period covered by this Decision.] It thus could not have been unaware of the broader geographic scope of the infringement.

Duravit

(867) The evidence in the Commission's possession reveals that Duravit was in fact aware (or could reasonably have foreseen) of the both geographic and product scope of the infringement. Duravit was primarily a ceramics producer throughout the period of the infringement. Nevertheless, Duravit was in fact aware (or could reasonably have foreseen) of the entire

¹²⁰⁴ Duscholux was also a participant of the DSI meeting of 5 October 2000, in which the planned price increases of the manufacturers for all three product groups were communicated (see recital (203)). Duscholux furthermore participated in the IFS meeting on 20 November 2002, where participants of all product groups reflected on the current pricing system, and discussed ways to determine end consumer prices by introducing a fixed multiplier (see recital (221)).

¹²⁰⁵ Duscholux attended the SFP meetings of 28 September 1994 (recital (596)), 30 November 1994 (recital (597)) and 26 November 1996 (recital (598)) at which taps and fittings manufacturers, shower enclosures manufacturers and ceramics manufacturers discussed prices.

¹²⁰⁶ Duscholux was for example present in the ASI meeting of 23 April 1996 in which ASI members agreed on a uniform multiplication factor of 125% for all product groups (see recital (307)).

¹²⁰⁷ Duscholux attended the Amicale meetings of 21 September 2000 (see recital (498)), 5 February 2001 (see recital (502)), 20 September 2002 (see recital (499)), 15 November 2002 (see recital (500)) and 10 June 2004 (recital (501)), at which taps and fittings manufacturers and shower enclosures manufacturers discussed prices.

¹²⁰⁸ See recital (178), meeting of 15 September 1994 and (180), meeting of 25 September 1995.

product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella association IFS¹²⁰⁹, which covered all three product groups.

(868) Turning to Duravit's awareness of the geographic scope of the infringement, it directly participated in the infringement in three Member States, namely Germany, Belgium and France,¹²¹⁰ out of the five Member States which were covered by the infringement when Duravit participated.¹²¹¹ A number of objective and consistent indicia show that Duravit at least should have reasonably been aware of the broader geographic scope of the infringement. First, Duravit's products were sold in Austria through Laufen (which was participating in the infringement in Austria) and in Italy through a joint venture with Laufen.¹²¹² In other words, Duravit participated in the infringement in three Member States where it was directly selling its products. It could reasonably foresee that, since roughly the same participants were colluding in the three Member States where it was present,¹²¹³ they would be engaging in similar conduct in other Member States in which Duravit was not present, where they also had significant market positions. Given this identity of participants in the three Member States in which Duravit was present, it seems very unlikely that it was unaware that the infringement had a broader geographic scope. Second, there were significant trade flows in the area of ceramics between the Member States concerned as set out in recitals (824) to (833), which show that the anti-competitive arrangements for Duravit were more effective if pursued in several Member States.¹²¹⁴ (...) ¹²¹⁵ (...) ¹²¹⁶ In fact, the person in charge of prices for the overall group¹²¹⁷ also attended the meetings of FSKI.

(869) For these reasons, the Commission concludes that Duravit could not have been unaware of the general scope and essential characteristics of the cartel.

Roca

(870) The Roca group manufactures and sells taps and fittings, shower enclosures and ceramics. Roca was aware (or could reasonably have foreseen) of the entire product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella association ASI in Austria, which covered all three product groups.¹²¹⁸ In France it was also a member of both AFPR and AFICS.

¹²⁰⁹ Duravit was present at the DSI meeting covering all product groups of 14 January 1997, at which aspects of the distribution system in force for all product groups were discussed (see recital (184)). Duravit was also a participant of the DSI meeting of 5 October 2000, in which the planned price increases of the manufacturers for all three product groups were communicated (see recital (203)).

¹²¹⁰ Duravit was a member of IFS and FSKI in Germany, the VC group in Belgium and AFICS in France throughout its participation in the infringement.

¹²¹¹ Indeed, the Commission does not conclude that there would be a cartel in the Netherlands after 1999.

¹²¹² (...)

¹²¹³ In fact, all undertakings participating in the VC group in Belgium, namely American Standard, Duravit, Villeroy & Boch and Sanitec as mentioned in this Decision were also participants of AFICS in France and the FSKI and IFS in Germany.

¹²¹⁴ See Joined Cases T-109/02, T-118/02 etc. *Bolloré SA and Others v Commission* [2007] ECR II-947, paragraph 247.

¹²¹⁵ (...)

¹²¹⁶ (...)

¹²¹⁷ (...)

¹²¹⁸ In particular, Roca participated in the ASI meeting on 16 November 2003, in which ASI reported to the wholesalers the price increases planned for all three product groups (see recital (339)), the meeting on 23 April 1996, in which ASI agreed on a uniform multiplication factor for all product groups (see recital (307)), the meeting of 5 November 1996 (see recital (309)), in which a decision was taken to uphold this multiplication factor

(871) However, although there are some indications to the contrary, on balance the Commission cannot safely conclude that Roca (including its subsidiaries, Roca France and Laufen) could have reasonably foreseen the overall scope of the cartel. In particular, Laufen was only acquired in 1999, and an infringement is found for France only as of 2002, which means that the Roca group directly participated in the infringement in more than one Member State over the last two years of infringement only. (...) ¹²¹⁹ it is more doubtful that it could have been aware that such activities also covered other Member States, especially before it was acquired by Roca. Accordingly, the Commission concludes that Roca should not be deemed to have been aware of the overall cartel, but only of the respective collusive conduct in France and Austria.

Dornbracht

(872) Dornbracht was primarily a taps and fittings producer throughout the period of the infringement. Nevertheless, Dornbracht was in fact aware (or could reasonably have foreseen) of the entire product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella associations ASI in Austria ¹²²⁰ and IFS in Germany. ¹²²¹

(873) As regards Dornbracht's awareness of the geographic scope of the infringement, the Commission observes that Dornbracht participated in cartel meetings in Germany and Austria, as a member of IFS and AGSI in Germany and ASI in Austria throughout its participation in the infringement. Although indicia for considering that Dornbracht could have reasonably foreseen the general geographic scope of the infringement exist, on balance the Commission concludes that Dornbracht should not be deemed to have been aware of the overall cartel, but only of the respective collusive conduct in Austria and Germany.

Kludi

(874) Kludi was primarily a taps and fittings producer throughout the period of the infringement. Nevertheless, Kludi was in fact aware (or could reasonably have foreseen) of the entire product scope of the infringement (covering the three product groups concerned), notably because of its participation in cartel meetings of the umbrella associations ASI ¹²²² and IFS ¹²²³, which covered

for all product groups, as well as the meeting of 15 October 1997, in which a factor of 130 for all product groups was confirmed (see recital (313)).

¹²¹⁹ For example, members of ASI took account of the price increase agreed among the German shower enclosure manufacturers in 2000. This increase amounted to 7.5% which was, as they explicitly stated, agreed "*unanimously in ADA*" (see recitals (320) and (321), see also recitals (679) to (682)). Roca attended that ASI meeting of 12 October 2000, when this surcharge and its origin in Germany were discussed among the ASI members, see recital (680).

¹²²⁰ By way of example, Dornbracht was present in the meeting of 25 September 2003, at which ASI discussed price levels and recorded that a compromise with wholesalers had been found to decrease ceramics and taps and fittings by 12%, (see recital (337)). Furthermore, Dornbracht was present at the meeting of 26 June 2003, at which options for a gross price reduction were discussed by ASI members (see recital (332)).

¹²²¹ Dornbracht furthermore participated in the IFS meeting on 20 November 2002, where participants of all product groups reflected on the current pricing system, and discussed ways to determine end consumer prices by introducing a fixed multiplier (see recital (221)).

¹²²² In the context of ASI, manufacturers even reached certain agreements on increases which were uniform for all three product groups. For example, in the ASI meeting of 23 April 1996 in which Kludi was present, ASI agreed on a uniform multiplication factor of 125% for all product groups (see recital (307)). Kludi was also a participant of the ASI meeting of 5 November 1996 (see recital (309)), in which a decision was taken to uphold this factor for all product groups and at the meeting of 15 October 1997, in which a factor of 130 for all product groups was confirmed (see recital (313)).

all three product groups. Kludi must therefore have been aware of the entire product scope of the infringement.

- (875) From a geographic perspective, Kludi participated in cartel arrangements in Germany and Austria, being a member of IFS and AGSI in Germany as well as ASI in Austria. Although indicia for considering that Kludi could reasonably have foreseen the general geographic scope of the infringement exist, on balance the Commission concludes that Kludi should not be deemed to have been aware of the overall cartel, but only of the respective collusive conduct in Austria and Germany.

Artweger

- (876) Artweger was primarily as shower enclosure active in the association ASI in Austria. Artweger was aware of the product scope of the cartel covering the three product groups, notably in view of its participation in cartel meetings of the umbrella association ASI.¹²²⁴
- (877) Although indicia for considering that Artweger could reasonably have foreseen the general geographic scope of the infringement exist (in particular, the fact that it also covered Germany),¹²²⁵ on balance, the Commission concludes that Artweger should not be deemed to have been aware of the overall cartel, but only of the respective collusive conduct in Austria.

Italian independent undertakings

- (878) As regards the smaller independent Italian undertakings which participated in the cartel meetings in only one Member State, namely Italy, it must be said that they were well aware of – and indeed admit to – the fact that Euroitalia was essentially a transposition of the German model of coordination into Italy. It was well-known to them that the reason for the existence of Euroitalia, founded by well established multinationals in the German market, was to establish meetings and share information in Italy (...).¹²²⁶ They were also participating in meetings where the multi-national attendees regularly referred to their parent companies and to pricing decisions and discussions taking place in other Member States (notably in Germany). They were also aware that the price coordination arrangements in which they were participating concerned at least two of the product groups (namely taps and fittings and ceramics).

¹²²³ Kludi participated in the IFS meeting on 20 November 2002, where participants of all product groups reflected on the current pricing system, and discussed ways to determine end consumer prices by introducing a fixed multiplier (see recital (221)).

¹²²⁴ By way of example, Artweger participated in the ASI meeting on 16 November 2003, in which ASI reported to the wholesalers the price increases planned for all three product groups (see recital (339)), the meeting on 23 April 1996, in which ASI agreed on a uniform multiplication factor for all product groups (see recital (307)), the meeting of 5 November 1996 (see recital (309)), in which a decision was taken to uphold this multiplication factor for all product groups, as well as the meeting of 15 October 1997, in which a factor of 130 for all product groups was confirmed (see recital (313)).

¹²²⁵ In particular, there are indications that Artweger might have been aware of the cartel arrangements in Germany. For example, members of ASI took account of the price increase agreed among the German shower enclosure manufacturers in 2000 in the amount of 7.5% which was, as they explicitly stated, agreed on "*unanimously in ADA*" (see recitals (320) and (321), see also recitals (679) - (680)). Artweger attended ASI meeting of 12 October 2000, when this surcharge and its origin in Germany were discussed among the ASI members (see recital (680)). It had even discussed the surcharge and its origin in Germany during a bilateral telephone call earlier with Duscholux on 9 October 2000, see recital (679). Moreover, there is evidence showing that the surcharge agreed on in 2004 in Austria pertaining to taps and fittings, was initiated by the manufacturers in Germany, see recitals (688) - (691). Artweger, despite being a shower enclosures producer, was present at a meeting of 5 May 2004, where this issue was discussed, see recital (690).

¹²²⁶ (...) This point was further made during the Oral Hearing by a number of these Italian undertakings and confirmed in their replies to the Statement of Objection.

(879) However, indicia that they be aware of the extension to territories other than Germany are less strong. Moreover, there is no concrete evidence in the Commission's file indicating that price discussions within Euroitalia specifically involved shower enclosures (in addition to taps and fittings and ceramics). Therefore, notwithstanding those addressees' awareness of the possibly broader geographic scope of the cartel, they might not have been aware that the price coordination discussions carried out in other Member States covered all three product groups concerned by this Decision, more specifically shower enclosures. For this reason, the Commission considers, on balance, that there is insufficient evidence to safely conclude that the Italian independent undertakings were aware of the general scope of the cartel. The Commission thus concludes that Cisal, Mamoli, RAF, Teorema and Zucchetti should not be deemed to have been aware of the overall cartel, but only of the respective collusive conduct in Italy.

(d) Arguments raised by the addressees and the Commission's appraisal

(880) Most respondents to the Statement of Objection dispute the Commission's findings regarding the single and continuous nature of the infringement, arguing that the three business areas (namely taps and fittings, shower enclosures and ceramics) should have been dealt with separately or that the arrangements in the six Member States concerned should have been assessed separately.¹²²⁷

(881) In particular, several addressees claim that bathroom fittings and fixtures do not constitute a homogenous market. They argue that the three products groups subject to the proceedings are not linked¹²²⁸ and constitute distinct product markets.¹²²⁹ Based on this view, the three different product groups are complementary rather than substitutable, from both a demand side as well as from a supply side.¹²³⁰ Some addressees refer in particular to the Commission's own analysis of the bathroom fittings market in the merger case *M.1578 Sanitec/Sphinx* (1 December 1999).¹²³¹ It is also argued that the scope of the product portfolio of the cartel members' customers (that is, the wholesalers) should not be relevant in analyzing whether the agreements/practices qualify as one single infringement. Therefore, some addressees contend that the Commission should have pursued three separate single continuous and complex infringements.¹²³² In addition, these addressees claim that the relevant markets are national in scope rather than Union-wide.

(882) Moreover, most addressees argue that the Commission has failed to establish an economic objective common to all addressees across the three product group. Several addressees put forward the argument that they are either single-product undertakings¹²³³ or undertakings active

¹²²⁷ (...) For many of these parties, the primary concern is the potential level of fines which they could be facing and – in view of the 2006 Guidelines on Fines – an impression that the fines would be higher under a finding of a single and continuous infringement. (...). None of these underlying considerations apply in this case (see Section 8.8.3.).

¹²²⁸ (...)

¹²²⁹ (...)

¹²³⁰ (...) According to (...), prices in one product/geographic market do not thus affect the competitive conditions in the other markets (...) also submits an economic study prepared by CRA to support its contention that participants only had an incentive to coordinate their prices in the three product segments separately: (...).

¹²³¹ In this respect, (...) also emphasizes that the Italian Competition Authority defined separate markets for (i) sinks, toilets and bidets (ii) shower trays (all types), and (iii) traditional bath tubs (acrylic, steel, etc.) in the Ideal Standard/Ceramica Dolomite merger: (...).

¹²³² (...)

¹²³³ In particular, several medium-sized undertakings claim that they were, in principle, only present on their domestic markets and that their sales outside those markets were trivial: (...).

on only two of the defined product segments.¹²³⁴ In addition, the addressees contend that most anti-competitive meetings took place in national associations which involved one product group. In their view, the addressees did not therefore have any common economic objective or overall plan or incentive to collude across the three product groups, as they were not directly in competition with each other. Similarly, they had no interest in engaging in illegal cross-border discussions and were in fact unaware of what was going on in Member States outside their domestic markets.¹²³⁵

- (883) Furthermore, several addressees claim that, even if the Commission were able to establish to the requisite legal standard the existence of national infringements, there are no structural links which would allow for a cross-country collusion.¹²³⁶ According to these arguments, only few addressees are found to be in all Member States concerned.¹²³⁷ It is further submitted that, as the industry associations are national in scope and fully decentralized, there can be no pan-European institutional structure, framework or mechanism in place for any exchanges of cross-border information and the Commission has failed to establish any such links or exchanges of information.¹²³⁸ On the contrary, the conduct described by the Commission indicates that the undertakings rather aimed at protecting national markets.¹²³⁹ On this basis, most addressees could not have been aware of what was discussed in the other associations and, accordingly, they were unaware of any common overall scheme beyond their national markets.¹²⁴⁰
- (884) In support of those arguments, several addressees also point to criteria previously used by the Commission to establish a single and continuous infringement, claiming that the Commission's findings in this case signal a departure from previous practice.¹²⁴¹ In this regard, according to submissions of the addressees, the concept of a single and continuous infringement traditionally involves a broad European or worldwide market with a single product and a tight oligopolistic structure. However, in this case, it is submitted that the three products are distinct and there are distinctive national markets which do not exhibit a high degree of concentration. The addressees also put forward that they do not produce all the products concerned, they are not active in all relevant national markets and they are not found to be implicated in all three separate arrangements. In addition, prior decisions by the Commission would have involved a top-down management structure or a central institution supervising the cartel arrangements. It is also argued that, in those few cases in which the Commission has established the existence of a cross-border single and continuous infringement covering distinct national markets, there was an express plan by the addressees at the highest corporate level to cartelize multiple national

¹²³⁴ (...) In a similar context, some undertakings also question the list of undertakings deemed central to the cartel, arguing that they were not active in all Member States and product sub-groups: (...)

¹²³⁵ (...) In this regard, it is further claimed that the common plan put forward by the Commission has not been determined with sufficient precision taking into account the particularities of the case.

¹²³⁶ (...) Moreover, Villeroy & Boch claims that the application of the concept of continuous and single infringement across market borders is a violation of fundamental constitutional rights and general legal principles of law (principle of individual responsibility; principle of legal certainty and foreseeability of the applicable law; and the principle of presumption of innocence): (...).

¹²³⁷ Namely Masco, American Standard, Sanitec, Grohe and Hansa, or in three or more Member States concerned, namely Villeroy & Boch, Duscholux, Duravit, Kludi and Dornbracht: (...).

¹²³⁸ (...)

¹²³⁹ (...)

¹²⁴⁰ (...) In this regard, several Italian independent manufacturers also argue that the idea that the presumed knowledge of the price dynamics and anticompetitive conduct within the German market translates to relevant commercial information about the other four markets is unfounded: (...).

¹²⁴¹ (...) (arguing that a differentiated treatment of this case, based on a specified set of cross-product and cross-country elements which previous decisions appear to have deemed insufficient, would now seem arbitrary and would infringe the principles of legal certainty and proportionality).

markets. In view of those considerations, most respondents submit that there is insufficient evidence in this case to conclude that there are separate, but interrelated arrangements forming a single and continuous complex infringement across several interdependent markets.

- (885) Furthermore, some multinational undertakings contest applying centralised pricing policies (or that there was a two-way flow of information between the subsidiaries and the parent companies)¹²⁴² and argue that, in any event, it is hard to see how such a centralisation could have provided a sufficient basis to establish an infringement that transcended national borders.¹²⁴³ On the other hand, the Italian independent producers contest being aware of such centralisation in multinational undertakings.¹²⁴⁴
- (886) In addition, several addressees argue that the observed similarities regarding the timing of the price increases are due to the three-tier distribution system (in particular the wholesalers) and the ensuing price structure of the market, as well as due to the nature and functioning of the industry.¹²⁴⁵ In the same context, some addressees also object that the Commission identifies similarities horizontally between manufacturers at the national level, while disregarding the role played by wholesalers in overall scheme.¹²⁴⁶
- (887) The Commission does not share the addressees' views and submits that there is sufficient evidence in this case to conclude that the cartel arrangements described in Section 4 of this Decision constitute a complex single and continuous infringement. Only rarely do cartels create a document that states its economic aim or how the cartel evolved over time. The Commission thus has to base its conclusions on a series of indicia and manifestations revealing of such elements. In this case, the Commission has identified several such indicia (recitals (797) to (849)). Similarly, there might not be a pan-European institutionalized structure, a supranational supervisory body or a specific "kick off" meeting readily attesting to the cross-product and cross-country scope of a collusive scheme. The Commission is required, each time, to interpret and weigh the evidence at its disposal in order to ascertain whether the anticompetitive practices so identified are continuous, sufficiently linked and in pursuit of a single economic aim, such that they can be deemed to form part of a single infringement.¹²⁴⁷ This is precisely what the Commission has done in this case. The inspections and leniency submissions revealed a series of recurring acts exhibiting a remarkable degree of similarity, across the three product groups and the six Member States concerned. The Commission weighed the evidence at hand and concluded that there are indeed a sufficient number of common features and other links amongst the cartel arrangements at issue, which render the Commission's finding of a single and continuous infringement the most credible option in the circumstances of this case.
- (888) More importantly, the Commission's finding is based on the way the cartel manifests itself. The subscription of most addressees to the single economic aim so identified finds support on objective grounds, such as the presence of addressees in cartel meetings of cross-product or umbrella associations, as well as in meetings of single-product associations where the pricing and sales of other products, and other national markets, were discussed (see, in particular, recital (798) - (802)).

¹²⁴² (...) Roca France specifies (...) that there was no central pricing until 2002 and that, until that year, subsidiaries were independent when setting prices: (...).

¹²⁴³ (...)

¹²⁴⁴ (...)

¹²⁴⁵ (...)

¹²⁴⁶ (...) Zucchetti also claims that there is no similarity in the pattern of the arrangements at every national level, because in Germany and Austria the cartel also had an additional dimension of cooperation which included the wholesalers and installers.

¹²⁴⁷ See for example Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 484.

- (889) In this context, the Commission recalls that it is essentially the cartel participants that delineate the scope and key parameters of the cartel by deliberately focusing their anticompetitive conduct on the products and territories concerned.¹²⁴⁸ The criteria outlined in see recitals (797) - (849), and in particularly recital (797) as regards the central group of cartel participants and recitals (798) to (802) regarding the scope of discussions at several association meetings) demonstrate that the addressees perceived the cartel arrangements at issue as part of an overall plan, as defined in the relevant case law.
- (890) In particular, the common features which made up the pattern of behaviour, and which led to the application of the single and continuous approach in this case, include *inter alia* (i) a group of cartelists active in all or most of the Member States which are central to the cartel and (ii) very similar arrangements in all six Member States which were made in the framework of national association meetings following an established recurring pattern of cycles of regular coordination of price increases, many of which were dealing with all three or at least two product segments. Even if the production of the addressees is limited to one or two product group(s), the fact they were participating at the umbrella association meetings which covered all three business areas, in which price coordination took place, shows that they conceived the arrangements as an overall plan as defined in the case law.
- (891) As regards the addressees' contentions about the distinct character of the three product groups concerned or lack of an adequate market definition, the Commission considers that the following observations are pertinent. First, it is noted that the Commission is not required to engage in any market definition when conducting cartel investigations. Following the consistent jurisprudence of the courts of the European Union¹²⁴⁹ the Commission was, in the circumstances, under no duty to define the relevant market, given that the agreements or concerted practices in question were liable to affect trade between Member States and had as their object the restriction and distortion of competition within the internal market. Moreover, the fact that the Commission may have defined a market in a certain way in the context of merger control proceedings bears no relevance for a cartel decision. The delineation of the product scope in this case has been based on the precise and consistent body of evidence presented in Section 4. Furthermore, the Commission has sufficiently described the essential features of the market with a view to identifying the operating conditions of the price coordination scheme at issue.
- (892) Second, there is no precondition that the objective links between the products concerned be based on substitutability grounds. The respondents maintain that the three product groups are complementary, thereby acknowledging the very existence of such objective links. This is entirely consistent with the market features identified in the course of the investigation and suffices to underpin the Commission's findings. In any event, the economic link between the three product segments is certainly obvious to the addressees' customers (who offer all product groups together) and the end-consumers (who purchase all of them from one source) - see also recitals (803) to (805). Moreover, it is attested in this case by the very scope of several anticompetitive meetings between the cartel participants (see, in particular, recitals (798) to (802)). It is further readily implied in the way the manufacturers organized the cartel (recital

¹²⁴⁸ See for example Joined Cases T-71/03, T-74/03, T-87/03 and T-93/03 *Tokai Carbon and others v Commission* [2005] ECR II-10, paragraph 90: “*It is not the Commission which arbitrarily chose the relevant market but the members of the cartel in which [the Applicant] participated who deliberately concentrated their anti-competitive conduct on [the identified] products.*”

¹²⁴⁹ See for example Case T-38/02 *Groupe Danone v Commission*, [2005] ECR II-4407, paragraph 99, and Case T-48/02 *Brouwerij Haacht NV v Commission*, [2005] ECR II-5259, paragraph 58 and the jurisprudence cited in these paragraphs.

(806) to (809)). To conclude, even if the three product groups may represent different characteristics and may be deemed to belong to distinct product markets, the objective links identified in recitals (797) to (849) (based on concrete evidence in the Commission's file) are sufficient to support the Commission's findings.

- (893) As regards the addressees' arguments concerning the alleged lack of commercial interest or incentive to collude across the three product groups, the following considerations are pertinent. First, the Commission observes that the alleged lack of economic incentive to collude across product groups cannot serve to discredit the probative value of an undertaking's participation in collusive arrangements within the framework of umbrella and cross-product associations, in circumstances where that participation is demonstrated on the basis of a concrete body of documentary evidence (as described in Section 4).¹²⁵⁰ The Commission considers that the very existence of, and participation in, such joint meetings attests to the objective links between the three product groups and disproves the addressees' contention that they allegedly had no incentive, nor any interest, to coordinate with manufacturers who were producing complementary products.
- (894) Second, the Commission considers that several factors present in this case (such as the complementarity of the three product groups, the joint customer base, the structure and modalities of the three-tier distribution system) indicate that – contrary to the addressees' submissions – manufacturers had an interest or incentive to act in a coordinated manner, notably in relation to the wholesalers, regardless of each manufacturer's particular product focus. Moreover, the argument that the addressees were also cross-supplying each other, further strengthens the finding that information (notably pricing and sales information) concerning the various bathroom fittings and fixtures were indeed of interest to each producer.
- (895) Furthermore, the Commission does not share the view that there are insufficient elements in this case to conclude that the price coordination scheme transcended national borders. To the contrary, the Commission considers that the cross-country links identified in particular in recitals (814) to (823) attest to the wider geographic scope of the cartel.
- (896) More generally, the Commission considers that the assessment of whether the cartel arrangements at issue formed part of a single and continuous infringement must be based on objective criteria. However, the addressees' arguments against the single and continuous approach are almost entirely based on subjective elements pertaining particularly to the product and geographic scope of their own activities. In this regard, the following observations are relevant.
- (897) First, the mere fact that each participant in a cartel may play a role which corresponds to its own specific circumstances does not exclude that participant's responsibility for the infringement as a whole, including acts committed by other participants that share the same unlawful purpose or the same anti-competitive effect. The participation of each co-perpetrator can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of

¹²⁵⁰ As further indicated in Section 5.2.4.4, where the Commission's case is based on documentary evidence in support of the infringement and where that evidence appears to be sufficient to demonstrate the existence of the anticompetitive arrangements, there is no need to examine the question whether the undertaking had a commercial interest in those arrangements (see Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries Ltd and Nippon Steel Corp. v. Commission* [2007] ECR I-729, paragraph 46. See also Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v Commission*, [2004] ECR I-123, paragraph 335).

implementation chosen or envisaged.¹²⁵¹ The contention that several addressees were either single-product undertakings or undertakings active on only two of the defined product segments cannot therefore disprove the Commission's findings, given that this is simply reflective of their product specialization (and ensuing contribution to the joint enterprise).

- (898) Second, the fact that several cartel participants (notably medium-sized independent undertakings focussing on specific markets) may not have been implicated in all collusive arrangements in all six Member States covered by the Commission's investigation cannot be the determinative factor in assessing the single and continuous nature of the infringement. Although a cartel is a joint enterprise, each participant may play its own particular role. Indeed, the participation of each undertaking concerned in the cartel is reflective of its position and focus of activities on the market.¹²⁵² In this case, each of these addressees played the role corresponding to its own specific circumstances, by actively participating in the collusive arrangements in the territories where they were predominantly active. Moreover, the absence of a pan-European institutional structure or other supranational supervisory body is not a prerequisite for establishing that the single and continuous infringement transcended national borders. In this case, although the cartel was orchestrated across Member States by a group of multinational players that were central to the cartel (see, in particular, recitals (797)), the coordination had to be implemented at national level to ensure the effectiveness of the scheme (see, in particular, (806) to (809)). These considerations are readily reflected in the way the cartel manifested itself, notably considering the recurring pattern and identity of methods of the collusive arrangements across the relevant Member States (see, in particular, recitals (806) to (813)).
- (899) Third, the Commission observes that it is not necessary for all cartel participants to be aware of all details and aspects of the cartel to imputed liability for the overall price coordination scheme. Indeed, this would not have been possible given their individual characteristics and position on the market. For purposes of assessing the attributive elements relevant to each undertaking, it must instead be established that – based on the specific facts of each case - each participant could not have been unaware of the general scope and the essential characteristics of the cartel.¹²⁵³ The Commission has explained its findings in that respect in recitals (850) to (879). Finally, the Commission observes that an undertaking may indeed be imputed liability for a practice, even if it is unable to implement it.¹²⁵⁴
- (900) Turning to the addressees' contentions concerning specific criteria used by the Commission in other decisions, the Commission observes that each case presents its own particular characteristics which must be assessed on their own merits. In this case, the Commission has based its conclusions on a series of indicia and manifestations identified in recitals (850) to (879), which attest to the single and continuous nature of the infringement.

¹²⁵¹ See for example Case 49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraphs 78-65; Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 485; and Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v Commission*, [2004] ECR I-123, paragraph 86.

¹²⁵² See Case 49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraphs 78-65; see also Judgment of the General Court in joined Cases T-456/05 and T-457/05, *Gütermann v Commission*, not yet reported, paragraph 53.

¹²⁵³ See for example Joined Cases T-259/02, T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich v Commission* [2006] ECR II-5169, paragraphs 192-193.

¹²⁵⁴ See Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co. KG and others v Commission*, [2002] ECR II-1487, paragraph 280.

- (901) As regards the arguments seeking to disprove the Commission's findings on the centralized pricing policies of the larger multi-national undertakings, the Commission observes that all contestants, namely Ideal Standard, Duscholux and Duravit, applied a centralized price-setting system. The Commission has explained the relevance and importance of such central pricing systems in ensuring the coherent organisation of the cartel across Member States and product groups (see recitals (834) to (844)).
- (902) The Commission also rejects the contention that it has not sufficiently specified the single economic objective in this case. Contrary to the addressees' allusions, the Commission has not determined that objective by a general reference to the distortion of competition in the bathroom fittings and fixtures. To the contrary, it has specifically defined its nature, scope, pattern and methods of implementation. In particular, it has detailed that the collusive arrangements at issue involved the distorting of price competition with regard to all six member States and three product groups concerned, which was achieved notably by means of annual cycles of coordination of price increases in the framework of regular meetings of associations (following an established recurring pattern and exhibiting almost identical mechanisms). The Commission further observes that, in order to ascertain the presence of a common economic aim linking the cartel arrangements in question, it is not necessary for the various acts to be identical. The intensity and effectiveness of the elements establishing a common objective may potentially vary over time, as well as across the product and geographic markets concerned.¹²⁵⁵
- (903) Finally, the Commission does not share the view that the market characteristics pertaining to the wholesalers or the three-tier distribution system should be disregarded in the context of examining whether the agreements/practices in question qualify as a single infringement. Contrary to the addressees' submissions, the common structure and modalities of distribution at the downstream level expose the unity of purpose and ensuing objective complementarity of the cartel arrangements amongst manufacturers at the upstream level (see recitals (806) to (809)). These features help to explain why manufacturers had an incentive to act in a coordinated manner in the specific circumstances of this case, why they felt the need to organise the cartel the way they did, and why the pattern of the anticompetitive arrangements exhibited such a high degree of similarity (across both Member States and product segments). They are thus entirely consistent with other objective links identified by the Commission (notably as regards the cross-product scope of several association meetings, the common recurring design of the agreements/practices, the complementarity of the three product segments), while also corroborating documentary evidence in its possession.
- (904) The Commission also considers that the following additional remarks are pertinent with regard to the context of several addressees' contestation of the single and continuous approach. The primary concern of most respondents was the potential level of fines which they could be facing and – in view of its 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003¹²⁵⁶ – an impression that the fines would be higher if the Commission would find a single and continuous infringement. Ideal Standard in particular also considered that a finding of separate infringements by product group would allow it to qualify for immunity with regard to ceramics.
- (905) To the extent that these concerns may have influenced the degree of contestation in the replies of the addressees, it must be said that they appear to be unfounded. At the Oral Hearing, the Commission explained that the extent of each party's participation in specific arrangements or

¹²⁵⁵ See for example T-23/99 *LR AF 1998 v Commission* [2002] ECR II-1705, paragraph 40; and Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 490.

¹²⁵⁶ OJ C 210, 1.9.2006, p. 2.

its involvement in achieving the aim of the cartel, which is essentially reflective of the scope of its activities, would be duly taken into consideration in assessing the gravity of the infringement and if and when it would come to determining the fine. Calculations for each undertaking would be based on sales to which the infringement relates. The fact that some undertakings are only active in some of the Member States, only in some of the product groups, or only for a more reduced number of years as regards certain Member States would thus be sufficiently reflected in the calculation of the fine.¹²⁵⁷ Moreover, a finding of separate infringements would entail separate fines with separate calculations, and accordingly, a separate application of the 10% legal maximum limit – such that most addressees could potentially be exposed to considerably higher fines. Finally, the fact that Ideal Standard may have been the first to inform the Commission of certain facts is duly taken into account in the context of the assessment of its cooperation, if need be, by applying the last paragraph of point 23 of the Leniency Notice.¹²⁵⁸

5.2.4 *Restriction of competition*

(906) Article 101(1) TFEU and Article 53(1) of the EEA Agreement expressly include as agreements and concerted practices restricting competition, which have as their object or effect to directly or indirectly fix selling prices or any other trading conditions.¹²⁵⁹

(907) It is the Commission's view that the collusive arrangements in this case had the object of restricting competition.

(908) As explained in Section 4 and Section 5.2.2.2, the anticompetitive conduct identified by the Commission in this case comprised the following collusive arrangements that formed part of an overall price coordination plan:

- The regular coordination of annual price increases within the framework of regular meetings of industry associations across the six Member States concerned. In particular, manufacturers met to discuss their respective planned price increases for the forthcoming price cycle. Subsequently, in the context of the same associations, manufacturers met to discuss the price increases actually introduced into the market.¹²⁶⁰ These steps were routinely repeated every year, with an evaluation of the preceding year's evolutions, a discussion of recent sales performance and forecasts for the coming year, and then – usually

¹²⁵⁷ See further Section 8.4 below (calculation of the basic amount of the fines). In particular, for each undertaking, the basis of the calculation is its sales by country, multiplied by the number of years of its individual participation in the infringement in that Member State. In the circumstances of this case, this tailored calculation by Member State and sub product-group ensures that the fines to be imposed are representative of each undertaking's own involvement in the cartel. It is further consistent with the delineation of the infringement in each relevant Member State and product line, as established on the basis of the specific evidence in the Commission's disposal.

¹²⁵⁸ These considerations are further addressed in Section 8.8.8.1 below (application of point 23 of the Leniency Notice with respect to American Standard).

¹²⁵⁹ The list is not exhaustive.

¹²⁶⁰ As previously noted, depending on the date of each association meeting, discussions on prices amongst participants notably pertained to either their respective intended price increases for the forthcoming price cycle (for example during meetings taking place in autumn of each year for the price cycle commencing in January of the following year), or to the price increases previously communicated at meetings and since actually introduced into the market (for example during meetings taking place at the first months of each price cycle). The Commission assessed the collusive arrangements described in Section 4 of this decision as a whole and in the light of the overall circumstances, in particular their legal and economic context, and concluded that all such arrangements restricted competition pursuant to Article 101(1) TFEU and Article 53(1) of the EEA Agreement (see, in particular, Sections 5.2.1, 5.2.2 and the present Section of this decision).

in the Autumn – an exchange of each participant's intended price increases for the forthcoming cycle. In addition, participants often discussed the minimum prices and discounts/rebates that they would offer to customers.

- The coordination of pricing on several other occasions connected to specific events, for which price increase rates were often fixed, in particular the increase of raw material costs, the introduction of the Euro, the introduction of road tolls; and
- The additional disclosure and exchange of sensitive business information which supported the overall price coordination scheme.

In all cases, including those where a specific price increase rate or corridor was not fixed, participants would share concrete and sufficient details of their pricing intentions and strategy, so as to provide other participants with explicit information concerning their future pricing. The systematic and sustained participation of the undertakings concerned in those association meetings further enabled them to develop relationships of mutual trust and interdependency, thus allowing them to create a climate of mutual certainty concerning their future pricing policies.

- (909) An exchange of information which is capable of removing uncertainties between participants as regard the timing, extent and details of the modifications to be adopted in the commercial conduct of the undertaking concerned must be regarded as pursuing an anti-competitive object. In order to find that a concerted practice has an anti-competitive object, it is not necessary for there to be a direct link between that practice and consumer prices. Overall, an exchange of information is tainted with an anti-competitive object if the exchange is capable of removing uncertainties concerning the intended conduct of the participating undertakings.¹²⁶¹
- (910) The arrangements at issue constituted agreements or concerted practices which concerned the fixing of prices. Price being a key instrument of competition in the trade concerned, the collusive arrangements adopted by the addressees all ultimately aimed at reducing or eliminating uncertainty as to the future pricing behaviour of addressees and to maximise the price that they could individually or collectively obtain. Horizontal practices relating to prices by their very nature restrict competition within the meaning of Article 101(1) TFEU.
- (911) Furthermore, it is settled case-law that for the purpose of application of Article 101 TFEU and Article 53 of the EEA Agreement there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the internal market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proven.¹²⁶² The same principles also apply with regard to concerted practices.¹²⁶³

¹²⁶¹ Case C-8/08 *T-Mobile Netherlands & others v Raad van bestuur van der Nederlandse Mededingingsautoriteit*, Judgment of 4 June 2009 (not yet reported), paragraphs 29-43. As regards the anti-competitive aim of meetings at which information is exchanged amongst participants concerning, *inter alia*, intended prices on the market, see further Joined Cases T-202/98 etc. *Tate & Lyle v Commission* ECR [2001] II-2035, paragraphs 58-60 (referred to in Section 5.2.2.1 above); and Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraphs 460-463.

¹²⁶² See for example Joined Cases C-101/07 P & C-110/07 P *FNCBV v Commission*, Judgment of 18 December 2008 (not yet reported), paragraph 87 (and case-law referenced therein); Case C-105/04 P *FEG v Commission* [2006] ECR I-8725, paragraph 136; and Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178.

¹²⁶³ There is thus also no need to consider the effects of a concerted practice where its anti-competitive object is established: see recently Case C-8/08 *T-Mobile Netherlands & others v Raad van bestuur van der Nederlandse Mededingingsautoriteit*, Judgment of 4 June 2009 (not yet reported), paragraphs 28-30. See also Case C-199/92 P

- (912) Nevertheless, as demonstrated in Section 4 and Section 5.2.5 (on implementation), participants at the association meetings continuously discussed the prices actually introduced by the other member undertakings (usually in meetings taking place at the first months of each price cycle). In the same context, participants often communicated their price increases by way of announcement letters, not only to their customers, but also to their competitors. Occasionally, they also had bilateral contacts with a view to monitoring the implementation of the coordinated prices.
- (913) In their replies to the SO and during the course of the Oral Hearing, some addressees contested the Commission's findings that the arrangements in question had as their object (or effect) the restriction of competition. Although the arguments of the addressees may vary slightly in that regard, they can essentially be grouped into the following recurring arguments.

5.2.4.1 The object of the arrangements – the addressees' arguments and the Commission's appraisal

- (914) Certain addressees dispute the Commission's findings that the discussions regarding prices (notably the disclosure/communication of the addressees' respective price increases at the association meetings described in Section 4 of this Decision) amounted to an infringement of competition rules by object within the meaning of Article 101(1) TFEU and Article 53(1) of the EEA Agreement. They mainly claim – by reference to the Commission's case in its entirety, or by reference to particular Member States, industry associations and association meetings, depending on their respective activities – that the Commission misunderstood the nature and context of the relevant price information exchanges among meeting participants (or otherwise overestimated their importance from a competition perspective).¹²⁶⁴
- (915) In particular, as regards communications of planned price increases among meeting participants (which, based on the Commission account of the facts, often took place few months or weeks before the start of a price cycle), certain addressees argue that:

(a) at the time of their communication at the relevant association meetings, the "intended" price increases had already been communicated and disclosed to customers, such that the price information revealed to meeting participants essentially constituted public or available information on the market, or information that could already have been easily gathered on the basis of market intelligence (through the interaction between manufacturers and their customers or otherwise);¹²⁶⁵ or

(b) at the time of their communication at the relevant association meetings, the "intended" price increases had already been decided autonomously by the participant(s), or the internal price setting deliberations within each undertaking had somehow already been concluded or progressed significantly.¹²⁶⁶

Hüls AG v Commission, [1999] ECR I-4287 paragraphs 158-166; and Case C-105/04 P *FEG v Commission* [2006] ECR I-8725, paragraphs 137-139.

¹²⁶⁴ Certain parties also claim that the Commission misunderstood the role of gross price lists in price setting (particularly with regard to transaction and end-consumer prices) or failed to assess the facts of this case in light of the specific conditions in the market which are not conducive to price coordination. These arguments are further considered in Sections 5.2.4.2 and 5.2.4.3 below.

¹²⁶⁵ (...)

¹²⁶⁶ (...)

Overall, according to those submissions, the arrangements at issue cannot thus be deemed to have had the object of restricting competition, nor can they be deemed to have influenced the pricing decisions of other participants at the meetings.

- (916) As a preliminary remark, the Commission observes that the addressees' contentions in this regard are inaccurate. The investigation file includes ample evidence establishing that the so communicated price information (in particular, planned price increases for the forthcoming price cycle) had not generally been disclosed to customers at the time of their communication at the relevant association meetings. In particular, participants very often initiated discussions regarding their respective planned price increases well in advance of any suggested or likely communication/disclosure to customers (for example already at meetings taking place in spring or summer or early autumn, for the price cycle commencing in January of the following year).¹²⁶⁷
- (917) Regardless, the contention that internal pricing deliberations within some participating undertakings might have progressed before certain association meetings, or that some of the attendees might have already somehow disclosed their intended price increases to customers at the time of the meetings (or have done so at about the same time or just before those meetings) would not alter the Commission's assessment in this case for the following reasons.
- (918) First, such a contention cannot detract from the fact that the intended price increases at issue were specifically discussed amongst manufacturers in the multilateral setting of regular association meetings, instead of manufacturers determining their respective policies independently. As set out in Sections 5.2.2.1 and 5.2.2.2, although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.¹²⁶⁸
- (919) Second, the Commission observes that the relevant evidence adduced notably refers to price increases in connection with forthcoming price cycles, which were the subject of discussions weeks or months prior to those price increases becoming effective (for example during meetings taking place in autumn of each year or even earlier, for the price cycle commencing in January of the following year). Therefore, the price discussions at the said meetings concerned the participants' respective forward-looking pricing policies (in particular their planned future price increases) and cannot possibly be portrayed as pertaining to past price information of "historic" or otherwise "unobjectionable" character. In all cases, participants would share concrete and sufficient details of their pricing intentions and strategy, so as to provide other participants with explicit information concerning their future pricing. It is the Commission's view that the manufacturers taking part in the collusive arrangements concerned by this Decision and remaining active on the market could not have failed to take into account, directly or indirectly, the price information exchanged in determining their own conduct on the market

¹²⁶⁷ By way of example, see recitals (178), (180), (189), (196), (199), (201), (206), (208), (215), (219), (227), (230), (235), (314), (318), (319), (321), (323), (334), (336), (338), (415), (416), (418), (425), (436), (445), (451), (521), (561) and (600).

¹²⁶⁸ See Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 461. See also Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663, paragraphs 173-174; and Joined Cases T-202/98 etc. *Tate & Lyle v Commission* ECR [2001] II-2035, paragraph 56.

(all the more so when the arrangements occur on a regular basis and over a long period of time).¹²⁶⁹

- (920) Third, contrary to the addressees' allusions, the period in which the relevant discussions took place among manufacturers in the association meetings (be it well in advance or just a few weeks before the start of the upcoming price cycle) was of critical importance from an undertaking's strategic perspective. In particular, during that period, the attendees had every interest in removing or reducing uncertainty about the future price lists of other participating manufacturers. They had every interest in enhancing their understanding about the anticipated price levels and overall pricing policies of other manufacturers (which also formed the basis of the impending price negotiations with wholesalers). They also had every interest in reducing information asymmetry and aligning their understanding and conduct in the context of such negotiations with customers (which were, in any event, often conducted in a coordinated manner). Finally, they had every interest in ensuring that their competitors (including those who had not yet finalized their pricing for the next price cycle or had not yet communicated their forthcoming price lists to customers) adhered to the coordinated price levels and policies. Therefore, the addressees of the Decision were keen to conduct such discussions in the multilateral setting of regular association meetings (and they indeed did so in a systematic and sustained way during the said period, which underlines the fact that their contentions are unfounded).
- (921) Fourth, the Commission observes that the specific context in which the relevant exchanges took place is of similar importance. As noted in Section 5.2.2.2, it is the Commission's view that the systematic participation of the undertakings concerned in the relevant association meetings enabled them to develop a climate of mutual certainty as to their respective future pricing policies.
- (922) Finally, even if one assumed that some producers first notified their customers, individually and on a regular basis, of the prices they intended to apply (which is not supported by the evidence in this case), that fact does not imply that – at the time of their communication at the association meetings – those prices constituted objective market data which were readily accessible. Moreover, through direct exchanges/contacts within the framework of association meetings, participants became aware of that information more simply, rapidly and directly than they would have via the market. Therefore, the addressees' contention, according to which the price information revealed to other participants at the meetings should not be deemed anti-competitive because it could have been made known to customers (or because participants could have been able to collect such information from the market),¹²⁷⁰ would not alter the Commission's assessment.
- (923) Turning to discussions among meeting participants concerning price increases actually introduced into the market (which, based on the Commission account of the facts, often took

¹²⁶⁹ See Sections 5.2.2.1 and 5.2.2.2 above. See also for example Joined Cases T-202/98 etc. *Tate & Lyle v Commission* ECR [2001] II-2035, paragraph 58; Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-167; Case C-49/92P *Commission v Anic Partecipazioni SpA*, [1999] ECR I-4125, paragraph 119-121; Case T-303/02, *Westfalen Gassen Nederland BV v. Commission*, [2006] ECR II-4567, paragraph 133; Case T-7/89 *Hercules v Commission* [1991] ECR II-1711; Case T-1/89 *Rhône Poulenc v Commission* [1991] ECR II-867. This presumption cannot be discharged merely by pointing to evidence suggesting that participants did not ultimately follow the same pricing policies: see for example Joined Cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 1912.

¹²⁷⁰ The Court of First Instance has disregarded as irrelevant similar arguments: see for example Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraphs 276 and 462-463; and Joined cases T-202/98, T-204/98 and T-207/98, *Tate & Lyle and Others v Commission*, [2001] ECR II-2035, paragraphs 60-61.

place at the first weeks or months of a price cycle), certain addressees argue that such exchanges cannot be deemed to form part of the alleged price coordination arrangements, nor can they be deemed to have had the object of restricting competition.¹²⁷¹ According to these submissions, this is notably because the exchanges at issue related to prices already applied on the market and, thus, had no or little importance from a competition law perspective (particularly given that they could not have influenced the pricing decisions of other participants at the meetings).

- (924) The Commission does not share these views. Contrary to the addressees' suggestions, such discussions on actual prices cannot be separated or otherwise distinguished from the price coordination scheme concerned by this Decision; nor can their significance for the assessment of this case be understated.
- (925) First, the Commission observes that the relevant exchanges on list prices actually introduced on the market were also conducted in the context of regular meetings of the same associations, in the same systematic and sustained way as with discussions regarding planned price increases for the forthcoming price cycle. Second, it is the Commission's view that such discussions enabled participants to monitor the implementation of the price coordination arrangements (see, in particular, Section 5.2.5).¹²⁷² Third, they also served by themselves as a means of removing or substantially reducing uncertainty as to the future conduct of other participants in the context of parallel or impending trade negotiations with wholesalers at the time (for example regarding rebates on the gross price lists), while facilitating the alignment of the participants' understanding and conduct in the context of such negotiations. The Commission has thus assessed the communications at issue within the continuum of coordinative efforts undertaken by the cartel participants, having due regard to that dual role. It concluded that they also formed – in all material respects – an integral part of the price coordination scheme concerned by this Decision.
- (926) Furthermore, as previously noted in Section 5.2.2 on the basis of the settled case-law, where communications concern future pricing policies, it is considered that the participant could not fail to take into account, directly or indirectly, the information obtained in order to determine the policy which it intends to pursue on the market.¹²⁷³ In order to establish that the arrangements did not have any influence whatsoever on its own conduct on the market, the case-law further suggests that the undertaking must at least have ended its participation in the anticompetitive arrangements and have publicly distanced itself from what was discussed or demonstrate that its participation in the anticompetitive arrangements was without any anticompetitive intentions by demonstrating that it had indicated to its competitor(s) that it was participating in those meetings in a spirit that was different from the others.¹²⁷⁴ The

¹²⁷¹ (...)

¹²⁷² As further explained in Section 5.2.5, from the perspective of implementation of the infringement, by discussing the prices actually introduced by other participants in association meetings, cartel members were able to verify if an undertaking was living up to the commitments it undertook at earlier association meetings (in particular meetings where participants had been discussing their intended price increases for the forthcoming price cycles). Given this function, and taking into account their systematic occurrence within the pattern of coordination arrangements identified in this Decision, exchanges on actual prices played a key role in the development of a climate of mutual certainty as to the participants' respective future pricing policies.

¹²⁷³ See Joined Cases T-202/98 etc. *Tate & Lyle v Commission* [2001] ECR II-2035, paragraph 58, Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II-867, paragraphs 122-123.

¹²⁷⁴ See, in this sense, Cases C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287, paragraph 155, Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co KG and Others v Commission (Pre-Insulated Pipes)* [2002] ECR II-1487, paragraphs 223-227, and Case T 141/89, Joined Cases T-202/98 etc. *Tate & Lyle v Commission* [2001] ECR II-2035, paragraph 65.

Commission considers that none of the addressees has adduced such evidence. The Commission further notes that it is not sufficient to merely submit arguments claiming that there was no anticompetitive spirit, but the undertaking involved in such practices needs to adduce evidence.¹²⁷⁵ Nor is it sufficient for the addressees to simply claim that the information was somehow not useful for them or that the conduct was public, or that there was no implementation, or that their sales declined during the reference period. Moreover, the fact that an undertaking does not act on the outcome of a meeting having an anticompetitive purpose is not such as to relieve it of responsibility for the fact of its participation in the cartel, unless it has publicly distanced itself from what was agreed at the meeting.¹²⁷⁶ Bearing in mind all these considerations, the Commission cannot accept arguments raised by certain addressees according to which the Commission has somewhat confused mere participation in the meetings with adherence to the price coordination scheme.¹²⁷⁷ The Commission further notes that the addressees' adherence to the collusive arrangements in question is specifically attested on the basis of their own individual contribution to the price exchanges at the said meetings.

- (927) In such circumstances, the Commission does not need to specifically establish subjective intent of the addressees, once an anticompetitive object of the agreements or concerted practice is established and once it is shown that the undertaking contributed by its own conduct to that object. Furthermore, collusive arrangements can be restrictive by object even if they also pursued legitimate objectives.¹²⁷⁸ In the latter regard, the fact that participants at cartel meetings also discussed general market trends or other industry information of general nature cannot distract from the fact that the exchange of pricing information (and other commercially sensitive information) concerned by this Decision pursued an anticompetitive object.
- (928) Nor is it necessary to show that the cartel participants abandoned their unilateral self-interest. An undertaking, which despite colluding with other participants may somehow deviate from the prices it had communicated in the context of the collusive arrangements, may simply be trying to exploit the cartel for its own benefit.¹²⁷⁹ In this context, certain evidence put forward by some addressees, which intended to prove that participants actually introduced prices on the market that differed from those they had previously communicated at the cartel meetings, cannot negate their participation in the collusive arrangements concerned by this Decision (nor absolve them from liability for those collusive arrangements). In any event, the anticompetitive practices at issue must be assessed in the continuum of coordinative efforts undertaken by the participants for the distortion of price competition, which also included exchanges of price increases actually introduced on the market by way of monitoring (which usually took place at the first months of the price cycle).
- (929) Moreover, it is irrelevant that on a few occasions within the context of the collusive arrangements in Austria price discussions pertained to reductions (rather than price increases).¹²⁸⁰ The key issue is that manufacturers should not eliminate the uncertainty concerning their future pricing policies in advance through multi-lateral contacts. This

¹²⁷⁵ See, in this sense, Joined Cases T-202/98 etc. *Tate & Lyle v Commission* [2001] ECR II-2035, paragraph 64-66.

¹²⁷⁶ See Case C-291/98 P *Sarrió v Commission* [2000] ECR I-9991, paragraph 50, and *Aalborg and Others v Commission* [2004] ECR I-123, paragraph 85.

¹²⁷⁷ (...)

¹²⁷⁸ See, in this sense, Joined Cases 96/82 etc. *NV IAZ International Belgium and Others v. Commission* [1983] ECR 3369, paragraph 25.

¹²⁷⁹ See for example Case T-308/94 *Cascades v Commission* [1998] ECR II-925, paragraph 230; Case T-59/02 *Archer Daniels Midland Co v. Commission* [2006] ECR II-3627, paragraph 189; see also Joined Cases 96/82 etc. *IAZ and Others v Commission* [1983] ECR 3369, paragraph 25.

¹²⁸⁰ (...): Artweger maintains that the alleged anticompetitive price exchanges related to decreases, while the collusion put forward by the Commission is about raising, not reducing, prices.

requirement of independence concerns the overall price-setting policy of the manufacturers. Article 101 TFEU explicitly prohibits to "*directly or indirectly fix purchase or selling prices*" and not only the increase of prices. According to case-law of the courts of the European Union, the purpose of Article 101(1) TFEU, and in particular of point (a) thereof, is to prohibit undertakings from distorting the normal formation of prices on the markets.¹²⁸¹ This is precisely so, given that – in the absence of collusion – prices could have decreased even more. Overall, the instances where price decreases had been specifically discussed at ASI meetings cannot thus be disassociated from the continuum of coordinative efforts undertaken by the cartel participants within the same association, nor can such price adjustments downwards undermine the unity of anticompetitive purpose of the arrangements at issue.

(930) Based on the considerations developed in Sections 5.2.2 and 5.2.4, the Commission concludes that the discussions and exchanges and other bilateral contacts concerning prices amongst the addressees of this Decision (as described in Section 4) had as their object the restriction of competition. Furthermore, in response to the addressees' arguments, the Commission concludes that there are no grounds to question, in the circumstances of this case, the anti-competitive object of the arrangements at issue and the underlying presumption of consumer harm.

5.2.4.2 The economic context or likely effects of the arrangements – the addressees' arguments and the Commission's appraisal

(931) In their Replies to the SO and during the course of the Oral Hearing, several respondents raised arguments pertaining to the wholesalers' strong position on the bathroom fittings and fixtures sector. They focus in particular on the wholesalers' countervailing buyer power which is, in their view, inconsistent with the Commission's cartel findings. Moreover, some addressees seek to establish that their role in the infringement was relatively limited as it was the wholesalers that determined the parameters and other key requirements of competition, or induced manufacturers to act in a coordinated manner (such as the requirement to always provide wholesalers with their planned price increases at a certain time of the year).¹²⁸²

(932) Similarly, certain respondents submit that the Commission failed to understand the context of the arrangements and the prevailing market conditions, including the functioning of the three-tier distribution system, in the sense that manufacturers were not in a position to control end-consumer prices.¹²⁸³ It is similarly argued that the Commission ignored the important role played by the wholesalers in the industry (who often instigated the alleged anticompetitive price discussions in the framework of association meetings). Some respondents also point to the fact that gross prices communicated by the manufacturers at the meetings were at a later stage subject to individual negotiations on discounts and other rebates with the wholesalers. The prices so exchanged did not thus constitute the transaction or end-consumer prices. The Commission is thus criticized for ignoring the economics of the industry and for maintaining the fundamental misconceptions of the SO regarding the functioning of the market, in particular the pricing mechanism and the ensuing essential distinction between net prices and list prices. Based on these considerations, some addressees submit that the alleged coordinated conduct could not have had an effect on end-consumer prices or might only have had limited overall effects on the market.¹²⁸⁴

¹²⁸¹ See for example Case T-13/89 *Imperial Chemical Industries v. Commission* [1992] ECR II-1021, paragraph 311.

¹²⁸² (...)

¹²⁸³ (...)

¹²⁸⁴ (...)

- (933) The Commission observes that such arguments cannot be used to justify the infringement. Nor can they be deemed to constitute an attenuating circumstance. First, as explained in Section 5.2.4, it is settled case-law that for the purpose of applying Article 101 TFEU and Article 53 of the EEA Agreement there is no need to take into account or demonstrate the actual anti-competitive effects of an agreement or concerted practice, when it has as its object the prevention, restriction or distortion of competition within the internal market. The Commission's findings relating to the anticompetitive object of the arrangements at issue (see, in particular, Section 5.4.2.1) would thus suffice for purposes of applying the said rules, regardless of whether the conduct of the manufacturers had a direct effect on end-consumer prices.
- (934) Second, in the bathroom fittings and fixtures industry, as in every industry, market conditions and other characteristics at the upstream and downstream level may indeed influence the behaviour of market participants. However, the alleged countervailing buyer power exercised by the wholesalers or other prevailing trading conditions cannot in any circumstances justify the price coordination arrangements amongst manufacturers at the horizontal level. The key consideration in this case is that the addressees chose to coordinate their prices, rather than respond independently to market conditions, by engaging in the practices described in Section 4. In any event, the Commission is entitled to conclude that the conditions of competition were distorted, even if buyer power is found to exist.¹²⁸⁵ Moreover, the Commission observes that the perceived existence of buyer power may well explain the incentive to organize a cartel, in order to maintain prices at a level which would be higher than the one resulting from market forces.¹²⁸⁶ In this case, there is indeed evidence attesting to the manufacturers' coordinated attempts to retain control of price-setting within the context of the three-tier distribution system or otherwise contain pressure from customers.¹²⁸⁷
- (935) Third, the Commission observes that it is in the nature of market transactions that general price increases are first announced by the different suppliers and that final prices are thereafter negotiated between the suppliers and individual customers. The cartel mainly concerned the general price increase announcements.¹²⁸⁸ For purposes of applying Article 101 TFEU, there is no requirement that the coordination relate specifically to individual transaction or end-consumer prices. Nor is the Commission required to establish that coordinated list prices systematically translated into coordinated final prices or that the coordination of list prices was mirrored at the level of final or end-consumer prices. Furthermore, in order to find that a concerted practice has an anti-competitive object, there does not need to be a direct link between that practice and end consumer prices.¹²⁸⁹ Overall, the contention that final prices were eventually negotiated with individual customers cannot thus detract from the fact that the price increase so exchanged at the meetings, which further formed the basis of those (final) prices

¹²⁸⁵ See for example Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 120.

¹²⁸⁶ In their replies to the SO, certain addressees even admit (or allude to) precisely this occurrence: (...).

¹²⁸⁷ See for example recitals (169), (209), (221), (299), (310) and (315).

¹²⁸⁸ As demonstrated in Section 4, particularly by reference to evidence from the Austrian market (see for example recitals (310) and (315)), the file also contains examples of price coordination which extended to cover price lists corresponding to more than one levels of the distribution chain – including price lists conceived with the objective of, and targeted specifically at, fixing end consumer prices. Such evidence (as well as ample evidence attesting to the coordination of additional price parameters, such as rebates and minimum prices, in all Member States covered by the Commission's investigation) exposes the intensity of the price coordination arrangements at issue. It further serves to reinforce the Commission's overall findings as to object and likely effects of those arrangements, as well as the presumption of ensuing consumer harm.

¹²⁸⁹ See for example Case C-8/08 *T-Mobile Netherlands & others v Raad van bestuur van der Nederlandse Mededingingsautoriteit*, Judgment of 4 June 2009 (not yet reported), paragraphs 36-39.

(and the starting point of the impending negotiations with customers), had an anti-competitive object.

- (936) Fourth, the fact that the prices communicated at the meetings were not those directly charged to customers or end-consumers (but were subject to impending negotiations with wholesalers) does not exclude that effects on the market took place. Indeed, at the time when manufacturers entered into such negotiations with wholesalers on rebates and other terms, they were in general already informed about the price increases of their peers. They could thus take account of these price increase levels in their negotiations with customers (which, in any event, were often conducted in a coordinated manner). Such sensitive price information, which formed the basis of subsequent price negotiations with wholesalers, was of strategic importance to the undertakings involved and was bound to have influenced the said negotiations.
- (937) The Commission also observes that according to settled case-law concertation on price objectives, target prices, list prices and other forms of announced prices may well constitute an infringement of Article 101 TFEU.¹²⁹⁰ Setting a price, even one that is merely indicative affects competition because it allows the participants in the cartel to foresee with a reasonable degree of certainty what pricing policy will be pursued by their competitors. In expressing a common intention to apply a certain level of prices to their products, the producers concerned no longer determine their policy on the market in an autonomous manner, thus adversely affecting the concept inherent in the TFEU provisions on competition.¹²⁹¹ Furthermore, the implementation of an agreement on price objectives, rather than on fixed prices, does not mean that prices corresponding to the agreed price objective are to be applied, but rather that the addressees endeavour to get close to their price objectives.¹²⁹²

5.2.4.3 The markets and products concerned – the addressees' arguments and the Commission's appraisal

- (938) Several respondents also seek to refute the Commission's findings of a cartel infringement by arguing that the market was in fact competitive. In particular, some addressees submit that the competitive and dynamic nature of the market renders the alleged price coordination amongst manufacturers ineffective. In this regard, reference is made to imports, which prevent the competitors from raising their price as well as to customers having the possibility to switch between suppliers.¹²⁹³ Similarly, references are made in particular to the low barriers to entry, the fragmentation of the market(s) and the fact that new entrants have been successful on the market.¹²⁹⁴
- (939) All these arguments relating to the structure or competitive features of the market do not support an absence of a cartel. First, as regards the argument that the bathroom fittings and fixtures industry is highly competitive, the Commission notes that Article 101 TFEU prohibits the prevention, restriction or distortion of competition within the internal market. Therefore, addressees cannot justify their involvement in cartel arrangements by claiming that there is

¹²⁹⁰ See for example Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 81 and 111; Case T-224/00 *Archer Daniels Midland Company and others v. Commission*, [2003] ECR II-2597, paragraph 271. See also Case 8/72 *Vereeniging van Cementhandelaren v Commission* [1972] ECR 977, paragraph 21.

¹²⁹¹ See Case T-410/03 *Hoechst v. Commission* [2008] ECR II-881, paragraph 349; and Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 81.

¹²⁹² Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 111.

¹²⁹³ (...)

¹²⁹⁴ (...)

competition on the market. As concerns the contention that the addressees to the infringement fiercely competed among themselves, this cannot detract from the fact that the price coordination arrangements are substantiated in this Decision on the basis of direct documentary evidence and corroborating oral statements (Section 4). The Commission further observes that the alleged competitive constraints may well explain the intensity and regularity of the cartel arrangements at issue, which comprised *inter alia* a plethora of association meetings taking place in a systematic and sustained way at national level. The issue whether an undertaking's conduct was (or can be considered *ex post* to be) economically rational, profitable, of commercial interest or otherwise sustainable is irrelevant in assessing whether or not that undertaking participated in the infringement.¹²⁹⁵ Furthermore, there is no requirement that in order to constitute an infringement by object, arrangements should exclude any competition between the addressees. It is sufficient to establish the anti-competitive object of the contacts between them.

- (940) Second, as regards the arguments that insufficient consideration was given to the structure of the relevant market, the Commission observes that a full analysis of the market structure in this case is not a precondition for purposes of establishing an infringement.¹²⁹⁶ This case involves price-related cartel arrangements, the anticompetitive object and likely effects of which have been established on the basis of a precise and consistent body of evidence demonstrated in Section 4 of this Decision. In any event, the Commission observes that it has – in that regard – described the essential features of the market with a view to identifying the operating conditions of the price coordination scheme at issue. Moreover, the Commission observes that there is no particular legislative or sector-specific context in this case which could potentially be deemed capable of justifying less severe treatment of the said practices. In any event, the Commission notes that the addressees of the Decision are the leading suppliers of bathroom fittings and fixtures in the respective fields of their activities and collectively represent a substantial share of the market.
- (941) Third, as regards the arguments that the Commission failed to conduct a proper competition assessment by reference to clearly defined product and geographic market(s), the Commission observes that it is entitled to find that agreements or concerted practices had as their object the restriction of competition and that they were capable *per se* of affecting trade between Member States to an appreciable extent without having to fully define the relevant market(s).¹²⁹⁷ It should be emphasized that it is not the Commission which arbitrarily defines the relevant market, but the members of the cartel who deliberately concentrate their anticompetitive conduct on certain products (thus determining the scope of the infringement).¹²⁹⁸ Similarly, there is no need for the Commission to reach a final conclusion on market definition if its conclusions would be the same on each candidate market definition.¹²⁹⁹ In any event, the Commission observes that it has delineated the product and geographic scope of the present

¹²⁹⁵ See for example Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries Ltd and Nippon Steel Corp. v. Commission* [2007] ECR I-729, paragraph 46. See also Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v Commission*, [2004] ECR I-123, paragraph 335.

¹²⁹⁶ See for example Joined Cases T-202/98 etc. *Tate & Lyle v Commission* [2001] ECR II-2035, paragraph 113-114; Joined Cases 40-48/73 etc. *Suiker Unie and others v Commission* [1975] ECR 1663, paragraph 621.

¹²⁹⁷ See for example Case T-213/00 *CMA CGM v Commission* [2003] ECR II-913 paragraphs 206; see also Case T-241/01 *SAS v Commission* [2005] ECR II-2917 paragraph 99; Case T-348/94 *Enso Espanola v Commission* [1998] ECR II-1875 paragraph 232, Case T-73/04 *Le Carbone Lorraine v Commission*, paragraphs 42 *et sequitur*, not yet reported.

¹²⁹⁸ Joined Cases T-71/03, T-74/03, T-87/03 and T-93/03 *Tokai Carbon and others v Commission* [2005] ECR II-10, paragraph 90.

¹²⁹⁹ See for example Joined Cases T-185/00 etc. *Métropole Television (M6) v Commission* [2002] ECR II-3805 paragraph 57.

infringement with sufficient precision, so as to be able to identify the operating conditions on the market in which competition is distorted and satisfy the essential requirements of legal certainty.

5.2.4.4 The distinctive character or lack of commercial interest of the undertakings concerned – the addressees' arguments and the Commission's appraisal

- (942) Some addressees point to their distinctive character or lack of commercial interest in order to contest the Commission's account of the facts and, in particular, cast doubt on the series of evidence and other indicia proving their participation in the cartel. These arguments can broadly be grouped into two categories: (a) some respondents claim that they focus their production activities on the high-end segment of the market or on particular segments of the market, such that they would have no real commercial interest in colluding on a pricing strategy with other participants at the meetings (or that it would be irrational for them to do so);¹³⁰⁰ and (b) some other respondents (in particular, medium-sized single-product manufacturers predominantly active in one of the Member States covered by the Commission's investigation) claim that they are medium-sized / family undertakings that only had a passive or minor role in the infringement and should, thus, be distinguished from the core group of multinationals.¹³⁰¹ In this regard, RAF and Duscholux Austria argue that they should even be exempted on the basis of the Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*) (hereinafter referred to as the "*de minimis* Notice")¹³⁰² or on the basis that their conduct could not have affected trade between Member States.¹³⁰³ Finally, Sphinx contends that it was the market leader at the relevant time and acted as a price-setter on the Dutch market, such that it had no interest in coordinating with its subordinate competitors in either Member State.¹³⁰⁴
- (943) First, the Commission observes as a general remark that the alleged lack of commercial interest in the price coordination activities taking place at the association meetings cannot serve as a basis for disproving an undertaking's participation in the infringement, in circumstances where that participation is demonstrated on the basis of a concrete body of documentary evidence (Section 4). Where the Commission's case is based on documentary evidence in support of the infringement and where that evidence appears to be sufficient to demonstrate the existence of the anticompetitive arrangements, there is no need to examine the question whether the undertaking had a commercial interest in those arrangements.¹³⁰⁵ It is further sufficient for the Commission to establish that the undertaking concerned participated in meetings during which

¹³⁰⁰ (...) Duravit submits that the largest part of its turnover is generated in the upper segment of the market and consists of design products that are considerably more expensive than standard models); (...) Villeroy & Boch claims that it only produces high-grade ceramics, including an acrylic range of baths, shower trays etc, and that its range cannot be compared with the standardized ceramics); (...) Cical claims that it produced high-end products which are not available for "do it yourself" installation).

¹³⁰¹ (...) (Roca France also submits that it cannot be deemed to belong to the group of "medium-sized" undertakings, but instead to the category of "small-sized" undertakings which played a limited role in the cartel).

¹³⁰² OJ C 368, 22.12.2001, p. 13. (...)

¹³⁰³ (...)

¹³⁰⁴ (...)

¹³⁰⁵ See Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries Ltd and Nippon Steel Corp. v. Commission* [2007] ECR I-729, paragraph 46. See also Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, *Aalborg and others v Commission*, [2004] ECR I-123, paragraph 335.

the anticompetitive arrangements took place in order to prove that the said undertaking participated in the cartel.¹³⁰⁶

- (944) Second, the Commission observes that the alleged distinctive characteristics of the addressees in question were not reflected in the cartel arrangements. In the discussions in all Member States in which manufacturers communicated their price increases for the following year in percentages, it was irrelevant whether some suppliers might focus their activities on specific segments on the market. Manufacturers in general communicated one price increase figure in percentages to be applied to all their series within the product category, without further specification. The evidence in the Commission's file does not support any contention that the price discussions at the said meetings were generally somehow limited to one or few series or lines within each broader product category (namely taps and fittings or shower enclosures or ceramics). Similarly, road toll surcharges and cost surcharges applied uniformly to all products. The cartel thus related to all products without a distinction between high-end and low-end products. It is moreover evident that Duravit, Villeroy & Boch and Cisal had a commercial interest in following price and other developments in relation to all products, including the standard products (regardless of whether they also produced high-end products).
- (945) Third, as regards the relatively limited role alleged by some medium-sized undertakings, this does not serve to disprove their actual participation in the infringement.¹³⁰⁷ The contention that some cartel participants may be medium-sized "family" undertakings does not absolve them from liability for participating in the cartel (nor does it constitute a mitigating circumstance).¹³⁰⁸ It is similarly irrelevant that other participants (notably larger multinational manufacturers) may have had a broader involvement. Any such differences (as well as the extent of each undertaking's individual involvement) are sufficiently reflected by the value of sales in the products to which the infringement relates that forms the basis of the calculation of the fine. Moreover, the contention that smaller undertakings allegedly used the meetings to improve or protect their own position on the market in relation to the leading multinationals (without necessarily subscribing to the price coordination arrangements at issue) does not cast doubt on the series of evidence and other indicia establishing proof of their participation in the cartel arrangements. The Commission observes that – for the period in which the claimants participated in the cartel – they were regular participants at the relevant association meetings and their conduct was not different from the other cartel participants. Therefore, the contacts made in those meetings must have been of commercial interest for them. In any event, assuming that the assertions made were true (which is certainly not established in this case), this would have no bearing on the Commission's assessment: given the concrete documentary evidence establishing the participation of those undertakings, there is no need to examine the question whether they actually had a commercial interest in the cartel arrangements.
- (946) Fourth, it is pertinent to make the following observations. The contention raised by certain addressees, such as Laufen, Roca France and Koralle, regarding their limited involvement given that the scope of their activities is confined to one Member State fail to take into account the fact that they are part of a group of undertakings that is active in several Member States (Roca and Sanitec respectively). For the purpose of this Decision (see Sections 6.2.4 and 6.2.7) they are deemed to constitute one single economic entity with their parent companies. Similar considerations apply with regard to the Duscholux subsidiaries. Turning to RAF's argument

¹³⁰⁶ See for example Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries Ltd and Nippon Steel Corp. v. Commission* [2007] ECR I-729, paragraph 47.

¹³⁰⁷ To the extent that the addressees request a fine reduction for passive or minor involvement in the cartel, the Commission refers to its observations in Section 8.5.2.4 of this Decision.

¹³⁰⁸ See for example T-23/99 *LR AF 1998 v Commission* [2002] ECR II 1705, paragraph 338.

that, as an SME, its conduct should thus be exempted under the rules of the *de minimis* Notice, reference is additionally made to point 11 of the *de minimis* Notice, which exempts from its application all agreements or concerted practices having as their object the fixing of prices. In any event, the addressees participating in the agreements would not meet the requirements of point 7 of the Notice. Finally, with regard to the argument made by Duscholux as to the national scope of the cartel arrangements or as to the national scope of its own activities or participation, the Commission refers to Section 5.2.6. It is further noted that the effect of trade concept refers to the anticompetitive conduct so identified and viewed as whole, and not to each undertakings' own activities or contribution. It is thus irrelevant whether or not the activities or participation of one specific undertaking in the agreements/concerted practices could potentially have themselves an appreciable effect on trade between Member States.¹³⁰⁹

- (947) Some respondents also argue that the pricing information they may have gained access to was not useful to them, in particular because the products involved are very heterogenous.¹³¹⁰ The Commission considers that, even if such assertions were true, this would not alter the Commission's findings. The fact that the addressees engaged in the conduct described in Section 4 is, as such, sufficient for purposes of establishing an infringement of Article 101 TFEU. Liability for the infringement does not depend on the degree of usefulness that the information discussed at the meetings may have had for each participant. In any event, the Commission notes that, if the information on prices was actually exchanged, it was because the participating undertakings thought that such a discussion was somehow useful.
- (948) Finally, some addressees argue that the individuals involved in the association meetings did not have ultimate responsibility to set prices within their respective undertakings.¹³¹¹ The Commission observes that it is not required to show that the partners or managers of an undertaking committed the infringement intentionally or negligently in order to attribute liability. It is settled case-law that "*it is not necessary for there to have been action by, or even knowledge on the part of the partners or principal managers of the undertaking concerned; action by a person who is authorized to act on behalf of the undertaking suffices*".¹³¹² Moreover, it suffices that the representatives of undertakings are perceived by the other meeting participants as such and that their actions are interpreted as being actions of the undertaking in question.¹³¹³
- (949) The Commission further notes that the individuals participating at the relevant association meetings were acting as (and receiving information as) representatives of the undertakings concerned. There is no evidence suggesting that those individuals were not considered or treated by the other participants as representatives of their undertakings. Moreover, the representatives of for example Hansgrohe, Ideal Standard in France and Italy, Roca France, and Sphinx at the association meetings were individuals (...) in their respective organizations (...).

¹³⁰⁹ Joined Cases T-259/02, T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich v Commission* [2006] ECR II-5169, paragraphs 168-170. See also Case T-89 *Petrofina* [1991] ECR II-1087, paragraph 226.

¹³¹⁰ (...)

¹³¹¹ (...)

¹³¹² Joined Cases T-100-103/80 *SA Musique Diffusion Française v. Commission* [1983] ECR II-1825, paragraph 97. See also Case T-9/99, *HFB and others v Commission* [2002] ECR II-1487, paragraph 275; Case T-15/99 *Brugg Rohrsysteme v Commission* [2002] ECR II-1613, paragraph 58; and Case T-236/01 *Tokai Carbon v Commission* [2004] ECR II-1181, paragraph 277.

¹³¹³ Order of the Court of Justice of 16 February 2006, Case C-111/04 P, *Adriatica di Navigazione SpA v Commission*, paragraph 53.

5.2.4.5 The legal qualification of specific arrangements – the addressees' arguments and the Commission's appraisal

- (950) Some addressees question the legal qualification of specific arrangements identified by the Commission as anticompetitive in the SO. The majority of these arguments refer to the additional exchange of sensitive business information (mostly relating to information about the addressees' respective sales).¹³¹⁴
- (951) The facts presented in Section 4 (in particular, recitals (236)-(238) with respect to Germany; recitals (340)-(341) with respect to Austria; recitals (461)-(462) with respect to Italy; recitals (503)-(504) and (516)-(518) with respect to Belgium; recitals (570)-(571) and (574) with respect to France; and recitals (602)-(605) with respect to The Netherlands) describe, in addition to the regular coordination of price increases, the disclosure and exchange of sensitive business information among the addressees of the Decision (by reference to specific examples for each Member State). Although the level of detail of such exchanges could vary from one Member State to another, the information generally covered recent or current sales, expressed either in volumes or as a percentage indicating turnover variations per member in connection with preceding reference periods. In certain occasions, the exchanges also included future sales projections by member. The exchanges always took place at the same meetings as the price discussions.¹³¹⁵
- (952) Several addressees argue that these exchanges of information had no effect on competition¹³¹⁶ or that the conditions established in case law concerning the exchange of commercially sensitive information are not fulfilled in this case.¹³¹⁷ In this respect, some respondents add that the information exchanged was too general or too aggregated to be deemed to reveal the commercial strategy of the participating undertakings.¹³¹⁸
- (953) These arguments cannot be accepted. First, the Commission observes that it does not perceive this exchange of information to be a separate infringement,¹³¹⁹ but instead considers that it complements and supports the price coordination arrangements. It is further noted that it would be artificial in the circumstances of this case to distinguish the sales information exchange from the overall price coordination scheme. This is apparent from the fact that, as developed in Section 4, the same association meetings concerned both price coordination and information sharing on sales, with communications on sales often forming the basis of discussions on prices at those meetings and with attendees referring interchangeably to both their sales performance and pricing in a roundtable discussion. The sales information sharing should thus be assessed in the context of the recurring price coordination arrangements. It contributed to a sustained level of interaction amongst the association members and it enabled participants constantly to monitor the evolution of sales and the market position of their competitors, thereby further solidifying their mutual bonds of trust and overall promoting stability. The Court of Justice has found that "*even an exchange of information which is in the public domain or related to historical and purely statistical prices infringes Article 81(1) EC [now Article 101(1) TFEU, remark added] where it underpins another anti-competitive arrangement. That interpretation is*

¹³¹⁴ (...)

¹³¹⁵ The details and specificities of this exchange of information are further developed by Member State in Part I of this Decision.

¹³¹⁶ (...)

¹³¹⁷ (...)

¹³¹⁸ (...)

¹³¹⁹ (...). In addition, the Commission does not allege that the parties could deduce each other's price increases from the sensitive information exchanged: (...).

based on the consideration that the circulation of price information limited to the members of an anti-competitive cartel has the effect of increasing transparency on a market where competition is already much reduced".¹³²⁰ These considerations should equally apply in this case, since the addressees exchanged information on their sales in the same context of coordinating their price increases. The Commission considers that, given the nature and context of the additional sales information exchanged, the said arrangements helped to increase market transparency.¹³²¹ On the basis of these considerations, the argument relating to the statistical nature of the information exchanged or to the fact that the information was already in the public domain or somehow relating to past sales would not alter the Commission's assessment in this case.¹³²²

- (954) The Commission further rejects the addressees' arguments as to the benign nature of the sales information sharing. As explained in Section 4 (in particular, recitals (236)-(238) with respect to Germany; recitals (340)-(341) with respect to Austria; recitals (461)-(462) with respect to Italy; recitals (503)-(504) and (516)-(518) with respect to Belgium; recitals (570)-(571) and (574) with respect to France; and recitals (602)-(605) with respect to the Netherlands), it is apparent that the turnover or sales information exchanged was not of historic nature. In several Member States, the information covered at least the period up to the month or quarter preceding the date of the meeting at which it was exchanged and sometimes included forward-looking sales projections by member, therefore providing the addressees with an updated view of evolution of their competitors' sales. Nor was the sales information exchanged sufficiently aggregated.
- (955) The Commission also observes that, as regards the sensitive nature of the information shared, the Court of First Instance has found in *Thyssen Stahl AG v Commission*¹³²³ that a system for the exchange of individual data can of itself be anti-competitive if "*the information distributed, relating to participants' orders and deliveries on the main Community markets, was broken down by undertaking and Member State [and] thus made it possible to identify the position occupied by each undertaking in relation to the total sales by the participants on all of the geographical markets in question*", as well as "*since the information distributed was updated and sent out frequently, undertakings were in a position to follow closely each change in market share held by the participants on the markets in question*". The Commission's file indeed contains evidence that in most Member States, the addressees exchanged regularly information that mainly covered recent or current sales variations (while also included future projections on sales by member). Furthermore, the Commission found an ABD letter dated 19 May 2004 in the course of the inspections, stating that "*the sense of the sales volume and turnover information on shower enclosures, which has been conducted already since many years, was that the specific member undertakings of the former ADA can, as promptly as possible, have knowledge about how their own market share has developed in comparison to their colleague undertakings*".¹³²⁴

¹³²⁰ Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 281.

¹³²¹ The Commission therefore cannot accept the argument to the contrary: (...).

¹³²² (...)

¹³²³ See Case T-141/94 *Thyssen Stahl AG v Commission* [1999] ECR II-347, paragraphs 379-412, upheld by the Judgment of the Court of Justice in Case C-194/99P *Thyssen Stahl AG v Commission* [2003] ECR I-10821, paragraphs 58-107.

¹³²⁴ (...) See also case T-53/03 *BPB v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 116.

- (956) The Commission also notes that the information circulated among the addressees as described in Part I was in some cases marked as confidential, therefore confirming that the addressees perceived it as being commercially sensitive.¹³²⁵
- (957) In general, the sales information so exchanged was thus regular and systematic, it comprised up-to-date (and occasionally even forward-looking) sales data, it was broken down by member and often consolidated and circulated to all members so that the participants could recall the relevant discussions. The Court of First Instance found in *Thyssen Stahl AG v Commission* that, "having regard to all the circumstances of the case, in particular the fact that the information distributed was up-to-date, broken down and intended only for producers, the product characteristics, and the degree of market concentration, the arrangements in question clearly affected the participants' decision-making independence".¹³²⁶ The Commission believes that similar considerations are pertinent in this case, particularly as there was artificial market transparency and ensuing distortion of market conditions from the operation of the price coordination scheme at issue.
- (958) Finally, the Commission deems irrelevant the contention according to which the accuracy of the information shared was dubious because it depended on the manufacturers' willingness or ability to contribute thoroughly.¹³²⁷ In this regard, it suffices to underline that the addressees would not have shared regularly such information if they had not deemed it valuable or reliable.¹³²⁸

5.2.4.6 The Commission's burden of proof – the addressees' arguments and the Commission's appraisal

- (959) Several arguments raised by the undertakings in their replies to the SO and during the Oral Hearing seek to establish that the Commission has not fulfilled the requisite burden of proof required by case law and that the Commission's weighing of evidence was not balanced. In particular, several undertakings submit that the Commission relied too heavily on oral statements made by the leniency applicants.¹³²⁹ Certain undertaking emphasize that oral leniency statements must be corroborated by documentary evidence.¹³³⁰ Some respondents also point to the potential lack of credibility of these statements.¹³³¹ It has also been submitted by certain undertakings that the anticompetitive content of certain meetings could not be established, and that certain documents were not sent by them or addressed to them, so that they could not be used against them.

¹³²⁵ This was the case for example in Belgium, within the VC group: see recitals (516)-(518). The fact that an exchange of information involves information which an independent operator scrupulously preserves as business secrets is sufficient to demonstrate the existence of an anti-competitive intention: see Joined cases T-202/98, T-204/98 and T-207/98, *Tate & Lyle and Others v Commission*, [2001] ECR II-2035, paragraph 66. See also Case T-12/89 *Solvay v Commission* [1992] ECR II-907 at para 100; and Judgment of the Court of First Instance on 12 September 2007 in case T-36/05, *Coats Holdings Ltd and J & P Coats Ltd, v Commission*, not yet reported, paragraph 113.

¹³²⁶ See Case T-141/94 *Thyssen Stahl AG v Commission* [1999] ECR II-347, paragraphs 379-412, upheld by the Judgment of the Court of Justice in Case C-194/99P *Thyssen Stahl AG v Commission* [2003] ECR I-10821.

¹³²⁷ (...)

¹³²⁸ Similarly, the Commission cannot accept the argument according to which the information shared was irrelevant to the parties: (...). See for example Case T-54/03 *Lafarge v Commission*, Judgment of 8 July 2008 (not yet reported), paragraph 267.

¹³²⁹ (...)

¹³³⁰ (...)

¹³³¹ (...)

- (960) First, it must be noted that the fact that the inculpatory documents were not found at the applicants' premises or were not distributed to other undertakings does not cast doubt on their probative value,¹³³² although such circumstances may be taken into consideration in assessing the scope of the participation in the infringement.¹³³³
- (961) Second, it is settled case-law that the Commission must show precise and consistent evidence in order to establish the existence of an infringement.¹³³⁴ However, it is also established that it is not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the Commission, viewed as a whole, meets that requirement.¹³³⁵
- (962) Third, it is moreover sufficient for the Commission to show that an undertaking participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite legal standard that the undertaking participated in the cartel.¹³³⁶ The fact that an undertaking does not abide by the outcome of meetings which it has attended and which have an anti-competitive purpose is not such as to relieve it of full responsibility for the fact that it participated in the cartel, if it has not publicly distanced itself from what was agreed at the meetings.¹³³⁷
- (963) Fourth, as regards proof of continuity of the infringement or of the participation of one undertaking, the fact that there are certain gaps in the sequence of events established by the Commission does not mean that the infringement cannot be regarded as uninterrupted.¹³³⁸ If there is no evidence directly establishing the duration of an infringement, it is sufficient for the Commission to adduce evidence of facts sufficiently proximate in time for it to be reasonable to accept that that infringement continued uninterruptedly between two specific dates. Moreover, the infringement does not fail to be made out just because as regards a series of meetings there is no direct evidence that anticompetitive discussions took place at such given meetings, when the meetings were attended by the same people, took place under similar external conditions

¹³³² See, to that effect, Joined Cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others v Commission ('PVC II')* [1999] ECR II-931, paragraph 675; Case T-56/99 *Marlines SA v Commission* [2003] ECR II-2003, paragraph 57; Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* [2000] ECR II-491, paragraphs 1397 and 1546.

¹³³³ *Cimenteries*, cited above, paragraph 1053.

¹³³⁴ Joined Cases T-44/02 etc *Dresdner Bank v Commission* [2006] ECR II-3567, paragraph 62; Case T-62/98 *Volkswagen v Commission* [2000] ECR II-2707, paragraph 43, and the case-law cited therein.

¹³³⁵ Joined Cases T-44/02 etc *Dresdner Bank v Commission* [2006] ECR II-3567, paragraph 63; Joined Cases T-305/94 etc *Limburgse Vinyl Maatschappij and Others v Commission ('PVC II')* [1999] ECR II-931, paragraphs 768 to 778, and in particular paragraph 777, confirmed on the relevant point by the Court of Justice, on appeal, in Joined Cases C-238/99 P etc *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I-8375, paragraphs 513 to 523.

¹³³⁶ Case C-199/92P *Hüls v Commission* [1999] ECR I-4287, paragraph 178; Case C-235/92P *Montecatini v Commission* [1999] ECR I-4539, paragraph 181; Joined Cases C-204/00P *Aalborg Portland v Commission ('Cement')* [2004] ECR I-123; Joined Cases C-189/02P *Dansk Røindustri v Commission* [2005] ECR I-5425, paragraph 142; Cases C-403 & 405/04P *Sumitomo Metal Industries Ltd and Nippon Steel Corp v Commission* [2007] ECR I-729, paragraph 47.

¹³³⁷ Joined Cases T-25/95 etc *Cimenteries CBR v Commission ('Cement')* [2000] ECR II-491, paragraph 1389; Case T-56/99 *Marlines v Commission* [2003] ECR II-5225, paragraph 61 (appeal dismissed Case C-112/04P *Marlines v Commission*, Order of 15 September 2005); Joined Cases T-71/03 etc *Tokai Carbon v Commission ('Specialty Graphite')* [2005] ECR II-10, paragraph 74.

¹³³⁸ Case T-43/92 *Dunlop Slazenger v Commission* [1994] ECR II-441, paragraph 79; Case T-279/02 *Degussa v Commission* [2006] ECR II-897 paragraph 153.

and indisputably had the same primary purpose, namely to discuss the problems within the industrial sector concerned.¹³³⁹

- (964) In *Aalborg* the Court of Justice ruled that "*In the context of an overall agreement extending over several years, a gap of several months between the manifestations of the agreement is immaterial. The fact that the various actions form part of an overall plan owing to their identical object, on the other hand, is decisive*".¹³⁴⁰ More specifically, the Court of Justice has recently ruled, as regards whether or not the Commission had adduced sufficient evidence of the continuation of an infringement, that "*the fact that such evidence was not adduced for certain specific periods does not preclude the infringement from being regarded as having been established during a more extensive overall period than those periods, provided that such a finding is based on objective and consistent indicia. In the context of such an infringement, extending over a number of years, the fact that the infringement is demonstrated at different periods, which may be separated by more or less long periods, has no impact on the existence of that agreement, provided that the various actions which form part of the infringement pursue a single aim and come within the framework of a single and continuous infringement*".¹³⁴¹
- (965) Fifth, as regards reliance on corporate statements, contrary to those addressees' submissions, the Commission has not relied heavily on oral corporate statements. In order to prove participation at meetings and content discussed, the Commission has in fact relied on an extensive body of documentary evidence, notably official minutes of association meetings, direct contemporaneous handwritten notes of such meetings taken by the attendees during the meetings, as well as additional items of documentary evidence such as email exchanges and other internal reports prepared in connection with those meetings.¹³⁴²
- (966) Furthermore, a significant proportion of this documentary evidence was found during the Commission's inspections on several undertakings' premises. The remainder of the documentary evidence, submitted by several leniency applicants, was prepared in *tempore non suspecto*, their content being entirely consistent with both the general features and the specific characteristics of the cartel. Overall, all categories of documents, juxtaposed by the Commission, are mutually supportive of the findings set out in this Decision.

¹³³⁹ As Judge Vesterdorf states in the Polypropylene Judgments: "there needs to be a particularly good explanation to convince a court of law that in a particular phase of a series of meetings things occurred which were completely different from what had transpired at earlier or subsequent meetings when the meetings were attended by the same people, took place under similar external conditions and indisputably had the same primary purpose, namely to discuss the problems within the industrial sector concerned". See the joint Opinion of Mr Vesterdorf, acting as Advocate General, in the Polypropylene case (Case T-1/89 [1991] ECR II-867, T-2/89 [1991] ECR II-1087, T-3/89 [1991] ECR II-1177, T-4/89 [1991] ECR II-1523, T-6/89 [1991] ECR II-1623, T-7/89 [1991] ECR II-1711, T-8/89 [1991] ECR II-1833, and T-9/89 to T-15/89 [1992] ECR II-499, II-629, II-757, II-907, II-1021, II-1155 and II-1275),, at II-954. Such principle was already applied in *cartonboard*, see for example Case T-311/94 *Kartonfabriek de Eendracht v Commission* [1998] ECR II-1129, paragraph 184.

¹³⁴⁰ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 260.

¹³⁴¹ Case C-113/04 P *Technische Unie v Commission* [2006] ECR I-8831, paragraph 169.

¹³⁴² Such internal notes reporting on the content of association meetings (or other bilateral contacts), which had previously taken place, were very often prepared by the same representatives attending the meetings. Regardless, the fact that a person writing a contemporaneous note about a meeting may not have himself attend that meeting (but was informed about its content by a participant at the time) does not affect the evidentiary value of the document (see for example case T-11/89 *Shell v Commission* [1992] ECR II-757, paragraph 86: "*The fact that the information is reported second hand is immaterial.*"). The key issue is that those internal reports were equally drafted in *tempore non suspecto* and that undertaking representatives had no reason to mislead their colleagues or superiors as to the issues discussed at the meeting(s). Their content should thus similarly be considered reliable.

- (967) As regards specifically the oral corporate statements, the Commission observes that they contain highly self-incriminating information and were independently submitted by the undertakings after mature reflection and in the context of the Leniency Notice which contains, at point 12, certain obligations for the applicant the violation of which can lead to a refusal of beneficial treatment under that Notice. While those corporate statements may differ in the details, they are also, when viewed together, mutually supportive as to the facts presented by the Commission. Moreover, descriptions pertaining to the general context of the coordination arrangements and contained therein are exemplified by reference to specific documentary evidence of association meetings and other bilateral contacts (taking place in a systematic and sustained way over a long period of time). In addition, even if the content of certain meetings or certain other details are not fully documented, the anti-competitive purpose of the general arrangements is well established.¹³⁴³
- (968) The Commission further notes that there is no provision or any general principle of Union law that prohibits the Commission from relying on statements made by other incriminated undertakings.¹³⁴⁴ Admittedly, the immunity and leniency applicants in this case gave their statements after the material events and for the purpose of application of the Leniency Notice. They cannot however be regarded as devoid of probative value. Statements which run counter to the interests of the declarant must in principle be regarded as particularly reliable evidence.¹³⁴⁵ The fact that they were seeking to benefit from the application of the Leniency Notice in order to obtain a reduction of the fine does not as such create an incentive to submit distorted evidence. Indeed, any attempt to mislead the Commission could call into question the sincerity and completeness of cooperation of the person seeking to benefit, thereby jeopardising his chances of benefiting from the Leniency Notice.¹³⁴⁶
- (969) As regards the use of oral corporate statements, which complement the Commission's findings, it should be also acknowledged that, according to case law, a corporate statement made by one cartel participant can be used to incriminate the other members, although it must be corroborated by other evidence in the Commission's file.¹³⁴⁷ To the extent that the Commission refers to oral statements submitted by the addressees, its findings are indeed generally corroborated by reference to specific items of documentary evidence. Moreover, the scope of the Commission's findings by Member State is delineated on the basis of such concrete documentary evidence, although references to additional oral explanations provided by the immunity and leniency applicants are also made in order to shed more light into the context and overall arrangements of the coordination at issue. Furthermore, it should be noted that – as demonstrated in Sections 4.2 and 4.3 – corporate statements submitted by different

¹³⁴³ As the Court of First Instance has ruled in Joined cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp v Commission* [2004] ECR II-2501, "it would be too easy for an undertaking guilty of an infringement to escape any penalty if it was entitled to base its argument on the vagueness of the information produced regarding the operation of an illegal agreement in circumstances in which the existence and anti-competitive purpose of the agreement had nevertheless been sufficiently established" (paragraph 203).

¹³⁴⁴ Joined cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp a.o v Commission* [2004] ECR II-2501, paragraph 192.

¹³⁴⁵ Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, *JFE Engineering v Commission* [2004] ECR II-2501, paragraph 211.

¹³⁴⁶ Judgment of 16 November 2006 in Case T-120/04, *Peróxidos Orgánicos, SA v Commission*, not yet reported, paragraph 70.

¹³⁴⁷ Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering v Commission* [2004] ECR II-2501, paragraphs 192, 219-221 and 335, and the case-law cited therein. Moreover, a lesser degree of corroboration may be required where the statement in question is particularly credible.

undertakings often attest to the same pattern of coordination or to particular facts.¹³⁴⁸ The Commission has, thus, based its findings on credible, precise and consistent evidence in accordance with the case law.

- (970) Sixth, the Commission further observes that, in all cases where proof of coordination is based on documentary evidence, the burden is on the defendant undertakings not merely to put forward an alternative explanation for the facts found by the Commission, but to refute the facts established by the documents.¹³⁴⁹ Additionally, once it has been established that an undertaking had attended meetings, even without playing an active role, and that those meetings had included for example discussions and planning of price initiatives, it is for the undertaking concerned to adduce evidence that it had not subscribed to those initiatives.¹³⁵⁰
- (971) In this context, certain addressees point to the *Woodpulp II* line of case-law¹³⁵¹ and contend that the Commission did not meet its burden of proof concerning the establishment of a cartel. In this regard, they allude to the existence of an alternative "plausible explanation" for the arrangements at issue or to the legitimate purpose of communications between the addressees.¹³⁵² It is for example mentioned that the uniform price publication dates which prompted contacts amongst the manufacturers existed pursuant to customer request or that the gross price lists were used to save transaction costs in the bargaining process with wholesalers.
- (972) These arguments cannot be accepted. In addition to the observations made with respect to the object, effects and economic context of the price coordination arrangements concerned by this Decision (see in particular Sections 5.2.4.2 and 5.2.4.3), the Commission notes that its findings concerning price coordination in this case are not based on mere parallel conduct of the addressees on the market or on suppositions, but on the overall body of evidence described in Section 4.¹³⁵³ This case cannot thus be compared with *Woodpulp II*. The addressees cannot

¹³⁴⁸ For example, the general features of the coordination arrangements in Germany and within Euroitalia in Italy have been corroborated by (...) (see recitals (166) to (176) as regards Germany and (399) to (407) as regards Italy). Similarly, the general features of the coordination arrangements in Austria and the Netherlands have been corroborated by (...) (see recitals (290)-(297) as regards Austria and recitals (593)-(595) as regards the Netherlands). Lastly, as regards the coordination arrangements within Amicale du Sanitaire in Belgium, those have been corroborated by (...) (see recitals (496)-(497)).

¹³⁴⁹ Joined Cases T-305/94 etc *Limburgse Vinyl Maatschappij and Others v Commission* ('PVC II') [1999] ECR II-931. The Commission's case is based on a concrete body of documentary evidence, which is corroborated by more than one leniency statements and – in several instances – even confirmed by parties that cannot benefit from a leniency status. As regards in particular the AFICS meeting of 25 February 2004 in France, the Commission has indeed relied heavily on the leniency statements from two undertakings in order to establish the relevant facts. (...) (see recital (584)). There is thus no reason to question their reliability.

¹³⁵⁰ Case C-199/92P *Hüls v Commission* [1999] ECR I-4287, paragraph 174; Case C-49/92P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 96.

¹³⁵¹ C-89/85 *Ahlström Osakeyhtiö v Commission* ("Woodpulp II") [1993] ECR I-1037.

¹³⁵² (...)

¹³⁵³ As the Court of First Instance observes in Case T-36/05 *Coats Holdings Ltd v. Commission* (not yet reported), paragraph 72: "[...]the case-law, according to which it is sufficient for the applicants to prove circumstances which cast the facts established by the Commission in a different light and thus allow another 'plausible explanation' of the facts to be substituted for the one adopted by the Commission, is applicable only where the Commission's reasoning is based on the supposition that the facts established cannot be explained other than by concerted action between undertakings." The Court has also specifically stated that "[i]t is not, therefore, applicable where the Commission's findings are based on documentary evidence." To the same effect, see Joined Cases T-67/00 etc. *JFE Engineering et al. v. Commission* [2004] ECR II-2501, paragraph 186.

deem facts that have been established by the Commission on the basis of a body of precise and consistent evidence as being mere suppositions or presumptions.¹³⁵⁴

5.2.5 Implementation

(973) Although the Commission is not obliged to demonstrate an implementation to find an infringement of Article 101(1) TFEU, such implementation can be demonstrated in this case.

(974) As explained in Section 4, depending on the date of each association meeting, price discussions amongst participants pertained to either their intended future price increases for the coming price cycle (for example during meetings taking place in autumn of each year for the price cycle commencing in January of the following year), or to the price increases actually introduced on the market (for example during meetings taking place at the first months of each price cycle). In other words, as the price coordination arrangements were mainly coordinated within industry associations, members were also able to monitor the actual implementation of the price increase rates that had been communicated at earlier association meetings. Indeed, participants regularly discussed the prices actually applied by the other member undertakings in the course of subsequent association meetings (usually in the first months of each price cycle). The occurrence of such discussions in association meetings can be identified with regard to all Member States covered by the Commission's investigation.¹³⁵⁵ In the same context, cartel participants often communicated their price increases, not only to their customers, but also to their competitors.¹³⁵⁶ Participants also had bilateral contacts with a view to monitoring the implementation of the coordinated prices and ensuring adherence to the cartel arrangements.¹³⁵⁷ Even if there was not necessarily a perfect alignment of prices, these arrangements (that is, regular discussions on actual prices introduced on the market within the framework of association meetings, the exchange of price announcement letters, as well as other bilateral contacts to the same effect) are sufficient to demonstrate that collusion was followed by action on the market.

(975) Certain addressees of the SO argue that discussions in association meetings or exchanges of price announcement letters concerning prices, which had already been introduced on the market, had no significance or can somehow be justified as customary in the context of trading with wholesalers. These arguments cannot be accepted. The Commission considers that these practices formed an integral part of the overall price coordination scheme. From the perspective of implementation of the infringement, by discussing in association meetings the prices actually introduced by other participants or by exchanging their price increase announcement letters, cartel members were able to verify if an undertaking was living up to the commitments it undertook at earlier association meetings (in particular meetings where participants had been discussing their intended price increases for the forthcoming price cycles). Such practices thus readily enabled participants to verify the pricing policies of their competitors, all the more so as

¹³⁵⁴ See for example *Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931, paragraphs (725)-(728). In Section 4 the Commission addressed specific arguments of the parties concerning particular evidence relied on in this Decision.

¹³⁵⁵ The Commission's file contains several items of evidence attesting to such monitoring in the course of industry association meetings – see for example with respect to Germany: recitals (172), (188), (194), (198), (207) and (216); with respect to Austria: recital (331); with respect to Italy: recitals (412), (413), (414), (417), (434), (438), (444), (453) and (456); with respect to Belgium: recital (501); and with respect to the Netherlands: recital (597).

¹³⁵⁶ The Commission's file contains several items of evidence attesting monitoring by means of exchanging price increase announcement letters among cartel participants – see for example recital (192).

¹³⁵⁷ See, for example recitals (192), (213) and (456).

they were undertaken in a systematic and sustained way over a long period, within the framework of the same industry associations.¹³⁵⁸

- (976) Moreover, the communications at issue cannot in any way be deemed justifiable in the context of trading with wholesalers or otherwise. They were undertaken at the horizontal level amongst manufacturers, repeatedly and over a long period of time, in furtherance of the price coordination scheme – by ensuring *inter alia* the monitoring of the implementation of the price increases discussed at earlier association meetings.
- (977) With respect to the exchange of price increase letters in particular, Dornbracht claims that some competitors were also customers when they used its products for their product series and, thus, exchange of pricing letters also occurred in that context.¹³⁵⁹ As a general point, the Commission submits that this proposition is not supported by the evidence in the Commission's file. Moreover, even if the assumption was made that there might be reasons which in principle could explain the exchange of pricing letters among the addressees, this would not alter the Commission's assessment. From the perspective of implementation of the infringement, the key issue is not whether the exchanges of letters amongst producers might somehow have occurred anyway (a notion which is in any event not justifiable on the specific facts of this case), but whether or not these communications objectively helped to ensure the monitoring of such implementation. Similarly, the fact remains (and it is generally not disputed) that producers discussed the price increases actually introduced on the market within the framework of regular association meetings (usually taking place at the beginning of each price cycle).
- (978) Several addressees of the SO have further argued in their replies that they did not implement the discussed prices or that implementation was not successful. These arguments cannot be accepted. The fact that an undertaking does not act on the outcome of a meeting having an anticompetitive purpose does not relieve it of responsibility for participation in a cartel. In any event, an unsuccessful implementation still shows an attempt to give effect to the agreements. In the Commission's view, discussions in association meetings about prices actually introduced on the market or the sending of pricing letters to other producers were *inter alia* a means by which an undertaking demonstrated that it took concrete steps to implement the coordinated prices discussed in earlier association meetings – even if such evidence may not always be decisive in proving whether the undertaking in fact implemented or attempted to implement the agreements.
- (979) Moreover, the Courts of the European Union have established a presumption that “*undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. That is all the more true where the undertakings concert together on a regular basis over a long period (...)*”.¹³⁶⁰ This presumption can be rebutted. However, in order to do so, the undertaking must show that it did not engage in any activities linked to the concertation and that it did not in any way take into account the commercial information it had

¹³⁵⁸ In the Commission's view, discussions in association meetings or exchanges of price increase announcement letters concerning list prices already introduced in the market did not solely enable participants to monitor the implementation of the price coordination arrangements. They also served by themselves as a means of substantially reducing uncertainty as to the future conduct of other participants in the course of parallel/subsequent trade negotiations with wholesalers (for example regarding rebates on the gross price lists.), while facilitating the alignment of the participants' understanding and conduct in the context of such negotiations. The Commission has assessed the communications at issue within the continuum of coordinative efforts undertaken by the cartel participants, having due regard to that dual role (see also Section 5.2.4).

¹³⁵⁹ (...)

¹³⁶⁰ See for example Case C-199/92 P *Hüls AG v Commission*, [1999] ECR I-4287, paragraph 162.

learned at the meeting.¹³⁶¹ This presumption cannot be discharged merely by pointing to evidence suggesting that participants did not ultimately follow the same pricing policies or that their prices were lower than those agreed upon in the relevant association meetings.¹³⁶² It is further clear from the case law that the implementation of an agreement on price objectives, rather than on fixed prices, does not mean that prices corresponding to the agreed price objective are to be applied, but rather that the addressees endeavour to get close to their price objectives.¹³⁶³

- (980) Finally, certain addressees argue that there was no specific retaliation mechanism against deviating attendees, which suggests that there was no implementation.¹³⁶⁴ In this respect, the following considerations are pertinent: first, the Commission is not required to identify any specific retaliation mechanism to demonstrate implementation. Nor is it necessary to establish that the cartel exhibits any particular institutionalised features to demonstrate its operation.¹³⁶⁵ Second, there is no evidence of attendees generally deviating from the coordinated conduct. On the contrary, the Commission considers that participants took concrete steps to monitor the application of their price increases, as evidenced from several items of evidence attesting to the continuous price reporting during association meetings taking place at the first months of each price cycle or the exchange of pricing letters. Third, in the Commission's view, the level of deterrence not to deviate from the announced price levels is intrinsically linked (and analogous) to the nature and intensity of the price coordination arrangements at issue: in the specific context of this case (notably, a systematic and sustained price coordination extending over a long period of time), it is apparent that the participants had developed close relationships characterized by a sufficient degree of cooperation and interdependency, such that they had reduced incentives to deviate.

5.2.6 *Effect on trade between Member States*

- (981) The continuing agreements or concerted practices between the manufacturers had had an appreciable effect upon trade between Member States and between contracting addressees of the EEA Agreement.
- (982) Article 101 TFEU is aimed at agreements which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.
- (983) The Court of Justice and the General Court have consistently held that, “in order that an agreement between undertakings may affect trade between Member States, it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of

¹³⁶¹ See Case C-199/92 P *Hüls AG v Commission*, [1999] ECR I-4287, paragraph 167.

¹³⁶² See for example Joined Cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 1912.

¹³⁶³ Case T-64/02 *Heubach v Commission*, [2005] ECR p. II-5137, paragraph 111.

¹³⁶⁴ (...)

¹³⁶⁵ See for example Joined Cases T-109/02, T-118/02 etc. *Bolloré SA and Others v Commission* [2007] ECR II-947, paragraphs 439, 441. Similarly, see Case T-348/94 *Enso Española v Commission* [1998] ECR II-1875, paragraph 318 (the existence of a retaliation mechanism may be an aggravating circumstance, but the absence of it cannot be as such an attenuating element); and Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407 para. 393.

trade between Member States”.¹³⁶⁶ In any event, whilst Article 101 TFEU “does not require that agreements referred to in that provision have actually affected trade between Member States, it does require that it be established that the agreements are capable of having that effect”.¹³⁶⁷

- (984) As demonstrated in Section 2.5 (inter-state trade), the markets for bathroom fittings and fixtures are characterised by a substantial volume of trade between Member States. The main European manufacturers are household names which are active across the Union, with sales in all Member States covered by the Commission's investigation and with manufacturing facilities in several Member States. The price coordination arrangements at issue, in which all addressees participated, followed the same pattern in all relevant Member States, thus forming a network of similar practices. The cross-border features of these arrangements are also apparent in the form of links between the implicated national associations, notably in view of the presence of a core group of undertakings in several Member States. In addition, customers of the producers and products concerned by this Decision can be found in all 27 Member States, as well as in Norway, Iceland and Liechtenstein, several of which have cross-border activities. Finally, price increases in one Member State have an effect on imports into and exports from that Member State, particularly where they lead to price differentials.¹³⁶⁸
- (985) The application of Article 101 TFEU and Article 53 of the EEA Agreement to a cartel is not, however, limited to that part of the members’ sales that actually involve the transfer of goods from one Member State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.¹³⁶⁹
- (986) In this case, the cartel arrangements identified by the Commission in the course of the investigation covered Germany, Austria, Italy, Belgium, France and The Netherlands, which forms a significant part of the Union. The existence of the collusive arrangements that are described in Section 4 must have resulted, or was likely to result, in the diversion of trade patterns from the course they would otherwise have followed.¹³⁷⁰

5.3 Non-application of Article 101(3) TFEU

- (987) The provisions of Article 101(1) TFEU and of Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) TFEU and Article 53(3) respectively where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question. It is for the

¹³⁶⁶ See Case 56/65 *Société Technique Minière* [1966] ECR 282, paragraph 7; Case 42/84 *Remia and Others* [1985] ECR 2545, paragraph 22; and Joined Cases T-25/95 and others, *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 3930.

¹³⁶⁷ Case C-306/96 *Javico*, [1998] ECR I-1983, paragraphs 16 and 17; see also Case T-374/94, *European Night Services*, [1998] ECR II-3141, paragraph 136.

¹³⁶⁸ (...)

¹³⁶⁹ See Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, paragraph 304.

¹³⁷⁰ See Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* [1980] ECR I-3125, paragraph 170.

undertakings concerned to prove that the arrangements in question fulfil the cumulative conditions laid down by Article 101(3) TFEU.¹³⁷¹

- (988) Certain addressees appear to indicate in their replies to the SO that the exchanges at association meetings qualify for an exemption pursuant to Article 101(3) TFEU. In particular, RAF Rubinetteria submits that the topics discussed within the Euroitalia group were most varied and reflected *inter alia* the preoccupation that a certain type of products would continue to maintain a high quality in the interests of consumers (notably taking into account the inflow of Chinese products into the EU market), thereby contributing to the improvement in production, distribution and technology.¹³⁷² Dornbracht claims that the harmonization of the timing (dates) of the price increase has led to more transparency on the market with regard to the wholesalers, thus increasing competition on the market.¹³⁷³
- (989) Such arguments cannot be accepted. Restriction of competition being the sole object of practices which concern price fixing, there is no indication that the agreements or concerted practices between the bathroom fittings and fixtures suppliers entailed any efficiency benefits or otherwise promoted technical or economic progress. Horizontal practices relating to prices, like the collusive arrangements concerned by this Decision, are by definition the most detrimental restrictions of competition, as they benefit only the participating suppliers but not consumers.
- (990) The Commission further observes that Article 101(3) TFEU lists four cumulative conditions which must be fulfilled in order for agreements or concerted practices to be exempted from the prohibition of Article 101(1) TFEU. The Commission has found that as a result, bathroom fittings and fixtures producers engaged in price coordination in a systematic and sustained way over a long period of time. The practices at issue went well beyond what could be justified or indispensable to attain any possible precompetitive objective. In addition, the Commission does not consider that the collusive arrangements in question, which concerned the fixing of prices, could promote consumer welfare. Moreover, the addressees have not demonstrated that alleged benefits compensated consumers for any actual or likely negative impact caused to them by the restriction of competition identified in this Decision. Similarly, it has not been demonstrated that the collusive arrangements at issue did not afford the possibility of eliminating competition.
- (991) Moreover, as regards RAF's arguments in particular, the Commission's case is based on evidence establishing that participants at Euroitalia meetings engaged in price-fixing or the exchange of sensitive business information. The fact that participants at those meetings might have also discussed benign topics of broader and general nature does not in any way undermine the statement of facts presented in Section 4. Turning to Dornbracht's argument concerning the alleged benefits of harmonizing the timing (dates) of the price increases, the Commission considers that such arguments in fact corroborate the Commission's account of the facts, as they confirm the ensuing transparency on the market and the functioning of the price cycles as described by the Commission.
- (992) Therefore, there are no indications that the conditions of Article 101(3) TFEU and Article 53(3) EEA Agreement could be fulfilled in this case.

¹³⁷¹ See for example Case C-552/03 *P Unilever Bestfoods v Commission* [2006] ECR I-9091, paragraphs 102-103.

¹³⁷² (...) RAF further argues that the divulgion and exchange of information between competing undertakings, as well as the ensuing transparency in the market, can have a neutral, if not beneficial, effect on the competitive structure of the market. It is apparent that the Commission assesses the price information exchanges at issue in a diametrically opposite way (see, in particular, Section 5.2.4.1).

¹³⁷³ (...)

5.4 Procedural arguments

- (993) Certain addressees of the SO argue that the Commission breached essential procedural requirements, in particular the principles of legal certainty, equality, good administration and the right to be heard, primarily by failing to provide full and immediate access to the Commission's investigation file.¹³⁷⁴
- (994) In particular, it is claimed that there were delays in providing access to the relevant documents, extensive redactions due to confidentiality claims, documents missing from access to file, certain illegible pages in the copy of the Commission's investigation file provided to them, as well as erroneous references in the SO, such that the addressees could not effectively exercise their rights of defence.¹³⁷⁵ Duravit further argues that the deadline set for the reply to the SO, as well as the extensions of deadlines granted by the Commission, were too short, given *inter alia* the size of the file.¹³⁷⁶ In both its reply to the SO and its reply to the Letter of Facts of 10 July 2009, Villeroy & Boch claims that the Commission did not describe precisely the infringement, but instead made sweeping and undifferentiated accusations of anticompetitive conduct by simply referring to tables of association meetings in the SO. In that regard, Villeroy & Boch argues that it was not evident which elements of the numerous protocols cited in the tables of association meetings in the SO were relevant for it and that it could not reasonably be expected from it to look through thousands of pages to find which passages the Commission deemed problematic. Moreover, Villeroy & Boch submits that the Commission did not accept its request for a further inspection of the files regarding documents made available to other addressees and the replies to the SO submitted by all other undertakings subject to the proceedings.
- (995) Teorema submits that its right of reply and defence was prejudiced by the way the Commission handled the procedure against it (relative to other addressees), particularly given that its own premises had not been inspected, it had not received requests for information and that it only became apprised of the proceedings against it with the notification of the SO.¹³⁷⁷ It further claims that the transcripts of the oral statements to which access was given were mostly in English and German and only available at the Commission's premises in Brussels. This allegedly made it very difficult for Teorema to fully understand them and adequately defend itself.
- (996) Finally, some addressees argue that the Commission has infringed the principle of proportionality or equal treatment because there are more undertakings that participated in association meetings to a similar extent as they did, but were not addressees of the SO.¹³⁷⁸
- (997) First, the Commission observes that it dealt with all procedural arguments brought forward to it during the period for reply to the SO, promptly and without unnecessary delay. Moreover, some of the issues were subsequently addressed to the Hearing Officers and dealt with by them. Also, in their replies to the SO, the addressees did not bring forward any argument which would have lead to a different assessment of any procedural questions raised.

1374 (...)

1375 (...)

1376 Several addressees allude to the deadline given being short: (...) Duravit further submits that it was not sufficiently clear when the deadline for the reply would begin to run, while the additional access to file was only granted after the deadline for the reply to the SO had begun to run.

1377 (...)

1378 (...)

- (998) In particular, the addressees of the SO had access to the Commission's file in the form of DVD-ROM which was sent to the addressees on 3 April 2007.¹³⁷⁹ Oral statements made in the framework of the Leniency Notice were accessible at the Commission's premises following a standard procedure.¹³⁸⁰ The Commission further provided addressees with an enumerative list of documents setting out the content of the investigation file (as well as an explanatory annex) to facilitate the review of the documents.¹³⁸¹ During the access to file procedure, certain additional information, which had previously not been accessible, became available to the addressees by way of further DVD-ROMs sent on 22 June, 5 and 16 July 2007. This information mainly concerned additional non-confidential extracts or documents made available by the addressees, following requests of certain addressees of the SO for access to documents. The Commission dealt with such requests (concerning redactions in documents submitted by other addressees due to confidentiality claims) and informed the addressees without unnecessary delay. In addition, access to such additional information was given to all addressees at the same time, while an additional extension of the deadline to respond to the SO was also granted to ensure the equal treatment of all addressees.
- (999) The Commission disagrees that certain references in the SO were erroneous or missing or related to bulky or numerous documents. Nor did the Commission make sweeping and undifferentiated accusations. The Commission's case was presented in the SO in a clear and coherent way, including a detailed description of each type of infringement identified in the course of the investigation, as well as several examples of association meetings and other contacts amongst the addressees, which typified all collusive arrangements alleged in the SO. Despite the voluminous file, the SO further referred to selected pages pertaining to the minutes or notes of specific association meetings. It also organized such references in tables by Member State and in chronological order, with a view to identifying accurately all participants in each association meeting, while also illustrating the sequence and pattern of coordination set out in the SO. Contrary to some addressees' submissions, the Commission thus submits that the SO allegations were presented in a comprehensive and organized way, such that each addressee was capable of preparing its defence efficiently.
- (1000) The Commission also observes that the size of the file simply reflects the extensive scope of the collusive arrangements entered into by the addressees of this Decision. It amounts to several thousands pages because the suspected anticompetitive conduct (and the Commission's ensuing investigatory efforts) covered hundreds of association meetings in six Member States over a period exceeding ten years. The size and scope of each file depends on the facts of each case at hand and the Commission cannot be reproached for taking investigatory measures to determine such facts.
- (1001) For its part, the Commission is required to adduce precise and consistent evidence to underpin the allegations in the SO. And this is precisely what the Commission did, having analyzed and juxtaposed several thousands of pages in order to identify the constitutive elements and the pattern of the infringement and to present them in a comprehensive and distilled way,

¹³⁷⁹ Access was given at the stage following the notification of the Commission's SO to enable parties to exercise their rights of defence and to ensure the principle of equality of arms – consistent with standard procedure. As a general rule, no access is granted to other parties' replies to the SO: see point 27 of Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004.

¹³⁸⁰ See point 44 of the Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (hereinafter "Notice on the rules of access to the Commission's file"), OJ C 325, 22.12.2005, p 7.

¹³⁸¹ Notice on the rules of access to the Commission file point 45.

consistent with due process requirements. It is then up to the addressees to organize their defence as they deem appropriate, commenting on the evidence put forward by the Commission or adducing other evidence from the investigation file (to which access was given) or from other sources in order to underpin their counter-arguments. And this is precisely what all addressees (including Duravit and Villeroy & Boch) did in their replies to the SO and in the course of the Oral Hearing, notably by reference to the specific items of evidence cited by the Commission in the SO. To conclude, it is thus the Commission's view that the addressees' rights of defence have not in any way been prejudiced by the modalities of access to file, the size of the file or the way in which the Commission structured and developed its case in the SO.

- (1002) Concerning the arguments that certain pages of the Commission's investigation file were illegible, the addressees were informed that copies of the documents in the DVD-ROM which was provided to them were, in general, of comparable quality to the documents in the Commission file. Moreover, access was granted to evidence as contained in the Commission's file, in its original form.
- (1003) As for the appropriateness of the deadline granted to reply to the SO, the following considerations are pertinent. The addressees were initially given a deadline to respond to the SO of two months from the receipt of the DVD-ROM.¹³⁸² Following requests from several addressees for an extension of the deadline, which the Hearing Officers accepted, the Commission granted, on 14 May 2007, a general extension of one month to all addressees (namely until 4 July 2007). This general extension was deemed appropriate in order to treat all addressees equally, bearing in mind the voluminous file, the various languages of the file, as well as an intervening period of public holidays (Easter holidays). Subsequently, in view of the additional information becoming available, a second general extension of approximately one month was granted to all the addressees by the Commission. The new deadline for responding to the SO thus expired on 1 August 2007. Additionally, upon individual requests, the Hearing Officers granted further extensions of approximately two weeks to Masco, Roca, Laufen and Duscholux, as well as an extension of one additional week to Dornbracht. Overall, the addressees were therefore given ample time to respond to the SO (approximately four months or more). Moreover, all requests for an extension were duly processed by the Commission, while some of them were also addressed to the Hearing Officers and dealt with by them. Finally, the Commission notes that the addressees did receive access to all respective documents and were able to refer to them in their replies to the SO.
- (1004) Turning to Teorema's additional arguments (no prior notice or knowledge of the case before the issuance of the SO), the Commission notes that Teorema was duly notified of the opening of proceedings against it with the notification of the SO and given the opportunity to defend itself. There is no due process requirement for the undertaking to have received a specific request for information or for its premises to have been specifically inspected prior to the opening of proceedings by the Commission. Moreover, according to case-law, the Commission is only obliged to inform an undertaking of an investigation when it addresses its first measure of inquiry to it,¹³⁸³ however not other undertakings which are not concerned directly by this measure, even if they might, at a later stage be involved in the proceedings. It should also be underlined that the Commission may not be in a position to inspect all potentially relevant undertakings premises in all potentially relevant Member States for every case it investigates.

¹³⁸² Taking into account the voluminous file, the Commission envisaged at the outset a deadline which exceeded the minimum time period of four weeks provided for in Article 17(2) of Commission Regulation (EC) No 773/2004.

¹³⁸³ See Judgment of the Court of First Instance of 8 July 2008, Case T-99/04, *AC-Treuhand AG v Commission*, not yet reported, at paragraph 45 *et sequ.*

Furthermore, it is the responsibility of the Commission to select and employ different measures of inquiry addressed by undertaking, as it deems appropriate, in order to progress the investigation of cases.¹³⁸⁴ In this case, it is further pertinent to note that – prior to the notification of the SO – the Commission informed Teorema of its intention to send the undertaking a SO by letter of 11 July 2006. Teorema has furthermore not demonstrated that, the fact that it was not informed of the initiation of an investigation in the case meant, it was not able to exercise its rights of defence. In addition, the Commission issued a press release confirming the launch of inspections, which also covered bathroom fittings manufacturers located in Italy, such that Teorema could have been aware of its possible involvement in the proceedings (MEMO/04/256 of 11 November 2004).

(1005) Finally, the Commission is under no obligation to provide a translation of the documents in the file.¹³⁸⁵

(1006) Concerning the arguments that the Commission would have infringed the principle of equal treatment by not addressing its SO to other undertakings that would have also been involved in the anti-competitive discussions, it is pertinent to note that the Commission is not obliged to relieve any undertaking from its responsibility just because of the additional participation of another undertaking in the cartel which was not been an addressee of the SO. In fact, according to case law, "*The principle of equal treatment must be reconciled with the principle of legality and thus a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party. A possible unlawful act committed with regard to another undertaking, which is not party to the proceedings, cannot induce the Community judicature to find that it is discriminatory and, therefore, unlawful with regard to the undertaking in question in the proceedings before it."*¹³⁸⁶ As a result, an undertaking which has acted in breach of competition law cannot escape from being penalized on the ground that other undertakings are not being pursued by the Commission.¹³⁸⁷

(1007) Some addressees also submit that, contrary to what is stated in the Commission's Letter of Facts, the Letter contains new objections against the addressees which were not previously raised in the SO, such that the Commission is not entitled to use the new evidence contained therein in the final Decision. If the Commission wished to use this evidence, it should have instead issued a Supplementary SO.¹³⁸⁸

(1008) The Commission rejects these arguments. The SO articulated the objections of the Commission, notably the regular coordination of price increases within the framework of regular meetings of associations in each of the six Member States concerned, on the basis of a coherent body of evidence. The Letter of Facts did not alter the objections set out against the addressees in the SO in any way. Nor did the Commission alter its legal assessment of the practices described in the SO. The Letter of Facts merely contained items of evidence that had not been specifically referred to in the SO in support or corroboration of the Commission's allegations, notwithstanding the fact that they duly formed part of the file to which all

¹³⁸⁴ See for example Case T-48/00 *Corus UK v Commission* [2004] ECR II-2325, paragraph 112.

¹³⁸⁵ Joined cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 635; Notice on the rules of access to the Commission file, point 46.

¹³⁸⁶ Case T-120/04, *Peroxidos Orgánicos v Commission v Commission*, ECR 2006, p.II-4441, paragraph 77.

¹³⁸⁷ Case T-120/04, *Peroxidos Orgánicos v Commission v Commission*, ECR 2006, p.II-4441, paragraph 77; Joined Cases T-5/00 and T-6/00, *Nederlandse Federative Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV v Commission*, ECR 2003, II-5761, paragraph 430; Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, *A. Ahlström Osakeyhtiö and others v Commission*, ECR 1988, p.5193, paragraph 197.

¹³⁸⁸ (...)

addressees had access. This evidence further exemplified the collusive arrangements entered into by the addressees, being very similar in substance, and entirely consistent with, the extensive body of evidence referred to in the SO. In particular, it comprised notes of meetings of the same associations (as well as other supplementary bilateral contacts) which similarly attest to the regular price coordination amongst the addressees, within the same context and time-frame identified in the SO. These items of evidence merely corroborate the objections already retained against (and communicated to) the undertakings concerned or further support the objections set out in the SO. It was thus sufficient to bring them to the attention of the addressees by means of the Letter of Facts at issue, offering the addressees the opportunity to comment specifically on them.¹³⁸⁹ Contrary to the addressees' allusions, the communication of the Letter of Facts signifies precisely the Commission's interest in ensuring that the addressees' rights of defence are fully respected.¹³⁹⁰

- (1009) Finally, the Commission is criticized for not investigating the wholesalers. In particular, it is claimed that, if the wholesalers are not accused of wrongdoing, the only logical and consistent line that the Commission can take is to find that the conduct in question is not illegal. Any other alternative would involve intolerable discrimination and would raise serious questions relating to possible wrongful exercise of prosecutorial discretion. Similarly, the Commission is criticized for not clarifying the criteria applied to decide which undertakings should be addressees of the SO, thereby discriminating between market participants.¹³⁹¹
- (1010) The Commission rejects these arguments. There may indeed also be a vertical dimension to the case, but this cannot possibly be used to justify any infringement of competition rules by the manufacturers.¹³⁹² The Commission based its assessment on a coherent body of evidence gathered from the producers' association meetings and other complementary bilateral contacts at horizontal level. Furthermore, the Commission is not precluded from referring to the modalities of distribution and the wholesalers in order to provide an accurate and complete description of the cartel arrangements at issue.¹³⁹³ Finally, there is no discrimination involved in the Commission advancing in the investigation of a case by weighing the specific evidence

¹³⁸⁹ See for example Case T-23/99 *LR af 1998 v Commission* [2002] ECR II-1705, paragraphs 188-190; Joined Cases T-236/01, T-239/01, T-244/01 etc *Tokai carbon Co Ltd and others v Commission* [2004] ECR II-1181, paragraph 45; Case T-340/03 *France Télécom v Commission*, ECR 2007, II-107, recitals 18 et sequitur.

¹³⁹⁰ This is notwithstanding that the items of evidence contained in the Letter of Facts had already been provided to the parties as part of the access-to-file exercise and that they were very similar in character as compared with the evidence already identified in the SO (essentially comprising additional exemplifications of the collusive practices of the parties, within the same framework of regular association meetings). Arguably, the parties must therefore have known the risk that the Commission might use this evidence (or at least part of this evidence) against them, as they could reasonably infer the conclusions which the Commission intended to draw from it in a possible decision (see for example Joined Cases T-191/98 & T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission (TACA)* [2003] ECR-II 3275, paragraphs 162-188; Case T-11/89 *Shell v Commission* [1992] ECR II-757, paragraphs 55-56; and Case T-13/89 *ICI v Commission* [1992] ECR II-1021, paragraphs 34-35). Nonetheless, for the avoidance of any doubt, the Commission considered that the communication of the Letter of Facts would be the optimal way forward in order to safeguard the rights of the parties.

¹³⁹¹ (...)

¹³⁹² As regards possible agreements or concerted practices by the wholesalers, the Commission had taken the view – at the very early stages of the investigation – that it is up to the National Competition Authorities (NCAs) to investigate any vertical issues (see footnote 12 of the SO).

¹³⁹³ As further noted in Sections 5.2.4.2 and 5.2.3.2, the perceived existence of countervailing buyer power on the part of the wholesalers may well explain the need felt to organize the cartel in the way described in the Decision, the practical aspects of the coordination having to be detailed at national level along the lines of recurring annual cycles. Moreover, in this case, there is evidence attesting to the manufacturers' coordinated attempt to retain control of price-setting within the context of the three-tier distribution system and form a united front vis-à-vis the wholesalers.

at its disposal concerning each potential implicated undertaking and setting its enforcement priorities accordingly.

5.5 Economic arguments

- (1011) Certain addressees provided economic reports to show that there was no correlation between gross prices and transaction prices (gross prices being significantly different from the prices actually charged), arguing that economic analyses do not support the Commission's findings of a cartel infringement.
- (1012) In their reply to the SO or to the Letter of Facts, Sanitec, Allia, Pozzi-Ginori, Keramag, Koralle and Sphinx, which are all subsidiaries of the Sanitec group, submitted an economic report, which essentially seeks to establish that the price coordination at issue did not cause significant harm to consumers.¹³⁹⁴ Moreover, to the extent that consumers were harmed, the report concludes that it is very unlikely that such harm was caused by the behaviour of the Sanitec subsidiaries. (...) Furthermore, the report claims that wholesale and installation markets were competitive and therefore, there was no reason to exclude that prices were determined merely by costs of procuring the products. (...)
- (1013) Such economic arguments essentially pertain to the market structure, economic context, and likely effects of the arrangements in question and cannot disprove the Commission's findings as to the existence of a cartel (which is established on the basis of the precise and consistent body of direct evidence described at Section 4). In this regard, the Commission refers in particular to its observations at Sections 5.2.4.2 to 5.2.4.5 (which equally apply with respect to the above arguments).
- (1014) As a general remark, it should further be noted that the impact of a cartel does not have to be assessed at the level of one undertaking or even a group, but at the level of the cartel as a whole. The Court of Justice has indeed ruled that "*the effects to be taken into account in setting the general level of fines are not those resulting from the actual conduct which an undertaking claims to have adopted, but those resulting from the whole of the infringement in which it had participated*".¹³⁹⁵ It should therefore be concluded that a report which examines the impact of the cartel on a single or few undertakings is irrelevant in this respect. This also applies to arguments provided by the other addressees regarding the impact they claim they experienced individually.
- (1015) The Commission also observes that the infringement is demonstrated by contemporaneous evidence. The fact that, in their replies to the SO, certain addressees rely on economic studies intended to demonstrate that no infringement existed cannot have the same probative value. Indeed, the Commission's assessment is not based on a prospective analysis of the addressees' likely economic incentives to engage in price coordination in the abstract, but on documentary evidence and corroborating oral statements which concretely attest to those addressees' participation in such price coordination arrangements.
- (1016) Furthermore, the issue whether a party's conduct was (or can be considered *ex post* to be) economically rational, commercially interesting or likely sustainable is irrelevant in assessing

¹³⁹⁴ (...)

¹³⁹⁵ *Commission v Anic Partecipazioni SpA*, cited in footnote 1072, paragraph 152.

whether or not it participated in the infringement.¹³⁹⁶ Furthermore, in order to find that a concerted practice has an anti-competitive object (see in particular Section 5.2.4.1), there does not need to be a direct link between that practice and end consumer prices.¹³⁹⁷ Equally, the question of whether or not Sanitec's own prices were effectively influenced by the arrangements does not alter the fact that Sanitec was involved in those arrangements.¹³⁹⁸

- (1017) As also noted, the contention according to which it is sufficient for the applicants to prove circumstances which cast the facts established by the Commission in a different light (thus allowing another 'plausible explanation' of the facts to be substituted for the one adopted by the Commission), can only be valid where the Commission's reasoning is based on the supposition that the facts established cannot be explained other than by concerted action between undertakings. It is not, therefore, applicable where the Commission's findings are based on the concrete body of documentary evidence (and other corroborating leniency submissions) described in Section 4. An *ex-post* evaluation of whether price levels dropped following the initiation of the Commission's investigation cannot thus substitute for those findings.
- (1018) The argument that it would have been unprofitable for the manufacturers to agree on list prices, if these were not translated into transaction prices, is similarly irrelevant. There is sufficient evidence to prove that the manufacturers engaged in sustained anti-competitive conduct over a long period of time, which had as its object the restriction of competition on the market. The question of whether it was ultimately profitable for them to have done so is not relevant. In any event, the sustained engagement of the manufacturers in the coordination arrangements in question over a long time period shows that advantages must in fact have derived from their coordination. Indeed, according to the case law, such a sustained practice shows in itself that the arrangements were considered effective or profitable.¹³⁹⁹
- (1019) Similarly, the argument that the wholesale and plumbing markets were competitive is irrelevant (see Sections 5.2.4.2 and 5.2.4.3). In practice, as the Commission's evidence establishes, a cartel at the manufacturers' level was in place. Thus, according to the Commission's findings, even if the wholesalers and plumbers segments were competitive, competition at the level of the manufacturers was nonetheless distorted.¹⁴⁰⁰ The alleged existence of buyer power

¹³⁹⁶ See for example Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries Ltd and Nippon Steel Corp. v. Commission* [2007] ECR I-729, paragraph 46. See also Joined cases C-204/00 P, C-205/00P, C-211/00P, C-213/00P, C-217/00P and C-219/00P, *Aalborg and others v Commission*, [2004] ECR I-123, paragraph 335.

¹³⁹⁷ Case C-8/08 *T-Mobile Netherlands & others v Raad van bestuur van der Nederlandse Mededingingsautoriteit*, Judgment of 4 June 2009 (not yet reported), paragraphs 36-39.

¹³⁹⁸ Moreover, the Commission is not required to demonstrate that undertakings participating in a cartel actually used the information exchanged in the cartel. There is a presumption, subject to proof to the contrary, that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. That is all the more true where the undertakings concert together on a regular basis over a long period of time: see for example Case C-199/92P *Hüls v Commission*, [1999] ECR I-4287, paragraphs 158 to 166; Case T-9/99 *HFB v Commission*, [2002] ECR II-1487, paragraphs 213 and 216.

¹³⁹⁹ The Court has in this sense decided: "*the practices in question were decided upon over a period of more than three years. It is thus hardly likely that, at that time, the producers considered them wholly ineffective.*": see for example Joined Cases T-T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij and others vs. Commission* [1999] ECR II-00931, paragraph 748; Joined cases T-109/02, T-118/02 etc. *Bolloré and others v Commission* [2007] ECR II-947, paragraphs 450-453.

¹⁴⁰⁰ The Commission's investigation pertained to the level of the manufacturers. As explicitly referred to in recital 22 of the SO, the Commission's investigation did not extend to include the wholesalers' market in the various Member States concerned.

downstream is similarly irrelevant to the Commission's finding of an infringement. Such buying power may potentially limit the impact of an infringement, but it may not be relied upon to negate the existence of an infringement as such. The Commission is entitled to conclude that the conditions of competition were distorted, despite the alleged buyer power.¹⁴⁰¹ In fact, the perceived existence of buyer power may well explain the need felt by the undertakings concerned to organize a cartel, in order to maintain prices at a level which would be higher than the one resulting from market forces. In this case, there are several items of evidence pointing to that effect (see for example recitals (169), (209), (221), (299), (310) and (315)).

- (1020) Finally, aside from the agreements on specific price increases or surcharges, the Commission has not alleged that the regular price coordination arrangements at issue generally resulted in uniform yearly price increases. There is further no requirement to do so in order for the Commission to establish its case. The manufacturers engaged in agreements which often contained price ranges that differed to some extent between undertakings so that the price levels might well have differed from undertaking to undertaking. Different price levels can therefore not exclude the fact that there was indeed coordination on the market.
- (1021) Similarly, a report submitted by Ideal Standard¹⁴⁰² attempts to establish that no effects occurred on the market as a result of the anti-competitive conduct since a significant impact on end consumer prices could not be observed. According to that analysis Ideal Standard subsidiaries, to the extent that collusion existed, had an incentive to coordinate in the segments for fixtures, ceramics and shower enclosures separately. The report further assumes that conditions necessary to maintain sustainable cross-border collusion in the case are missing and rather than assessing the cartel on a cross-border basis, geographic markets should be viewed as national.¹⁴⁰³ These arguments essentially pertain to the likely effects of the price coordination arrangements at issue, as well as the alleged absence of a single and continuous infringement. As regards the former, the Commission refers in particular to its observations at Sections 5.2.4.2 and 5.2.4.3. As regards the latter, the Commission refers to Section 5.2.3.

5.6 Conclusions on the application of Article 101 TFEU and Article 53 of the EEA Agreement

- (1022) In light of the those considerations, the Commission concludes that the addressees of this Decision participated in a single, continuous and complex infringement of Article 101 TFEU and Article 53 of the EEA Agreement, through agreements or concerted practices in the bathroom fittings and fixtures market, covering the territories of Germany, Austria, Italy, Belgium, France and The Netherlands.
- (1023) The anticompetitive conduct comprised the following collusive arrangements forming part of an overall price coordination scheme:
- The regular coordination of annual price increases within the framework of regular meetings of industry associations across the six Member States concerned. In several cases,

¹⁴⁰¹ See for example Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 120.

¹⁴⁰² (...)

¹⁴⁰³ In the course of the Oral Hearing, Villeroy & Boch also referred to a study focussing on the market conduct of AFICS members, as well as to a study relating to the role of gross prices lists in the ceramic sanitary ware markets with a view to concluding that those lists could not have been used to manipulate net prices. As with the two studies, these reports essentially seek to establish that the alleged coordination at the level of list prices had no impact on transaction prices. In this regard, the Commission reiterates its observations made in Sections 5.2.4.2, 5.2.4.3 and 5.5. Moreover, the Commission notes that the underlying data of the report were submitted on 12 June 2008, thus several months following the expiry of the deadline set for reply.

the coordination also covered additional pricing elements, such as the fixing of minimum prices and rebates;

- The coordination of pricing on several other occasions connected to specific events, for which price increase rates were often fixed, in particular the increase of raw material costs, the introduction of the Euro and the introduction of road tolls; and
- The additional disclosure and exchange of sensitive business information which supported the overall price coordination scheme across the six Member States concerned.

6. ADDRESSEES

6.1. Principles

(1024) The subject of Article 101 TFEU and Article 53 EEA Agreement is the "undertaking", a concept that is not identical with the notion of corporate legal personality in national commercial, company or fiscal law. In order to determine liability for an infringement of Article 101 TFEU, it is necessary to identify the undertaking which can be held liable. According to the case law of the Court of Justice, "*the term "undertaking" covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed*". It has also stated that "*the concept of an undertaking, in the same context, must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal*". When such an economic entity infringes the competition rules, it falls, according to the principle of personal responsibility to that entity to answer for that infringement.¹⁴⁰⁴

(1025) However, acts enforcing Union and EEA competition rules should be addressed to legal entities. A decision concerning an infringement of Article 101 TFEU or Article 53 of the EEA Agreement may therefore be addressed to one or several entities having their own legal personality and forming part of this undertaking. Consequently, it is necessary for the purposes of applying and enforcing a decision to identify legal entities within the undertakings involved being the addressees of the Decision.

(1026) It is established case-law that the mere fact that a subsidiary has separate legal personality is not sufficient to exclude the possibility that its conduct may be attributed to the parent company¹⁴⁰⁵, since "*Community competition law recognises that different companies belonging to the same group form an economic unit and therefore an undertaking within the meaning of Articles 81 and 82 of the Treaty [now Article 101 and 102 TFEU, remark added] if the companies concerned do not determine independently their own conduct on the market.*"¹⁴⁰⁶ The fact that a parent company and its subsidiary constitute a single undertaking within the meaning of Article 101 TFEU enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement.¹⁴⁰⁷

¹⁴⁰⁴ Judgment of the Court of Justice of 10 September 2009, Case C-97/08 P, *Akzo Nobel v Commission*, paragraphs 54 to 56, not yet reported.

¹⁴⁰⁵ See Judgment of the Court of Justice in Case 48/69 *ICI v Commission* [1972] ECR 619; Judgment of the Court of First Instance of 20 April 1999. See also Case T-305/94, *Limburgse Vinyl Maatschappij NV and others (PVC II)*, [1999] ECR II-0931.

¹⁴⁰⁶ Judgment of the Court of Justice in case 170/83 *Hydrotherm* [1984] ECR 2999, paragraph 11, and Court of First Instance in Case T-102/92 *Vihov v Commission* [1995] ECR II-17, paragraph 50, cited in Case T-203/01 *Michelin v Commission* [2003] ECR II-4071. See also Judgment of the Court of Justice of 10 September 2009 Case C-97/08 P, *Akzo Nobel v Commission*, paragraph 59, not yet reported.

¹⁴⁰⁷ Judgment of the Court of Justice of 10 September 2009, Case C-97/08 P, *Akzo Nobel v Commission*, paragraph 59, not yet reported.

- (1027) Parent companies exercising a decisive influence on a subsidiary's commercial conduct can be held jointly and severally liable for the infringement of Article 101 TFEU (and Article 53 of the EEA Agreement) committed by the subsidiary.¹⁴⁰⁸ It is moreover sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent exercises a decisive influence over the commercial policy of the subsidiary. The Commission will be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.¹⁴⁰⁹
- (1028) In response to the SO and referring to case law,¹⁴¹⁰ several addressees of the SO argued that 100% ownership does not, on its own, create any presumption, but that additional elements are required to establish proof of decisive influence. However, as clearly stated by the Court of Justice, the attribution of liability to the parent company can indeed be sufficiently based on a presumption following from near 100% ownership.¹⁴¹¹ Additional indicia can be used to corroborate this presumption, but are not a prerequisite for the attribution of liability. Consequently, a 100% parent company is liable unless the parent company rebuts the presumption by proving that the subsidiary acts autonomously.
- (1029) It is moreover clear from recent case law of the Court of Justice, that the conduct of the subsidiary on the market cannot be the only factor which enables the liability of the parent company to be established, but is only one of the signs of an economic unit. An involvement in the day-to-day business of the subsidiary is not necessary in order to establish an economic unit and therefore an undertaking within the meaning of Union competition law.¹⁴¹² Moreover, the Court of Justice has stated that the relevant factors relating to

¹⁴⁰⁸ See Judgments by the Court of Justice in Joined Cases C-189/02 , C-202/02 P, C- 205/02 P, C-208/02 P and C-213/02, *Dansk Rørindustri and Others v Commission* [2005] ECR I-0000, paragraph 117; Case C-294/98 P *Metsä-Serla Oyj and Others v Commission* [2000] ECR I-10065, paragraph 27. See also Judgment by the Court of First Instance of 27 September 2006, in Case T-314/01, *Coöperatieve Verkoop- en Productievereniging van Aardappelmeele en Derivatene Avebe BA v Commission*, [2006], II-3085.

¹⁴⁰⁹ See also Case C-97/08 P, *Akzo Nobel v Commission*, paragraph 62, not yet reported.

¹⁴¹⁰ In particular Judgment of 26 April 2007 in joined cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, *Bolloré and others v Commission*, not yet reported, Case T-325/01, *DaimlerChrysler v Commission* [2005] ECR-II 3319; Case T-259/02 to T-264/02 and T-271/02 *Lombard Club* Judgment of the Court of First Instance of 14 December 2006, [2006] ECR, II-5169.

¹⁴¹¹ See Judgment of the Court of Justice of 10 September 2009, C-97/08 P, *Akzo Nobel v Commission*, paragraph 64, not yet reported.

¹⁴¹² See Judgment of 10 September 2009 in case C-97/08 P, *Akzo Nobel v Commission*, paragraphs 73, not yet reported, in this regard the Court also referred to the Opinion of Advocate General Kokott delivered on 23 April 2009, Case C-97/08, *Akzo Nobel v Commission*, which states at relevant paragraphs 87 et sequ.: "*It should be noted in this regard that the absence of autonomy of the subsidiary in terms of its market conduct is only one possible connecting factor on which to base an attribution of responsibility to the parent company.... 89. However, even if the autonomy of the subsidiary as regards its commercial policy in the narrower sense is examined, the decisive influence of the parent company does not necessarily have to result from specific instructions, guidelines or rights of co-determination in terms of pricing, production and sales activities or similar aspects essential to market conduct. Such instructions are merely a particularly clear indication of the existence of the parent company's decisive influence over its subsidiary's commercial policy. However, autonomy of the subsidiary cannot necessarily be inferred from their absence. Nor, a fortiori, can it depend on whether the parent company has interfered in the day-to-day business of its subsidiary, or, equally, whether anticompetitive activities engaged in by the subsidiary were attributable to an instruction from the parent company or known to the latter. 91. A parent company may exercise decisive influence over its subsidiaries even when it does not make use of any actual rights of co-determination and refrains from giving any specific instructions or guidelines on individual elements of commercial policy. Thus, a single commercial policy within a group may also be inferred indirectly from the totality of the economic and legal links between the parent company and its subsidiaries. Moreover, as the Commission*

economic, organizational and legal links which tie the subsidiary to the parent company may vary from one case to another and cannot be set out in an exhaustive list.¹⁴¹³

- (1030) Legal entities that participated in an infringement and have subsequently been acquired meanwhile by another undertaking remain liable for their unlawful behaviour prior to their acquisition where they retain their legal personality and continue their activities as subsidiaries (that is, they retain their legal personality).¹⁴¹⁴ In such a case, the acquirer may only be liable for the conduct of the subsidiary from the moment of its acquisition, if the latter persists in the infringement and liability of the new parent company can be established.¹⁴¹⁵ If the undertaking which has acquired the assets infringes Article 101 TFEU or Article 53 of the EEA Agreement, liability for the infringement should be apportioned between the seller and the acquirer of the infringing assets.¹⁴¹⁶
- (1031) Liability for unlawful behaviour may pass to a successor where the corporate entity which committed the violation has ceased to exist in law after the infringement has been committed.¹⁴¹⁷ When an undertaking committed an infringement of Article 101 TFEU or Article 53 of the EEA Agreement and when that undertaking later disposed of the assets that were the vehicle of the infringement and withdrew from the market concerned, the undertaking in question will still be held responsible for the infringement if it is still in existence.¹⁴¹⁸ However, the Court of Justice considers that, if the legal person initially answerable for the infringement ceases to exist and loses its legal personality, being purely and simply absorbed by another legal entity, that entity must be held answerable for the whole period of the infringement and thus liable for the activity of the entity that was absorbed.¹⁴¹⁹ The mere disappearance of the person responsible for the operation of the undertaking when the infringement was committed does not allow that undertaking to avoid liability.¹⁴²⁰

correctly points out, even a company's mere membership of a group may influence its market conduct, in relation, for example, to the question of with whom that company should actively compete."

¹⁴¹³ See Judgment of the Court of Justice of 10 September 2009 in case C-97/08 P, *AKZO v Commission*, paragraph 74, not yet reported.

¹⁴¹⁴ Case 279/98 P *Cascades v Commission* [2000] ECR I-9693, paragraphs 78 to 80.

¹⁴¹⁵ Case T-354/94 *Stora Kopparbergs Bergslags AB v Commission*, [1998] ECR II-2111, paragraph 80.

¹⁴¹⁶ See Commission Decision of 27 July 1994 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/31.865, *PVC II*), OJ L 239, 14.9.1994, p. 14 paragraph 41: *"It is (...) irrelevant that an undertaking may have sold its PVC business to another: the purchaser does not thereby become liable for the participation of the seller in the cartel. If the undertaking which committed the infringement continues in existence it remains responsible in spite of the transfer. On the other hand, where the infringing undertaking itself is absorbed by another producer, its responsibility may follow it and attach to the new or merged entity. It is not necessary that the acquirer be shown to have carried on or adopted the unlawful conduct as its own. The determining factor is whether there is a functional and economic continuity between the original infringer and the undertaking into which it was merged"*.

¹⁴¹⁷ Case C-49/92 *Commission v. Anic Partecipazioni SpA*, [1999] ECR I-4125, paragraph 145.

¹⁴¹⁸ Case T-95/89 *Enichem Anic SpA v Commission (Polypropylene)*, ECR 11-1623, paragraphs 237-8; see also case C-49/92 *Commission v Anic Partecipazioni*, [1999] ECR I-4125.

¹⁴¹⁹ See the Judgment of 16 November 2000 in case C-279/98P *Cascades v Commission* [2000] ECR I-9693, paragraphs 78 and 79: *"It falls, in principle, to the natural or legal person managing the undertaking in question when the infringement was committed to answer for that infringement, even if, when the Decision finding the infringement was adopted, another person had assumed responsibility for operating the undertakings ... Moreover, those companies were not purely and simply absorbed by the appellant but continued their activities as subsidiaries. They must, therefore, answer themselves for their unlawful activity prior to their acquisition by the appellant, which cannot be held responsible for it."*

¹⁴²⁰ See Case T-305/94, *Limburgse Vinyl Maatschappij NV and others (PVC II)*, [1999] ECR II-0931, paragraph 953.

(1032) The fact that a company retains legal personality after having transferred part of its activities to another company within the same group does not prevent the Commission from holding the latter company liable for the infringement committed by the former.¹⁴²¹

6.2. Application to this case

6.2.1. Masco

Description of the Masco group

(1033) The SO was addressed to Masco Corporation Inc and its European subsidiaries (including Hansgrohe AG and its subsidiaries, as well as Hüppe GmbH & Co. KG and its subsidiaries).

(1034) Masco Corporation Inc acquired sole control of Hansgrohe AG on 27 December 2002 (with [60-70]% of the shareholding).¹⁴²² Prior to that, Masco Corporation Inc held a minority shareholding of [20-30]% and had no joint control of the Hansgrohe group.¹⁴²³ (...) ¹⁴²⁴ Hansgrohe was also involved in a joint venture with (...) in France as from 1998. Hansgrohe manufactures and sells taps and fittings.

(1035) Masco Corporation Inc also wholly-owns Hüppe GmbH,¹⁴²⁵ which in turn wholly-owns the following sales subsidiaries: Hüppe Ges. mbH (Austria), Hüppe Belgium N.V. (S.A.), (Belgium), and Hüppe BV (Netherlands). Hüppe manufactures and sells shower enclosures.

(1036) Further, Masco indirectly participated in the cartel arrangements through another of its wholly-owned subsidiaries, namely Damixa Belgium N.V. (S.A.), which is active in sanitary taps and mixers and shower accessories.

(...)

(1037) Hansgrohe and its competitor (...)’s 50:50 joint venture (...), which represented both undertakings at the AFICS meetings, was a "*combined marketing and sales unit*", which never generated own turnover and only solicited orders from the parent undertakings.¹⁴²⁶ (...) ¹⁴²⁷ As demanded by case law, the evidence in the Commission's possession thus shows that the two parent companies determined jointly the joint venture's course of action on the market to the point where it was deemed not to have any real autonomy in the matter.¹⁴²⁸

Arguments raised by Masco and the Commission's appraisal

¹⁴²¹ Case C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, Aalborg Portland a.o. v Commission, paragraphs 356 to 359, [2004] ECR I-123 and case T-43/02, Jungbunzlauer AG v Commission, Judgment of 27 September 2006, [2006] ECR II-3435, at paragraph 132.

¹⁴²² See Commission Decision of 19 December 2002, in Case COMP/M.3045 - *Masco/Hansgrohe*, OJ C 22, 21.1.2003, (...).

¹⁴²³ (...)

¹⁴²⁴ (...)

¹⁴²⁵ (...) Masco acquired Hüppe GmbH & Co. KG on 3 April 1987. (...) The SO was addressed to Hüppe GmbH & Co. KG which was transformed into Hüppe GmbH in May 2008. This Decision is therefore addressed to Hüppe GmbH. (...)

¹⁴²⁶ (...)

¹⁴²⁷ (...)

¹⁴²⁸ Case T-314/01 *Coöperative Verkoop – en Productievereniging van Ardappelmeel en Derivaten Avebe BA v Commission*, [2006] ECR II-3085, paragraph 138 - 139.

- (1038) Masco does not contest any finding of the SO regarding its parental liability. However, it clarifies in its reply to the SO that it acquired sole control of Hansgrohe AG in December 2002 (...).¹⁴²⁹ Masco also stated that prior to that, it held a minority shareholding of [20-30]% and had no joint control.¹⁴³⁰
- (1039) Masco does not contest the imputation of liability regarding Hüppe's participation in the cartel arrangements as from 1 January 1995.¹⁴³¹ Nor does it contest the imputation of liability for Damixa's behaviour.¹⁴³² Turning to Hansgrohe - as acknowledged by Masco - Masco's liability is established as from 27 December 2002 date at which it acquired sole control of Hansgrohe AG. Finally, Masco does not contest either its liability for the behaviour of the joint venture(...), which participated in the AFICS meetings.¹⁴³³

6.2.2. Grohe

- (1040) Grohe AG, (...) Grohe Beteiligungs GmbH, (...) Grohe Deutschland Vertriebs GmbH (Germany), Grohe Gesellschaft mbH (Austria), Grohe N.V. (Belgium), Grohe S.A.R.L. (France), Grohe S.P.A. (Italy), and Grohe Nederland B.V. (the Netherlands).
- (1041) (...) The Commission further observes that Grohe presented itself in the proceedings as one undertaking. It was represented by the same lawyer and all the responses were submitted on behalf of all the Grohe entities involved. Finally, Grohe does not dispute the Commission's finding of the Commission that it is one economic entity.
- (1042) Consequently, Grohe Beteiligungs GmbH, Grohe AG and the subsidiaries Grohe Deutschland Vertriebs GmbH (Germany), Grohe Gesellschaft mbH (Austria), Grohe N.V. (Belgium), Grohe S.A.R.L. (France), Grohe S.P.A. (Italy), and Grohe Nederland B.V. (the Netherlands) together form part of the undertaking that committed the infringement.

6.2.3. Ideal Standard

Description of the Ideal Standard group

- (1043) The SO was addressed to American Standard Companies Inc (named ASI Holding Inc. until 24 January 1995),¹⁴³⁴ American Standard Europe BVBA and several of their subsidiaries. American Standard Companies Inc was the parent company of a group active in the field of bathroom fittings and fixtures. (...) ¹⁴³⁵ (...), ¹⁴³⁶ (...), ¹⁴³⁷ (...).¹⁴³⁸ (...).¹⁴³⁹

¹⁴²⁹ See Commission Decision of 19 December 2002, in Case COMP/M.3045 - *Masco/Hansgrohe*, OJ C 22, 21.1.2003, p 10 (...)

¹⁴³⁰ (...)

¹⁴³¹ (...)

¹⁴³² Damixa's behaviour is indeed mentioned in the SO (see for example table 6 and recital 308), as well as the fact that it is part of the Masco group (recitals 42 and 54), and Masco has discussed Damixa's behaviour in the cartel in its reply to the SO (see, for example recitals 8, 28 or 29). However, by way of precision, it should be mentioned that the Commission addressed its SO directly to Masco, rather than to Damixa Belgium sa, in line with the Judgment adopted by the Court of First Instance in the *PVC II Case* in which it stated that "*where large numbers of operating companies are active in both production and marketing and are also designed to cover specific geographical areas, for the Commission to address its decision to the group's holding company rather than, as the applicant would have it, to one of its operating companies does not constitute an error in law*". Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission* (PVC II), [1999] ECR II-931, paragraph 989.

¹⁴³³ Masco's liability for the joint venture was notably developed at recitals 255 and 452 of the SO.

¹⁴³⁴ (...)

¹⁴³⁵ (...)

(1044) (...).¹⁴⁴⁰ (...).¹⁴⁴¹ (...).

(1045) In Germany, Ideal Standard operated first through Ideal Standard GmbH. This entity was converted in 1998 (by conversion in the form of a change of organisation, that is, the change of legal form ensuring identity without the transfer of assets or shares) into Ideal Standard GmbH & Co. OHG, which the Commission therefore considers as a successor in economic and legal terms of the former Ideal Standard GmbH.¹⁴⁴² On 19 March 2003 the group established Ideal Standard GmbH (a different company than the one existing until 1998, despite the identity of names), to which Ideal Standard GmbH & Co. OHG transferred its sales activities.¹⁴⁴³ It is therefore the Commission's intention to hold Ideal Standard GmbH liable together with its former 100% parent companies, i.e. American Standard Companies Inc (now Trane Inc.) and American Standard Europe bvba (now WABCO bvba) for the infringement as regards Ideal Standard GmbH and its predecessors' direct participation in the cartel arrangements in Germany.

(1046) All these European subsidiaries or branches directly participated in the cartel arrangements. They mostly manufactured under the brand "Ideal Standard" and distributed ceramic sanitary ware products, as well as taps and fittings.

(1047) (...) the Ideal Standard group had headquarters in Europe, which had no separate legal personality. Those headquarters were known as the Belgian 'branch' of (...).¹⁴⁴⁴ The European headquarters "*performed internal preparatory, ancillary or centralization work*",¹⁴⁴⁵ which consisted in "*advertising, supplying and collecting information, insurance and reinsurance, scientific research, contracts with national and international authorities, centralization of activities in the area of accounts, administration and data processing, centralization of financial transactions and hedging of risks associated with exchange rate fluctuations, as well as all ancillary or preparatory work for the companies of the group*".¹⁴⁴⁶ (...).

(1048) (...) the group established American Standard Europe BVBA (...).¹⁴⁴⁷ and in January 2002 (...) sold all fixed assets and liabilities of its Belgian branch (the European headquarters) to American Standard Europe BVBA (...).

(1049) The Ideal Standard group's structure underwent further substantial changes in 2007. American Standard Companies Inc was renamed Trane Inc. American Standard Europe BVBA's vehicle control systems business was spun-off and renamed WABCO Europe

1436 (...)

1437 (...)

1438 (...)

1439 (...)

1440 (...)

1441 (...)

1442 As indeed acknowledged by WABCO, Ideal Standard GmbH continued to exist in the form of Ideal Standard GmbH & Co. OHG. (...)

1443 (...)

1444 (...)

1445 (...)

1446 (...)

1447 (...)

BVBA. WABCO Europe is quoted on the New-York stock exchange and is part of the WABCO group, a former division of American Standard Companies Inc.¹⁴⁴⁸

- (1050) In the course of this process, American Standard Companies Inc (now Trane Inc) also sold the European bath and kitchen business, including the bathroom and kitchen division of the former American Standard Europe BVBA to funds advised by Bain Capital Partners LLC, effective as of 31 October 2007. The sale included Idéal Standard France S.A.S., Ideal Standard GmbH (Germany), Ideal Standard Italia S.r.l., Ideal Standard Nederland BV and the Belgian branch as well as the Austrian bathroom fittings and fixtures division of WABCO Austria GmbH (...).¹⁴⁴⁹

Arguments raised by American Standard Companies Inc (now Trane Inc) and the former American Standard Europe BVBA (now WABCO Europe BVBA)

- (1051) American Standard Europe BVBA (now WABCO Europe BVBA) has not tried to rebut the presumption which applies for the 100% owner of the different national subsidiaries which participated in the infringement. However, American Standard Companies Inc submits that the SO has not established a basis for joint and several liability of undertakings of the former group. In particular, the SO failed to establish that American Standard Companies Inc exercised a decisive influence over the commercial policy of its European subsidiaries.¹⁴⁵⁰
- (1052) American Standard Companies Inc further claims that the SO does not allege its direct participation in the infringement; nor does it establish its awareness of the infringement.¹⁴⁵¹ According to American Standard Companies Inc, relying on its 100% shareholding at the time of the infringement does not suffice, and the Commission should point to additional evidence, or additional indicia to establish the actual exercise of decisive influence over the national subsidiaries.¹⁴⁵²
- (1053) American Standard Companies Inc also argues that finding its liability on the sole basis of its 100% shareholding without providing further evidence of the actual exercise of decisive influence on its subsidiaries would respectively violate the presumption of innocence as well as the principle of *in dubio pro reo*.¹⁴⁵³
- (1054) American Standard Companies Inc also submits that, by imputing liability on it in these circumstances, the Commission would violate customary international law, namely the principle of international comity, and would also not respect the principles of corporate law, according to which the liability of a shareholder by way of a "piercing of the corporate veil" must remain a narrow exception.¹⁴⁵⁴ Essentially, according to American Standard Companies Inc's submission, liability for competition law infringements committed by a subsidiary should therefore only be imposed on a parent company only when the parent company itself was directly involved in the infringement or was at least aware of the infringements committed by its subsidiary.¹⁴⁵⁵
- (1055) (...).

1448 (...)

1449 (...)

1450 (...)

1451 (...) Similarly, in its reply to the Letter of Facts of 29 June 2009, Trane Inc. reiterates that it did not directly participate in the alleged collusive practices, nor did it exercise decisive influence on the pricing and marketing policy of its European subsidiaries. Therefore, it should not be held liable for the conduct of those subsidiaries.

1452 (...)

1453 (...)

1454 (...)

1455 (...)

Assessment of American Standard Companies Inc's (now Trane Inc) and the former American Standard Europe BVBA's (now WABCO Europe BVBA) arguments

- (1056) Contrary to what American Standard Companies Inc argues, as recently confirmed by the Courts of the European Union,¹⁴⁵⁶ it is established case law that the Commission can presume that parent companies exercise decisive influence on their wholly-owned subsidiaries. Where such a presumption applies, as in this case for American Standard Inc, it is for the parent company to rebut the presumption, by adducing evidence demonstrating that its subsidiary decided independently on its conduct on the market.
- (1057) The Commission notes that American Standard Companies Inc (...) do not present any particular piece of evidence to support their contention that they should not be held liable for the infringement. Their contention is simply that the Commission must show awareness at least or that the subsidiaries would not be carrying out its pricing and marketing policy autonomously. However, not a single piece of evidence is referred to in support of the fact that the European subsidiaries acted autonomously on the market, since the position of American Standard Companies Inc and WABCO Europe BVBA is premised on the wrong assumption that it is for the Commission to adduce such evidence.
- (1058) Although this would suffice to consider that American Standard Companies Inc (...) have not provided elements to rebut the presumption, the file also contains evidence which contradict their arguments.
- (1059) American Standard Companies Inc used (...) as a vehicle to exercise its control over the European business. Indeed, (...) played a central role regarding the European subsidiaries, (...). By way of example, the establishment by (...) of the Belgian branch (the European headquarters), to supervise the 'national subsidiaries' in Europe,¹⁴⁵⁷ is indicative of American Standard Inc's willingness to control and influence its European business. This branch centralized information from the subsidiaries established at the national level, and undoubtedly maintained a direct and most close link with its American management, as it did not even have its own legal personality. Moreover, American Standard Europe BVBA acknowledged in its reply to the Commission's request for information of November 2005 (...).¹⁴⁵⁸
- (1060) Since attribution of liability to a parent company for the infringement committed by its subsidiary flows from the fact that the two entities constitute a single undertaking for the purposes of the rules of the European Union on competition,¹⁴⁵⁹ the fact that the Commission perceives the former Ideal Standard group as a single undertaking does not infringe the principle of *in dubio pro reo* or the presumption of innocence. The application of evidentiary presumptions is not contrary to the principle presumption of innocence. Moreover, such presumption does not infringe the principle of individual responsibility. When parent and subsidiary form a single undertaking, the parent is held individually liable for an infringement which it is deemed to have committed itself on account of its legal and economic links with the subsidiary.¹⁴⁶⁰

¹⁴⁵⁶ Judgment of the Court of Justice of 10 September 2009, Case 97/08 P, *Akzo Nobel v Commission*, not yet reported.
¹⁴⁵⁷ See recital (1047).
¹⁴⁵⁸ (...)
¹⁴⁵⁹ See Cases T-71/03, T-74/03, T-87/03, and T-91/03 *Tokai Carbon v Commission*, [2005] ECR II-10, paragraph 54.
¹⁴⁶⁰ See, to that effect, Case C-294/98 P *Metsä-Serla and Others v Commission* [2000] ECR I-10065 paragraph 34; Judgment of 8 October 2008, *Schunk v Commission*, T-69/04, paragraphs 73-74.

- (1061) The same reasoning applies to the argument according to which imputing liability to an American company would violate the principle of international comity. The fact that American Standard Inc did not materially participate in the cartel arrangements is indeed irrelevant. Further, as to the fact that American Standard Companies Inc was established in the United States throughout the whole period of infringement, the Court of Justice has made clear in the *Continental Can Case* that the circumstance that a company "does not have its registered office within the territory of one of the Member States is not sufficient to exclude it from the application of Community Law".¹⁴⁶¹ In any event, the applicants have not claimed that they are subject to conflicting obligations, as required by the case law for finding an infringement of the principle of non-intervention.¹⁴⁶²
- (1062) For these reasons, Trane Inc (formerly American Standard Companies Inc) and WABCO bvba (formely American Standard Europe BVBA) are jointly and severally liable respectively from the beginning of the infringement (concerning Trane Inc) and from 29 October 2001 (concerning WABCO bvba) with Ideal Standard GmbH, Ideal Standard Produktions-GmbH, Idéal Standard S.A. (France), WABCO Austria GmbH and Ideal Standard Italia s.r.l., as they all formed part of the undertaking that committed the infringement. Further, Ideal Standard Nederland BV is independently liable for its involvement in the Netherlands.

6.2.4. Roca

Description of the Roca group

- (1063) The SO was addressed to Roca Sanitario SA as well as to its subsidiaries Roca France s.a.r.l. and Laufen Austria AG. Roca Sanitario SA, Spain, was the 100% parent company of Roca France s.a.r.l. throughout the whole period of infringement, as well as of Laufen (named ÖSPAG until February 2002)¹⁴⁶³ since 29 October 1999. Before that date, Roca Sanitario held no shares in Laufen.
- (1064) Companies of the Roca group are active in the three product groups covered by this Decision. Roca France s.a.r.l. does not manufacture any products, but is involved in the distribution and sales of the products manufactured mainly by other subsidiaries of the Roca group (including Laufen).¹⁴⁶⁴ In this respect, Roca France s.a.r.l. focused its activities on taps and fittings and ceramics until 2003, when it started selling shower enclosures as well.¹⁴⁶⁵ Laufen's business was focused on the manufacture and commercialization of ceramic sanitary ware until 2005. Since then, Laufen has also undertaken the distribution and sale of Roca branded taps and fittings and shower enclosures.¹⁴⁶⁶

Arguments raised by Roca

- (1065) Roca Sanitario argues that it cannot be held jointly and severally liable with its subsidiaries because it did not directly participate in the arrangements described in the SO.¹⁴⁶⁷ According

¹⁴⁶¹ See Case 6/72, *Continental Can Co Inc v Commission*, [1973] ECR 215, paragraph 16.

¹⁴⁶² Joined cases 89, 104, 114, 116, 117 and 125 to 129/85, *A. Ahlström Osakeyhtiö and others v Commission*, [1988] ECR 5193, paragraphs 19-20, and Case T-102/96, *Gencor v Commission*, [1999] ECR II-753, paragraphs 102-103.

¹⁴⁶³ (...)

¹⁴⁶⁴ (...)

¹⁴⁶⁵ (...)

¹⁴⁶⁶ (...)

¹⁴⁶⁷ (...)

to Roca Sanitario, there is no indication of its material involvement in the infringement described in the SO, since it did not directly take part in the cartel meetings.¹⁴⁶⁸

- (1066) Roca Sanitario also argues that it does not exert any decisive influence on Roca France and Laufen, which both act as autonomous entities.¹⁴⁶⁹ According to Roca Sanitario, the Commission assumes wrongly that pricing decisions were taken by Roca Sanitario itself and imposed to Roca France and Laufen.¹⁴⁷⁰ Roca Sanitario further submits that Roca France and Laufen did not communicate information on their respective national markets to Roca Sanitario and that they have always acted and determined their prices autonomously (as fully independent undertakings).¹⁴⁷¹ Therefore, Roca Sanitario argues that there was no two-way flow of information within the group as described in the SO.¹⁴⁷² Further, Roca Sanitario states that none of the employees of Laufen and Roca France acted upon its instruction.¹⁴⁷³ Roca Sanitario also claims that it did not implement any of the alleged anti-competitive agreements identified by the Commission in the SO.¹⁴⁷⁴
- (1067) Roca Sanitario refers notably to the Judgment of the Court of Justice in *ICI/Commission*¹⁴⁷⁵ to establish that the Commission cannot presume that a parent company exercises decisive influence over the conduct on the market of its subsidiaries, based on the sole fact that the parent company is the 100% owner of the subsidiaries.¹⁴⁷⁶ Roca Sanitario argues that the Commission has not established the exercise of decisive influence on its behalf over its subsidiaries, other than the 100% ownership.¹⁴⁷⁷ Roca Sanitario submits that it was not even aware of its subsidiaries' behaviour.¹⁴⁷⁸ Finally, Roca Sanitario claims that even if the Commission had been right to presume its liability, Roca Sanitario has in any event rebutted this presumption, as the case law allows it to do so.¹⁴⁷⁹
- (1068) Similarly, Roca France and Laufen both submit in their respective replies to the SO that their commercial behaviour is totally independent from Roca Sanitario. They also claim that they never received instructions from Roca Sanitario concerning their participation in the practices identified in the SO. They state as well that Roca Sanitario was not aware of such practices.¹⁴⁸⁰

Assessment of Roca's arguments

1468 (...)
1469 (...) Roca Sanitario submits that it did not directly participate in the anticompetitive practices described by the Commission and it should not be held liable for the alleged collusive conduct of those subsidiaries.
1470 (...)
1471 (...)
1472 (...)
1473 (...)
1474 (...)
1475 Judgment of the Court of Justice of 14 July 1972, Case 48/69, *ICI/Commission*, ECR 619. (...)
1476 Roca Sanitario relies on other Judgments and decisions to further substantiate this point. (...) See Judgment of the Court of Justice of 16 November 2000, Case C-286/98P, *Stora Koppabergs Berslags AB/Commission*, ECR I-9925. Commission Decision of 13 July 1994, IV/C/33.833 – *Cartonboard*. Judgment of the CFI of 4 May 1998, Case T-354/94P, *Stora Koppabergs Berslags AB/Commission*. Judgment of the CFI of 15 September 2005, Case T-325/01, *DaimlerChrysler AG/Commission*, ECR II-3319. Judgment of the CFI of 27 September 2006, Case T-314/01, *Avebe/Commission*, not yet reported.
1477 (...)
1478 (...)
1479 (...)
1480 (...)

- (1069) As explained in recitals (1026) to (1027)), it is established case law that the Commission can presume that parent companies exercise decisive influence on their wholly-owned subsidiaries. Where such a presumption applies, as in this case for Roca Sanitario, it is for the parent company to rebut the presumption, by adducing evidence demonstrating that its subsidiary decided independently on its conduct on the market. Failure to provide adequate evidence on the part of the parent company provides a sufficient basis for the imputation of liability, as it is the case here with Roca Sanitario.
- (1070) Concerning the principle of personal liability, Article 101 TFEU is addressed to “undertakings” which may comprise several legal entities. Further, it is sufficient to note that Roca Sanitario's arguments are based on an erroneous premise, namely that no infringement was found to have been committed by it. To the contrary, it is clearly held individually liable for an infringement that it is deemed to have committed itself, on account of its legal and economic links with Laufen and Roca France; links through which it was able to determine those companies' conduct on the market.¹⁴⁸¹
- (1071) As to the arguments that Roca Sanitario has put forward in order to claim that its subsidiaries acted autonomously and that it did not exert any influence upon them, the Commission observes that the exercise of decisive influence on the commercial policy of a subsidiary does not require day-to-day management of the subsidiary's operation or in particular that Roca Sanitario would have fixed the prices to be applied by its subsidiaries. The subsidiary's management may well be entrusted with the subsidiary, but this does not rule out that the parent company imposes objectives and policies which affect the performance of the group and its coherence and to discipline any behaviour which may depart from those objectives and policies.¹⁴⁸² (...)
- (1072) Further, the Commission's file encloses several elements indicative of Roca Sanitario's influence on its both wholly-owned subsidiaries. (...).¹⁴⁸³ (...).¹⁴⁸⁴ (...) Moreover, Roca France does not manufacture itself, and the relationship with Roca Sanitario shows that it forms part of a "*unitary organisation*" which pursues "*a specific economic aim on a long term basis*".¹⁴⁸⁵
- (1073) As far as Laufen is concerned, it has not been demonstrated either that it would have its own board of directors with external representatives.¹⁴⁸⁶ (...).¹⁴⁸⁷ (...).¹⁴⁸⁸ (...).¹⁴⁸⁹ The

¹⁴⁸¹ Case C-294/98 P *Metsä-Serla and Others v Commission* [2000] ECR I-10065, paragraphs 28 and 34.

¹⁴⁸² See Judgment of 12 December 2007 in case T-112/05, *Akzo Nobel and Others v. Commission*, [2007] ECR II-5049, paragraph 83.

¹⁴⁸³ Case T-354/94 *Stora Kopparbergs Bergslags v Commission* [1998] ECR II-2111, paragraph 80.

¹⁴⁸⁴ (...)

¹⁴⁸⁵ See Case T-9/99 *HFB and Others v Commission* [2002] ECR II-1487, paragraph 54 and the case-law cited "*The concept of undertaking within the meaning of Article 81 EC includes economic entities which consist of a unitary organisation of personal, tangible and intangible elements, which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision*".

¹⁴⁸⁶ Case T-354/94 *Stora Kopparbergs Bergslags v Commission* [1998] ECR II-2111, paragraph 80.

¹⁴⁸⁷ (...)

¹⁴⁸⁸ (...)

¹⁴⁸⁹ (...)

Commission considers that these elements indicate that Laufen forms part too of a "unitary organisation" which pursues "a specific economic aim on a long term basis".¹⁴⁹⁰

- (1074) Further, the allegation that there is no indication of direct involvement of the parent company (Roca Sanitario) in the anti-competitive conduct and its alleged lack of awareness is irrelevant. That argument is based on the erroneous premise that a parent company can only be held liable for the infringements committed by its subsidiaries if it can be established that it was aware of the infringement or it was directly involved in its organisation and implementation. Contrary to that contention, attribution of liability to a parent company for the infringement committed by its subsidiary flows from the fact that the two entities constitute a single undertaking for the purposes of the rules on competition of the European Union¹⁴⁹¹ and not from proof of the parent's participation in - or awareness of - the infringement.
- (1075) For these reasons, Roca Sanitario is jointly and severally liable with Roca France as from the beginning of the infringement and with Laufen as from 29 October 1999 as they all form part of the undertaking that committed the infringement.

6.2.5. Hansa

- (1076) Hansa Metallwerke AG (Germany) (...) Hansa Nederland B.V. (founded in 1995), Hansa France S.A., Hansa Italiana s.r.l., Hansa Belgium BVBA-SPRL (also founded in 1995) and Hansa Austria GmbH. (...) Furthermore, Hansa presented itself in the proceedings as one undertaking. It was represented by one lawyer and all the responses were submitted on behalf of all the Hansa entities involved. Finally, Hansa does not dispute the Commission's finding of the Commission that it is one economic entity.
- (1077) Consequently, Hansa Metallwerke AG and its national subsidiaries together form part of the undertaking that committed the infringement.

6.2.6. Dornbracht

- (1078) The undertaking referred to as Dornbracht for the purposes of this Decision comprises Aloys F. Dornbracht GmbH & Co KG. It operated in Austria during the infringement period via its branch "Vertriebsbüro Österreich", the acts of which are imputed to it.

6.2.7. Sanitec (Keramag, Koralle, Sphinx, Allia, Pozzi Ginori)

Description of the Sanitec group

- (1079) (...).¹⁴⁹² (...).¹⁴⁹³ (...).

¹⁴⁹⁰ See Case T-9/99 HFB and Others v Commission [2002] ECR II-1487, paragraph 54 and the case-law cited, "The concept of undertaking within the meaning of Article 81 EC includes economic entities which consist of a unitary organisation of personal, tangible and intangible elements, which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision".

¹⁴⁹¹ See Cases T-71/03, T-74/03, T-87/03, and T-91/03 *Tokai Carbon v Commission*, [2005] ECR II-10, paragraph 54.

¹⁴⁹² www.sanitec.com: "Sanitec Corporation was established in 1990 as a subsidiary of Wärtsilä Corporation. Wärtsilä's bathroom operations were merged to form Sanitec, which at that same time comprised Wärtsilä Tammisaari Porcelain (currently Ido Bathroom), Ifö Sanitär AB, Porsgrund A/S and Evac AB. Prior to 1991 Sanitec was mainly active in Finland, Sweden and Norway. In 1991 Wärtsilä merged with Lohja Oy and became Metra Corporation."

(1080) (...).¹⁴⁹⁴ (...).¹⁴⁹⁵ (...).

(1081) (...).¹⁴⁹⁶

(1082) (...)

(1083) (...).¹⁴⁹⁷ (...).

Keramag

(1084) (...).¹⁴⁹⁸ (...).¹⁴⁹⁹(...).¹⁵⁰⁰

Koralle

(1085) Koralle Sanitärprodukte GmbH is based in Vlotho, Germany, (...).¹⁵⁰¹

Sphinx

(1086) Koninklijke Sphinx B.V. is based in Maastricht, the Netherlands (...).¹⁵⁰² (...) ¹⁵⁰³ (...) ¹⁵⁰⁴

Allia

(1087) (...).¹⁵⁰⁵

Produits Ceramiques de Touraine S.A.

(1088) (...)

Pozzi-Ginori

(1089) (...).¹⁵⁰⁶

¹⁴⁹³ www.keramag.com: "Keramag AG belongs to the Sanitec concern by a majority. Sanitec, with over 9,000 employees and 27 production sites, is the European market leader of sanitary ceramics, bathtubs and showers. Since 2005 Sanitec has been under ownership of the Swedish investor EQT."

¹⁴⁹⁴ (...)

¹⁴⁹⁵ (...)

¹⁴⁹⁶ (...) See Case T-305/94, *Limburgse Vinyl Maatschappij NV and others (PVC II)*, [1999] ECR II-0931, paragraph 953; Case C-49/92 *Commission v. Anic Partecipazioni SpA*, [1999] ECR I-4125, paragraph 145.

¹⁴⁹⁷ (...)

¹⁴⁹⁸ (...)

¹⁴⁹⁹ (...)

¹⁵⁰⁰ (...)

¹⁵⁰¹ (...)

¹⁵⁰² www.sphinx.nl, the entity was originally called N.V. Koninklijke Sphinx Gustavsberg before the acquisition by Sanitec.

(...)

¹⁵⁰³ (...)

¹⁵⁰⁴ (...)

¹⁵⁰⁵ (...)

¹⁵⁰⁶ (...)

Arguments raised by Sanitec Europe Oy

- (1090) (...) ¹⁵⁰⁷ (...) ¹⁵⁰⁸ (...) ¹⁵⁰⁹ (...) ¹⁵¹⁰
(1091) (...) ¹⁵¹¹ (...) ¹⁵¹² (...) ¹⁵¹³ (...) ¹⁵¹⁴ (...) ¹⁵¹⁵
(1092) (...) ¹⁵¹⁶

Assessment of Sanitec Europe Oy's arguments

- (1093) As recently confirmed by the courts of the European Union, ¹⁵¹⁷ (...).
(1094) (...) ¹⁵¹⁸ (...) ¹⁵¹⁹ (...) ¹⁵²⁰ (...) ¹⁵²¹
(1095) (...) ¹⁵²² (...) ¹⁵²³ (...).
(1096) (...) ¹⁵²⁴ (...) ¹⁵²⁵ (...) ¹⁵²⁶ (...) ¹⁵²⁷ (...) ¹⁵²⁸ (...) ¹⁵²⁹ (...) ¹⁵³⁰ (...) ¹⁵³¹ (...) ¹⁵³² (...) ¹⁵³³
(...) ¹⁵³⁴ (...) ¹⁵³⁵ (...) ¹⁵³⁶ (...) ¹⁵³⁷ (...) ¹⁵³⁸

1507	(...)
1508	(...)
1509	(...)
1510	(...)
1511	(...)
1512	(...)
1513	(...)
1514	(...)
1515	(...)
1516	(...)
1517	Judgment of the Court of Justice of 10 September 2009, Case C-97/08 P, <i>Akzo Nobel v Commission</i> , paragraph 62, not yet reported.
1518	See Judgment of 12 December 2007 in case T-112/05, <i>Akzo Nobel and Others v. Commission</i> , [2007] ECR II-5049, paragraph 83.
1519	(...)
1520	(...)
1521	www.sanitec.com : "Sanitec is a multi-national, multi-brand company that develops its business base through brand advantages. This approach supports us in our quest to be a leading provider of bathroom solutions. We are both local and global; having the local knowledge and experience while at the same time having the advantage of a global perspective. Sanitec is based around locally well known brands with strong positions. The brands are all positioned as number one or two on the markets in which they operate in."
1522	(...)
1523	(...)
1524	See Keramag Annual Report 2004, page 26, http://www.keramag.de/fileadmin/download/k-gb-2004-d.pdf , which states: ".... The parent company, Sanitec Corporation, Helsinki, has provided annual consolidated financial

(1097) (...) ¹⁵³⁹ (...) ¹⁵⁴⁰ (...). ¹⁵⁴¹

(1098) (...) ¹⁵⁴² (...).

(1099) For these reasons, Sanitec Europe Oy is jointly and severally liable with Keramag Keramische Werke AG Allia S.A.S. and Produits Céramiques de Touraine S.A. as from the beginning of the infringement; with Koninklijke Sphinx B.V. as from 14 December 1999; with Koralle Sanitärprodukte GmbH as from 14 December 1999 and with Pozzi Ginori as from 14 May 1996 (and until 14 September 2001), (...).

6.2.8. Villeroy & Boch

accounts according to internationally accepted principles of accounting" - "...erstellte die Konzernmutter, die Sanitec Corporation, Helsinki, einen nach international anerkannten Rechnungslegungsgrundsätzen aufgestellten Konzernabschluss."

1525 See for example Keramag Annual Report 1999, <http://www.keramag.de/fileadmin/download/k-gb99-d.pdf>.

1526 See Keramag Annual Report for 2003, <http://www.keramag.com/fileadmin/download/k-gb-2003-d.pdf>, at page 23.
1527 (...)

1528 (...)

1529 (...)

1530 (...)

1531 (...)

1532 (...)

1533 (...)

1534 (...)

1535 (...)

1536 (...)

1537 (...)

1538 (...). Moreover, the influence of the Sanitec parent companies is further emphasized by the fact that the number of members in the Keramag boards was rather limited (the supervisory board of Keramag consisted of only six or seven members, one third of which were employee representatives as required under German law while the board of directors of Keramag consisted of two or three members). <http://www.keramag.de/fileadmin/download/k-gb99-d.pdf>, <http://www.keramag.de/fileadmin/download/k-gb2000-d.pdf>, http://www.keramag.de/fileadmin/download/gb2001_keramag.pdf, <http://www.keramag.de/fileadmin/download/k-gb-2002-d.pdf>, <http://www.keramag.de/fileadmin/download/k-gb-2003-d.pdf>, <http://www.keramag.de/fileadmin/download/k-gb-2004-d.pdf>.

1539 (...)

1540 (...)

1541 (...), where Sanitec is considered the market leader.

1542 See Cases T-71/03, T-74/03, T-87/03, and T-91/03 *Tokai Carbon v Commission*, [2005] ECR II-10, paragraph 54.

The Villeroy & Boch group

- (1100) In Germany, Villeroy & Boch AG, the parent company of the Villeroy & Boch group, distributes and produces ceramics. Shower enclosures were produced and sold by Sanitrend Sanitär Handelsgesellschaft mbH, which was merged with Villeroy & Boch AG in 2003.
- (1101) Villeroy & Boch AG has been throughout the period of the infringement the 100% owner of the Villeroy & Boch Austria GmbH, which was founded in 1981 and distributes ceramics in Austria since then. In addition, Villeroy & Boch AG also set the prices which were to be charged by the subsidiary and invoiced all the products sold by the subsidiary to customers. In the area of shower enclosures, it was Villeroy & Boch AG's subsidiary Ucosan B.V. which set the prices.
- (1102) In Belgium, the fully-owned subsidiary Villeroy & Boch Belgium S.A. distributed ceramics until the end of 2002. Since then, according to Villeroy & Boch, the Luxembourgish subsidiary Villeroy & Boch Sàrl is responsible for the distribution of ceramics within the group. Villeroy & Boch AG has been and remains the majority shareholder of both these subsidiaries. In addition, it set all prices for the Belgian territory and invoiced the products sold to customers.¹⁵⁴³
- (1103) In the Netherlands, the subsidiary Villeroy & Boch Nederland B.V. has been responsible for the distribution of ceramics since 1989. Villeroy & Boch AG was the sole shareholder throughout the period of the infringement. The entire activities of this subsidiary were transferred to Ucosan B.V. on 1 April 2007 (see following recital). Villeroy & Boch Nederland B.V. was subsequently liquidated. Shower enclosures in the Netherlands were throughout the entire period of the infringement produced, distributed and invoiced by Ucosan B.V.
- (1104) Villeroy & Boch has held 50% of the shares in Ucosan, active in the area of shower enclosures), since 1989. On 1 November 1999, Villeroy & Boch acquired the remaining 50% stake in Ucosan, thus becoming its 100% owner. Ucosan consisted of Ucosan Holding B.V. with its seat in the Netherlands, which held inter alia 100% of the shares in the German subsidiary Sanitrend Sanitär Handelsgesellschaft mbH. This subsidiary was renamed Ucosan GmbH, then Villeroy & Boch Wellness, until finally it was merged with Villeroy & Boch AG on 24 March 2003. Ucosan Holding B.V. and Ucosan B.V., its 100% Dutch subsidiary, are still in existence.
- (1105) In France, the legal entity Villeroy & Boch S.A.S. carries out the production and sales of ceramics. Villeroy & Boch AG as the parent company sets the prices for this subsidiary and owns more than 99 % of its shares since the beginning of the infringement.¹⁵⁴⁴

Liability of Villeroy & Boch AG and its subsidiaries

- (1106) Villeroy & Boch AG, has not tried to rebut the presumption that it exercised control over its (near) 100% subsidiaries Villeroy & Boch Austria GmbH, Villeroy & Boch Belgium S.A., Villeroy & Boch Sàrl (Luxembourg, not an addressee of this Decision), Villeroy & Boch

¹⁵⁴³ Despite the fact that allegedly, the Luxembourg entity Villeroy & Boch Sàrl took over the activities of the Belgian subsidiary in the area of ceramics, it is noted that for the cartel the representative (...) remained a contact person for the cartel activities before and after the alleged take-over of the activities by Villeroy & Boch Sàrl, see in this regard (...). In any case, Villeroy & Boch Belgium S.A. is still in existence as legal entity and will remain an addressee of this Decision.

¹⁵⁴⁴ (...)

Nederland B.V. and Villeroy & Boch S.A.S. (France). The national subsidiaries had no price setting autonomy and partly even invoiced in the name of Villeroy & Boch AG. As for the Ucosan group (Ucosan Holding B.V., Ucosan B.V. and the German subsidiary Sanitrend Sanitär Handelsgesellschaft mbH (later renamed Ucosan GmbH, and subsequently Villeroy & Boch Wellness),¹⁵⁴⁵ their actions were attributed to Villeroy & Boch in the SO¹⁵⁴⁶ as they are 100% owned by Villeroy & Boch AG since 1 November 1999.

- (1107) In the common reply to the SO, the addressees have not questioned this liability for the actions of Ucosan. They have even implicitly accepted their responsibility.¹⁵⁴⁷
- (1108) However, in the common reply to the Letter of Facts of 10 July 2009, Villeroy & Boch disputed liability for the conduct of Ucosan. It states that before 2003, (...), who had been the owner of the remaining 50% of the shares in Ucosan Holding B.V. before the acquisition of the entire share capital in 1999, was the sole director of the undertaking before 2001. From 2001 to 2003, an additional director was appointed, however, in the cases of a disagreement between the two, (...) opinion would prevail according to an agreement of 16 January 1989.
- (1109) These arguments cannot be accepted. First, Villeroy & Boch fails to take account of the fact that it was, from 1999 onwards, the owner of 100% of the share capital of Ucosan Holding B.V.. The fact that one of Ucosan's directors was allegedly previously an owner of shares in the entity (which is not supported by further evidence since the agreement from 1989 which is provided by Villeroy & Boch to further underpin its submissions was concluded between the legal person (...) and Villeroy & Boch as shareholders of Ucosan), cannot of itself serve as a basis to rebut the presumption that it did not exercise control over its fully owned subsidiary. Second, the agreement submitted by Villeroy & Boch from the year 1989, was concluded at a point in time when Ucosan was still a joint venture between the company (...) and Villeroy & Boch, cannot serve as a basis to liberate Villeroy & Boch from its responsibility for the conduct of the subsidiary at a point in time when it was the only shareholder in the entity.
- (1110) Ucosan B.V. took over the entire activities of the Dutch subsidiary Villeroy & Boch Nederland B.V, which was subsequently liquidated. Ucosan B.V. was thus the legal and economic successor of Villeroy & Boch Nederland B.V.. Villeroy & Boch AG can be held liable for the conduct of Villeroy & Boch Nederland B.V. and its economic and legal successor Ucosan B.V. for the entire period of the infringement, since it held 100 % of the shares in both Villeroy & Boch Nederland B.V. and in its successor Ucosan B.V and it has not adduced any argument or evidence to rebut the presumption that it forms a single undertaking with those companies.
- (1111) For these reasons, Villeroy & Boch AG, Villeroy & Boch Belgium S.A., Villeroy & Boch Austria GmbH, Villeroy & Boch S.A.S. are addressees of this Decision as they are jointly and severally held liable for their own conduct as well as the conduct of Villeroy & Boch Nederland B.V, and, from 1 November 1999 the conduct of Ucosan wick together form part of the undertaking that committed the infringement.

¹⁵⁴⁵ This company in fact merged with Villeroy & Boch AG on 24 March 2003.

¹⁵⁴⁶ See recital 97 as well as tables 3 and 14 of the SO.

¹⁵⁴⁷ (...)

6.2.9. Duravit

(1112) (...).¹⁵⁴⁸ (...).

(1113) The Commission thus holds Duravit AG, Duravit Belux SPRL./BVBA and Duravit S.A. (France) jointly and severally liable for the infringement, as they altogether form part of the undertakings that committed the infringement.

6.2.10. Duscholux

Description of the Duscholux group

(1114) The Duscholux companies did not provide the requested information regarding the structure of the Duscholux group, despite several information requests and reminders in that respect.¹⁵⁴⁹ Although there is concrete evidence indicating that they have reporting obligations to the parent companies and that their strategic conduct on the market is determined by them, they contend that they are unable to provide information regarding the structure of the group. Duscholux GmbH (Germany), which – according to its letter of 9 July 2009 – was renamed DPM Duschwand-Produktions- und Montagegesellschaft mbH (hereinafter also referred to as "Duscholux Germany") and entered into liquidation, for example submits that the corporate relationships within the group are unknown to them, despite the fact that the liquidator (...) is also active for Duscholux Holding AG and Duscholux AG in management positions.¹⁵⁵⁰ The Commission's knowledge on the corporate relationship within Duscholux group structure is, thus, partly based on public sources.¹⁵⁵¹

(1115) According to the evidence in the possession of the Commission, all Duscholux subsidiaries and their parent companies form part of one undertaking and one economic entity in the sense of Union competition law, as is evident in the following recitals:

(1116) According to the information in the Commission's disposal, the parent company of the Duscholux group is Duscholux Holding AG in Switzerland.¹⁵⁵² It is the (indirect) 100% shareholder of Duscholux Germany, Duscholux Belgium and Duscholux Netherlands. It is furthermore the 100% owner of Duscholux AG in Switzerland. It holds at least 70% of the shares in Duscholux Austria.

(1117) Within the Duscholux group, the various legal entities are responsible for either production (production companies) or distribution (distribution companies). Duscholux AG in Switzerland is a production company and sells to the Duscholux subsidiaries in the various Member States. The Duscholux production companies sell their products to the distribution companies at transfer prices. They have been informing the distribution companies about changes in those transfer prices centrally.¹⁵⁵³

1548 (...)

1549 (...)

1550 (...)

1551 The Commission's sources are D&B comprehensive reports. The Commission has submitted this evidence to all entities concerned of the Duscholux group, asking them to comment on the documents. (...) Duscholux Belgium submitted that it has no observations on the report, (...).

1552 The Commission has asked Duscholux Holding AG to provide information on the group structure and its subsidiaries on 29 January 2010. However, Duscholux has not provided an answer to the Commission's request for information.

1553 (...)

- (1118) In Germany, another production facility of Duscholux is located in Schriesheim, which is owned by Duscholux Germany. This company was owned to 100% by Duscholux Holding AG. Duscholux GmbH delivered its entire production to (...). Duscholux Holding AG held 75% of the shares in the latter until 2002, and from 2002 until 2003 it held 100% of the shares. Since then, it is fully owned by the company Duscholux Schiedam Holding B.V. NL. (...) is responsible for the distribution of products in Germany and also sells the products produced in Schriesheim to other Duscholux subsidiaries under the brand name "Duscholux".¹⁵⁵⁴
- (1119) In Austria, the company Duscholux GmbH & Co KG is responsible for the distribution products of the Duscholux group.¹⁵⁵⁵ Duscholux Holding AG directly holds 70% of the shares in this company. The remaining 30% of Duscholux GmbH & Co KG were, during the time of the infringement, held by a company named "Leiden Grundstücksverwaltungs GmbH" (previously Duscholux GmbH), the majority owner of which is again Duscholux Holding AG.¹⁵⁵⁶
- (1120) In the Netherlands, Duscholux Nederland B.V. which is again a 100% subsidiary of Duscholux Holding AG, was the distribution company. In Belgium, the distribution company was the 100% owned subsidiary Duscholux Belgium S.A.
- (1121) In the view of the Commission, the legal entities of the Duscholux group which are addressees of this Decision all form part of the undertaking Duscholux. All the subsidiaries involved are connected via the 100% (or near 100%) shareholding of Duscholux Holding AG in Switzerland.¹⁵⁵⁷ Furthermore, the group is divided into subsidiaries which distribute and such which produce products under the central brand "Duscholux". The distribution companies purchase exclusively from the production companies within the group.
- (1122) The subsidiaries of Duscholux had monthly and yearly reporting obligation to the parent companies in Switzerland. Strategic decisions, such as relating to production and product development were also taken by the corporate management in Switzerland. The submissions of Duscholux Nederland B.V. ("Duscholux Netherlands") and Duscholux Belgium are telling in that respect.¹⁵⁵⁸
- (1123) The evidence thus shows that the Duscholux companies which are addressees of this Decision acted on the market as one economic entity. In line with the case law, their conduct is one "*of a single economic entity, under single control and pursuing a common long-term economic aim.*"¹⁵⁵⁹

Duscholux' arguments and the Commission's rebuttals

¹⁵⁵⁴ (...)

¹⁵⁵⁵ Duscholux GmbH & Co KG was inadvertently referred to in the SO as "Duscholux GmbH". It was however clear to Duscholux GmbH & Co KG that it was the actual company addressed. The power of attorney submitted stated mentions the entity under the name Duscholux GmbH & Co KG, see power of attorney dated 26 May 2007. It was also the entity Duscholux GmbH & Co which answered for the allegations in Austria, (...).

¹⁵⁵⁶ (...)

¹⁵⁵⁷ The Commission considers that, even if Ducholux Holding AG is not an addressee of the Decision, the Commission is entitled to rely on the links with the Swiss headquarters as indicia of the existence of a single undertaking.

¹⁵⁵⁸ (...), Dutch text "*De besluitvorming inzake productonwikkeling en daadwerkelijke productie berust bij de fabrieken in overleg met de concernleiding in ons hoofkantoor in Thun, Zwitserland*". (...); French text: "*toutes les décisions en rapport avec le strategie sont prises au siège du groupe, situé à Thun*".

¹⁵⁵⁹ Case T-9/99, HFB vs. Commission, ECR 2002, II-1487, paragraph 61.

- (1124) Duscholux claims that in Germany, Duscholux GmbH (now DPM), which was an addressee of the SO, is a mere production company without any distribution activities. The only customer of Duscholux GmbH was (...), which distributed the products. According to its submissions, Duscholux GmbH is not a member of any association and did not take part in cartel activities. Duscholux claims that it cannot take a position on behalf of (...) and has furthermore never attended meetings of ABD/ADA in Germany.¹⁵⁶⁰
- (1125) These arguments cannot be accepted. The function of Duscholux GmbH in Germany cannot be reduced to that of a mere production company. In fact, Duscholux' own product brochure for customers names as contact point for Germany Duscholux GmbH and not (...).¹⁵⁶¹ The distinction between (...) and Duscholux GmbH had no practical importance. (...), who participated in many meetings of both ABD/ADA and IFS as well as in numerous bilateral contacts of shower enclosure manufacturers, and (...).¹⁵⁶² Moreover, the companies shared the same address,¹⁵⁶³ and (...) indicated its general email address as info@duscholux.de.¹⁵⁶⁴ The correspondence between the cartellants in Germany, when conducted by email was also addressed to the email address .¹⁵⁶⁵
- (1126) Thus, the distinction between (...) and Duscholux GmbH is purely one of legal form. As regards their conduct on the market, no distinction between the two legal entities can be made. In addition, it cannot be argued that Duscholux GmbH did not take part in cartel activities. (...) took part in many cartel meetings and the evidence in the Commission's file does not show that he was representing exclusively (...) and not Duscholux GmbH in those meetings. In the majority of the participants' lists of ADA/ABD meetings, the name of the participating company is "Duscholux" without further qualification. Correspondence was sent by ABD to(...), "c/o Fa. Duscholux GmbH",¹⁵⁶⁶ and correspondence to ABD was often sent on behalf of Duscholux GmbH.¹⁵⁶⁷ Furthermore, the Commission notes that in response to the Commission's information requests, the German association ABD itself identified "Duscholux GmbH" as its member, without referring to (...).¹⁵⁶⁸
- (1127) In their replies to the SO, which are all nearly identical in content, the Duscholux subsidiaries contend that they are entirely independent in their conduct and that there is no central management of the Duscholux group.¹⁵⁶⁹ However, their own responses to the Commission's information requests disprove such contentions. Duscholux Belgium had even submitted that "*all the decisions relating to the strategy are taken by the seat of the group, situated in Thun*" (Thun being located in Switzerland) and also stated that it gives monthly and yearly reporting to the headquarters.¹⁵⁷⁰ Similarly, Duscholux Austria identified itself in an answer to one of the Commission's information request as the "*Austrian representation of*

1560 (...)

1561 (...)

1562 (...)

1563 See for example the letters of ABD dated 19 and 26 May 2004, which was addressed to "(...) c/o Fa. Duscholux GmbH, Postfach 1163, 69191 Schriesheim", (...) and the letter of ABD of 9 December 2003 to "(...)".

1564 (...)

1565 (...)

1566 (...)

1567 (...)

1568 (...)

1569 (...) Duscholux AG (Switzerland) claims that it did not directly participate in the alleged collusive practices, it did not exercise any management or financial control over the Duscholux subsidiaries and, consequently, it cannot be held liable for their alleged infringements.

1570 (...) French text: "*toutes les décisions en rapport avec le stratégie sont prises au siège du groupe, situé à Thun*".

the Duscholux group".¹⁵⁷¹ Also, Duscholux Netherlands had submitted that "*the decision making regarding product development and actual production is in the hands of the factories together with the group corporate management in the headquarters in Switzerland*". Furthermore, Duscholux Netherlands submitted that it reports its turnover figures monthly to the headquarters and gives a yearly prognosis of its future turnover to the headquarters.¹⁵⁷² This shows that the subsidiaries did in fact perceive the Swiss Duscholux companies as headquarters. It also shows that the headquarters determined the strategic behaviour of the subsidiaries on the market and the latter were in no way independent entities. Rather, all entities of the Duscholux group are under a single management with a common purpose. Therefore, the argument that there was no central management of the group and that all the subsidiaries were entirely independent has to be rejected. The evidence in the Commission's possession reveals clearly that the Duscholux group was organised as one economic entity, with a central headquarters in Switzerland and certain sub-entities being responsible for production and distribution in the various Member States.

- (1128) Based on these considerations, the Commission holds Duscholux GmbH & Co KG (Austria), DPM Duschwand-Produktions- und Montagegesellschaft mbH (Germany) and Duscholux Belgium S.A. jointly and severally liable for the infringement as they collectively form part of the undertakings that committed the infringement.

6.2.12. Kludi

- (1129) (...).¹⁵⁷³ (...).¹⁵⁷⁴ (...).¹⁵⁷⁵

- (1130) (...).¹⁵⁷⁶ (...).¹⁵⁷⁷ Finally the two entities submitted a common reply to the SO and did not contest that Kludi GmbH & Co KG, Germany could be liable for the infringement insofar as it concerns Austria.

- (1131) Based on these considerations, the Commission holds Kludi GmbH & Co KG and Kludi Armaturen Gesellschaft mit beschränkter Haftung & Co KG jointly and severally liable for the infringement as they collectively form part of the undertakings that committed the infringement.

6.2.13. Artweger

- (1132) The undertaking referred to as Artweger comprises Artweger GmbH & Co KG in Austria for the purposes of this Decision.

¹⁵⁷¹ (...) German text: "österreichische Niederlassung der Duscholux-Gruppe".

¹⁵⁷² (...) Dutch text: "*De besluitvorming inzake productontwikkeling en daadwerkelijke productie berust bij de fabrieken in overleg met de concernleiding in ons hoofkantoor in Thun, Zwitserland*".

¹⁵⁷³ (...)

¹⁵⁷⁴ (...)

¹⁵⁷⁵ (...)

¹⁵⁷⁶ (...)

¹⁵⁷⁷ (...)

6.2.14. Cisal

(1133) The undertaking referred to as Cisal comprises Rubinetteria Cisal S.p.A for the purposes of this Decision.

6.2.16 Mamoli

(1134) The undertaking referred to as Mamoli comprises Mamoli Rubinetteria S.p.A for the purposes of this Decision.

6.2.17 RAF Rubinetterie

(1135) The undertaking referred to as RAF comprises RAF Rubinetteria S.p.A for the purposes of this Decision.

6.2.18 Teorema

(1136) The undertaking referred to as Teorema comprises Teorema Rubinetteria S.p.A for the purposes of this Decision.

6.2.19 Zucchetti Rubinetteria

(1137) The undertaking referred to as Zucchetti comprises Zucchetti Rubinetteria S.p.A for the purposes of this Decision.

7. DURATION OF THE INFRINGEMENT

7.1. Preliminary remark on provisions of competition rules applicable to Austria

(1138) Before its accession to the European Union, Austria was an EFTA Member State that had become a contracting party to the EEA Agreement. Restrictions of competition thus fell under Article 53 of the EEA Agreement as from 1 January 1994, the date on which it entered into force. As a result, Article 53 of the EEA Agreement applied to the cartel for the period 1 January 1994 to 31 December 1994 and Article 101 TFEU applies after Austria's accession. The Commission has taken account of these considerations in establishing the starting date of the infringement period regarding restrictions of competition that affected the Austrian market.

7.2. Starting Date for Each Undertaking

(1139) (...) the Commission will, for the purposes of this Decision, limit its assessment under Article 101 TFEU and Article 53 of the EEA Agreement and the application of any fines to the period starting with the meeting held on 16 October 1992 (Euroitalia).¹⁵⁷⁸

(1140) The Commission indicates the relevant starting date at recitals (1141) to (1168) with respect to each addressee of the Decision. The Annexes to this Decision contain each undertaking's participation in the respective association meetings. However, in order to determine the starting date for each undertaking, the Commission for purposes of this Decision uses the first meeting for which there is uncontroversial evidence of discussion on prices and of the undertaking's participation, even if there are indicia of anticompetitive conduct before that date.

¹⁵⁷⁸ See recital (411): Euroitalia meeting of 16 October 1992.

7.2.1. Masco (Hansgrohe and Hüppe)

- (1141) Masco Corporation Inc. is the parent company of Hansgrohe AG and its subsidiaries and Hüppe GmbH and its subsidiaries, which participated in the collusive conduct described in this Decision. The relevant starting date for Masco Corporation Inc. is 1 January 1995 concerning Hüppe¹⁵⁷⁹ and 29 December 2002 (date of acquisition) concerning Hansgrohe¹⁵⁸⁰
- (1142) The relevant starting date for the following Hansgrohe entities is: 6 November 2002 for Hansgrohe Deutschland Vertriebs GmbH (Germany),¹⁵⁸¹ 30 May 1995 for Hans Grohe Handelsges. GmbH (Austria),¹⁵⁸² 21 September 2000 for Hans Grohe S.A. (Belgium),¹⁵⁸³ 28 September 1994 for Hans Grohe B.V. (Netherlands),¹⁵⁸⁴ May 2004 for Hansgrohe S.A.R.L. (France),¹⁵⁸⁵ and 16 October 1992 for Hansgrohe S.R.L. (Italy).¹⁵⁸⁶ All these entities are 100% held by Hansgrohe AG, for which the relevant starting date is therefore 16 October 1992.¹⁵⁸⁷
- (1143) The relevant starting date for the following Hüppe entities is: 15 September 1994 for Hüppe GmbH & Co. KG, Germany,¹⁵⁸⁸ 12 October 1994 for Hüppe Ges. mbH (Austria),¹⁵⁸⁹ 10 March 2003 for Hüppe Belgium N.V./S.A.,¹⁵⁹⁰ and 20 January 1999 for Hüppe BV (Netherlands).¹⁵⁹¹ Hüppe GmbH & Co. KG, Germany, is the 100% owner of the other Hüppe entities.

7.2.2. Ideal Standard

- (1144) The relevant starting date for Trane Inc. (formerly American Standard Inc.) is 15 March 1993.¹⁵⁹² The relevant starting date for WABCO B.V.B.A. (formerly American Standard Europe B.V.B.A.) is 29 October 2001, date at which the former American Standard Europe B.V.B.A. was created.¹⁵⁹³
- (1145) The relevant starting date for the various Ideal Standard subsidiaries is: 19 March 2003 for Ideal Standard GmbH (Germany),¹⁵⁹⁴ 21 July 1994 for WABCO Austria GmbH (Austria),¹⁵⁹⁵ 10 December 2002 for Idéal Standard S.A.S. (France),¹⁵⁹⁶ 15 March 1993 for Ideal Standard Italia s.r.l.,¹⁵⁹⁷ 30 October 2001 for Ideal Standard Produktions-GmbH (as

¹⁵⁷⁹ As stated in the SO, paragraph (452).

¹⁵⁸⁰ Masco is also liable for Damixa SA/NV's involvement in the infringement as from 10 March 2003. See recital (521): HCT meeting of 10 March 2003.

¹⁵⁸¹ This date corresponds to Hansgrohe Deutschland Vertriebs GmbH's date of creation. See recital (1034) above.

¹⁵⁸² See recital (302): ASI meeting of 30 May 1995.

¹⁵⁸³ See recital (498): Amicale du Sanitaire meeting of 21 September 2000.

¹⁵⁸⁴ See recital (596): SFP meeting of 28 September 1994.

¹⁵⁸⁵ See recital (569): Bilateral contact between Grohe and Hansgrohe in May 2004.

¹⁵⁸⁶ See recital (411): Euroitalia meeting of 16 October 1992.

¹⁵⁸⁷ See recital (411): Euroitalia meeting of 16 October 1992.

¹⁵⁸⁸ See recital (178): Meeting with Shower enclosures manufacturers of 15 September 1994.

¹⁵⁸⁹ See recital (300): ASI meeting of 12 October 1994.

¹⁵⁹⁰ See recital (521): HCT meeting of 10 March 2003.

¹⁵⁹¹ See recital (600): SFP meeting of 20 January 1999.

¹⁵⁹² See recital (412): Euroitalia meeting of 15 March 1993.

¹⁵⁹³ See recital (1045).

¹⁵⁹⁴ This corresponds to the date on which American Standard GmbH was created. See recital (1044). However, Trane Inc's liability for American Standard's participation in the cartel arrangements in Germany starts with the AGSI meeting of 6 March 1998. See recital (188).

¹⁵⁹⁵ See recital (299): ASI meeting of 21 July 1994.

¹⁵⁹⁶ See recital (558): AFPR meeting of 10 December 2002.

¹⁵⁹⁷ See recital (412): Euroitalia meeting of 15 March 1993.

regards the infringement in Belgium),¹⁵⁹⁸ and 30 November 1994 for Ideal Standard Nederland BV.¹⁵⁹⁹

7.2.3. Grohe

- (1146) The relevant starting date for Grohe Beteiligungs GmbH and Grohe AG is 15 March 1993.¹⁶⁰⁰
- (1147) The relevant starting date for the following Grohe entities is: 6 March 1998 for Grohe Deutschland Vertriebs GmbH (Germany),¹⁶⁰¹ 21 July 1994 for Grohe Gesellschaft mbH (Austria),¹⁶⁰² 21 September 2000 for Grohe N.V. (Belgium),¹⁶⁰³ 10 December 2002 for Grohe S.A.R.L. (France),¹⁶⁰⁴ 15 March 1993 for Grohe S.P.A. (Italy),¹⁶⁰⁵ and 28 September 1994 for Grohe Nederland B.V. (the Netherlands).¹⁶⁰⁶

7.2.4. Sanitec (Keramag, Koralle, Sphinx, Allia and Pozzi-Ginori)

- (1148) Sanitec Europe Oy, Finland, was at the time of the infringement the parent company of Koninklijke Sphinx B.V., Netherlands, Keramische Werke AG and its subsidiaries, Koralle Sanitärprodukte GmbH, Germany, Allia S.A.S. and Produits Ceramiques de Touraine S.A., France, and Pozzi-Ginori S.p.A., Italy.
- (1149) The relevant starting date for Sanitec Europe Oy is 12 October 1994.¹⁶⁰⁷ However, as explained in Section 6, Sanitec acquired Koralle Sanitärprodukte GmbH and Koninklijke Sphinx B.V. on 14 December 1999.
- (1150) The relevant starting date for Keramag AG is: 12 October 1994 in Austria,¹⁶⁰⁸ 30 October 2001 in Belgium,¹⁶⁰⁹ 7 July 2000 in Germany¹⁶¹⁰ and 26 November 1996 the Netherlands.¹⁶¹¹
- (1151) The relevant starting date for Koralle Sanitärprodukte GmbH is 24 January 1996.¹⁶¹²
- (1152) The relevant starting date is 28 September 1994 for Koninklijke Sphinx B.V.¹⁶¹³ in the Netherlands, and 30 October 2001 Belgium.¹⁶¹⁴
- (1153) The relevant starting date for Allia S.A.S. and Produits Céramiques de Touraine is 25 February 2004.¹⁶¹⁵
- (1154) The relevant starting date for Pozzi-Ginori S.p.A. is 14 May 1996.¹⁶¹⁶

¹⁵⁹⁸ See recital (507): VC meeting of 30 October 2001.

¹⁵⁹⁹ See recital (597): SFP meeting of 30 November 1994.

¹⁶⁰⁰ See recital (412): Euroitalia meeting of 15 March 1993.

¹⁶⁰¹ See recital (188): AGSI meeting of 6 March 1998.

¹⁶⁰² See recital (299): ASI meeting of 21 July 1994.

¹⁶⁰³ See recital (498): Amicale du Sanitaire meeting of 21 September 2000.

¹⁶⁰⁴ See recital (558): AFPR meeting of 10 December 2002.

¹⁶⁰⁵ See recital (412): Euroitalia meeting of 15 March 1993.

¹⁶⁰⁶ See recital (596): SFP meeting of 28 September 1994.

¹⁶⁰⁷ See recital (300): ASI meeting of 12 October 1994.

¹⁶⁰⁸ See recital (300): ASI meeting of 12 October 1994.

¹⁶⁰⁹ See recital (507): VC meeting of 30 October 2001.

¹⁶¹⁰ See recital (200): FSKI meeting of 7-8 July 2000.

¹⁶¹¹ See recital (598): SFP meeting of 26 November 1996.

¹⁶¹² See recital (182): ABW/ABD meeting of 24 January 1996.

¹⁶¹³ See recital (596): SFP meeting of 28 September 1994.

¹⁶¹⁴ See recital (507): VC meeting of 30 October 2001.

¹⁶¹⁵ See recital (572): AFICS meeting of 25 February 2004.

7.2.5. *Villeroy & Boch*

(1155) The relevant starting date is 12 October 1994 for Villeroy & Boch Austria Handels-GmbH, Austria,¹⁶¹⁷ 30 October 2001 for Villeroy & Boch Belgium S.A.,¹⁶¹⁸ 26 November 1996 for Villeroy & Boch Nederland B.V.,¹⁶¹⁹ and 25 February 2004 for Villeroy & Boch S.A.S., France.¹⁶²⁰ Although the first evidence of participation in price coordination discussions is dated of 28 December 1998 for Villeroy & Boch AG, Germany,¹⁶²¹ Villeroy & Boch AG is the 100% mother company of Villeroy & Boch Austria, Villeroy & Boch Belgium, Villeroy & Boch the Netherlands and Villeroy & Boch France. Accordingly, the relevant starting date for Villeroy & Boch AG is 12 October 1994.¹⁶²²

7.2.6 *Duscholux*

(1156) The relevant starting date is 15 September 1994 for DPM Duschwand-Produktions- und Montagegesellschaft m.b.H. (Germany),¹⁶²³ 29 November 1994 for Duscholux GmbH & Co KG (Austria)¹⁶²⁴ and 21 September 2000 for Duscholux Belgium N.V./S.A..¹⁶²⁵

7.2.7 *Hansa*

(1157) The relevant starting date is 26 November 1996 for Hansa Nederland B.V.,¹⁶²⁶ 16 October 1992 for Hansa Italiana s.r.l.,¹⁶²⁷ 10 March 2003 for Hansa Belgium BVBA-SPRL,¹⁶²⁸ and 21 July 1994 for Hansa Austria GmbH.¹⁶²⁹ Although the first evidence of participation in price coordination discussions is dated of 6 March 1998 for Hansa Metallwerke AG, Germany,¹⁶³⁰ Hansa Metallwerke AG is the 100% parent company of the subsidiaries Hansa Nederland B.V., Hansa Italiana s.r.l., Hansa Belgium BVBA-SPRL and Hansa Austria GmbH. Accordingly, the relevant starting date for Hansa Metallwerke AG is 16 October 1992.¹⁶³¹

7.2.8 *Roca*

(1158) Roca Sanitario SA, Spain, is the 100% owner of Roca s.a.r.l. (France) and Laufen Austria AG (Austria). The relevant starting date for Roca Sanitario is 29 October 1999, date of the acquisition of Laufen Austria AG.

¹⁶¹⁶ See recital (420): Michelangelo meeting of 14 May 1996.

¹⁶¹⁷ See recital (300): ASI meeting of 12 October 1994.

¹⁶¹⁸ See recital (507): VC meeting of 30 October 2001.

¹⁶¹⁹ See recital (598): SFP meeting of 26 November 1996.

¹⁶²⁰ See recital (572): AFICS meeting of 25 February 2004.

¹⁶²¹ See recital (192): Letter from Villeroy & Boch to American Standard dated 28 December 1998.

¹⁶²² See recital (300): ASI meeting of 12 October 1994.

¹⁶²³ See recital (178): Meeting with Shower enclosures manufacturers of 15 September 1994.

¹⁶²⁴ See recital (301): ASI meeting of 29 November 1994.

¹⁶²⁵ See recital (498): Amicale du Sanitaire meeting of 21 September 2000.

¹⁶²⁶ See recital (598): SFP meeting of 26 November 1996.

¹⁶²⁷ See recital (411): Euroitalia meeting of 16 October 1992.

¹⁶²⁸ See recital (521): HCT meeting of 10 March 2003.

¹⁶²⁹ See recital (299): ASI meeting of 21 July 1994.

¹⁶³⁰ See recital (189): AGSI meeting of 2 October 1998.

¹⁶³¹ See recital (411): Euroitalia meeting of 16 October 1992.

(1159) The relevant starting date is 10 December 2002 for Roca s.a.r.l. France,¹⁶³² and 12 October 1994 for Laufen Austria AG in Austria.¹⁶³³

7.2.9 *Dornbracht*

(1160) The relevant starting date is 6 March 1998 for Aloys F. Dornbracht GmbH & CO. KG Armaturenfabrik, Germany.¹⁶³⁴

7.2.10 *Duravit*

(1161) The relevant starting date is 7 July 2000 for Duravit AG, Germany.¹⁶³⁵ Regarding its two 100% subsidiaries, the relevant starting date is 25 February 2004 for Duravit S.A., France,¹⁶³⁶ and 30 October 2001 for Duravit Belux SPRL/BVBA Belgium.¹⁶³⁷

7.2.11 *Kludi*

(1162) The relevant starting date is 21 July 1994 for Kludi Armaturen GmbH & CO. KG, Austria.¹⁶³⁸ The relevant starting date is 6 March 1998 for Kludi GmbH & Co KG, Germany.¹⁶³⁹

7.2.12 *Artweger*

(1163) The relevant starting date is 12 October 1994 for Artweger GmbH & Co KG, Austria.¹⁶⁴⁰

7.2.13 *Cisal*

(1164) The relevant starting date is 15 March 1993 for Rubinetteria Cisal S.p.A.¹⁶⁴¹

7.2.14 *Mamoli*

(1165) The relevant starting date is 18 October 2000 for Mamoli Robinetteria S.p.A.¹⁶⁴²

7.2.15 *RAF*

(1166) The relevant starting date is 15 March 1993 for RAF Rubinetteria S.p.A.¹⁶⁴³

7.2.16 *Teorema*

(1167) The relevant starting date is 15 March 1993 for Teorema Rubinetteria S.p.A.¹⁶⁴⁴

7.2.17 *Zucchetti*

(1168) The relevant starting date is 16 October 1992 for Zucchetti Rubinetteria S.p.A.¹⁶⁴⁵

¹⁶³² See recital (558): AFPR meeting of 10 December 2002.

¹⁶³³ See recital (300): ASI meeting of 12 October 1994.

¹⁶³⁴ See recital (188): AGSI meeting of 6 March 1998.

¹⁶³⁵ See recital (200): FSKI meeting of 7-8 July 2000.

¹⁶³⁶ See recital (572): AFICS meeting of 25 February 2004.

¹⁶³⁷ See recital (507): VC meeting of 30 October 2001.

¹⁶³⁸ See recital (299): ASI meeting of 21 July 1994.

¹⁶³⁹ See recital (188): AGSI meeting of 6 March 1998.

¹⁶⁴⁰ See recital (300): ASI meeting of 12 October 1994.

¹⁶⁴¹ See recital (412): Euroitalia meeting of 15 March 1993.

¹⁶⁴² See recital (442): Euroitalia meeting of 18 October 2000.

¹⁶⁴³ See recital (412): Euroitalia meeting of 15 March 1993.

¹⁶⁴⁴ See Recital (412): Euroitalia meeting of 15 March 1993.

¹⁶⁴⁵ See Recital (411): Euroitalia meeting of 16 October 1992.

7.3 End Date for Each Undertaking

- (1169) As regards the end date of the infringement for each undertaking, the following preliminary remarks are pertinent. In cases of complex infringements, the fact that an undertaking is not present in a meeting, or does not agree with what is discussed in a meeting, does not mean that the undertaking has terminated its participation in an on-going infringement. In order to terminate the infringement, the undertaking must clearly distance itself from the cartel. In the absence of such explicit withdrawal the Commission may still consider that the infringement has not yet been terminated.¹⁶⁴⁶ Similarly, the Court has referred to the requirement "*to distance itself openly from the cartel objectives and the methods to be used for implementing those objectives*", in the absence of which the undertaking can be deemed not to have withdrawn from the cartel.¹⁶⁴⁷ In this case there is no such evidence of any withdrawal from the cartel by any undertaking.
- (1170) Having regard to the considerations given at recital (1169), the Commission considers that the cartel continued, in most cases, until the surprise inspections carried out by the Commission on 9 and 10 November 2004. Overall, the Commission thus takes 9 November 2004 as the end date regarding all addressees of this Decision, with the following exceptions:
- (1171) First, Masco Corporation began cooperating with the Commission on 15 July 2004 and stopped its involvement in the cartel immediately thereafter. 15 July 2004 should thus be deemed to constitute the termination date of the infringement as regards Masco Corporation and its subsidiaries Hansgrohe AG; Hansgrohe Deutschland Vertriebs GmbH (Germany); Hans Grohe S.A. (Belgium); Hans Grohe B.V. (Netherlands); Hansgrohe S.A.R.L. (France); Hansgrohe S.R.L. (Italy); Hans Grohe Handelsges. mbH (Austria); Hüppe GmbH (Germany); Hüppe Belgium N.V./S.A.; Hüppe BV (Netherlands); and Hüppe Ges. mbH (Austria).
- (1172) Second, the Commission considers that Pozzi-Ginori's participation lasted until the Michelangelo meeting of 14 September 2001.¹⁶⁴⁸
- (1173) Lastly, the date of termination of the infringement taken into account by the Commission regarding all undertakings active in the Netherlands, with the exception of Duscholux, is 31 December 1999. Indeed, the latest piece of documentary evidence in the Commission's possession specifically attesting to price discussions concerns the SFP meeting dated 20 January 1999.¹⁶⁴⁹ As the prices discussed at that meeting were to apply in the Netherlands until at least 31 December 1999, the Commission considers that the latter date is the relevant termination date concerning cartel participants in the Netherlands.¹⁶⁵⁰

7.4 Conclusion on the Duration of the Infringement

Table B: Duration of Infringement Period per Addressee

¹⁶⁴⁶ Case T-62/02 *Union Pigments AS v Commission* [2005] ECR II-5057, paragraph 94; Case T-303/02 *Westfalen Gassen Nederland v Commission* [2006] ECR II-4567, paragraphs 138-139.

¹⁶⁴⁷ Case T-329/01 *Archer Daniels Midland v Commission* [2006] ECR II-3255, paragraph 247.

¹⁶⁴⁸ See recital (445): Michelangelo meeting of 14 September 2001.

¹⁶⁴⁹ See recital (600): SFP meeting of 20 January 1999.

¹⁶⁵⁰ This is a conservative interpretation, considering that the handwritten notes found at the premises of Hansgrohe (see recital (600)) establish that the said price increases were to be applied as of April 1999, which may well in turn be deemed to indicate that the relevant price cycle lasted until April 2000.

Addressees	Period of involvement	Number of years and months
Masco Corporation Inc.	From 1 January 1995 To 15 July 2004	9 years and 6 months
<i>Hansgrohe AG</i>	From 16 October 1992 To 15 July 2004	11 years and 8 months
<i>Hansgrohe Deutschland Vertriebs GmbH (Germany)</i>	From 6 November 2002 To 15 July 2004	1 year and 8 months
<i>Hans Grohe Handelsges.mbH (Austria)</i>	From 30 May 1995 To 15 July 2004	9 years and 1 month
<i>Hansgrohe S.R.L. (Italy)</i>	From 16 October 1992 To 15 July 2004	11 years and 8 months
<i>Hans Grohe S.A. (N.V.) (Belgium)</i>	From 21 September 2000 To 15 July 2004	3 years and 9 months
<i>Hansgrohe S.A.R.L. (France)</i>	From 1 May 2004 To 15 July 2004	2 months
<i>Hans Grohe B.V. (Netherlands)</i>	From 28 September 1994 To 31 December 1999	5 years and 3 months
<i>Hüppe GmbH (Germany)</i>	From 15 September 1994 To 15 July 2004	9 years and 10 months
<i>Hüppe Ges.mbH (Austria)</i>	From 12 October 1994 To 15 July 2004	9 years and 8 months
<i>Hüppe Belgium N.V./S.A.</i>	From 10 March 2003 To 15 July 2004	1 year and 4 months
<i>Hüppe B.V. (Netherlands)</i>	From 20 January 1999 To 31 December 1999	11 months
Trane Inc. (USA)	From 15 March 1993 To 9 November 2004	11 years and 8 months
WABCO BVBA	From 29 October 2001 To 9 November 2004	3 years
Ideal Standard Produktions-GmbH	From 30 October 2001 To 9 November 2004	3 years
Ideal Standard GmbH (Germany)	From 19 March 2003 To 9 November 2004	1 year and 7 months
WABCO Austria GmbH	From 21 July 1994 To 9 November 2004	10 years and 3 months
Ideal Standard Italia s.r.l.	From 15 March 1993 To 9 November 2004	11 years and 7 months
Ideal Standard S.A.S. (France)	From 10 December 2002 To 9 November 2004	1 year and 10 months
Ideal Standard Nederland BV	From 30 November 1994 To 31 December 1999	5 years and 1 month
Grohe Beteiligungs GmbH (Germany)	From 19 March 2003 To 9 November 2004	1 year and 7 months
<i>Grohe AG (Germany)</i>	From 15 March 1993 To 9 November 2004	11 years and 8 months
<i>Grohe Deutschland Vertriebs GmbH (Germany)</i>	From 6 March 1998 To 9 November 2004	6 years and 8 months
<i>Grohe Vertriebs</i>	From 21 July 1994	10 years and 3 months

<i>Gesellschaft mbH (Austria)</i>	To 9 November 2004	
<i>Grohe S.p.A. (Italy)</i>	From 15 March 1993 To 9 November 2004	11 years and 7 months
<i>Grohe NV (Belgium)</i>	From 21 September 2000 To 9 November 2004	4 years and 1 month
<i>Grohe S.A.R.L. (France)</i>	From 10 December 2002 To 9 November 2004	1 year and 11 months
<i>Grohe Nederland B.V.</i>	From 28 September 1994 To 31 December 1999	5 years and 3 months
Sanitec Europe Oy	From 12 October 1994 To 9 November 2004	10 years and 1 month
<i>Keramag Keramische Werke AG (Germany)</i>	From 12 October 1994 to 9 November 2004	10 years
<i>Koralle Sanitärprodukte GmbH (Germany)</i>	From 24 January 1996 To 9 November 2004	8 year and 9 months
<i>Koninklijke Sphinx B.V. (Netherlands)</i>	From 28 September 1994 To 9 November 2004	10 years and 1 month
<i>Sphinx Bathrooms Belgium N.V. (S.A.)</i>	From 30 October 2001 To 9 November 2004	3 years
<i>Allia S.A.S. (France)</i>	From 25 February 2004 To 9 November 2004	8 months
<i>Produits Céramiques de Touraine S.A. (France)</i>	From 25 February 2004 To 9 November 2004	8 months
<i>Pozzi-Ginori S.p.A.</i>	From 14 May 1996 To 14 September 2001	5 years and 4 months
Villeroy & Boch AG	From 28 September 1994 To 9 November 2004	10 years and 1 month
<i>Villeroy & Boch Austria Handels-GmbH</i>	From 12 October 1994 To 9 November 2004	10 years
<i>Villeroy & Boch Belgium S.A.</i>	From 30 October 2001 To 9 November 2004	3 years
<i>Villeroy & Boch S.A.S. (France)</i>	From 25 February 2004 To 9 November 2004	8 months
<i>Villeroy & Boch Nederland B.V.</i>	From 26 November 1996 To 31 December 1999	3 years and 1 month
DPM Duschwand-Produktions- und Montagegesellschaft m.b.H. (Germany)	From 15 September 1994 To 9 November 2004	10 years and 1 month
Duscholux GmbH (Austria)	From 29 November 1994 To 9 November 2004	9 years and 11 months
Duscholux Belgium N.V./S.A.	From 21 September 2000 To 9 November 2004	4 years and 1 month
Hansa Metallwerke AG (Germany)	From 16 October 1992 To 9 November 2004	12 years
<i>Hansa Austria GmbH</i>	From 21 July 1994 To 9 November 2004	10 years and 3 months
<i>Hansa Italiana s.r.l. (Italy)</i>	From 16 October 1992	12 years

	To 9 November 2004	
<i>Hansa Belgium BVBA-SPRL</i>	From 10 March 2003 To 9 November 2004	1 year and 7 months
<i>Hansa Nederland BV</i>	From 26 November 1996 To 31 December 1999	3 years and 1 month
Roca Sanitario SA	From 29 October 1999 To 9 November 2004	5 years and 1 month
<i>Laufen Austria AG</i>	From 12 October 1994 To 9 November 2004	10 years
<i>Roca s.a.r.l. (France)</i>	From 10 December 2002 To 9 November 2004	1 year and 10 months
Aloys F. Dornbracht GmbH & Co. KG	From 6 March 1998 To 9 November 2004	6 years and 8 months
Duravit AG (Germany)	From 7 July 2000 To 9 November 2004	4 years and 4 months
<i>Duravit Belux SPRL/BVBA (Belgium)</i>	From 30 October 2001 To 9 November 2004	3 years
<i>Duravit S.A. (France)</i>	From 25 February 2004 To 9 November 2004	8 months
Kludi GmbH & Co KG (Germany)	From 6 March 1998 To 9 November 2004	6 years and 8 months
<i>Kludi Armaturen GmbH & Co.KG (Austria)</i>	From 21 July 1994 To 9 November 2004	10 years and 3 months
Artweger GmbH & Co KG (Austria)	From 12 October 1994 To 9 November 2004	10 years and 11 months
Rubinetteria Cisal S.p.A. (Italy)	From 15 March 1993 To 9 November 2004	11 years and 7 months
Mamoli Robinetteria S.p.A. (Italy)	From 18 October 2000 To 9 November 2004	4 years
RAF Rubinetteria S.p.A. (Italy)	From 15 March 1993 To 9 November 2004	11 years and 7 months
Teorema Rubinetteria S.p.A. (Italy)	From 15 March 1993 To 9 November 2004	11 years and 7 months
Zucchetti Rubinetteria S.p.A. (Italy)	From 16 October 1992 To 9 November 2004	12 years

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

- (1174) Where the Commission finds that there is an infringement of Article 101 TFEU and Article 53 of the EEA Agreement, it may, by decision, require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (1175) Given the incidence and secrecy of the cartel arrangements over a number of years, it is not possible to determine with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or similar object or effect.
- (1176) Such prohibition applies to all secret meetings and multilateral or bilateral contacts between competitors with the object or effect of restricting competition between them or enabling them to coordinate their market behaviour.

8.2. Application of Limitation Periods

- (1177) Pursuant to Article 25(1)(b) of Regulation (EC) No 1/2003, the power of the Commission to impose fines or penalties for infringements of the substantive rules relating to competition is subject to a limitation period of five years. For continuing or repeated infringements, the limitation period only begins to run on the day the infringement ceases.¹⁶⁵¹ Any action taken by the Commission for the purpose of the preliminary investigation or proceedings in respect of an infringement interrupts the limitation period and each interruption starts time running afresh.¹⁶⁵²
- (1178) In this case, the Commission's investigation started with the unannounced inspections held on 9-10 November 2004, pursuant to Article 20(4) of Regulation (EC) No 1/2003. Hence, no fine may be imposed regarding any illegal conduct that ceased prior to 9 November 1999, unless such infringement started before that date and was continuing or repeated with the same object.
- (1179) Moreover, as this Decision is adopted after 31 December 2009, the infringement is prescribed insofar as it relates to the cartel meetings in the Netherlands within the framework of SFP. It is considered that there is a legitimate interest in finding that part of the infringement, as it is part of a wider overall infringement, and therefore helps explain the true scope and consistency of the anticompetitive behaviour.
- (1180) Villeroy & Boch argues that it stopped participating in the ASI ceramics sub-group in 2000, such that the alleged infringement in respect of the alleged anticompetitive conduct in Austria would now be time-barred in any event.¹⁶⁵³ However, as also stated in recital (388) Villeroy & Boch continued to regularly participate in the ASI plenary meetings, where price coordination took place, such as – by way of example - the meetings of 21 June 2001,¹⁶⁵⁴ 19 September 2002,¹⁶⁵⁵ 7 November 2002,¹⁶⁵⁶ 23 January 2003¹⁶⁵⁷ or 26 June 2003¹⁶⁵⁸ and

¹⁶⁵¹ Article 25(2) of Regulation No 1/2003.

¹⁶⁵² Article 25(3) to (5) of Regulation (EC) No 1/2003.

¹⁶⁵³ (...)

¹⁶⁵⁴ (...)

¹⁶⁵⁵ (...)

which had an impact on all the product groups in which Villeroy & Boch was at the time active. The infringement for Villeroy & Boch is thus in no way time-barred.

- (1181) Finally in its reply to the SO, Sanitec argues that several allegations are old and that limitation periods should prevent those isolated items of evidence from being used without the possibility for the undertakings involved to effectively respond.¹⁶⁵⁹ This argument cannot be accepted. The various anticompetitive meetings, evidence of which is used by the Commission to establish proof of the facts in this case, form part of a continuous infringement. The infringement was not interrupted between the relevant association meetings, as they took place very frequently, in a sustained way over a long period of time. The Commission has properly assessed the underlying evidence in the continuum of price coordination efforts undertaken by the cartel participants. The fact that the recurring pattern of anticompetitive meetings may be traced as back as 1992 does not in any way preclude the Commission from investigating or sanctioning the cartel, but to the contrary attests to its longevity, intensity and stability.¹⁶⁶⁰

8.3. Article 23(2) of Regulation (EC) No 1/2003

- (1182) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may, by Decision, impose upon undertakings fines where, either intentionally or negligently, they infringe Article 101 TFEU or Article 53 of the EEC Agreement.¹⁶⁶¹ Under Article 15(2) of Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the EC Treaty,¹⁶⁶² which was applicable during part of the infringement, the fine for each undertaking participating in the infringement could not exceed 10% of its total turnover in the preceding business year.
- (1183) Pursuant to Article 23(3) of Regulation (EC) No 1/2003 and Regulation No 17 the Commission must, in fixing the amount of the fine, have regard to all relevant circumstances and particularly the gravity and duration of the infringement.
- (1184) In doing so, the Commission will set the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fines imposed any aggravating or mitigating circumstances pertaining to each undertaking. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC)

1656 (...)

1657 (...)

1658 (...)

1659 (...)

1660 (...)

(...) the Commission ultimately focused its investigation (and this Decision) in the period from 1992 to 2004, where the evidence in the Commission's file presented the highest degree of continuity and coherence, notably within the specific framework of regular association meetings. Similarly, the Commission delineated the scope of the infringement by reference to association meetings for which a continuous and consistent body of evidence had been identified during the proceedings, adjusting the relevant period(s) in each Member State (and for each product group) accordingly.

1661 Further, under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area, "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 81 and 82] of the EC Treaty [...] shall apply *mutatis mutandis*". (OJ L 305, 30.11.1994, p. 6).

1662 OJ 13, 21.2.1962, p. 204. English special edition: Series I Chapter 1959-1962 P. 0087.

No 1/2003¹⁶⁶³ (hereafter, "the 2006 Guidelines on fines"). Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice.

8.4. The Guidelines on Fines

- (1185) In their replies to the SO, some addressees contest the application of the 2006 Guidelines on fines.¹⁶⁶⁴ Ideal Standard claims that any fine imposed should be determined according to the Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (hereinafter referred to as "1998 Guidelines on fines").¹⁶⁶⁵ In particular, it argues that applying the 2006 Guidelines on fines to them would violate the general principles of non-retroactivity, equal treatment and the protection of legitimate expectations. According to these arguments, the introduction of the 1998 Guidelines on fines did create legitimate expectations on the part of an individual undertaking and their retroactive revision would be permitted only if that revision were reasonably foreseeable. Moreover, it is submitted that applying the 2006 Guidelines on fines, which could substantially increase the amount of the fines imposed, would violate the general principles of proportionality, non-discrimination, legal certainty, coherent application of fines and *nulla poena sine lege*.
- (1186) Moreover, it is claimed that, in practice, the 2006 Guidelines on fines render a separate assessment of the gravity of an infringement irrelevant in most cases investigated by the Commission, because the 100% increase for each year of the duration of an infringement, combined with an entry fee of 15% to 25%, in practice result in a fine that reaches or exceeds the 10% total turnover cap.¹⁶⁶⁶
- (1187) The Commission disagrees with those arguments. To the extent that they rely on the premise that applying the 2006 Guidelines on fines would lead to higher fines than under the 1998 Guidelines on fines, it shall be noted that the 2006 Guidelines on fines merely establish a different method of calculation of fines and do not provide for higher fines than under the 1998 Guidelines. On the opposite, under the 1998 Guidelines on fines, the likely starting amount would be above EUR 20 million in case of very serious infringements such as the one in this case. Further, the 1998 Guidelines on fines did not establish any specific ceiling, apart from the general one imposed at Article 23 of Regulation (EC) 1/2003, and the Commission was entitled to take into account the size of the market or the value of sales when setting the amount of the fine. Besides, it is true that under the 2006 Guidelines on fines the increase for duration is higher, but it will apply to an amount which is likely to be lower than the one which used to be set under the 1998 Guidelines on fines. Therefore, the Commission notes that the addressees do not appear in reality to argue that the 1998 Guidelines on fines should apply to this case, but rather that the Commission should abide by the level of fines that it has applied in the past, when the 1998 Guidelines on fines were

¹⁶⁶³ OJ C 210, 1.9.2006, p. 2

¹⁶⁶⁴ (...)

¹⁶⁶⁵ OJ C 9, 14.1.1998, p. 3.

¹⁶⁶⁶ (...) American Standard Inc. further argues that including the acquired companies' turnover for each year prior to their acquisition would disregard the principle *nulla poena sine lege*: a substantial increase in the fine by application of point 24 of the 2006 Guidelines on fines in conjunction with the principle of successor liability goes beyond the relevant legal framework relating to penalties, as set out in Article 23 of Regulation (EC) No 1/2003. (...)

still applicable. Thus, in essence, the addressees simply argue that the Commission should be bound by the previous practice, and therefore by the previous levels of fines.

- (1188) However, it is settled case law that in determining the amount of the fines, the Commission has wide discretion. It is also settled case law that the fact that the Commission imposed fines of a certain level for certain types of infringements in the past does not mean that it cannot increase that level to ensure the implementation of the competition policy of the European Union. The proper application of the competition rules of the European Union requires that the Commission may at any time adjust the level of fines to the needs of that policy.¹⁶⁶⁷ The Commission is entitled to increase the general level of fines if, for example, it believes that such an increase is necessary to achieve a deterrent effect in the light of the frequency of contraventions of the competition rules.¹⁶⁶⁸ Moreover, the Commission's practice in previous cases does not serve as a legal framework for fines in competition matters¹⁶⁶⁹ and the undertakings involved in an administrative procedure in which fines may be imposed cannot acquire a legitimate expectation that the Commission will not exceed the level of fines previously imposed or in a method of calculating the fines.¹⁶⁷⁰ Finally, the Commission can alter the weight that it gives to particular factors in its assessment of gravity of the infringement.¹⁶⁷¹
- (1189) The principles of non-retroactivity, legal certainty, legitimate expectations and equal treatment are not violated by the application of the 2006 Guidelines on fines. The principle of the legality of criminal offences and penalties (*nullum crimen, nulla poena sine lege*) implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable.¹⁶⁷² It also implies that a heavier penalty shall not be imposed than the one that was applicable at the time the criminal offence was committed.
- (1190) The Court of Justice has had the opportunity to address similar issues in the past as regards the application of the 1998 Guidelines on Fines.¹⁶⁷³ On the assumption that those 1998 Guidelines on fines had the effect of increasing the level of the fines imposed, the Court held

¹⁶⁶⁷ See, *inter alia*, Joined cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission* [1983] ECR 1825, paragraph 109 and Joined Cases C-189/02P, C-202/02P, C-205/02P to C-208/02P and C-213/02P *Dansk Rørindustri and others v Commission* [2005] ECR I-5425, paragraph 227; Case T-303/02 *Westfalen Gassen Nederland v Commission* [2006] ECR II-4567, paragraph 151; Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients v Commission* [2003] ECR II-2597, paragraph 56 referring to Case T-150/89 *Martinelli v Commission* [1995] ECR II-1165, paragraph 59.

¹⁶⁶⁸ See for example Joined Cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission* [1983] ECR 1825 paragraphs 105-108; Case T-334/94 *Sarrió v Commission* [1998] ECR I-1439, paragraph 331.

¹⁶⁶⁹ Case T-52/02 *SNCZ v Commission* [2005] ECR II-5005, paragraph 77.

¹⁶⁷⁰ Joined Cases C-189/02 P, C-202/02 P, C-205/02P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 228. See also Judgment of 8 October 2008 in Case T-73/04 *Le Carbone-Lorraine v Commission*, not yet reported, paragraph 205.

¹⁶⁷¹ See for example Case T-347/94 *Meyr-Melnhof v Commission* [1998] ECR II-1751, paragraph 368; See also Case T-241/01 *SAS v Commission* [2005] ECR II-2917, paragraph 132.

¹⁶⁷² Joined Cases C-189/02 P, C-202/02 P, C-205/02P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraphs 215 to 219.

¹⁶⁷³ See for example Joined Cases C-189/02P, C-202/02P, C-205/02P to C-208/02P and C-213/02 P *Dansk Rørindustri and others v Commission* [2005] ECR I-5425, paragraphs 222-230; Case C-397/03P *Archer Daniels Midland v Commission* [2006] ECR I-4429, paragraphs 15-36; T-15/02 *BASF AG v Commission* [2006] ECR II-497, paragraph 250; T-101/05 and T-111/05 *BASF and UCB v Commission* [2007] ECR II-4949, paragraphs 233-234. See also, more generally, Case T-279/02 *Degussa v Commission* [2006] ECR II-897, paragraphs 34-98.

that the 1998 Guidelines on fines and, in particular, the new method of calculating fines contained therein, were reasonably foreseeable for undertakings at the time when the infringements were committed. The fact that the Court findings were made in a context where there were no previous guidelines of fines does not render such findings inapplicable to this case, since in its Judgment the Court addressed generally the issue of a change in "enforcement policy". Taking into account that the case law has consistently admitted that turnover of the product to which the infringement relates can be relevant in the setting of the fine,¹⁶⁷⁴ that element of the calculation cannot be considered to be unforeseeable. Insofar as the harm or the expected benefit of an infringement will be the same every year, it cannot be said that multiplying the variable amount of the fine by the number of years of infringement is unforeseeable either.¹⁶⁷⁵

- (1191) As regards the contention that the new policy results in a higher fine than that imposed on the basis of the former practice, it should be noted that this is not necessarily so. The Commission could have also increased the level of fines under the 1998 Guidelines on fines. The addressees clearly cannot have foreseen the exact level of fine that they could expect under the 1998 Guidelines and all their arguments to that effect are speculative. Insofar as the Commission could at any time revise its own Guidelines, and, as it was the case as regards the 1998 Guidelines, apply them to cases in the past, undertakings could not have any specific legitimate expectation that the fine to be imposed would be based on the 1998 Guidelines. Finally, as regards comparison with fines set in previous decisions under the 1998 Guidelines on Fines, each infringement is necessarily different as regards its nature and scope, as well as the markets, the products, the undertakings and the periods concerned.¹⁶⁷⁶
- (1192) Since fines are based on turnovers to which the infringement relates, Ideal Standard's arguments according to which (...), is irrelevant. Whether or not fines reach the 10% cap depends on a number of variables, and the mere fact that the fine of certain undertakings reaches such cap does not render the fine disproportionate, nor does it imply that it is based only on the undertaking's total turnover.¹⁶⁷⁷ The 10% upper limit seeks to prevent fines being imposed which the undertakings, owing to their size (as determined, albeit approximately and imperfectly, by their total turnover), are unlikely to be able to pay. It is precisely this upper limit that seeks to ensure that the fines are not excessive or disproportionate. The 10% ceiling thus has a distinct and autonomous objective by comparison with the criteria of gravity and duration of the infringement.¹⁶⁷⁸
- (1193) Finally, it is noted that the Commission already considered, at recital (486) of the SO, the application of the 2006 Guidelines on fines to this case.

8.5. The basic amount of the fines

¹⁶⁷⁴ Judgment of 8 July 2008, *BPB v Commission*, T-53/03, paragraph 278, and case law cited therein.

¹⁶⁷⁵ Especially since the scope of the notion of foreseeability depends to a considerable degree on the content of the text in issue, the field it is designed to cover and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation (Joined Cases C-189/02P, C-202/02P, C-205/02P to C-208/02P and C-213/02P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 219).

¹⁶⁷⁶ Case T-329/01 *Archer Daniels Midland v Commission* [2006] ECR II-3255, paragraph 112.

¹⁶⁷⁷ See for example Joined Cases C-189/02P, C-202/02P, C-205/02P to C-208/02P and C-213/02P *Dansk Rørindustri and others v Commission* [2005] ECR I-5425, paragraphs 272-283.

¹⁶⁷⁸ Case T-52/03 *Knauf Gips v Commission*, not reported, paragraphs 452-453.

8.5.1 Methodology

- (1194) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales.
- (1195) According to the 2006 Guidelines on fines, the basic amount of the fine consists of an amount of between 0% and 30% of a company's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the company's participation in the infringement, and an additional amount of between 15% and 25% of the value of a company's sales, irrespective of duration.
- (1196) The Commission has used the figures provided by the undertakings for the calculations.¹⁶⁷⁹
- (1197) In determining the basic amount to be imposed, the Commission takes the value of each undertaking's sales of goods to which the infringement directly or indirectly relates in the geographic area concerned. In particular, for each undertaking, the basis of the calculation in this case is its sales by Member State, multiplied by the number of years of its individual participation in the infringement in that Member State and for its corresponding group of products. Therefore, the fact that some undertakings are only active in some Member States, or in only one of the product groups concerned, is properly reflected in the calculation of the fine. In the circumstances of this case, this tailored calculation by Member State and product group ensures that the fines to be imposed are representative of each undertaking's own involvement in the cartel, as well as consistent with the delineation of the infringement for each relevant Member State and product group (based on the evidence in the Commission's disposal).
- (1198) In accordance with point 13 of the 2006 Guidelines on fines, the Commission took as the basis for the calculation the sales made by each undertaking during the last full business year of its participation in the infringement. There are no particular or otherwise exceptional circumstances in this case to warrant a departure from this principle.

8.5.2 *The value of sales in this case*

- (1199) In this case, the sales of taps and fittings, ceramic sanitary wares and shower enclosures made by each undertaking in Germany, Austria, Italy, Belgium and France will be considered (depending on its individual involvement in the cartel).
- (1200) In accordance with the findings on the duration of the involvement in the infringement (see Section 7), the following business years are taken into account when determining the value of sales: in relation to four countries to which the infringement relates, namely Germany, Austria, Belgium and Italy, the last full year of infringement is 2003 for all undertakings; for the infringement relating to ceramics in France, the calculation is based on the sales made in 2004, as the duration relating to this product group in this country only encompasses 8 months in 2004. Further, for Hansgrohe in France, although the concerned sales were achieved in the product group of taps and fittings, the sales in 2004 have to be taken into account, as the infringement of the entity lasted only two months in 2004. Lastly, as regards Pozzi Ginori in Italy, its participation in the cartel arrangements ended on 14 September

¹⁶⁷⁹ For this purpose, a main request for information was sent to all parties on 25 April 2008 (see recital (144)). A subsequent request regarding the application of the 10% legal maximum (identification of the parties' total turnover in the preceding business year) was sent to all parties on 23 December 2009.

2001, so that the sales achieved by that undertaking in 2000 have to be taken into consideration.

- (1201) In its reply to the SO, Cisal draws a distinction between the so-called "standard price list" and the "special price list" (that is, the list destined to specific clients with products exclusively made for them to order). It claims that it has not reported prices from the "special price list" at Euroitalia meetings and, therefore, the latter part of Cisal's activities remained outside of all agreed practices (with Cisal maintaining a totally competitive conduct). On that basis, Cisal essentially maintains that sales associated with its so-called "special price list" should be excluded from the calculation of the value of sales.¹⁶⁸⁰
- (1202) These arguments cannot be accepted. In particular, no such distinction can readily be inferred or ascertained from the notes of the Euroitalia meetings. Having regard to the specific context and nature of price discussions at Euroitalia meetings (as described in Section 4.2.3), price coordination covered taps and fittings in general. There is no evidence in the file suggesting that price increases announced and discussed would not apply to the "special prices" too. In any event, even if it were to be assumed that the so-called "special price list" was never directly or indirectly the subject of price discussions at the meetings, sales associated with that list would be affected by the infringement, because these so-called "special" prices were in all likelihood set by reference to the "standard" prices (usually reflecting a percentage add-on compared with the "standard" prices).¹⁶⁸¹ Indeed, it is entirely rational from a business perspective that the price level for any "standard" price lists is bound to influence the setting of prices for all "specialized" derivative products.
- (1203) In their respective replies to the SO, Kludi, Sanitec and Villeroy & Boch argue that the price discussions held at the various associations' meetings did not cover products that the manufacturers sold to the wholesalers and that were aimed to be sold to the consumer under the wholesalers' own brands (so called "private labels").¹⁶⁸² Although the Commission's file includes documents that tend to indicate that price discussions covered products to be sold under the wholesalers' own brands, it cannot be established with sufficient certainty that such products were covered in the regular price discussions in all Member States. Therefore, the value of sales taken into account for the calculation of the amount of the fine will not include those products' sales.¹⁶⁸³
- (1204) Moreover, Sanitec alleges that the Commission should take account of the fact that the so-called "list prices" are only used for a certain part of the market, while the sales for so-called project sales and sales to DIY-outlets were not based directly on list prices. According to Sanitec, in the cases of project sales, an architect or planner or sometimes also an installer would approach a wholesaler, which then in turn would contact manufacturers to conduct a tender process for a specific project such as the construction of a residential house, a hospital or a hotel. With regard to these latter sales, Sanitec argues that, although part of them is made via the wholesalers, the prices are negotiated individually at the beginning of the project and, as projects often comprise a time span of over 12 months, the prices are in most cases not aligned to the changes in the price lists over time.¹⁶⁸⁴
- (1205) Despite indications to the contrary, the Commission has decided to exclude in its fine calculation any sales made from the manufacturers directly to so-called DIY-outlets, despite

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1681 (...)
1682 (...)
1683 (...)
1684 (...)

indications that information on DIY outlets was exchanged at some meetings (see for example recitals (431) and (444)).

(1206) As concerns the so-called project sales to which Sanitec refers, a more differentiated approach is necessary. The Commission considers, on balance, that there is not sufficient evidence to find that the infringement related to project sales which were made directly from the manufacturer to the respective end-consumers, such as hospitals, public authorities, hotels. The Commission is of the opinion that the infringement was focussed on sales made to wholesalers rather than end-consumers, which were not systematically made aware of the agreed price increases. Sales made directly to end consumers will therefore be excluded from the values of sales taken into consideration for the calculation of the fine.

(1207) However, as stated by Sanitec itself, a number of so-called project sales were made from manufacturers to wholesalers, who then sold on to the respective end consumers, either directly or via installers. The Commission takes the view that the infringement did indeed directly or indirectly relate to these sales and that these sales should be taken into account for the determination of the value of sales for the following reasons. First, these sales were made by manufacturers to wholesalers or even in the framework of the so-called three-tier distribution system, in which wholesalers sell on to installers which then supply the end-consumer. Sales made by manufacturers to wholesalers were the core of the infringement at stake, irrespective of the end consumer to whom the wholesaler subsequently sold or whether the price list was in every case readjusted over the life cycle of a certain project. Second, even if the list prices were not directly used for each individual project in the same way, it would be unconceivable that price suggestions would not be based on the manufacturers' coordination on price increases and the list prices which they used to sell to wholesalers and which the wholesalers were therefore aware of. Third, a distinction of sales depending on whether the end consumer accepted the price as proposed by a wholesaler or installer or whether he asked for a re-negotiation on the basis of a tender of the manufacturers is artificial and not acceptable to the Commission. Thus, the Commission concludes that all sales made by the manufacturers to the wholesalers should be taken into account when determining the value of sales to which the infringement directly or indirectly related.

(1208) The value of sales of the products to which the infringement related was as follows:

Table C: Value of Sales

Undertaking	Product group	Value of sales
Masco (Hansgrohe)	Taps and Fittings	(...) (in Germany); (...) (in Austria); (...) (in Italy); (...) (in Belgium); (...) (in France).
Masco (Damixa)	Taps and Fittings	(...) (in Belgium).
Masco (Hüppe)	Shower Enclosures	(...) (in Germany); (...) (in Austria); (...) (in Belgium).
Grohe	Taps and Fittings	(...) (in Germany);

		(...) (in Austria); (...) (in Belgium), (...) (in Italy); (...) (in France).
Ideal Standard	Taps and Fittings	(...) (in Germany); (...) (in Austria); (...) (in Italy); (...) (France).
Ideal Standard	Ceramics	(...) (in Germany); (...) (in Austria); (...) (in Italy); (...) (in Belgium); (...) (in France).
Roca	Ceramics	(...) (in Austria); (...) (in France).
Roca	Taps and fittings	(...) (in France) .
Hansa	Taps and fittings	(...) (in Germany); (...) (in Austria); (...) (in Italy); (...) (in Belgium).
Dornbracht	Taps and fittings	(...) (in Germany); (...) (in Austria).
Sanitec (Keramag)	Ceramics	(...) (in Germany); (...) (in Austria); (...) (in Belgium).
Sanitec (Koralle)	Shower Enclosure	(...) (in Germany).
Sanitec (Sphinx)	Ceramics	(...) (in Belgium).
Sanitec (Allia)	Ceramics	(...) (in France).
Sanitec (Produits céramiques de Touraine)	Ceramics	(...) (in France).
Sanitec (Pozzi Ginori)	Ceramics	(...) (in Italy).
Villeroy & Boch	Ceramics	(...) (in Germany); (...) (in Austria); (...) (in Belgium); (...) (in France).
Villeroy & Boch	Shower Enclosures	(...) (in Germany) (...) (in Austria)
Duravit	Ceramics	(...) (in Germany); (...) (in Belgium); (...) (in France).
Duscholux	Shower Enclosures	(...) (in Germany); (...) (in Austria); (...) (in Belgium).

Kludi	Taps and fittings	(...) (in Germany); (...) (in Austria).
Artweger	Shower enclosures	(...) (in Austria).
Cisal	Taps and fittings	(...) (in Italy).
Mamoli	Taps and fittings	(...) (in Italy).
RAF	Taps and fittings	(...) (in Italy).
Teorema	Taps and fittings	(...) (in Italy).
Zucchetti	Taps and fittings	(...) (in Italy).

8.5.3 Determination of the basic amount of the fines

(1209) As provided for in the 2006 Guidelines on fines, the basic amount of the fine to be imposed should 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.

8.5.3.1 Gravity

(1210) As a general rule, the proportion of the value of sales taken into account will be set at a level of up to 30%. In order to decide whether the proportion of the value of sales should be at the lower or at the higher end of the scale, the Commission considers a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.

(a) Nature

(1211) Horizontal price coordination is, by its very nature, among the most harmful restrictions of competition. The addressees of this Decision participated in a single, complex and continuous infringement of Article 101 TFEU and Article 53 of the EEA Agreement, with the common objective to distort competition on the market for bathroom fittings and fixtures (see Section 5). The cartel arrangements covered at least six Member States, permeated all product groups under investigation and operated entirely to the benefit of the participating producers and to the detriment of their customers and, ultimately, consumers.

(b) Combined market shares

(1212) The combined market share of the undertakings for which the infringement could be established fluctuates from Member State to Member State, but is estimated to be around approximately 54.3% for all product groups and in all Member States covered by the Commission's investigation. This figure does not take into account the market shares of other minor participants to which this Decision is not addressed.

(c) Geographic scope

(1213) The cartel arrangements covered (...) six Member States, namely Germany, Austria, Italy, Belgium, France and the Netherlands.

(d) Implementation

(1214) It has been established that the infringement was generally implemented (see, in particular, Section 5.2.5), albeit there is no sufficient evidence to consider that it was rigorously implemented.

(e) Arguments raised by the addressees, and the Commission's assessment

- (1215) In their replies to the SO, some addressees have raised various arguments aiming at attenuating the gravity of the infringement.¹⁶⁸⁵ In particular, they claim that a modest percentage of the value of sales should be applied in order to reflect (i) the lack of implementation; (ii) the economic context of the arrangements at issue, notably in relation to the strong market power or inducement by the wholesalers; and (iii) the absence of (or limited extent of) effects or resulting consumer harm, notably in view of the fact that coordinated prices were subsequently subject to individual negotiations with customers on rebates and other terms.
- (1216) As regards the relevance of these factors, which essentially reflect recurring arguments raised by certain addressees in their replies to the SO contesting the Commission's account of the facts, the Commission refers to its observations at Sections 5.2.2 to 5.2.5 of this Decision. The Commission further observes that, according to point 23 of the 2006 Guidelines on fines, cartels will be, as a matter of policy, fined severely. The scope and economic importance of the area affected by the cartel arrangements is reflected by the basic amount (which is based on the value of sales) and does not require any further adjustment of the fine. In any event, to the extent that the cartel might not have been fully successful, no increase is applied due to the implementation of the cartel.
- (1217) Some Italian respondents further claim that the Commission's 2006 Guidelines on fines do not foresee any differentiated treatment between the main instigators of the cartel and other undertakings that, having no role in the creation of the illegal conduct and even sustaining substantial disadvantages as a result, are held fully liable for the violation of competition rules.¹⁶⁸⁶ In this context, it is claimed that medium-sized addressees are being discriminated against by the application of the 2006 Guidelines on fines (as compared with the multinationals that orchestrated the cartel arrangements at issue).
- (1218) The Commission does not share this view. The fact that some cartel participants may be medium-sized "family-based" undertakings does not constitute a mitigating circumstance.¹⁶⁸⁷ The individual liability of those respondents (demonstrated on the basis of concrete documentary evidence in Section 4) cannot be negated or otherwise justified by the fact that other participants (notably larger multinational manufacturers) may have participated in the cartel arrangements for a longer period or in more Member States. In any event, any such differences are properly reflected by the value of sales in the products to which the infringement relates and which forms the basis of the calculation of the fine. In particular, the relative size and individual involvement of each participant in the arrangements at issue is duly taken into account in such calculation – the fine of each cartel participant being calculated on the basis of the extent of its individual involvement (by reference to its activities in specific Member States, with regard to specific product groups and for specific years).
- (1219) Moreover, the Commission does not consider that the basic amount should be adjusted specifically for the Italian independent undertakings in order to accommodate the contention that the cartel arrangements in Italy were somewhat less formal or less institutionalised (compared with the corresponding cartel arrangements in Germany and Austria). First, as explained in Sections 4.3.2 and 5.2.5, it is not necessary to establish that the cartel exhibits

¹⁶⁸⁵ Dornbracht argues that the price coordination arrangements between manufacturers were a way to confront the strong countervailing power of wholesalers; although this may not justify the infringement, it must be taken into account when assessing the gravity of the infringement: (...).

¹⁶⁸⁶ (...)

¹⁶⁸⁷ See for example T-23/99 *LR AF 1998 v Commission* [2002] ECR II 1705, paragraph 338.

any particular formalistic features, monitoring or retaliation mechanism(s) in order to demonstrate its operation. Second, despite some variations by Member State, the key features and essential parameters of the cartel (type of conduct, methods/mechanisms and recurring pattern) can be identified in all Member States covered by the Commission's investigation, including Italy. The fact that the relevant associations and meetings in Italy were more informal, or that the corresponding arrangements in Germany or Austria may be deemed to exhibit a higher degree of organisation, cannot detract from the fact that the cartel arrangements in Italy presented the same typology (notably annual price coordination cycles, based on the regular and systematic exchange of the participants' intended price increases and subsequent actual prices, following an established recurring pattern). Similarly, a possible adjustment to reflect a varying degree of intensity (as alluded to by the claimants) would not be sufficiently justified.¹⁶⁸⁸ In any event, the Commission notes that, at the claimants' own admissions, the Italian arrangements were essentially a transposition of the model of coordination amongst multi-national producers established in Germany.

(f) Conclusion on gravity

- (1220) In conclusion, and taking into account the factors in this Section, and in particular the nature of the infringement, the proportion of the value of sales of each undertaking involved to be used to establish the basic amount of the fines to be imposed should be 15%.

8.5.3.2 Duration

- (1221) Point 24 of the 2006 Guidelines on fines provides that *“In order to take fully into account the duration of the participation of each undertaking in the infringement, the amount determined on the basis of the value of sales (see points 20 to 23 above) will be multiplied by the number of years of participation in the infringement”*.
- (1222) Section 7 determined on the duration of the infringement of the undertakings involved in this case. As indicated in Section 8.4.1, for each undertaking, the basis of the calculation is its sales by Member State, as multiplied by the number of years of its individual participation in the infringement in that Member State. The Commission has thus applied varying multipliers by Member State and, if need be, by product, with a view to reflecting properly each undertaking's individual participation in the infringement.
- (1223) The application of point 24 of the 2006 Guidelines on Fines leads to the following multipliers. The duration periods and resulting multipliers might depart from Section 7, due to the fact that the tables in this recital focus solely on the actual participation of the mentioned legal entities in the cartel arrangements. For the periods during which parent companies are liable for the conduct of their subsidiaries, reference is made to Sections 6 and 7.

Table D: Multiplier per undertaking

Masco

¹⁶⁸⁸ The meetings and corresponding price increase exchanges in Italy were at least as frequent and recurring as in other Member States (in addition to the fact that they presented the same typology and essential characteristics). The price discussions amongst the Italian participants were detailed and even pertained to discounts granted to customers, such that they cannot be deemed less intense compared to other Member States. Therefore, from both a quantitative and qualitative perspective, the Commission considers that an adjustment for gravity is not warranted in this case, either with respect specifically to the smaller Italian undertakings or with respect to the overall cartel arrangements in Italy.

Addressee	Period of duration	Number of years and months	Multiplier
<i>Hansgrohe AG</i> ¹⁶⁸⁹	From 6 March 1998 To 6 November 2002	4 years and 8 months	4.66
<i>Hansgrohe Deutschland Vertriebs GmbH (Germany)</i> ¹⁶⁹⁰	From 6 November 2002 To 15 July 2004	1 year and 8 months	1.66
<i>Hans Grohe Handelsges.mbH (Austria)</i> ¹⁶⁹¹	From 30 May 1995 To 15 July 2004	9 years and 1 month	9.08
<i>Hansgrohe S.R.L. (Italy)</i> ¹⁶⁹²	From 16 October 1992 To 15 July 2004	11 years and 8 months	11.66
<i>Hans Grohe S.A. (N.V.) (Belgium)</i> ¹⁶⁹³	From 21 September 2000 To 15 July 2004	3 years and 9 months	3.75
<i>Hansgrohe S.A.R.L. (France)</i>	From 1 May 2004 To 15 July 2004	2 months	0.16
<i>Hüppe GmbH (Germany)</i> ¹⁶⁹⁴	From 15 September 1994 To 15 July 2004	9 years and 10 months	9.83
<i>Hüppe Ges.mbH (Austria)</i> ¹⁶⁹⁵	From 12 October 1994 To 15 July 2004	9 years and 8 months	9.66
<i>Hüppe Belgium N.V./S.A.</i>	From 10 March 2003 To 15 July 2004	1 year and 4 months	1.33
<i>Damixa Belgium N.V. (S.A.)</i> ¹⁶⁹⁶	From 10 March 2003 until 15 July 2004	1 year and 4 months	1.33

Grohe

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Grohe Deutschland</i>	Taps and fittings	From 6 March 1998	6 years and 8 months	6.66

¹⁶⁸⁹ Notwithstanding the period reflected in this table, the duration of Hansgrohe AG's liability as parent company (established in Section 6) is reflected in Section 7. However, Masco's liability for Hansgrohe AG and its subsidiaries starts as from 27 December 2002 (see Section 6).

¹⁶⁹⁰ This multiplier is of 1.5 as regards Masco Corporation Inc since its liability for Hansgrohe AG and its subsidiaries starts as from 27 December 2002 (see Section 6).

¹⁶⁹¹ *Ibidem.*

¹⁶⁹² *Ibidem.*

¹⁶⁹³ *Ibidem.*

¹⁶⁹⁴ Notwithstanding the period reflected in this table, the duration of Hüppe GmbH liability as parent company (established in Section 6) is reflected in Section 7. However, Masco's liability for Hüppe GmbH and its subsidiaries starts as from 1 January 1995 (see Sections 6 and 7). As a result this multiplier is of 9.5 as regards Masco Corporation Inc.

¹⁶⁹⁵ This multiplier is of 9.5 as regards Masco Corporation Inc since its liability for Hüppe GmbH and its subsidiaries starts as from 1 January 1995 (see Section 6 and 7).

¹⁶⁹⁶ Although Damixa NV (SA) is not an addressee of this Decision, Masco is held liable for its subsidiary's conduct (see Section 6).

<i>Vertriebs GmbH (Germany)</i>		To 9 November 2004		
<i>Grohe Vertriebs Gesellschaft mbH (Austria)</i>	Taps and fittings	From 21 July 1994 To 9 November 2004	10 years and 3 months	10.25
<i>Grohe S.p.A. (Italy)</i>	Taps and fittings	From 15 March 1993 To 9 November 2004	11 years and 7 months	11.58
<i>Grohe NV (Belgium)</i>	Taps and fittings	From 21 September 2000 To 9 November 2004	4 years and 1 month	4.08
<i>Grohe S.A.R.L. (France)</i>	Taps and fittings	From 10 December 2002 To 9 November 2004	1 year and 11 months	1.92
<i>Grohe Nederland B.V.</i>	Taps and fittings	From 28 September 1994 To 31 December 1999	5 years and 3 months	5.25

Ideal Standard

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Ideal Standard GmbH & Co OHG</i>	Ceramics	From 30 October 2001 To 9 November 2004	3 years	3
<i>Ideal Standard GmbH (Germany)</i>	Taps and Fittings Ceramics	From 19 March 2003 To 9 November 2004	1 year and 7 months	1.58
<i>WABCOAustria GmbH¹⁶⁹⁷</i>	Taps and Fittings	From 21 July 1994 To 9 November 2004	10 years and 3 months	10.25
<i>WABCO Austria GmbH¹⁶⁹⁸</i>	Ceramics	From 2 March 1995 to 9 November 2004	9 years 8 months	9.66

¹⁶⁹⁷ Jointly and severally with Trane Inc. However, this multiplier is of 3 as regards Wabco bvba since this legal entity was created on 29 October 2001 (see Sections 6 and 7).

¹⁶⁹⁸ *Ibidem*

<i>Ideal Standard Italia</i> ¹⁶⁹⁹ s.r.l.	Taps and Fittings Ceramics	From 15 March 1993 To 9 November 2004	11 years and 7 months	11.58
<i>Ideal Standard S.A.S. (France) (TF)</i>	Taps and Fittings	From 10 December 2002 To 9 November 2004	1 year and 10 months	1.83
<i>Ideal Standard S.A.S. (France) (CSW)</i>	Ceramics	From 25 February 2004 To 9 November 2004	8 months	0.66

Roca

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Laufen Austria AG</i> ¹⁷⁰⁰	Ceramics	From 12 October 1994 To 9 November 2004	10 years	10
<i>Roca s.a.r.l. (France) (TF)</i>	Taps and fittings	From 10 December 2002 To 9 November 2004	1 year and 10 months	1.83
<i>Roca s.a.r.l. (France) (CSW)</i>	Ceramics	From 25 February 2004 To 9 November 2004	8 months	0.66

Hansa

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Hansa Metallwerke AG (Germany)</i> ¹⁷⁰¹	Taps and fittings	From 6 March 1998 To 9 November 2004	6 years and 8 months	6.66
<i>Hansa Austria</i>	Taps and fittings	From 21 July	10 years and 3 months	10.25

¹⁶⁹⁹ *Ibidem*

¹⁷⁰⁰ This multiplier is of 5 as regards Roca Sanitario SA since it acquired Laufen Austria AG on 29 October 1999 (See Section 6).

¹⁷⁰¹ Notwithstanding the period reflected in this table, the duration of *Hansa Metallwerke AG* liability as parent company (established in Section 6) is reflected in Section 7.

<i>GmbH</i>		1994 To 9 November 2004	months	
<i>Hansa Italiana s.r.l. (Italy)</i>	Taps and fittings	From 16 October 1992 To 9 November 2004	12 years	12
<i>Hansa Belgium BVBA- SPRL</i>	Taps and fittings	From 10 March 2003 To 9 November 2004	1 year and 7 months	1.58

Dornbracht

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Aloys F. Dornbracht GmbH & Co. KG (for Germany)</i>	Taps and fittings	From 6 March 1998 To 9 November 2004	6 years and 8 months	6.66
<i>Aloys F. Dornbracht GmbH & Co. KG (for Austria)</i>	Taps and fittings	2 March 2001 to 9 November 2004	3 years and 8 months	3.66

Sanitec

Addressee	Period of duration	Number of years and months	Multiplier
<i>Keramag Keramische Werke AG (for Germany)</i>	From 7 July 2000 To 9 November 2004	4 years and 4 months	4.33
<i>Keramag Keramische Werke AG (for Austria)</i>	From 12 October 1994 To 9 November 2004	10 years	10
<i>Keramag Keramische Werke AG (for Belgium)</i>	From 30 October 2001 To 9 November 2004	3 years	3
<i>Koralle Sanitärprodukte GmbH¹⁷⁰²</i>	From 24 January 1996 To 9 November 2004	3 years and 10 months	8.75
<i>Koninklijke Sphinx B.V. (for Belgium)</i>	From 30 October 2001 To 9 November 2004	3 years	3
<i>Allia S.A. / S.A.S.</i>	From 25 February 2004	8 months	0.66

¹⁷⁰² This multiplier is of 4.83 as regards Sanitec Europe Oy since it acquired Koralle Sanitärprodukte GmbH on 14 December 1999 (See Section 6).

(France)	To 9 November 2004		
<i>Produits Céramiques de Touraine S.A.</i> (France)	From 25 February 2004 To 9 November 2004	8 months	0.66
<i>Pozzi-Ginori S.p.A.</i>	From 14 May 1996 To 14 September 2001	5 years and 4 months	5.33

Villeroy & Boch

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Villeroy & Boch AG</i> ¹⁷⁰³	Ceramics	From 7 July 2000 To 9 November 2004	4 years and 4 months	4.33
<i>Villeroy & Boch AG (shower enclosures)</i>	Shower enclosures	1 November 1999 – 9 November 2004	5 years	5
<i>Villeroy & Boch Austria Handels-GmbH</i>	Ceramics	From 12 October 1994 To 9 November 2004	10 years	10
<i>Villeroy & Boch Austria Handels-GmbH</i>	Shower enclosures	From 1 November 1999 To 9 November 2004	10 years	5
<i>Villeroy & Boch Belgium S.A.</i>	Ceramics	From 30 October 2001 To 9 November 2004	3 years	3
<i>Villeroy & Boch S.A.S. (France)</i>	Ceramics	From 25 February 2004 To 9 November 2004	8 months	0.66

Duravit

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Duravit AG (Germany)</i> ¹⁷⁰⁴	Ceramics	From 7 July 2000 To 9 November	4 years and 4 months	4.33

¹⁷⁰³ Notwithstanding the period reflected in this table, the duration of *Villeroy & Boch AG* liability as parent company (established in Section 6) is reflected in Section 7.

¹⁷⁰⁴ Notwithstanding the period reflected in this table, the duration of *Duravit AG* liability as parent company (established in Section 6) is reflected in Section 7.

		2004		
<i>Duravit Belux SPRL/BVBA (Belgium)</i>	Ceramics	From 30 October 2001 To 9 November 2004	3 years	3
<i>Duravit S.A. (France)</i>	Ceramics	From 25 February 2004 To 9 November 2004	8 months	0.66

Duscholux

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>DPM Duschwand- Produktions- und Montagegesellsc haft m.b.H. (Germany)</i>	Shower enclosures	From 15 September 1994 To 9 November 2004	10 years and 1 month	10.08
<i>Duscholux GmbH (Austria)</i>	Shower enclosures	From 29 November 1994 To 9 November 2004	9 years and 11 months	9.92
<i>Duscholux Belgium N.V./S.A.</i>	Shower enclosures	From 21 September 2000 To 9 November 2004	4 years and 1 month	4.08

Kludi

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Kludi GmbH & Co KG (Germany)</i>	Taps and fittings	From 6 March 1998 To 9 November 2004	6 years and 8 months	6.66
<i>Kludi Armaturen GmbH & Co.KG (Austria)</i>	Taps and fittings	From 21 July 1994 To 9 November 2004	10 years and 3 months	10.25

Artweger

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Artweger GmbH & Co KG (Austria)</i>	Shower enclosures	From 12 October 1994 To 9 November 2004	10 years	10

Cisal

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Rubinetteria Cisal S.p.A. (Italy)</i>	Taps and fittings	From 15 March 1993 To 9 November 2004	11 years and 7 months	11.58

Mamoli

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Mamoli Robinetteria S.p.A. (Italy)</i>	Taps and fittings	From 18 October 2000 To 9 November 2004	4 years	4

RAF

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>RAF Rubinetteria S.p.A. (Italy)</i>	Taps and fittings	From 15 March 1993 To 9 November 2004	11 years and 7 months	11.58

Teorema

Addressee	Product group	Period of duration	Number of years and months	Multiplier
<i>Teorema Rubinetteria S.p.A. (Italy)</i>	Taps and fittings	From 15 March 1993 To 9 November 2004	11 years and 7 months	11.58

Addressee	Product group	Period of duration	Number of years and months	Multiplier
Zucchetti Rubinetteria S.p.A. (Italy)	Taps and fittings	From 16 October 1992 To 9 November 2004	12 years	12

8.5.3.3 The percentage to be applied for the additional amount

(1224) Point 25 of the 2006 Guidelines on fines provides that “irrespective of the undertaking's participation in the infringement, the Commission will include in the basic amount a sum of between 15% and 25% of the value of sales [...] in order to deter undertakings from even entering into horizontal price-fixing, market-sharing and output limitation agreements”.

(1225) Given the specific circumstances of the case, taking into account the criteria discussed at Section 8.4.3.1, the percentage to be applied for the additional amount is set at 15%.

8.5.3.4 Conclusion on the basic amount

(1226) The basic amount of the fine to be imposed on each undertaking should therefore be as follows:

Table E: Basic Amount

Undertaking	Product group	Amount in EUR
Masco (Hansgrohe)	Taps and Fittings	(...) Of which (...) for Germany, (...) for Austria, (...) for Italy, (...) for Belgium, (...) for France Of which jointly and severally with Masco Corporation Inc ¹⁷⁰⁵ : (...) for Germany (...) for Austria (...) for Italy (...) for Belgium (...) for France
Masco (Hüppe)	Shower Enclosures	(...) Of which (...) for Germany, (...) for Austria, (...) for Belgium.

¹⁷⁰⁵

(...)

		Of which jointly and severally with Masco Corporation Inc ¹⁷⁰⁶ : (...) for Germany, (...) for Austria, (...) for Belgium
Masco (Damixa)	Taps and Fittings	(...) on Masco (for Belgium)
Ideal Standard	Taps and Fittings	(...) Of which (...) for Germany, (...) for Austria, (...) for Italy, (...) for France Of which jointly and severally with Wabco bvba: ¹⁷⁰⁷ (...) for Germany (...) for Austria (...) for Italy (...) for France
Ideal Standard	Ceramics	(...) Of which (...) for Germany, (...) for Austria, (...) for Italy, (...) for Belgium, (...) for France Of which jointly and severally with Wabco bvba: ¹⁷⁰⁸ (...) for Germany (...) for Austria (...) for Italy (...) for Belgium (...) for France
Grohe	Taps and fittings	(...) Of which (...) for Germany, (...) for Austria, (...) for Belgium, (...) for Italy, (...) for France)
Roca	Taps and fittings	(...) (for France)
Roca	Ceramics	(...) Of which (...) for France, (...) for Austria

1706 (...)
1707 (...)
1708 (...)

		Of which jointly and severally with Roca Sanitario ¹⁷⁰⁹ (...) for France (...) for Austria
Hansa	Taps and fittings	(...) Of which (...) for Germany (...) for Austria (...) for Italy (...) for Belgium
Dornbracht	Taps and fittings	(...) Of which (...) for Germany (...) for Austria
Sanitec (Keramag)	Ceramics	(...) Of which (...) for Germany, (...) for Austria, (...) for Belgium
Sanitec (Koralle)	Shower Enclosures	(...) (for Germany) Of which (...) jointly and severally with Sanitec Europe Oy
Sanitec (Sphinx)	Ceramics	(...) (for Belgium)
Sanitec (Allia)	Ceramics	(...) (for France)
Sanitec (Produits Céramiques de Touraine)	Ceramics	(...) (for France)
Sanitec (Pozzi Ginori)	Ceramics	(...) (for Italy)
Villeroy & Boch	Ceramics	(...) Of which (...) for Germany (...) for Austria (...) for Belgium (...) for France
Villeroy & Boch	Shower Enclosures	(...) Of which (...) for Germany (...) for Austria
Duravit	Ceramics	(...) Of which (...) for Germany (...) for Belgium (...) for France
Duscholux	Shower Enclosures	(...) Of which (...) for Germany (...) for Austria (...) for Belgium
Kludi	Taps and fittings	(...) Of which (...) for Germany

¹⁷⁰⁹

This reflects Roca Sanitario's liability for Laufen Austria as from 29 October 1999 (see Section 6).

		(...) for Austria
Artweger	Shower Enclosures	(...) (for Austria)
Cisal	Taps and fittings	(...) (for Italy)
Mamoli	Taps and fittings	(...) (for Italy)
RAF	Taps and fittings	(...) (for Italy)
Teorema	Taps and fittings	(...) (for Italy)
Zucchetti	Taps and fittings	(...) (for Italy)

8.6. Adjustments to the basic amount

8.6.1 Aggravating circumstances

(1227) No aggravating circumstances have been identified in this case.

8.6.2 Mitigating circumstances

(1228) The 2006 Guidelines on fines list a number of circumstances that may lead to a reduction in the basic amount, namely immediate termination of the infringement following the Commission's investigation (excluding cartels), negligent participation in the infringement, limited involvement in the infringement, cooperation with the Commission beyond the undertaking's legal obligations to do so, and encouragement or authorization to engage in the infringing conduct by a public authority. Each of the relevant circumstances, as well as additional arguments raised by the addressees, is examined in this Section.

8.6.2.1 Early termination of the infringement

(1229) A number of addressees of the SO claim that they should benefit from a reduction because they terminated the infringement following the Commission's intervention or even before such intervention.¹⁷¹⁰ However, it is settled case law that the Commission may lawfully deny a reduction based on that ground.¹⁷¹¹

8.6.2.2 Negligent participation

(1230) A number of addressees argue that they did not act intentionally, but rather negligently, by pointing *inter alia* to the negligent conduct of their management or their unsophisticated organization or lack of knowledge/experience of competition law rules.¹⁷¹²

(1231) The argument that addressees had no knowledge that they were infringing Article 101 TFEU or that the infringement was not intentional cannot be accepted. It is settled case-law that for an infringement of the competition rules of the Treaty to be regarded as having been

¹⁷¹⁰ (...)

¹⁷¹¹ Judgment of 19 March 2009, *Archer Daniels v Commission*, C-510/06 P, paragraphs 144-150. As regards termination before the Commission intervention, see Judgment of 15 June 2005 in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others v Commission* (not published in the ECR), paragraph 292. The Commission observes that the alleged termination of Grohe's participation in the infringement (including in relation to the French market) has occurred following the initiation of the Commission's investigation. Grohe was aware that the Commission initiated an investigation, particularly in view of the fact that Grohe was itself subject to those inspections in Germany, Austria, Italy, Belgium and The Netherlands.

¹⁷¹² (...)

committed intentionally, it is not necessary for an undertaking to have been aware that it was infringing those rules. It is sufficient that it could not have been unaware that its conduct was aimed at restricting competition.¹⁷¹³

- (1232) First, the Commission observes that the undertakings involved in the price coordination arrangements at issue were established participants on the market, with the legal and economic knowledge necessary to enable them to recognize (or at least foresee) that their conduct aimed at distorting competition. Moreover, notwithstanding the relatively smaller size of some participants as compared to the core multinationals undertakings, all addressees were amongst the key manufacturers in their respective area of activities.
- (1233) Second, it has further been established that the exchange of their respective price increases at the relevant association meetings (notably their respective planned price increases for the upcoming price cycle) aimed at reducing uncertainty about their competitors' future pricing policy (Section 5). This can be readily deduced from the fact that participants continued to regularly attend association meetings and reveal their planned price increases or future pricing policy therein, in a systematic and sustained way over a long period of time.
- (1234) Third, the Commission observes that it is not required to show that the partners or higher management of a company committed the infringement intentionally or negligently in order to attribute liability. It is settled case-law that it is not necessary for there to have been action by, or even knowledge on the part of the partners or principal managers of the undertaking concerned; action by a person who is authorized to act on behalf of the undertaking suffices.¹⁷¹⁴ In this regard, it is noted that the individuals participating at the relevant association meetings were acting as (and receiving information as) representatives of the undertakings concerned. There is no evidence suggesting that those individuals were not considered or treated by the other participants as representatives of their undertakings.
- (1235) Finally, as to the argument that the illegality of the exchange of information was doubtful¹⁷¹⁵ it is enough to recall that an exchange of information constitutes an infringement of Article 101 TFEU when it underpins another anti-competitive arrangement,¹⁷¹⁶ although it can also be anticompetitive as such, as explained in Section 5. Moreover, although attendees of the various associations' meetings did sometimes mention exchanges of information on sales in their handwritten notes, those exchanges did sometimes not appear on the official minutes of the meetings. This illustrates that the participants in the meetings were aware of the potentially anticompetitive nature of such exchanges.
- (1236) In these circumstances, the Commission considers that the addressees acted deliberately, regardless of whether they were aware that, in so doing, they were infringing the prohibition laid down by Article 101(1) TFEU. To conclude, the addressees in question cannot thus qualify for any fine reduction on the basis of negligent conduct.

¹⁷¹³ See Joined Cases T-202/98 etc. *Tate & Lyle v Commission* [2001] ECR II-2035, paragraph 127. See also Joined Cases 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82 *IAZ and Others v Commission* [1983] ECR 3369, paragraph 45; Case 246/86 *Belasco and Others v Commission* [1989] ECR 2117, paragraph 41; Case T-141/89 *Tréfileurope v Commission* [1995] ECR II-791, paragraph 176; Case T-310/94 *Gruber + Weber v Commission* [1998] ECR II-1043, paragraph 259.

¹⁷¹⁴ Cases 100-103/80, *SA Musique Diffusion Française v. Commission* [1983] ECR 1825, paragraph 97. See also Case T-9/99, *HFB and others v Commission* [2002] ECR II-1487, paragraph 275, Case T-15/99, *Brugg Rohrsysteme v Commission* [2002] ECR II-1613, paragraph 58, Case T-236/01 *Tokai Carbon v Commission* [2004] ECR II-1181, paragraph 277.

¹⁷¹⁵ (...)

¹⁷¹⁶ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 281.

8.6.2.3 Effective cooperation outside the Leniency Notice

- (1237) Point 29 of the 2006 Guidelines on Fines provides that: “*The basic amount may be reduced where the Commission finds that mitigating circumstances exist, such as: (...) where the undertaking concerned has effectively cooperated with the Commission outside the scope of the Leniency Notice and beyond its legal obligation to do so.*”
- (1238) Some addressees claim that they deserve a reduction of the fine because they did not contest the facts in their reply to the SO.¹⁷¹⁷ As a general remark, the Commission observes in this regard that it is not bound by its earlier practice¹⁷¹⁸ and that the reward for non-contestation of facts which was provided for in the Commission Notice on the non-imposition or reduction of fines in cartel cases¹⁷¹⁹ of 1996 has been abandoned. The mere non-contestation, outside some exceptional situations, does not facilitate the work of the Commission, as the Court of Justice¹⁷²⁰ found that even in that situation the Commission will have to prove those facts and that the undertaking is free to put forward, at the appropriate time and in particular in the procedure before the Court, any plea in its defense which it deems appropriate. The opposite is only true where the undertaking at issue acknowledges the facts.¹⁷²¹ Insofar as the Leniency Notice does not provide for any reduction for the simple acknowledgement of facts (nor, a fortiori, for a non-contestation of those facts) no legitimate expectation has been created as to the granting of any reduction on that basis. To the extent that certain addressees do acknowledge certain facts, this has not facilitated the Commission's task, insofar as the Commission had a sufficient body of evidence in order to prove the facts in question.¹⁷²²
- (1239) With regard to the leniency applicants in particular, it is further pertinent to clarify that the Commission has assessed the value of evidence concerning the infringement provided on a voluntary basis by different undertakings under the Leniency Notice, irrespective of whether it was supplied by means of a formal leniency application or in the form of voluntary self-incriminating information provided in reply to a request for information. To the extent that such co-operation merited a reduction, this has been granted under the Leniency Notice.¹⁷²³
- (1240) Therefore, the Commission has to assess whether there are any particular circumstances present in this case (excluding the non-contestation of facts) which could justify granting a reduction for effective co-operation outside the scope of the Leniency Notice to Kludi, Cisal, Zucchetti, Mamoli and RAF.
- (1241) In its response to the SO, Kludi broadly admits its participation in the infringement, while clarifying certain findings and pointing to a number of attenuating circumstances.¹⁷²⁴ Although the Commission welcomes the cooperative spirit demonstrated by Kludi during

¹⁷¹⁷ (...)

¹⁷¹⁸ Case T-347/94 *Mayr-Melnhof Kartongesellschaft v Commission*, [1998] ECR II-1751, para. 368; Case T-23/99 *LR AF 1998 v Commission* [2002] ECR II-1705, paragraph 337.

¹⁷¹⁹ OJ C 207, 18.7.1996, p. 4.

¹⁷²⁰ Case C-297/98 P *SCA Holding v Commission* [2000] ECR I-10101, paragraph 37.

¹⁷²¹ Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients v Commission* [2003] ECR II-2597, paragraph 227; Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others v Commission* [2004] ECR II-1181; ‘*Tokai I*’, paragraph 108; Judgment of 8 October 2008, *Schunk v Commission*, T-69/04, paragraph 84.

¹⁷²² Judgment of 24 September 2009, *Erste Group bank and Others v Commission*, Joined cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P, paragraph 288-290

¹⁷²³ See Section 8.8 below. See also Case T-15/02, *Basf v Commission*, [2006] ECR II-497, at paragraph 586.

¹⁷²⁴ (...)

the procedure (particularly considering its non-leniency status), it must also be acknowledged that there are no exceptional or otherwise particular circumstances present in this case to justify a reduction of Kludi's fine for effective cooperation outside the scope of the Leniency Notice. It must thus be concluded that Kludi has not cooperated with the Commission beyond its legal obligation to do so.

- (1242) Similarly, in its reply to the SO, Cital did not contest the facts put forward by the Commission, but sought to clarify aspects of its involvement and to substantiate a number of attenuating circumstances.¹⁷²⁵ Cital corroborated certain aspects of the Commission's case and volunteered its notes of the Euroitalia meeting held on 30-31 October 2003, as well as letters addressed to its clients that were also sent to Euroitalia competitors (see recitals (455) and (456)). It is nonetheless appropriate to clarify that the anticompetitive nature of the Euroitalia meeting of 30-31 October 2003 was already known to the Commission and established on the basis of direct documentary evidence gathered during the inspections at the premises of two other undertakings. Similarly, the exchange of price increase letters amongst cartel participants in Italy (by way of *inter alia* monitoring the implementation of the price coordination arrangements) was already known to the Commission on the basis of inspection documents, which – in addition – specifically concerned communications by Cital (see recital (456) and footnote 571). Therefore, despite Cital's cooperative spirit, it must similarly be concluded that there are no exceptional or otherwise particular circumstances present in this case to justify a reduction of Cital's fine for effective cooperation outside the scope of the Leniency Notice and that Cital has not cooperated with the Commission beyond its legal obligation to do so.
- (1243) In its reply to the SO,¹⁷²⁶ Zucchetti submits that it has been trying to identify additional information of added value to be submitted to the Commission, but it could not do so because it had already provided all the relevant information in its possession during the inspection. As it had been particularly helpful during the inspections, Zucchetti argues that it qualifies for a fine reduction for effective cooperation. The Commission observes that Zucchetti indeed assisted the work of the inspectors by promptly handing over documents (notably, handwritten notes of association meetings) and providing relevant explanations. However, this type of cooperation did not exceed its legal obligation to do so at the time. It must therefore be also concluded that there are no exceptional or otherwise particular circumstances present in this case to justify a reduction of Zucchetti's fine for effective cooperation outside the scope of the Leniency Notice.
- (1244) Mamoli and RAF argue that they have each provided the Commission with all the required information with punctuality, transparency and correctness, and that they demonstrated their availability to respond to the Commission's requests without in any way hindering the investigation.¹⁷²⁷ In this regard, the Commission observes that Mamoli and RAF have not cooperated with the Commission beyond their legal obligation to do so. As regards the corroboration of certain aspects of the Commission's case (particularly relating to the background of Euroitalia's inception which was from the start conceived as an extension of the German coordination scheme), it must be noted that this information was already known to the Commission from at least three immunity or leniency applications and further corroborated by documentary evidence. Moreover, the Commission notes that both Mamoli

¹⁷²⁵ See recitals (475)-(476) above.

¹⁷²⁶ (...)

¹⁷²⁷ (...)

and RAF do make a number of qualifications as to the Commission's findings in the SO.¹⁷²⁸ It must therefore be concluded that there are no exceptional or otherwise particular circumstances present in this case to justify a reduction of Mamoli's and RAF's fine for effective cooperation outside the scope of the Leniency Notice

- (1245) To the extent that the Commission does not find that a reduction is justified in application of the Leniency Notice as regards Roca, Hansa, Dornbracht or Artweger, there are equally no exceptional reasons to apply a reduction outside the Leniency Notice. Some of the replies to the SO contained a number of qualifications, and to the extent that some of these addressees have not contested the facts, or even acknowledged part of them, they have not facilitated the Commission's task, insofar as the Commission had a sufficient body of evidence in order to prove the infringement.

8.6.2.4 Minor or passive involvement

- (1246) Several respondents (in particular, medium-sized single-product manufacturers predominantly active in one of the Member States covered by the Commission's investigation) claim that they only had a minor or passive role in the infringement and should thus benefit for a fine reduction.¹⁷²⁹ In this regard, some addressees refer to their relatively smaller size and reduced market presence or sales or their relatively limited weight in the dynamics of the market as compared with the core multinational manufacturers. Similarly, some addressees argue that they are single-product undertakings predominantly active in one Member State and therefore part of only few of the cartel arrangements identified by the Commission.¹⁷³⁰ Finally, some Italian respondents point in particular to the fact that the cartel arrangements in Italy were orchestrated by producers established in Germany, with a view to extending the German model of cooperation in Italy; the multinational undertakings thus had a predominant role from the inception of Euroitalia and throughout the period of the cartel arrangements in Italy and it should, therefore, be acknowledged that the smaller Italian producers only had a passive or limited role.
- (1247) The Commission considers that the following preliminary observations are pertinent. First, although the 1998 Guidelines on fines recognised that the fine could be reduced if the undertaking had taken "*an exclusively passive or 'follow-my-leader' role in the infringements*", the 2006 Guidelines on fines do not include this as an attenuating circumstance, even if such behavior may, under certain circumstances, be considered as amounting to a limited involvement which may, in turn, justify a reduction of the fine. Second, for purposes of determining whether a cartel participant is entitled to a fine reduction for passive or minor role, the Commission must assess what kind of role that undertaking played in the cartel arrangements at issue, regardless of its position on the market. Indeed, the relative size, the relative importance of the business to which the infringement related and the scope of activities of each undertaking are all factors that are

¹⁷²⁸ (...) RAF submits, for example, that due to the volatility of prices of raw materials, it is not "plausible" that undertakings would have concerted their prices in the market (...), or that the information exchanged had no value since the market was "transparent". As for Mamoli, its reply is very ambiguous. It limits itself "not to deny to have participated in some meetings in the context of which the participants communicated price increases that have already been decided" (...). It also contests the use of evidence provided pursuant to the Leniency Notice, that is, the probative value of part of the body of evidence relied upon, by the Commission.

¹⁷²⁹ (...) Moreover, Duravit points to its distinctive product activities which render its involvement ancillary relative to the other cartel participants:(...).

¹⁷³⁰ To a large extent, this argumentation reflects the parties' contestation of their participation in a single and continuous infringement. In this respect, the Commission refers to its observations at Section 5.2.3 above.

sufficiently reflected when the value of sales is determined (and do not need to be taken into account a second time). Third, as previously noted, the fact that some cartel participants may be medium-sized "family" undertakings does not constitute a mitigating circumstance.¹⁷³¹ The individual liability of those respondents (demonstrated on the basis of concrete documentary evidence in Section 4) cannot be negated or otherwise justified by the fact that other participants (notably larger multinational manufacturers) may have had a broader involvement. Any such differences are again properly reflected by the value of sales in the products to which the infringement relates and which forms the basis of the calculation of the fine. Finally, the contention that smaller undertakings allegedly used the meetings to improve or protect their own position on the market vis-à-vis the leading multinationals (without necessarily subscribing to the price coordination arrangements at issue) does not constitute sufficient evidence of a generally passive or limited role.

- (1248) In any event, even under the 1998 Guidelines on fines, no reduction for "passive role" was warranted. The jurisprudence takes a restrictive approach as to when an undertaking's behaviour could justify a reduction under that head. In this respect, the Court of First Instance ruled in *Cheil Jedang* that "*a passive role implies that the undertaking will adopt a low profile, that is to say not actively participate in the creation of any anti-competitive agreements*".¹⁷³² In *Bolloré*, the Court of First Instance required that the undertaking in question have adopted an "*exclusively passive role*" or "*total passivity*".¹⁷³³ Other cases also show that the Courts have interpreted the passive role element in a strict manner.¹⁷³⁴
- (1249) The Commission observes that – for the period during which the addressees participated in the cartel – they were most regular participants at the relevant association meetings and their conduct was substantially not different from the other cartel participants. The mere fact that some addressees may not have participated in certain associations has already been taken into account when defining the scope of the liability of each party, and will, as a result be reflected in the amount of the fine. It must therefore be concluded that there are no particular circumstances present in this case to justify a reduction of those addressees' fine for passive or limited role.

8.6.2.5 Non-Implementation

- (1250) Point 29 of the 2006 Guidelines on Fines stipulates: "*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: the mere fact that an undertaking participated in the infringement for a shorter duration than others will not be regarded as a mitigating circumstance since this will already be reflected in the basic amount.*"
- (1251) Several addressees argue that consumers did not suffer any damage from the alleged price coordination arrangements or that the agreements were in any event not respected by the participants.¹⁷³⁵ In the same context, some addressees also submit that they adopted a

¹⁷³¹ See for example T-23/99 *LR AF 1998 v Commission* [2002] ECR II 1705, paragraph 338.

¹⁷³² *Cheil Jedang*, paragraph 167.

¹⁷³³ *Bolloré*, paragraph 611.

¹⁷³⁴ See *Tokai*, paragraphs 295 and 296, and *Le Carbone-Lorraine*, paragraph 179.

¹⁷³⁵ (...)

competitive conduct on the market and that the alleged cartel had, if at all, only a limited effect on the market.¹⁷³⁶

- (1252) The Commission disagrees with these contentions. First, to the extent that the cartel might not have been fully successful, the Commission has already taken this into account when setting the variable amount of the fine, as no increase has been applied due to the implementation of the cartel. Second, entitlement to a reduction for lack of implementation requires that the circumstances show that, during the period in which an undertaking was party to the offending agreements, it actually avoided implementing them by adopting competitive conduct on the market or, at the very least, that it clearly and substantially breached the obligations relating to the implementation of the cartel to the point of disrupting its very operation.¹⁷³⁷ Third, the Commission does not share the view that the agreements were not implemented. To the contrary, it has been established that the infringement was implemented at least to some extent (see, in particular, Section 5.2.5). More specifically, in the circumstances of this case there is a presumption that participants who remained active on the market (and, in this case, continued to regularly attend the association meetings at issue) took account of the price information exchanged at those meetings for the purposes of determining their conduct. This presumption cannot be discharged merely by pointing to evidence suggesting that participants did not ultimately follow the same pricing policies or that their prices were lower than those agreed upon in the relevant association meetings.¹⁷³⁸ Similarly, evidence indicating that addressees may have occasionally cheated other participants is not sufficient to establish their competitive conduct or that their behaviour disrupted the operation of the cartel for purposes of applying point 29 of the 2006 Guidelines on fines. Finally, as regards the economic context or likely effects of the cartel arrangements, the Commission refers to its observations at Sections 5.2.2 – 5.2.4.

8.6.2.6 Compliance programme

- (1253) Several addressees point to the existence (or introduction) of an internal competition compliance programme or additional internal auditing procedures, which in their view should be considered an attenuating circumstance.¹⁷³⁹
- (1254) The Commission welcomes the existence of compliance programmes and other internal audit policies. Nonetheless, it considers compliance with the law as a natural obligation of each company and does not consider such compliance, or a programme ensuring such compliance, as going beyond what is already expected. The existence of a compliance programme cannot thus be accepted as an attenuating circumstance. Despite those addressees' stated general corporate policy of complying with competition law rules, the fact remains that they were involved in anticompetitive practices. Moreover, the Commission notes that the actions taken by the addressees after the infringement was revealed do not go beyond what they were expected to do (in particular as regards the leniency applicants),

¹⁷³⁶ (...) In this regard, some of the addressees also point to the fact that, notwithstanding the rate(s) of price increase that they communicated at association meetings, they often ultimately applied different rate(s) of price increase (or even decreased their prices): (...).

¹⁷³⁷ T-26/02, *Daiichi v Commission* [2006] ECR II 497 paragraph 113.

¹⁷³⁸ See for example Joined Cases T-25/95 etc. *Cimenteries CBR and others v Commission* [2000] ECR II-491, paragraph 1912.

¹⁷³⁹ (...) Similarly, American Standard submits that it is committed to the highest standards of corporate governance: (...).

namely to end their involvement in the anticompetitive practices and to cooperate with the Commission's investigation.

8.6.2.7 Other circumstances (specific requests for a symbolic fine or non-imposition of fines)

- (1255) Artweger requests that the Commission depart from the methodology laid down in the 2006 Guidelines on fines (points 36 and 37) and only impose a symbolic fine on it (if any).¹⁷⁴⁰ Artweger essentially recasts the arguments raised in its reply to the Statement of Objections contesting the Commission's account of the facts, which have already been addressed by the Commission in Section 4 and 8.5. However, a deviation from the standard fining methodology is not warranted, nor otherwise justified in relation to Artweger. The Commission must also reject Artweger's argument that national law encouraged the infringement¹⁷⁴¹ as the provision at issue only referred to common advertising and marketing campaigns, which are not the subject-matter of this Decision.
- (1256) Rubinetterie Cisol requests that the Commission only impose a symbolic fine on it (if any) in order to protect stakeholders in the company and those that are dependent in the company.¹⁷⁴² The Commission has addressed the mitigating circumstances raised by Cisol in Section 8.5.2. There are no further circumstances to justify the imposition of a symbolic fine in the case of Cisol. Insofar as Cisol claims to be in a difficult financial situation, this is assessed at Section 8.10.
- (1257) Zucchetti requests that the Commission only impose a symbolic fine on it (if any), bearing in mind all arguments raised in its reply to the SO.¹⁷⁴³ The Commission has already addressed Zucchetti's arguments in Section 4 and 8.5. The imposition of a symbolic fine is thus not warranted, nor otherwise justified in the case of Zucchetti. Insofar as Zucchetti claims to be in a difficult financial situation, this is assessed at Section 8.10.

8.6.3 Specific increase for deterrence

- (1258) Point 30 of the 2006 Guidelines on fines provides that “*The Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect; to that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates*”.
- (1259) With regard to the specific circumstances of this case, the Commission considers that the addressees' turnover beyond the sales of goods to which the infringement relates is not such as to justify a specific increase for deterrence.

8.6.4 Conclusions on the adjusted basic amounts

- (1260) No adjustment is made to the basic amounts.

8.7. Application of the 10% turnover limit

1740 (...)
1741 (...)
1742 (...)
1743 (...)

- (1261) Article 23(2) of Regulation (EC) No 1/2003 stipulates that the fine for each undertaking shall not exceed 10% of the undertaking's total turnover in the preceding business year. Should certain undertakings, within which several companies are joint and severally liable for a fine as they were one undertaking at the time of the infringement, have suffered changes in their structure after the end of the infringement, so that the parent company at the time of the decision is not the parent company at the time of the infringement, the Commission applies the 10% ceiling separately. Also, the 10% ceiling is applied on the basis of the combined turnover of the companies which belong to the same group whenever the current parent company is not itself an addressee of the decision.
- (1262) The 10% ceiling applies per infringement.¹⁷⁴⁴ The legal limit must be calculated on the basis of the total turnover figures relating to 2009.¹⁷⁴⁵
- (1263) In this case, this specific ceiling, based on available figures for 2009, is attained in respect of the fine to be imposed on the following undertakings:
- (1264) The amounts of the fine to be imposed on each undertaking before application of the Leniency Notice are therefore the following:

Table F: Amount following application of 10% turnover limit

Undertaking	Amount in EUR
Masco	(...)
Grohe	(...)
Former Ideal Standard group	(...)
Roca	(...)
Hansa	(...)
Dornbracht	(...)
Sanitec	(...)
Villeroy & Boch	(...)
Duravit	(...)
Duscholux	(...)
Kludi	(...)
Artweger	(...)
Cisal	(...)
Mamoli	(...)
RAF	(...)
Teorema	(...)

¹⁷⁴⁴ Case T-15/02 *BASF v Commission* [2006] ECR II-497, paragraph 70, Judgment of 8 October 2008, SGL v Commission, T-68/04, paragraph 126-134. This means that if the arguments of a number of undertakings about the separate nature of the infringements were accepted, the fines for a number of undertakings would be substantially higher.

¹⁷⁴⁵ Case T-33/02 *Britannia Alloys & Chemicals v Commission* [2005] ECR II-4973, paragraph 39. DPM Duschwand Produktions- und Montagegesellschaft has achieved a negligible turnover in 2009 compared to its turnover during the infringement period. Therefore - although it is still lower than the turnover during the infringement - the turnover 2008 is taken into account for DPM Duschwand Produktions- und Montagegesellschaft in order to determine the ceiling of the fine imposed on the legal entities of the undertaking Duscholux which are addressees of this Decision, see case T-33/02 *Britannia Alloys & Chemicals v Commission* [2005] ECR II 4973, paragraph 42, see also case 76/06P, *Britannia Alloys & Chemicals v Commission*, ECR [2007], I-4405, paragraph 25 and 30.

8.8. Application of the 2002 Leniency Notice

(1265) As explained in Section 3.1, this investigation was initiated further to information brought to the attention of the Commission by Masco Corporation, which expressed its willingness to cooperate with the Commission and applied for immunity under the terms of the 2002 Leniency Notice. Following the Commission's inspections, Grohe, Ideal Standard, Roca, Hansa and Dornbracht submitted applications under the Leniency Notice.

8.8.1 Masco Corporation and its subsidiaries

(1266) Pursuant to point 8 of the Leniency Notice the Commission will grant an undertaking immunity from any fine which would otherwise have been imposed if (a) the undertaking is the first to submit evidence which in the Commission's view may enable it to adopt a decision to carry out an inspection in connection with an alleged cartel affecting the Union; or (b) the undertaking is the first to submit evidence which in the Commission's view enables it to find an infringement of Article 101 TFEU in connection with an alleged cartel affecting the Union. Points 9, 10 and 11 of the Leniency Notice further elaborate on the conditions necessary in order to qualify for immunity from a fine.

(1267) Masco was the first undertaking to inform the Commission about the cartel activities in the bathroom fittings and fixtures sector. Masco applied for immunity on 15 July 2004 pursuant to the Leniency Notice on behalf of all its subsidiaries and affiliates, notably, Hansgrohe and Hüppe.¹⁷⁴⁶ In the course of the Commission's investigation, Masco also provided several corporate statements and a number of documents.¹⁷⁴⁷ The evidence submitted by Masco comprised documentary proof of cartel arrangements regarding the coordination of future price increases; oral explanations on how and where the cartel members met and communicated with each other, how the cartel operated and how the cartel arrangements were implemented; minutes of meetings within industry associations in the respective Member States and of bilateral meetings, again including proof of the agreements made and the implementation process; and internal documents, such as email, faxes and contemporaneous handwritten notes, which provided additional examples of the working and the implementation of the cartel. Masco's submissions pertained to all Member States concerned, the focus being on Germany, Austria and Italy.

(1268) Prior to Masco's leniency application, the Commission had not undertaken any inspection into the alleged cartel, nor did it have in its possession any evidence to carry out an inspection. As the information submitted by Masco enabled the Commission to adopt a Decision to carry out inspections pursuant to Article 20(4) of Regulation (EC) 1/2003, Masco was granted conditional immunity pursuant to points 8(a) and 15 of the Leniency Notice on 2 March 2005. The inspections took place on 9 and 10 November 2004.

(1269) In order to qualify for immunity from a fine, the Leniency Notice requires applicants for immunity pursuant to point 8(a) to meet the cumulative conditions set out in point 11 of the Notice, in addition to the conditions which entitled them to benefit from conditional immunity under point 8(a). Point 11(a) of the Leniency Notice lays down the obligation for

¹⁷⁴⁶ (…)

¹⁷⁴⁷ (…)

the immunity applicant to cooperate fully, on a continued basis and expeditiously throughout the administrative procedure, and to provide all evidence that comes into its possession or is available to it. The condition in point 11(a) is drafted widely. Point 11(b) and (c) require the immunity applicant to end its involvement in the suspected infringement no later than the time at which it submits evidence under point 8 and not to have taken any steps to coerce other undertakings to participate in the infringement.

- (1270) There is no evidence in the Commission's possession suggesting that Masco has not terminated its involvement in the suspected infringement at the time when it applied for immunity. Furthermore, there is no evidence suggesting that Masco exerted pressure on other addressees to join the cartel arrangements. Finally, the Commission is of the opinion that Masco has fulfilled the requirements of point 11(a) of the Leniency Notice.
- (1271) In its reply to the SO, Grohe suggests that Masco may have breached its obligation of secrecy, thereby compromising the duty of cooperation incumbent upon it under point 11(a) of the Leniency Notice.¹⁷⁴⁸ In particular, Grohe points to inspection documents which may be deemed to indicate that the use of the Leniency Notice was made known to the other suspected members of the cartel prior to the Commission's inspections of 9 and 10 November 2004.¹⁷⁴⁹
- (1272) The Commission observes that any allegation in this respect must be based on a sufficiently precise and consistent evidence. The evidence in the Commission's possession does not support the assertion that Masco breached its secrecy obligation. Aside from the ambiguity as to the context of the documents, the specific references may well be explained by reasons other than a breach of the conditions imposed on Masco to benefit from immunity.¹⁷⁵⁰ Furthermore, there is no evidence suggesting that the effectiveness of the Commission's inspections was impaired in any way. On the other hand, contrary to Grohe's allusions, the evidence in the Commission's file provides no evidence to contradict the finding that Masco provided full, continuous and effective cooperation throughout the administrative procedure. In particular, following its original leniency application, Masco made several supplementary submissions and remained at the Commission's disposal to answer swiftly any request that might contribute to the establishment of the facts, in an elaborate and consistent manner.
- (1273) In view of those considerations, Masco (including Hüppe GmbH & Co. KG and Hansgrohe AG and their subsidiaries in Germany, Austria, Italy, Belgium and France) benefits from immunity from fines pursuant to point 8 of the 2002 Leniency Notice. Consequently, Masco's fine is reduced by 100%.

1748 (...)

1749 These inspection documents comprise handwritten notes concerning AGSI-Erfa meetings in September 2004 (few weeks prior to the Commission's inspections). It is not clear whether these handwritten notes refer to the same AGSI meeting. The first set of notes is dated 1 September 2004, while the second set of notes is dated 27 September 2004. The evidence in the Commission's possession only attests to the existence of the AGSI meeting on 27 September 2007. The first document reads as follows: "*ERFA info: leniency notice in connection with price fixing i.e. immunity from prosecution for the witnesses*": (...). The second one, (...), reads as follows: "*Note Cartel Office leniency notice currently used. Association's liability possible up to 10% of Association turnover (...) HG strategically not present*": (...).

1750 For example, (...)’s absence from the meetings of the German associations in Spring/early-Summer 2004 might have been considered suspicious by the other attendees of the AGSI meeting of 27 September 2004. In turn, this could have prompted them to speculate about a possible leniency application by (...) or to discuss about the existence and operation of leniency regimes. (...) could also have initiated a discussion about the possibility of applying for leniency for antitrust violations (prompted by (...)’s absence or speculations put forward by other attendees).

8.8.2 *Grohe Beteiligungs GmbH and its subsidiaries*

- (1274) According to point 21 of the Leniency Notice, in order to qualify for a reduction of a fine, a company must provide the Commission with evidence of the suspected infringement which represents significant added value with respect to the evidence already in the Commission's possession. In addition, the company must terminate its involvement in the suspected infringement no later than the time it submits the evidence. Pursuant to point 22 of the Leniency Notice, the concept of "added value" refers to the extent to which the evidence provided strengthens the Commission's ability to prove the facts in question. In making this assessment, the Commission will generally consider written evidence originating from the period of time to which the facts pertain to have a greater value than evidence subsequently established. Similarly, evidence directly relevant to the facts in question will generally be considered to have a greater value than that with only indirect relevance. Pursuant to point 23, in order to determine the level of reduction within each of these bands, the Commission will take into account the time at which the evidence was submitted and the extent to which it represents added value. It may also take into account the extent and continuity of any cooperation provided by the undertaking following the date of its submission
- (1275) It must also be recalled, bearing in mind that some leniency applicants have provided evidence allegedly showing an infringement beyond the periods for which the Commission has finally found an infringement, that the Commission is entitled to limit its assessment to the usefulness for the findings which are actually made in this Decision.¹⁷⁵¹
- (1276) On 15 November 2004, soon after the inspections had been carried out, Grohe applied for immunity from fines or for reduction of fines pursuant to the Leniency Notice. Grohe's leniency application covered its subsidiaries in Austria, Belgium, France, Italy and the Netherlands (in addition to Germany). Grohe's initial leniency application was subsequently supplemented (...).
- (1277) Grohe was the first undertaking to apply for leniency after Masco. By letter dated 8 December 2006, Grohe was informed of the Commission's preliminary intention to grant it a reduction of 30% to 50% of any fine, pursuant to Articles 23(b) and 26 of the Leniency Notice.
- (1278) The Commission is of the opinion that Grohe's leniency submissions represented significant added value for the following reasons: first, they corroborated information already in the Commission's possession with regard to (i) the undertakings' involvement, (ii) the time period the Commission was investigating, (iii) the circumstances in which the cartel members met and communicated with each other, as well as (iv) the overall way in which the cartel operated and the way in which the agreements were implemented. Second, Grohe's submissions enabled the Commission to reconstruct with more accuracy the pattern of coordinative efforts undertaken by the cartel participants in the context of a few associations. Finally, they contained some new evidence in the form of written descriptions of the cartel organisation and of minutes of meetings revealing the price coordination arrangements made among the cartel members.
- (1279) However, Grohe's submissions were mostly of corroborative and explanatory nature. Although they reinforced the Commission's ability to prove certain facts, the Commission already had evidence on the file with regard to most of those facts. Overall, as regards the

¹⁷⁵¹ Judgment of 15 June 2005 in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03 *Tokai Carbon and Others v Commission* (not published in the ECR), paragraph 368.

extent of the cooperation, Grohe's cooperation was of no or very little value as regards certain Member States (such as Austria, the Netherlands or Italy). Although evidence as regards AFPR was valuable, it was submitted after Ideal Standard would have provided evidence on the activities of that association, which diminished greatly its added value.¹⁷⁵² In addition, even as regards those Member States where Grohe's cooperation was more important, Grohe rarely submitted contemporaneous (*in tempore non suspecto*) documentary evidence specifically attesting to price increase exchanges. Based on those considerations, although the leniency status of Grohe pursuant to Articles 23(b) and 26 of the Leniency Notice is not called into question, the Commission considers that Grohe should be granted the lowest reduction in the available range.

- (1280) In its reply to the SO, Ideal Standard disputed on several occasions the added value of Grohe's submissions or sought to establish that its own submissions should be deemed to have considerably more added value than Grohe's.¹⁷⁵³ The Commission considers that these arguments are not sufficient to conclude that Grohe has not provided significant added value. Moreover, the Commission, to the extent that it agrees that the quality of Grohe's contribution could have been substantially higher, has taken into account such factor when deciding the specific reduction to be applied within the range
- (1281) There is no evidence suggesting that Grohe has not terminated its involvement in the suspected infringement before or at the latest at the time at which it submitted the evidence (point 21 of the Leniency Notice). Grohe has cooperated effectively with the Commission during the administrative proceedings.
- (1282) In conclusion, Grohe is the first undertaking to satisfy point 21 of the Leniency Notice. Having regard to the early stage at which it provided that contribution and the extent of its cooperation following its leniency application, but also to the specific (and relative) value of its contribution in establishing proof of the underlying facts of the case, a fine reduction of 30% should be granted to Grohe.

8.8.3 *Ideal Standard*

- (1283) On 19 November 2004, very soon after Grohe's leniency application, the Commission received an application from American Standard Europe BVBA (on its own behalf and on behalf of its subsidiaries) for immunity from fines pursuant to point 8 of the Notice or, alternatively, for a reduction of fine with regard to an alleged cartel in the bathroom fittings and fixtures industry in Austria, Belgium, France, Germany, Italy and the Netherlands. The leniency application was supplemented with submissions of additional documentary evidence (...).
- (1284) Ideal Standard was the second undertaking to apply for leniency after Grohe. By letter dated 8 December 2006, Ideal Standard was informed of the Commission's preliminary intention to grant it a reduction of 20% to 30% of any fine, pursuant to Articles 23(b) and 26 of the Leniency Notice.
- (1285) The Commission is of the opinion that Ideal Standard's leniency submissions represented significant added value, even as regards the Member States for which no fine is imposed in application of point 23, last paragraph, of the Leniency Notice, notably for the following reasons: first, they contained new evidence in the form of written descriptions of the cartel organization and of minutes of meetings (including contemporaneous notes) regarding the

¹⁷⁵² (...)
¹⁷⁵³ (...)

price coordination arrangements made among the cartel members. Second, they corroborated information already in the Commission's possession with regard to (i) the undertakings' involvement, (ii) the time period the Commission is investigating, (iii) the circumstances in which the cartel members met and communicated with each other, as well as (iv) with regard to the overall way in which the cartel operated and the way in which the agreements were implemented. Third, the breadth and level of detail of the information provided by Ideal Standard (in particular, evidence in the form of contemporaneous documentary evidence) strengthened the Commission's ability to establish proof of the cartel arrangements.

- (1286) There is no evidence that Ideal Standard did not terminate its involvement in the infringement later than the time it made its application. Ideal Standard has further provided the Commission with effective cooperation from that date and throughout the administrative proceedings.
- (1287) In conclusion, Ideal Standard is the second applicant to satisfy point 21 of the Leniency Notice. Considering the value of Ideal Standard's contribution to this case as regards those Member States for which a fine is imposed on it, the early stage at which it provided this contribution and the extent of its cooperation following its leniency application, the maximum range reduction of 30% should be granted to Ideal Standard and its subsidiaries.

8.8.4 *Roca Sanitario SA, and its subsidiaries*

- (1288) On 17 January 2006, the Commission received an application from Roca France for immunity from fines pursuant to point 8 of the Leniency Notice or, in the alternative, for a reduction of any fine that would otherwise have been imposed with regard to an alleged cartel in the bathroom fittings and fixtures industry in Austria, Belgium, France, Germany, Italy and the Netherlands. It was supplemented with additional documents (...).
- (1289) By letter dated 8 December 2006, the three undertakings of the Roca group which were addressees of the SO (Roca Sanitario, Roca France and Laufen)¹⁷⁵⁴ were informed that the submission did not meet the requirements set out in points 8(a) and 9 or 8(b) and 10 of the Leniency Notice and that, in accordance with point 12 of the Notice, immunity from fines was not available for the suspected infringement. The Commission also informed Roca that it had come to the preliminary conclusion that Roca was the third undertaking to submit evidence of the suspected infringement which, within the meaning of points 21 and 22 of the Notice, represented significant added value with respect to the evidence already in the Commission's possession. However, the Commission also specified in the same letter that it would have to assess the extent to which Roca's contribution represented added value in order to determine the level of reduction of any fine.
- (1290) After further examination of the evidence submitted by Roca, the Commission came to the provisional conclusion that Roca was not entitled to a reduction of the fine and informed all concerned entities of the group of its intention not to grant them a reduction of fines in a letter dated 22 January 2010 stating the following motives.
- (1291) First, Roca's original leniency submission, dated 17 January 2006, as well as its subsequent submission of (...).¹⁷⁵⁵ Moreover, Roca has contended that such information does not reveal an infringement of Article 101 of the TFEU.¹⁷⁵⁶

¹⁷⁵⁴ The Commission considered that, as all companies form part of the same undertaking, any reduction would be applicable to all of them.

¹⁷⁵⁵ (...)

- (1292) Second, Roca's subsequent submission of (...) contained a very brief general statement about (...).¹⁷⁵⁷ Moreover, Roca's statement, (...). No further information has been provided by Roca. On the contrary, Roca has downplayed the importance of such (...) in its reply to the SO, and has considered that they do not constitute an infringement of Article 101 TFEU.¹⁷⁵⁸
- (1293) Third, Roca has not provided any information as regards an infringement in the context of AFPR (in relation to taps and fittings in France). On the contrary, in its reply to the SO, Roca has denied the existence of any price coordination within AFPR.¹⁷⁵⁹

Roca's reply and the Commission's arguments

- (1294) (...).¹⁷⁶⁰ (...).¹⁷⁶¹ (...).¹⁷⁶²
- (1295) The Commission does not agree with those arguments. First, the position given by the Commission in its letter of 8 December 2006 was of a preliminary nature (see recital (1289)). In this respect, having further compared Roca's submissions with other leniency submissions that were already at the Commission's disposal at the time of Roca's leniency application (and in particular with Ideal Standard's leniency submissions), the Commission has concluded that Roca's submissions did not represent any significant added value (see recitals (1289)-(1290)). Second, before adopting any final Decision, the Commission is entitled to examine the attitude after 8 December 2006, in particular to assess whether Roca has been genuinely cooperating. (...)
- (1296) (...).¹⁷⁶³
- (1297) The Commission does not accept Roca France's arguments. Roca France fails to provide reasons to substantiate its view that the evidence it provided in its leniency application is more elaborate than acknowledged by the Commission. Further, although Roca France submitted more documents in terms of numbers of pages than Ideal Standard, the information that it had provided hardly strengthens the Commission's ability to prove the facts as regards meetings held within AFICS for the period in time where finally a infringement is found. (...) Lastly, Roca France's arguments as set out in its reply to the SO were aimed at trying to diminish or even negate the probative value of the information that it had itself provided (see recitals (1292)-(1293)).
- (1298) (...).¹⁷⁶⁴ (...).¹⁷⁶⁵ (...).¹⁷⁶⁶
- (1299) The Commission does not accept Roca France's arguments. Roca France's leniency submissions have not strengthened the Commission's ability to prove the facts as regards meetings held within AFICS to an extent to be considered to constitute significant added value. In addition, Roca France has downplayed in its reply to the SO any probative value of its own leniency submissions, which means that it considered itself that the leniency submissions had limited probative value. Finally, the approach followed by both Roca

1756 (...) Roca France denied the anticompetitive nature of this exchange of information. (...)

1757 (...)

1758 (...)

1759 (...)

1760 (...)

1761 (...)

1762 (...)

1763 (...)

1764 Joined Cases C-189/02P Dansk Rorindustri v Commission [2005] ECR I-5425.

1765 See Judgement of the Court of First Instance of 30 September 2009, T-161/05, not yet reported.

1766 (...)

France and Laufen in their respective replies to the SO is so ambiguous that it can hardly be considered a clear non-contestation of the facts as set out in the SO. Even if one were to assume that Roca France and Laufen did not contest those facts, the mere fact of not contesting these facts is not enough to benefit from a reduction of the fine. Overall, the behaviour on the part of Roca cannot be considered to reflect a genuine spirit of cooperation during the proceedings as required by case law of the courts of the European Union.¹⁷⁶⁷

Conclusion

- (1300) The developments cited in recitals (1288) to (1299) illustrate that Roca has not provided significant added value nor exhibited a genuine spirit of cooperation during the proceedings.¹⁷⁶⁸ On the contrary, Roca's conduct following the date of its leniency application (and supplementary submissions) tainted the value of the evidence that it originally purported to offer, as illustrated by its reply to the SO.¹⁷⁶⁹ Such behaviour on the part of Roca does not reflect a genuine spirit of cooperation during the proceedings as required by case law.¹⁷⁷⁰ Finally, the ambiguous statements by Roca did not facilitate the Commission's task of finding an infringement which is a pre-requisite for granting leniency.¹⁷⁷¹

8.8.5 Hansa Metallwerke AG, Germany, and its subsidiaries

- (1301) On 19 January 2006, Hansa Metallwerke AG, Hansa Nederland B.V., Hansa Italiana s.r.l., Hansa Belgium BVBA-SPRL and Hansa Austria GmbH (“Hansa”) applied for immunity from fines or for the reduction of fines. In addition to Germany, Hansa’s leniency application also covered its subsidiaries in Austria, Belgium, Italy and the Netherlands.
- (1302) It is noted that Hansa's leniency application was submitted late in the procedure (on 19 January 2006), such that the Commission already had in its possession evidence establishing proof of the infringement (based on the inspection documents, the immunity submissions of Masco, as well the leniency submissions of Grohe and Ideal Standard). Most of the self-incriminating documents submitted had already been copied during the inspection at Hansa's premises. Therefore, the Commission considers that Hansa has not provided significant added value and should not be allowed to any reduction of fine.

8.8.6 Aloys F. Dornbracht GmbH & CO. KG Armaturenfabrik

- (1303) On 20 January 2006, Aloys F. Dornbracht GmbH & Co. KG applied for immunity from fines or for the reduction of fines.
- (1304) The Commission observes that the evidence submitted by Dornbracht cannot be deemed to represent significant added value within the meaning of point 21 of the Leniency Notice. The Commission already had evidence establishing proof of the infringement in its possession (based on the inspections and the submissions made by Masco, Grohe and Ideal Standard). It must therefore be concluded that Dornbracht is not entitled to any fine reduction.

¹⁷⁶⁷ Joined Cases C-189/02P *Dansk Røindustrie v Commission* [2005] ECR I-5425, paragraphs 338 to 396.

¹⁷⁶⁸ Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Røindustri and Others v Commission* [2005] ECR I-5425, paragraphs 388 to 403, particularly paragraph 395; Judgment of the Court of Justice of 29 June 2006 in case C-301/04 P, *Commission v SGL Carbon AG a.o.*, at paragraphs 68-70.

¹⁷⁶⁹ (...)

¹⁷⁷⁰ Joined Cases C-189/02P *Dansk Røindustrie v Commission* [2005] ECR I-5425, paragraphs 338 to 396.

¹⁷⁷¹ See, for example, T-116/04 *Wieland v Commission*, para 123. (...)

8.8.7 Artweger

(1305) In its reply to the SO, Artweger GmbH & Co KG also applied for leniency.¹⁷⁷² For the avoidance of doubt, the Commission notes that the documents submitted by Artweger with the reply to the SO do not represent any added value, as the existence of an infringement in Austria was sufficiently supported by evidence found during inspections and other leniency applications. The documents provided by Artweger are not relied upon by the Commission. Therefore Artweger's application does not meet the conditions of points 21 and 23 of the Leniency Notice.

8.8.8 Application of point 23 of the Leniency Notice

(1306) According to point 23, third paragraph, of the Leniency Notice, if an undertaking provides evidence "*relating to facts previously unknown to the Commission which have a direct bearing on the gravity or the duration of the suspected cartel*", the Commission will not take these elements into account when setting the fine to be imposed on that undertaking. It follows clearly from its wording that point 23, third paragraph, requires a fact "*unknown to the Commission*" and not simply the fact that evidence may critically reinforce the ability to prove certain facts with regard to which the Commission already has evidence on the file. No partial immunity is to be granted when the Commission has already evidence in its possession but is seeking to complete it. In such situation, granting a fine reduction to the offenders, rather than immunity from fines to a single undertaking, is justified by the fact that the aim is no longer to reveal a fact likely to lead to an increase in the fine imposed, but to gather as much evidence as possible in order to reinforce the Commission's ability to establish the facts in question.¹⁷⁷³ Moreover, in order to benefit from point 23, third paragraph, the evidence provided by the applicant must have a direct bearing on the duration or the gravity of the suspected cartel as such, and not merely on the applicant's own involvement in the cartel. It is not enough to provide evidence regarding certain details which may reinforce the ability to prove the cartel (such as additional meetings or contacts), but which have no bearing on the overall gravity or duration of the cartel. Based on those considerations, the following recitals assess the addressees' claims under point 23 of the Leniency Notice in detail:

8.8.8.1 Ideal Standard

(1307) In its reply to the SO, Ideal Standard argues that it is entitled to full immunity from fines pursuant to point 23 of the Leniency Notice in relation to ceramics in general, because it was the first applicant to provide the Commission with information and evidence of price coordination by ceramics manufacturers.¹⁷⁷⁴ The Commission observes that Ideal Standard is not entitled to any such immunity pursuant to points 8(b) and 10 of the Leniency Notice with respect to the cartel arrangements involving ceramics in general, because the Commission already had evidence in its possession pertaining to ceramics, based on the inspections that had been previously carried out. In particular, the Commission was already

¹⁷⁷² (...)

¹⁷⁷³ Case T-127/04, Judgment of 6 May 2009, KME v Commission, not yet reported, paragraphs 131-132.

¹⁷⁷⁴ (...) This contention is further supported by its argument that the Commission failed to establish a multi-product, cross-Member State single, continuous and complex infringement which encompasses the cartel arrangements pertaining to ceramics manufacturers. With regard to the latter argumentation, the Commission refers to Section 5.2.3 above.

aware of the fact that the product scope of the infringement included ceramics and had specific evidence in its possession to establish proof of it. In any event, Ideal Standard cannot benefit from any such immunity because Masco had already been granted conditional immunity under point 8(a) of the Leniency Notice.

(1308) Aside from this general claim, Ideal Standard argues that it should be granted partial immunity (carve-out) pursuant to point 23, third paragraph, of the Leniency Notice with regard to specific cartel arrangements pertaining to ceramics with regard to all the Member States covered by the Commission's investigation.¹⁷⁷⁵ The Commission must thus assess whether Ideal Standard has indeed provided evidence relating to specific facts previously unknown to the Commission which have a direct bearing on the gravity or duration of the infringement. Each of these claims is assessed by Member State:

(a) Germany

(1309) Ideal Standard submits that it should be granted partial immunity in relation to the price coordination arrangements within the framework of FSKI.¹⁷⁷⁶

(1310) Ideal Standard has indeed provided critical evidence in relation to price coordination within the framework of FSKI. However, the relevant arrangements were not previously unknown to the Commission. In particular, the Commission was aware that the cartel in Germany included ceramics producers, based on evidence pertaining to the umbrella association IFS. More importantly, the Commission had in its possession documentary evidence specifically attesting to such price coordination taking place within FSKI from the inspection documents which had been found in the premises of (...) in Germany. Therefore, point 23 third paragraph of the Leniency Notice is not applicable in these circumstances. Rather, the fact that Ideal Standard's submissions reinforced the Commission's ability to prove the facts with regard to FSKI should be taken into account in determining the appropriate range reduction of its fine within the relevant band. In this regard, the maximum range reduction of 30% was granted to Ideal Standard.

(b) Austria

(1311) Ideal Standard further argues that it should be granted partial immunity in relation to the price coordination arrangements within the framework of the ASI ceramics working group.¹⁷⁷⁷ The Commission considers that point 23, third paragraph of the Leniency Notice is not applicable in these circumstances because the evidence the Commission uses to establish the relevant facts in relation to the price coordination arrangements in Austria (notably the minutes and notes of ASI association meetings) were mostly found during the inspections or were contained in (...) application of immunity. The relevant facts were thus previously known to the Commission.

(c) Italy

(1312) Ideal Standard also submits that it is entitled to partial immunity in relation to the cartel arrangements in the Italian ceramics market.¹⁷⁷⁸ However, the evidence establishing proof of the price coordination arrangements within the framework of the associations Euroitalia and Michelangelo for the period 1993 to 2004 in Italy (which also covered ceramics) were

¹⁷⁷⁵ (...)
¹⁷⁷⁶ (...)
¹⁷⁷⁷ (...)
¹⁷⁷⁸ (...)

previously known to the Commission, primarily from the inspection documents.¹⁷⁷⁹ The Commission thus considers that point 23, third paragraph, of the Leniency Notice is not applicable in relation to the latter cartel arrangements.

(d) Belgium

- (1313) In addition, Ideal Standard submits that it should be granted partial immunity in relation to the price coordination arrangements within the framework of the VC Group in Belgium.¹⁷⁸⁰ The facts underpinning the Commission's findings in relation to the VC Group were indeed unknown to the Commission prior to Ideal Standard's submission. For this reason, pursuant to point 23 third paragraph of the Leniency Notice, the Commission will not take these elements into account when setting the fine to be imposed on Ideal Standard.

(e) France

- (1314) Ideal Standard further submits that point 23, third paragraph, of the Leniency Notice, should apply in relation to France. It submits that it provided the Commission with the key to understanding what the "tour de table" really involved (...).¹⁷⁸¹ Therefore, according to Ideal Standard, this infringing activity should not be taken into account when determining the amount of Ideal Standard's fine.
- (1315) The documentary evidence used by the Commission to establish the facts underpinning the cartel arrangements within the framework of AFPR in the period 2002 to 2004 (...) (see Section 4.2.5). Although Grohe provided documentary evidence relating to the same price coordination arrangements and for the same time period in France, it must further be acknowledged that Ideal Standard presented its evidence to the Commission earlier.¹⁷⁸² The relevant facts were thus unknown to the Commission at the time of Ideal Standard's submission (taking also into account the fact that no inspections had been carried out in France). For this reason, pursuant to point 23 third paragraph of the Leniency Notice, the Commission will not take these elements into account when setting the fine to be imposed on Ideal Standard.
- (1316) The Commission also considers that Ideal Standard should benefit from point 23, third paragraph, of the Leniency Notice as regards the findings relating to AFICS. The facts underpinning the cartel arrangements found in this Decision as regards AFICS were not known to the Commission before Ideal Standard's leniency submission.¹⁷⁸³

8.8.8.2 Roca s.a.r.l. France

¹⁷⁷⁹ Contrary to American Standard's contentions, the references attributed to it in the context of the Euroitalia and Michelangelo meetings cannot possibly be described as "*mere passing references*" without anticompetitive purpose. It suffices to say that these ceramics-specific exchanges equally involve regular price increases, as well as other pricing elements (such as minimum prices and discounts), in a way that is similar to, and entirely consistent with, corresponding exchanges about taps and fittings taking place at the same meetings. (see, by way of example, notes of the Euroitalia meetings held on 9 July 1993, 12 March 1996, 31 January 1997, 15 October 1999, 21 January 2000 and 14 February 2003; and notes of Michelangelo meetings held on for example 12 May 2000 and 20 July 2000). There is no doubt as to the company's anticompetitive object when communicating them (particularly taking into account their degree of detail and the overall context of discussions at the meetings).

¹⁷⁸⁰ (...)

¹⁷⁸¹ (...) the Commission ultimately concluded that proof of infringement can properly be established for the period from 2002 to 2004 (see Section 4.2.4).

¹⁷⁸² (...)

¹⁷⁸³ (...)

(1317) In its reply to the SO, Roca France requests partial immunity pursuant to point 23 of the Leniency Notice for (...).¹⁷⁸⁴ For the reasons explained in detail in Section 8.8.4, Roca France is not entitled to any such partial immunity or other reduction of fines pursuant to point 23 of the Leniency Notice.

8.8.9 Conclusion on the application of the Leniency Notice

(1318) On the basis of the considerations set out in Section 8.8., the fines to be imposed on the immunity and leniency applicants following the application of the Leniency Notice should be as follows:

Table G: Amounts following the application of the Leniency Notice

Applicant	Total adjusted basic amount	Reduction	Fine
Masco	(...)	100%	(...)
Grohe	(...)	30 %	(...)
Former Ideal Standard group	(...)	30%	(...)
Roca	(...)	0%	(...)
Hansa	(...)	0 %	(...)
Dornbracht	(...)	0 %	(...)

8.9. The amounts of the fines in these proceedings

(1319) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 before application of point 35 of the 2006 Guidelines on fines should therefore be as follows:

Table H: Amount of fines

Undertaking	Fines in Euro
Artweger	(...)
Cisal	(...)
Dornbracht	(...)
Duravit	(...)
Duscholux	(...)
Grohe	(...)
Hansa	(...)

¹⁷⁸⁴

(...)

Kludi	(...)
Mamoli	(...)
Masco	(...)
RAF	(...)
Roca	(...)
Sanitec	(...)
Teorema	(...)
V&B	(...)
Zucchetti	(...)
Ideal Standard	(...)
Total	(...)

8.10. Ability to pay

8.10.1. Introduction

- (1320) According to point 35 of Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003¹⁷⁸⁵ (hereinafter, "the 2006 Guidelines on fines") *"In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value."*
- (1321) In exercising its discretion under point 35 of the 2006 Guidelines on fines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.
- (1322) Ten undertakings have invoked their inability to pay under point 35 of the 2006 Guidelines on fines: (...). The Commission has considered those claims and carefully analysed the available financial data on those undertakings. All undertakings concerned received requests for information asking them to submit details about their individual financial situation and the specific social and economic context.
- (1323) Insofar as the undertakings argue that the estimated fine would have a negative impact on their financial situation, without adducing credible evidence demonstrating their inability to pay the expected fine, the Commission points to settled case law according to which the Commission is not required, when determining the amount of the fine to be imposed, to take into account the poor financial situation of an undertaking, since recognition of such an obligation would be tantamount to giving unjustified competitive advantages to undertakings least well adapted to the conditions of the market.¹⁷⁸⁶

¹⁷⁸⁵ OJ C 210, 1.9.2006, p. 2

¹⁷⁸⁶ See Joined Cases 96/82 to 102/82, 104/82, 105/82, 108/82 and 110/82, *IAZ International Belgium and Others v Commission* [1983] ECR 3369, paragraphs 54 and 55, and Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 327, Case C-308/04 P, *SGL Carbon AG v Commission* [2006] ECR I-5977, paragraph 105.

- (1324) Accordingly, in recitals (1329) to (1387) the individual financial position of each of the undertakings concerned and the impact of the fine is assessed in the respective specific social and economic context for those undertakings that have provided more detailed information and data. The respective financial situation of the undertakings concerned is assessed at the time the Decision is adopted and on the basis of the financial data and information submitted by the undertakings.
- (1325) In assessing the undertakings' financial situation, the Commission considers the financial statements (annual reports, consisting of a balance sheet, an income statement, a statement of changes in equity, a cash-flow statement, and notes) of the last (usually five) financial years, as well as their provisional financial statements for the current year and their projections for the subsequent two years. The Commission takes into account and relies upon a number of financial ratios measuring the solidity (in this case, the proportion which the expected fine would represent of the undertakings' equity and assets), profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. In addition, the Commission takes into account relations with outside financial partners such as banks, on the basis of copies of contracts concluded with those partners in order to assess the undertakings' access to finance and, in particular, the scope of any undrawn credit facilities they may have. The Commission also includes in its analysis relations with shareholders in order to assess their confidence in the undertakings' economic viability (shareholder relations may be illustrated by recent dividend payments and other outflows of cash paid to the shareholders), as well as the ability of those shareholders to assist the undertakings concerned financially.¹⁷⁸⁷ Attention is paid both to the equity and profitability of the undertakings and, above all, to their solvency, liquidity and cash flow. The analysis is, in other words, both prospective and retrospective but with a focus on the present and immediate future of the undertaking. The analysis is not purely static but rather dynamic, whilst taking into account consistency over time of the submitted projections. The analysis takes into account possible restructuring plans and their state of implementation.
- (1326) The Commission also assesses the specific social and economic context for each undertaking whose financial situation is found to be sufficiently critical following the analysis described in recital (1325). The Commission also attempts to take into account the impact of the global economic and financial crisis (hereinafter "the economic crisis") affecting the construction sector and its subsequent impact on the bathroom fitting sector, and the expected consequences for the undertaking concerned in terms of, for example, falling demand and falling prices, but also in terms of access to finance. A number of undertakings in this case stated that the economic crisis has had a particularly severe impact on the construction sector and on all undertakings that directly or indirectly offer products or services to that industry, such as bathroom fittings producers. They also argued that there has been a dramatic drop in demand in the bathroom fittings market since mid-2008 due to the economic crisis and that the margins in the bathroom fittings sector in Europe are under strong pressure. They further argued that imports from low-salary countries, overcapacity among existing manufacturers and the current economic crisis have intensified the fight for survival among the market participants. They argue that as a result, a number of important undertakings have left the bathroom fittings sector in recent years or have undergone (and may still be undergoing)

¹⁷⁸⁷ By analogy to the assessment of "*serious and irreparable harm*" in the context of interim measures, the Commission bases its assessment of the undertaking's ability to pay on the financial situation of the undertaking as a whole, including its shareholders, irrespective of the finding of liability (Case C-335/99P(R), *HFB v. Commission*, [1999] ECR I-8705; Case C-7/01P(R), *FEG v. Commission*, [2001] ECR I-2559), and Case T-410/09R *Almamet v. Commission* (not yet reported), at paragraphs 47 *et seq.*

restructuring. In addition, as a result of the economic crisis, undertakings are experiencing difficulty in maintaining their credit lines with banks and obtaining sufficient financing. These arguments are, for the sector in general, supported by studies, such as the report produced by the Directorate General for Enterprise and Industry entitled "Impact of the economic crisis on key sectors of the EU – the case of the manufacturing and construction industries" of February 2010.¹⁷⁸⁸ The question whether the specific economic context as described in this recital and the specific social context apply to each individual undertaking is assessed in recitals (1329) to (1387) for each applicant which has invoked an inability to pay.

- (1327) The fact that an undertaking goes into liquidation does not necessarily mean that there will always be a total loss of asset value. Therefore, the risk of liquidation may not, in itself, justify a reduction in the fine which would have otherwise been imposed.¹⁷⁸⁹ This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management continue to develop the undertaking and its assets. Therefore, each applicant which has invoked an inability to pay needs to demonstrate that good and viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure maintaining the undertaking as a going concern, the Commission considers that there is a sufficiently high risk that the undertaking's assets would lose a significant part of their value if, as a result of the fine to be imposed, the undertakings were to be forced into liquidation.
- (1328) Consequently, where the conditions laid down in point 35 of the 2006 Guidelines on fines are met, the reduction of the final amount of the fine imposed on each of the undertakings concerned is established on the basis of the financial and qualitative analysis described in recitals (1325) to (1327), also taking into account the ability of the undertaking concerned to pay the final amount of the fine imposed and the likely effect such payment would have on the economic viability of each undertaking.

8.10.2. (...)

(1329) (...)¹⁷⁹⁰ (...)¹⁷⁹¹, (...).¹⁷⁹² (...)¹⁷⁹³ (...),¹⁷⁹⁴ (...).

(1330) (...).

(1331) (...).¹⁷⁹⁵ (...).¹⁷⁹⁶ (...).¹⁷⁹⁷ (...).¹⁷⁹⁸ (...).¹⁷⁹⁹

¹⁷⁸⁸ Report by DG Enterprise and Industry: available at http://ec.europa.eu/enterprise/newsroom/cf/document.cfm?action=display&doc_id=5633&userservice_id=1&request_id=0.

¹⁷⁸⁹ See Joined Cases T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 *Tokai Carbon and Others v Commission* [2004] ECR II-1181, paragraph 372 and Case T-64/02 *Heubach v Commission* [2005] ECR II-5137, paragraph 163.

¹⁷⁹⁰ (...)

¹⁷⁹¹ (...)

¹⁷⁹² (...)

¹⁷⁹³ (...)

¹⁷⁹⁴ (...)

¹⁷⁹⁵ (...)

¹⁷⁹⁶ (...)

¹⁷⁹⁷ (...)

¹⁷⁹⁸ (...)

¹⁷⁹⁹ Cf. by analogy Case T-410/99 R *Almamet v. Commission*, paras. 67, 70.

(1332) (...).¹⁸⁰⁰ (...).¹⁸⁰¹ (...).

8.10.3. (...)

(1333) (...).¹⁸⁰² (...),¹⁸⁰³ (...)¹⁸⁰⁴ (...).

(1334) (...).

(1335) (...).

(1336) (...).¹⁸⁰⁵ (...).¹⁸⁰⁶ (...).¹⁸⁰⁷ (...).¹⁸⁰⁸ (...).¹⁸⁰⁹ (...).

8.10.4. (...)

(1337) (...).¹⁸¹⁰ (...),¹⁸¹¹ (...)¹⁸¹² (...).

(1338) (...).

(1339) (...)¹⁸¹³ (...).

(1340) (...).

(1341) (...).

(1342) (...).

(1343) (...).

(1344) (...).

(1345) (...).¹⁸¹⁴

(1346) (...).

8.10.5. (...)

(1347) (...).¹⁸¹⁵ (...),¹⁸¹⁶ (...)¹⁸¹⁷, (...).

1800	(...)
1801	(...)
1802	(...)
1803	(...)
1804	(...)
1805	(...)
1806	(...)
1807	(...)
1808	(...)
1809	(...)
1810	(...)
1811	(...)
1812	(...)
1813	EBITDA is the acronym for "earnings before interest, taxes, depreciation and amortisation".
1814	(...)
1815	(...)
1816	(...)

- (1348) (...).
- (1349) (...).
- (1350) (...).
- (1351) (...).
- (1352) (...).
- (1353) (...).¹⁸¹⁸ (...).¹⁸¹⁹
- (1354) (...).

8.10.6. (...)

- (1355) (...).¹⁸²⁰ (...),¹⁸²¹ (...)¹⁸²², (...).
- (1356) (...).
- (1357) (...).
- (1358) (...).¹⁸²³ (...).¹⁸²⁴ (...).
- (1359) (...).
- (1360) (...).
- (1361) (...).¹⁸²⁵
- (1362) (...).

8.10.7. (...)

- (1363) (...).¹⁸²⁶ (...),¹⁸²⁷ (...)¹⁸²⁸, (...).
- (1364) (...).
- (1365) (...).
- (1366) (...).
- (1367) (...).
- (1368) (...).¹⁸²⁹

- 1817 (...)
- 1818 (...)
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- 1823 (...)
- 1824 (...)
- 1825 (...)
- 1826 (...)
- 1827 (...)
- 1828 (...)
- 1829 (...)

(1369) (...).¹⁸³⁰

(1370) (...).

8.10.8. (...)

(1371) (...).¹⁸³¹ (...) ¹⁸³² (...) ¹⁸³³, (...) ¹⁸³⁴, (...).

(1372) (...).¹⁸³⁵ (...).

(1373) (...).

8.10.9. (...)

(1374) (...).¹⁸³⁶, (...) ¹⁸³⁷, (...) ¹⁸³⁸, (...).

(1375) (...).

(1376) (...).

(1377) (...).¹⁸³⁹ (...).

(1378) (...).

(1379) (...).

(1380) (...).¹⁸⁴⁰ (...) ¹⁸⁴¹

(1381) (...).

8.10.10. (...)

(1382) (...).¹⁸⁴² (...), ¹⁸⁴³ (...), ¹⁸⁴⁴ (...).

(1383) (...).

(1384) (...).

8.10.11. (...)

1830	(...)
1831	(...)
1832	(...)
1833	(...)
1834	(...)
1835	(...)
1836	(...)
1837	(...)
1838	(...)
1839	(...)
1840	(...)
1841	(...)
1842	(...)
1843	(...)
1844	(...)

(1385) (...).¹⁸⁴⁵ (...) ¹⁸⁴⁶ (...).¹⁸⁴⁷

(1386) (...).

(1387) (...).

8.10.12. Conclusion

(1388) It follows from the assessment in recitals (1329) to (1387) that a reduction in the fine which would otherwise be imposed is granted to (...), (...), (...), (...) and (...) pursuant to point 35 of the 2006 Guidelines on fines on the grounds of inability to pay. The requests from (...) for a reduction in the fines which would otherwise be imposed, on the grounds of inability to pay pursuant to point 35 of the 2006 Guidelines on fines, should be rejected.

8.11. General economic situation

(1389) (...) refers to the economic crisis and alleges that it has put the bathroom fittings industry in an exceptional and unprecedented distressed situation.¹⁸⁴⁸ For that reason, it requests that a reduction of the fines be imposed on it and the other undertakings concerned of at least 20 %. (...) invokes point 37 of the 2006 Guidelines on fines, which states: „*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 [of these Guidelines].*”

(1390) (...) describes how the economic crisis has severely affected the building and construction sector in general and, consequently, the bathroom fittings industry. According to (...), the whole bathroom fittings industry has experienced a sharp decline in turnover and is recovering only very slowly if at all. Additionally, as a manufacturer of high quality fittings, (...) claims it has been affected more than others and submits that the fines to be imposed by the Commission should reflect the negative impact of the economic crisis on its business activities.

(1391) (...) refers to precedents where the Commission has imposed a reduced fine to take into account the particular circumstances of a given case.¹⁸⁴⁹ However, the fact that the Commission may have considered certain factors to constitute mitigating circumstances in determining the amount of the fine in previous decisions does not mean that it is appropriate or obliged to make the same assessment in subsequent decisions.¹⁸⁵⁰ In any event, the circumstances are different in this case.

1845 (...)

1846 (...)

1847 (...)

1848 (...)

1849 (...)

Commission Decision of 2 April 2003 in Case No COMP/38.279 – *French beef*, OJ L 209, 19.8.2003, p. 12; Commission Decision of 22 July 2009 in Case No COMP/39.396 – *Calcium Carbide*, summary published in OJ C 301, 11.12.2009, p. 18; Commission Decision of 11 March 2008 in Case COMP/38.543 — *International removal services*, summary published in OJ C 188, 11.8.2009, p. 16; Commission press release IP/09/1695 of 11 November 2009 relating to Case COMP/38.359 – *Heat stabilisers* (not yet reported).

1850 Case T-7/89 *Hercules Chemicals v Commission* [1991] ECR II-1711, paragraph 53, confirmed on appeal in Case C-51/92P *Hercules Chemicals v Commission* [1999] ECR I-4235, and the case law cited therein; Case T-347/94

- (1392) In the *French beef* case¹⁸⁵¹, the Commission granted a reduction in the fine on the basis of point 5(b) of Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (“the 1998 Guidelines on fines”) ¹⁸⁵². That reduction was based on exceptional circumstances (in terms of a significant fall in consumption and prices) at the time the agreement was concluded between farmers and slaughterers with the aim of setting minimum prices. Grohe does not claim that the anti-competitive behaviour at issue in this case was a response to such exceptional circumstances but rather, claims that such circumstances now exist. The circumstances of this case are therefore not comparable to those of the *French beef* case.
- (1393) In the *Calcium Carbide* case¹⁸⁵³, the fine to be imposed on Almamet was reduced by 20 % on the basis of an evaluation of its financial position and certain special circumstances that were specific to it, not because of sectoral difficulties, as in this case.
- (1394) In the *International Removal Services* case¹⁸⁵⁴ the decision took into account the specific circumstances concerning the individual situation of an undertaking and its parent companies, and accordingly granted that undertaking a 70% reduction of the fine to be imposed on it. This, however, was based on that undertaking's specific individual circumstances, not on sectoral difficulties.
- (1395) Finally, in the *Heat Stabilisers* case¹⁸⁵⁵, a further reduction in the fine imposed on an undertaking was granted in addition to the reduction pursuant to the Leniency Notice, but the further reduction was the result of the application of point 35 of the 2006 Guidelines on fines, not point 37 of those guidelines.
- (1396) To the extent that undertakings invoke their distressed financial situation which may result from the general or sectoral economic situation, such claims are dealt with in the section regarding ability to pay (Section 8.10). Although, like the other cartel members in this case, (...) was informed of the possibility to invoke its inability to pay under point 35 of the 2006 Guidelines, it did not do so.
- (1397) Furthermore, the Commission is of the opinion that the deterioration of business activities in the bathroom fittings sector, due to the economic crisis, is not in itself sufficient to justify a reduction of the fine, in particular where an undertaking has not sufficiently demonstrated that such deterioration risks jeopardising seriously the undertaking's economic viability. The information submitted was insufficient to allow for any conclusions as to the financial state of (...). In particular, the submission focused heavily on the state of the sector and (...) put itself forward only as an example, together with its main competitors in the sector.
- (1398) (...) also argues that a fine based on its turnover for 2009 would breach the principle of proportionality, as it would not take into account its current financial resources. In this regard, it suffices to refer to Article 23(2) of Regulation (EC) No 1/2003, according to which fines are calculated on the basis of the turnover in the business year preceding the decision.

Mayr-Melnhof Kartongesellschaft v. Commission [1998] ECR II-1751, paragraph 368; Case T-23/99 *LR AF 1998 v. Commission* [2002] ECR II-1705, paragraph 337. Case C-510/06 P *Archer Daniels Midland Co. v Commission*, judgment of 19 March 2009, paragraph 82.

¹⁸⁵¹ Commission Decision of 2 April 2003 in Case No COMP/38.279 – *French beef*, OJ L 209, 19.8.2003, p. 12.

¹⁸⁵² OJ C 9, 14.1.1998, p. 3.

¹⁸⁵³ Commission Decision of 22 July 2009 in Case No COMP/39.396 – *Calcium Carbide*, summary published in OJ C 301, 11.12.2009, p. 18.

¹⁸⁵⁴ Commission Decision of 11 March 2008 in Case COMP/38.543 — *International removal services*, summary published in OJ C 188, 11.8.2009, p. 16.

¹⁸⁵⁵ Commission press release IP/09/1695 of 11 November 2009 relating to Case COMP/38.359 – *Heat stabilisers*

(1399) Consequently, (...) request for application by the Commission of point 37 of the 2006 Guidelines on fines should be rejected.

HAS ADOPTED THIS DECISION:

Article 1

(1) The following undertakings have infringed Article 101 of the Treaty of the Functioning of the European Union and – from 1 January 1994 – Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector covering the territory of Germany, Austria, Italy, France, Belgium and the Netherlands:

1. Masco Corporation from 1 January 1995 until 15 July 2004; Hansgrohe AG from 16 October 1992 until 15 July 2004; Hansgrohe Deutschland Vertriebs GmbH from 6 November 2002 until 15 July 2004; Hansgrohe Handelsgesellschaft mbH from 30 May 1995 until 15 July 2004; Hansgrohe S.A./N.V. from 21 September 2000 until 15 July 2004; Hansgrohe B.V. from 28 September 1994 until 31 December 1999; Hansgrohe S.A.R.L. from 1 May 2004 until 15 July 2004; Hansgrohe S.R.L. from 16 October 1992 until 15 July 2004; Hüppe GmbH from 15 September 1994 until 15 July 2004; Hüppe Ges.mbH from 12 October 1994 until 15 July 2004; Hüppe Belgium S.A. (N.V.) from 10 March 2003 until 15 July 2004 and Hüppe B.V. from 20 January 1999 until 31 December 1999.
2. Grohe Beteiligungs GmbH from 15 March 1993 until 9 November 2004; Grohe AG from 15 March 1993 until 9 November 2004; Grohe Deutschland Vertriebs GmbH from 6 March 1998 until 9 November 2004; Grohe Gesellschaft mbH from 21 July 1994 until 9 November 2004; Grohe S.A. (N.V.) from 21 September 2000 to 9 November 2004; Grohe S.A.R.L. from 10 December 2002 to 9 November 2004; Grohe S.P.A. from 15 March 1993 to 9 November 2004 and Grohe Nederland B.V. from 28 September 1994 to 31 December 1999.
3. Trane Inc. from 15 March 1993 to 9 November 2004, WABCO Europe BVBA from 29 October 2001 to 9 November 2004 and WABCO Austria GesmbH from 21 July 1994 to 9 November 2004, Ideal Standard GmbH from 19 March 2003 to 9 November 2004; Ideal Standard Produktions-GmbH from 30 October 2001 to 9 November 2004; Ideal Standard France from 10 December 2002 to 9 November 2004; Ideal Standard Italia s.r.l. from 15 March 1993 to 9 November 2004.
4. Ideal Standard Nederland BV from 30 November 1994 to 31 December 1999.
5. Hansa Metallwerke AG from 16 October 1992 to 9 November 2004; Hansa Nederland B.V. from 26 November 1996 to 31 December 1999; Hansa Italiana s.r.l. from 16 October 1992 to 9 November 2004; Hansa Belgium BVBA-SPRL from 10 March 2003 to 9 November 2004 and Hansa Austria GmbH from 21 July 1994 to 9 November 2004.
6. Sanitec Europe Oy from 12 October 1994 to 9 November 2004; Allia S.A.S. from 25 February 2004 to 9 November 2004; Produits Céramiques de Touraine S.A. from 25 February 2004 to 9 November 2004; Keramag Keramische Werke AG from 12 October 1994 to 9 November 2004; Koninklijke Sphinx B.V. from 28 September 1994 to 31 December 1999; Koralle Sanitärprodukte GmbH from 24 January 1996 to 9 November 2004, and Pozzi Ginori S.p.A. from 14 May 1996 to 14 September 2001.
7. Villeroy & Boch AG from 28 September 1994 to 9 November 2004; Villeroy & Boch Austria GmbH from 12 October 1994 to 9 November 2004; Villeroy & Boch Belgium S.A. (N.V.) from 30 October 2001 to 9 November 2004; and Villeroy & Boch S.A.S. from 25 February 2004 to 9 November 2004.

8. Duravit AG from 7 July 2000 to 9 November 2004; Duravit BeLux Sprl/Bvba from 30 October 2001 to 9 November 2004; Duravit S.A. from 25 February 2004 to 9 November 2004.
9. Duscholux GmbH & Co. KG From 29 November 1994 to 9 November 2004, Duscholux Belgium SA/NV from 21 September 2000 to 9 November 2004 and DPM Duschwand-Produktions- und Montagegesellschaft mbH. from 15 September 1994 to 9 November 2004.

(2) The following undertakings have infringed Article 101 of the Treaty of the Functioning of the European Union and – from 1 January 1994 – Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector covering the territory of Germany and Austria:

10. Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik from 6 March 1998 to 9 November 2004.
11. Kludi GmbH & Co. KG from 6 March 1998 to 9 November 2004 and Kludi Armaturen GmbH & Co. KG from 21 July 1994 to 9 November 2004.

(3) The following undertakings have infringed Article 101 of the Treaty of the Functioning of the European Union and – from 1 January 1994 – Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector covering the territory of Austria and France:

12. Roca Sanitario S.A. from 29 October 1999 to 9 November 2004 and Roca SARL from 10 December 2002 to 9 November 2004 and Laufen Austria AG from 12 October 1994 to 9 November 2004.

(4) The following undertaking has infringed Article 101 of the Treaty of the Functioning of the European Union and – from 1 January 1994 – Article 53 of the EEA Agreement by participating, for the periods indicated, in a continuing agreement or concerted practice in the bathroom fittings and fixtures covering the territory of Austria:

13. Artweger GmbH. & Co. KG from 12 October 1994 to 9 November 2004.

(5) The following undertakings have infringed Article 101 of the Treaty of the Functioning of the European Union by participating, for the periods indicated, in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector covering the territory of Italy:

14. Rubinetteria Cital S.p.A. from 15 March 1993 to 9 November 2004
15. Mamoli Rubinetteria SpA from 18 October 2000 to 9 November 2004
16. RAF Rubinetteria S.p.A. from 15 March 1993 to 9 November 2004
17. Rubinetterie Teorema S.p.A. from 15 March 1993 to 9 November 2004
18. Zucchetti Rubinetteria S.p.A. from 16 October 1992 to 9 November 2004

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

1.		EUR 0	On Masco Corporation; Hansgrohe AG; Hansgrohe Deutschland Vertriebs GmbH; Hansgrohe Handelsgesellschaft mbH; Hansgrohe S.A./N.V.; Hansgrohe B.V.; Hansgrohe S.A.R.L.; Hansgrohe S.R.L.; Hüppe GmbH; Hüppe Ges.mbH; Hüppe Belgium S.A. (N.V.) and Hüppe B.V.
2.	(a)	EUR 25 372 377	Jointly and severally on Grohe Deutschland Vertriebs GmbH, Grohe Beteiligungs GmbH and Grohe AG
	(c)	EUR 4 917 533	Jointly and severally on Grohe Gesellschaft mbH, Grohe Beteiligungs GmbH and Grohe AG,
	(d)	EUR 4 132 820	Jointly and severally on Grohe S.A. (N.V.), Grohe Beteiligungs GmbH and Grohe AG
	(e)	EUR 6 277 702	Jointly and severally on Grohe S.A.R.L., Grohe Beteiligungs GmbH and Grohe AG
	(f)	EUR 14 124 828	Jointly and severally on Grohe S.P.A., Grohe Beteiligungs GmbH and Grohe AG
	(g)	EUR 0	Jointly and severally on Grohe Nederland B.V., Grohe Beteiligungs GmbH and Grohe AG
	TOTAL	EUR 54 825 260	
3.	(a)	EUR 259 066 294	On Trane Inc.
	(b)	EUR 44 995 552	Jointly and severally on WABCO Europe BVBA and Trane Inc.
	(c)	EUR 1 519 000	Jointly and severally on WABCO Austria GesmbH, WABCO Europe BVBA and Trane Inc.
	(d)	EUR 0	Jointly and severally on Ideal Standard France, WABCO Europe BVBA and Trane Inc.
	(e)	EUR 12 323 430	Jointly and severally on Ideal Standard Italia s.r.l., WABCO Europe BVBA and Trane Inc.
	(f)	EUR 5 575 920	Jointly and severally on Ideal Standard GmbH, WABCO Europe BVBA and Trane Inc.
	(g)	EUR 0	Jointly and severally on Ideal Standard Produktions-GmbH, WABCO Europe BVBA and Trane Inc.
	(h)	EUR 2 611 000	Jointly and severally on WABCO Austria GesmbH and Trane Inc.
	(i)	EUR 0	On Ideal Standard Nederland BV
	TOTAL	EUR 326 091 196	
4.	(a)	EUR 17 700 000	Jointly and severally on Roca Sanitario SA and Laufen Austria AG
	(b)	EUR 6 700 000	Jointly and severally on Roca SARL and Roca Sanitario S.A.
	(c)	EUR 14 300 000	Laufen Austria AG
	TOTAL	EUR 38 700 000	
5.	(a)	EUR 10 332 958	Hansa Metallwerke AG,

	(b) EUR 2 245 696	Jointly and severally on Hansa Austria GmbH and Hansa Metallwerke AG
	(c) EUR 2 066 592	Jointly and severally on Hansa Italiana s.r.l. and Hansa Metallwerke AG
	(d) EUR 112 974	Jointly and severally on Hansa Belgium BVBA-SPRL and Hansa Metallwerke AG
	(e) EUR 0	Jointly and severally on Hansa Nederland B.V. and Hansa Metallwerke AG
	TOTAL EUR 14 758 220	
6.	EUR 12 517 671	On Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik;
7.	(a) EUR 9 873 060	On Sanitec Europe Oy
	(b) EUR 26 068 884	Jointly and severally on Keramag Keramische Werke AG and Sanitec Europe Oy
	(c) EUR 1 395 690	Jointly and severally on Koninklijke Sphinx B.V. and Sanitec Europe Oy
	(d) EUR 4 579 610	Jointly and severally on Allia S.A.S. and Sanitec Europe Oy
	(e) EUR 2 529 689	Jointly and severally on Produits Céramiques de Touraine S.A., Allia S.A.S. and Sanitec Europe Oy
	(f) EUR 4 520 000	Jointly and severally on Pozzi Ginori S.p.A. and Sanitec Europe Oy
	(g) EUR 5 233 840	Jointly and severally on Koralle Sanitärprodukte GmbH and Sanitec Europe Oy
	(h) EUR 3 489 227	On Koralle Sanitärprodukte GmbH
	TOTAL EUR 57 690 000	
8.	(a) EUR 54 436 347	On Villeroy & Boch AG
	(b) EUR 6 083 604	Jointly and severally on Villeroy & Boch Austria GmbH and Villeroy & Boch AG
	(c) EUR 2 942 608	Jointly and severally on Villeroy & Boch Belgium S.A. (N.V.) and Villeroy & Boch AG
	(d) EUR 8 068 441	Jointly and severally on Villeroy & Boch S.A.S. and Villeroy & Boch AG
	TOTAL EUR 71 531 000	
9.	(a) EUR 25 226 652	On Duravit AG
	(b) EUR 2 471 530	Jointly and severally on Duravit BeLux SPRL/BVBA and Duravit AG
	(c) EUR 1 568 143	Jointly and severally on Duravit S.A. and Duravit AG
	TOTAL EUR 29 266 325	
10.	(a) EUR 384 022	On Duscholux GmbH & Co. KG
	(b) EUR 128 007	On Duscholux Belgium S.A.;
	(c) EUR 1 147 652	On DPM Duschwand-Produktions- und

		Montagegesellschaft mbH;
	TOTAL EUR 1 659 681	
11.	(a) EUR 3 233 192	Kludi GmbH & Co. KG
	(b) EUR 2 282 253	Kludi Armaturen GmbH & Co. KG
	TOTAL EUR 5 515 445	
12.	EUR 2 787 015	On Artweger GmbH. & Co. KG;
13.	EUR 1 196 269	On Rubinetteria Cisal S.p.A.
14.	EUR 1 041 531	On Mamoli Robinetteria SpA
15.	EUR 253 600	On RAF Rubinetteria S.p.A.
16.	EUR 421 569	On Rubinetterie Teorema S.p.A.
17.	EUR 3 996 000	On Zucchetti Rubinetteria S.p.A.

The fines shall be paid in euro, within three months of the date of the notification of this Decision to the following account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: European Commission – BUFI/COMP/39092

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking may cover the fine by the due date by either providing a bank guarantee acceptable to the Accounting Officer of the Commission or making a provisional payment of the fine.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article in so far as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to:

1. Masco Corporation 21001 Van Born Road Taylor, MI 48180 USA	35. Hansa Belgium BVBA-SPRL Z.3 Doornveld 33 B-1731 Zellik
2. Hansgrohe AG Auestraße 5-9 D-77761 Schiltach	36. Hansa Austria GmbH Rottfeld 7 A-5013 Salzburg
3. Hansgrohe Deutschland Vertriebs GmbH Auestraße 5-9 D-77761 Schiltach	37. Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik Köbbingser Mühle 6 D-58640 Iserlohn
4. Hansgrohe Handelsgesellschaft mbH IZ NÖ-Süd Straße 2d/Objekt M18 A-2355 Wiener Neudorf	38. Sanitec Europe Oy Kaupintie 2, FIN-00440 Helsinki
5. Hansgrohe S.A./N.V. Riverside Business Park Blvd International 55 Building K B-1070 Brussels	39. Allia S.A.S. Zone d'Activité du Bois Gasseau F-77210 Samoreau
6. Hansgrohe BV Handelsweg 45 NL-1525 RG Westknollendam	40. Produits Céramiques de Touraine S.A. 12 rue de la Céramique F-41130 Selles sur Cher
7. Hansgrohe S.A.R.L. Parc de Haute Technologie 27 rue Georges Besse F-92182 Antony Cedex	41. Keramag Keramische Werke AG Kreuzerkamp 11 D- 40878 Ratingen
8. Hansgrohe S.R.L. SS 10 km 24,4 IT-14019 Villanova d'Asti (AT)	42. Koninklijke Sphinx B.V. Stationsplein 12B NL-6221 BT Maastricht
9. Hüppe GmbH. Industriestraße 3 D-26160 Bad Zwischenahn	43. Koralle Sanitärprodukte GmbH Hollwieser Straße 45 D-32602 Vlotho
10. Hüppe Ges.mbH	44. Pozzi Ginori S.p.A.

Max.Neuwirthgasse 2/1 A-2361 Laxenburg	Via Valcellina A-2, Z.I. Nord IT-33097 Spilimbergo
11. Hüppe Belgium S.A. (N.V.) 49, Chaussée du Louvain B-1932 Woluwé St. Etienne	45. Villeroy & Boch AG Saaruferstraße D-66693 Mettlach
12. Hüppe B.V. Kelvinring 1 NL-2952 BG Alblasterdam	46. Villeroy & Boch Austria GmbH Guggenbergstraße 2 A-5310 Mondsee
13. Grohe Beteiligungs GmbH Feldmühleplatz 15 D-40656 Düsseldorf	47. Villeroy & Boch Belgium S.A. (N.V.) Avenue Louise 37 B-1050 Brussels
14. Grohe AG Feldmühleplatz 15 D-40656 Düsseldorf	48. Villeroy & Boch S.A.S. 82 Rue d'Hauteville F-75010 Paris
15. Grohe Deutschland Vertriebs GmbH Feldmühleplatz 15 D-40656 Düsseldorf	49. Duravit AG Werderstraße 36 D-78132 Hornberg
16. Grohe Gesellschaft mbH Wienerbergstrasse 11/A7 A-1100 Wien	50. Duravit BeLux SPRL/BVBA Brusselsesteenweg 288 B-3090 Overijse
17. Grohe S.A. (N.V.) Diependaalweg 4a B-3020 Winksele	51. Duravit S.A. Rue de Marienthal, B.P.30010 F-67241 Bischwiller Cedex
18. Grohe S.A.R.L. 60, Bld de la Mission Marchand F-92400 Courbevoie-La Défense	52. Duscholux GmbH & Co. KG Am Kirchenholz 2 A-4063 Hörsching
19. Grohe S.P.A. Via Castellazzo Nr. 9/B IT-20040 Cambiago (Milano)	53. Duscholux Belgium S.A. Sterrebeekstraat 181, C1-C2 B-1930 Zaventem
20. Grohe Nederland B.V.	54. DPM Duschwand-Produktions- und

<p>Metaalstraat 2 NL-2718 SW Zoetermeer ZH</p>	<p>Montagegesellschaft mbH Industriestraße 1 D-69198 Schriesheim</p>
<p>21. Trane Inc. 1 Centennial Avenue Piscataway, NJ 08854, U.S.A.</p>	<p>55. Kludi GmbH & Co. KG Am Vogelsang 31-33 D-58706 Menden</p>
<p>22. WABCO Europe BVBA Chaussée de Wavre 1789, box 15 B-1160 Brussels</p>	<p>56. Kludi Armaturen GmbH & Co. KG Neufelder Straße 17 A-7053 Hornstein</p>
<p>23. WABCO Austria GesmbH Murbangasse 8 A-1108 Wien</p>	<p>57. Artweger GmbH. & Co. KG Sulzbach 159 A-4820 Bad Ischl</p>
<p>24. Ideal Standard GmbH Euskirchener Strasse 80 D-53121 Bonn</p>	<p>58 Rubinetteria Cisal S.p.A. Via Pietro Durio 160 IT-28010 Pella-Frazione Alzo-NO</p>
<p>25. Ideal Standard Produktions-GmbH Roentgenstrasse 9 D-54516 Wittlich</p>	<p>59 Mamoli Rubinetteria SpA. P.zza Spartaco Mamoli 1 IT-20084 Lacchiarella (MI)</p>
<p>26. Ideal Standard France 165 avenue du Bois de la Pie F-95920 Roissy CDG Cedex</p>	<p>60. RAF Rubinetteria S.p.A. Via Torchio, 2 IT-28017 San Maurizio d'Opaglio (NOVARO)</p>
<p>27. Ideal Standard Italia s.r.l. Via Domodossola, 19 IT-20145 Milano</p>	<p>61. Rubinetterie Teorema S.p.A. Via XX Settembre 120 IT-25020 Flero (BS)</p>
<p>28. Ideal Standard Nederland BV L.J. Costerstraat 30 PB 7 NL-5916 PS Venlo</p>	<p>62. Zucchetti Rubinetteria S.p.A. Via Molini di Resiga , 29 IT-28024 Gozzano (NO)</p>
<p>29. Roca Sanitario S.A. Avda. Diagonal, 513 ES-08029 Barcelona</p>	

30. Roca SARL Parc Moderne d'Industries Zone d'Activité de Béthunes 9-21 rue de Bretagne F-95310 Saint Ouen L'Aumone	
31. Laufen Austria AG Mariazeller Straße 100 A-3150 Wilhelmsburg	
32. Hansa Metallwerke AG Sigmaringer Strasse 107 D-70567 Stuttgart	
33. Hansa Nederland B.V. Gildenstraat 37 NL-3861 RG NIJKERK	
34. Hansa Italiana s.r.l. Via M.G. Agnesi 37/39, IT-47014 Castelnuovo del Garda	

This Decision shall be enforceable pursuant to Article 299 of the Treaty of the Functioning of the European Union and Article 110 of the EEA Agreement.

Done at Brussels, 23.6.2010

For the Commission
Joaquin ALMUNIA
Vice-President of the Commission

Annex [1]

**Meetings of the IFS (previously DSI) – Germany
IndustrieForum Sanitär (Freundeskreis der deutschen Sanitärindustrie)**

Germany: IFS (Was DSI until 24/4/01)										
14/01/97 ¹⁸⁵⁶										
23/06/97 ¹⁸⁵⁷										
22/09/97 ¹⁸⁵⁸										
10/11/98 ¹⁸⁵⁹										
10/02/00 ¹⁸⁶⁰										
05/10/00 ¹⁸⁶¹										
24/04/01 ¹⁸⁶² (Inaugural IFS meeting)										
23/05/01 ¹⁸⁶³										
14/11/01 ¹⁸⁶⁴										
11/04/02 ¹⁸⁶⁵										
30/04/02 ¹⁸⁶⁶										
04/07/02 ¹⁸⁶⁷										
20/11/02 ¹⁸⁶⁸										
02/04/03 ¹⁸⁶⁹										
09/04/03 ¹⁸⁷⁰										
18/07/03 ¹⁸⁷¹										
15/10/03 ¹⁸⁷²										

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- 1856 (…)
 - 1857 (…)
 - 1858 (…)
 - 1859 (…)
 - 1860 (…)
 - 1861 (…)
 - 1862 (…)
 - 1863 (…)
 - 1864 (…)
 - 1865 (…)
 - 1866 (…)
 - 1867 (…)
 - 1868 (…)
 - 1869 (…)
 - 1870 (…)
 - 1871 (…)

13/11/03 ¹⁸⁷³										
27/04/04 ¹⁸⁷⁴										
20/07/04 ¹⁸⁷⁵										

1872 (...)
1873 (...)
1874 (...)
1875 (...)

Annex [2]

**Meetings of the AGSI (previously FG Armaturen) – Germany
Arbeitsgemeinschaft Sanitärarmaturenindustrie (VDMA/ Fachgruppe Armaturen)**

Germany: AGSI (was VDMA, FG Armaturen until 1/9/97)						
28/03/96 ¹⁸⁷⁶						
10/12/96 ¹⁸⁷⁷						
23/06/97 ¹⁸⁷⁸						
01/09/97 ¹⁸⁷⁹						
23/10/97 ¹⁸⁸⁰						
18/02/98 ¹⁸⁸¹						
06/03/98 ¹⁸⁸²						
04/05/98 ¹⁸⁸³						
19/05/98 ¹⁸⁸⁴						
2/10/98 ¹⁸⁸⁵						
21/10/98 ¹⁸⁸⁶						
14/01/99 ¹⁸⁸⁷						
09/03/99 ¹⁸⁸⁸						
30/09/99 ¹⁸⁸⁹						
13/10/99 ¹⁸⁹⁰						
26/10/99 ¹⁸⁹¹						
07/12/99 ¹⁸⁹²						

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- 1876 (...)
 - 1877 (...)
 - 1878 (...)
 - 1879 (...)
 - 1880 (...)
 - 1881 (...)
 - 1882 (...)
 - 1883 (...)
 - 1884 (...)
 - 1885 (...)
 - 1886 (...)
 - 1887 (...)
 - 1888 (...)
 - 1889 (...)
 - 1890 (...)
 - 1891 (...)
 - 1892 (...)

23/02/00 ¹⁸⁹³						
07/03/01 ¹⁸⁹⁴						
30-31/05/01 ¹⁸⁹⁵						
22/08/01 ¹⁸⁹⁶						
04/09/01 ¹⁸⁹⁷						
06/12/01 ¹⁸⁹⁸						
27/02/02 ¹⁸⁹⁹						
19/03/02 ¹⁹⁰⁰						
15/05/02 ¹⁹⁰¹						
26/06/02 ¹⁹⁰²						
27-28/08/02 ¹⁹⁰³						
21/11/02 ¹⁹⁰⁴						
30/01/03 ¹⁹⁰⁵						
06/03/03 ¹⁹⁰⁶						
10/07/03 ¹⁹⁰⁷						
04/09/03 ¹⁹⁰⁸						
18/09/03 ¹⁹⁰⁹						
27/11/03 ¹⁹¹⁰						
12/01/04 ¹⁹¹¹						
29/03/04 ¹⁹¹²						
28-29/04/04 ¹⁹¹³						

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- 1893 (...)
 - 1894 (...)
 - 1895 (...)
 - 1896 (...)
 - 1897 (...)
 - 1898 (...)
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 - 1900 (...)
 - 1901 (...)
 - 1902 (...)
 - 1903 (...)
 - 1904 (...)
 - 1905 (...)
 - 1906 (...)
 - 1907 (...)
 - 1908 (...)
 - 1909 (...)
 - 1910 (...)
 - 1911 (...)
 - 1912 (...)

01/07/04 ¹⁹¹⁴						
14/07/04 ¹⁹¹⁵						
27/09/04 ¹⁹¹⁶						
05/10/04 ¹⁹¹⁷						

1913 (...)
1914 (...)
1915 (...)
1916 (...)
1917 (...)

Annex [3]

**Meetings of the ABD (previously ABW and ADA) - Germany
Arbeitskreis Baden und Duschen e.V.
(Arbeitskreis Badewannen and Arbeitskreis Duschabtrennungen)¹⁹¹⁸**

Germany: ABD (was ADA or ABW until 2003)				
12/12/95 ¹⁹¹⁹				
24/01/96 ¹⁹²⁰				
03/12/96 ¹⁹²¹				
17/09/96 ¹⁹²²				
25/02/97 ¹⁹²³				
24/09/97 ¹⁹²⁴				
05/12/97 ¹⁹²⁵				
16/12/97 ¹⁹²⁶				
09/05/98 ¹⁹²⁷				
05/06/98 ¹⁹²⁸				
16/10/98 ¹⁹²⁹				
16/12/98 ¹⁹³⁰				
09/06/99 ¹⁹³¹				
04/12/99 ¹⁹³²				
08/03/00 ¹⁹³³				
24/05/00 ¹⁹³⁴				
20/06/00 ¹⁹³⁵				

¹⁹¹⁸ N.B.: This table does not include anti-competitive meetings of the shower enclosure manufacturers held outside the official context of the ABD or ADA. (...)

- ¹⁹¹⁹ (...)
- ¹⁹²⁰ (...)
- ¹⁹²¹ (...)
- ¹⁹²² (...)
- ¹⁹²³ (...)
- ¹⁹²⁴ (...)
- ¹⁹²⁵ (...)
- ¹⁹²⁶ (...)
- ¹⁹²⁷ (...)
- ¹⁹²⁸ (...)
- ¹⁹²⁹ (...)
- ¹⁹³⁰ (...)
- ¹⁹³¹ (...)
- ¹⁹³² (...)
- ¹⁹³³ (...)
- ¹⁹³⁴ (...)
- ¹⁹³⁵ (...)

10-11/08/00 ¹⁹³⁶				
23/09/00 ¹⁹³⁷				
18/10/00 ¹⁹³⁸				
05/12/00 ¹⁹³⁹				
30/05/01 ¹⁹⁴⁰				
23/06/01 ¹⁹⁴¹				
8-11/08/01 ¹⁹⁴²				
18/09/01 ¹⁹⁴³				
14/12/01 ¹⁹⁴⁴				
15/05/02 ¹⁹⁴⁵				
07/08/02 ¹⁹⁴⁶				
17/09/02 ¹⁹⁴⁷				
12/12/02 ¹⁹⁴⁸				
12/05/03 ¹⁹⁴⁹				
16/05/03 ¹⁹⁵⁰				
25/06/03 ¹⁹⁵¹				
11/07/03 ¹⁹⁵²				
31/07/03 ¹⁹⁵³				
07/11/03 ¹⁹⁵⁴				
04/06/04 ¹⁹⁵⁵				

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- 1936 (...)
 - 1937 (...)
 - 1938 (...)
 - 1939 (...)
 - 1940 (...)
 - 1941 (...)
 - 1942 (...)
 - 1943 (...)
 - 1944 (...)
 - 1945 (...)
 - 1946 (...)
 - 1947 (...)
 - 1948 (...)
 - 1949 (...)
 - 1950 (...)
 - 1951 (...)
 - 1952 (...)
 - 1953 (...)
 - 1954 (...)
 - 1955 (...)

Annex [4]

Meetings of the FSKI – Germany
Fachverband Sanitär-Keramische Industrie

Germany: FSKI				
07-08/07/00 ¹⁹⁵⁶				
23/01/01 ¹⁹⁵⁷				
13/07/01 ¹⁹⁵⁸				
23/01/02 ¹⁹⁵⁹				
05/07/02 ¹⁹⁶⁰				
17/01/03 ¹⁹⁶¹				
4-5/07/03 ¹⁹⁶²				

1956 (...)
1957 (...)
1958 (...)
1959 (...)
1960 (...)
1961 (...)
1962 (...)

Annex [5]
Meetings of ASI - Austria

Austria: ASI												
22/04/94 ¹⁹⁶³												
28/06/94 ¹⁹⁶⁴												
11/07/94 ¹⁹⁶⁵												
21/07/94 ¹⁹⁶⁶												
08/08/94 ¹⁹⁶⁷												
17/08/94 ¹⁹⁶⁸												
20/09/94 ¹⁹⁶⁹												
12/10/94 ¹⁹⁷⁰												
29/11/94 ¹⁹⁷¹												
02/03/95 ¹⁹⁷²												
30/05/95 ¹⁹⁷³												
01/09/95 ¹⁹⁷⁴												
06/11/95 ¹⁹⁷⁵												
16/11/95 ¹⁹⁷⁶												
27/11/95 ¹⁹⁷⁷												
23/01/96 ¹⁹⁷⁸												
29/02/96 ¹⁹⁷⁹												
26/03/96 ¹⁹⁸⁰												
11/04/96 ¹⁹⁸¹												
23/04/96 ¹⁹⁸²												
01/08/96 ¹⁹⁸³												
13/06/96 ¹⁹⁸⁴												
06/09/96 ¹⁹⁸⁵												
05/11/96 ¹⁹⁸⁶												
05/12/96 ¹⁹⁸⁷												
19/12/96 ¹⁹⁸⁸												

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- 1963 (...)
 - 1964 (...)
 - 1965 (...)
 - 1966 (...)
 - 1967 (...)
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 - 1969 (...)
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 - 1981 (...)
 - 1982 (...)
 - 1983 (...)
 - 1984 (...)
 - 1985 (...)
 - 1986 (...)
 - 1987 (...)

03/02/97 ¹⁹⁸⁹												
16/04/97 ¹⁹⁹⁰												
19/06/97 ¹⁹⁹¹												
11/09/97 ¹⁹⁹²												
15/10/97 ¹⁹⁹³												
21/01/98 ¹⁹⁹⁴												
30/04/98 ¹⁹⁹⁵												
05/05/98 ¹⁹⁹⁶												
18/06/98 ¹⁹⁹⁷												
06/98 ¹⁹⁹⁸												
13/8/98 ¹⁹⁹⁹												
14/9/98 ²⁰⁰⁰												
05/11/98 ²⁰⁰¹												
21/01/99 ²⁰⁰²												
08/04/99 ²⁰⁰³												
05/05/99 ²⁰⁰⁴												
06/05/99 ²⁰⁰⁵												
24/6/99 ²⁰⁰⁶												
26/08/99 ²⁰⁰⁷												
06/09/99 ²⁰⁰⁸												
13/09/99 ²⁰⁰⁹												
11/10/99 ²⁰¹⁰												
23/11/99 ²⁰¹¹												
24/01/00 ²⁰¹²												
4/2/00 ²⁰¹³												
29/02/00 ²⁰¹⁴												
02/05/00 ²⁰¹⁵												
10/05/00 ²⁰¹⁶												
5/07/00 ²⁰¹⁷												
06/07/00 ²⁰¹⁸												

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- 1988 (...)
 - 1989 (...)
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 - 2011 (...)
 - 2012 (...)
 - 2013 (...)
 - 2014 (...)
 - 2015 (...)
 - 2016 (...)
 - 2017 (...)

07/09/00 ²⁰¹⁹												
12-13/10/00 ²⁰²⁰												
23/11/00 ²⁰²¹												
02/03/01 ²⁰²²												
24/04/01 ²⁰²³												
21/06/01 ²⁰²⁴												
21/09/01 ²⁰²⁵												
28/02/02 ²⁰²⁶												
26/04/02 ²⁰²⁷												
21/06/02 ²⁰²⁸												
27/06/02 ²⁰²⁹												
11/09/02 ²⁰³⁰												
19/09/02 ²⁰³¹												
07/11/02 ²⁰³²												
3/12/02 ²⁰³³												
23/01/03 ²⁰³⁴												
14/03/03 ²⁰³⁵												
10/04/03 ²⁰³⁶												
26/06/03 ²⁰³⁷												
19/08/03 ²⁰³⁸												
08/09/03 ²⁰³⁹												

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- 2018 (...)
 - 2019 (...)
 - 2020 (...)
 - 2021 (...)
 - 2022 (...)
 - 2023 (...)
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 - 2038 (...)
 - 2039 (...)

25/09/03 ²⁰⁴⁰											
16/11/03 ²⁰⁴¹											
20/11/03 ²⁰⁴²											
22/01/04 ²⁰⁴³											
25/03/04 ²⁰⁴⁴											
05/05/2004 ²⁰⁴⁵											
04/06/04 ²⁰⁴⁶											
05/05/04 ²⁰⁴⁷											
15/09/04 ²⁰⁴⁸											

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- 2040 (...)
 - 2041 (...)
 - 2042 (...)
 - 2043 (...)
 - 2044 (...)
 - 2045 (...)
 - 2046 (...)
 - 2047 (...)
 - 2048 (...)

Annex [6]
Meetings of Euroitalia – Italy

Euroitalia									
16/10/92 ²⁰⁴⁹									
15/03/93 ²⁰⁵⁰									
16/04/93 ²⁰⁵¹									
09/07/93 ²⁰⁵²									
22/03/94 ²⁰⁵³									
21/10/94 ²⁰⁵⁴									
03/03/95 ²⁰⁵⁵									
19/07/95 ²⁰⁵⁶									
16/10/95 ²⁰⁵⁷									
12/03/96 ²⁰⁵⁸									
14/05/96 ²⁰⁵⁹									
17- 18/07/96 ²⁰⁶⁰									
14/10/96 ²⁰⁶¹									
31/01/97 ²⁰⁶²									
27/05/97 ²⁰⁶³									
22/09/97 ²⁰⁶⁴									
26/01/98 ²⁰⁶⁵									

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- 2049 (...)
 - 2050 (...)
 - 2051 (...)
 - 2052 (...)
 - 2053 (...)
 - 2054 (...)
 - 2055 (...)
 - 2056 (...)
 - 2057 (...)
 - 2058 (...)
 - 2059 (...)
 - 2060 (...)
 - 2061 (...)
 - 2062 (...)
 - 2063 (...)
 - 2064 (...)
 - 2065 (...)

27/04/98 ²⁰⁶⁶									
16/10/98 ²⁰⁶⁷									
29/01/99 ²⁰⁶⁸									
07/05/99 ²⁰⁶⁹									
15/10/99 ²⁰⁷⁰									
21/01/00 ²⁰⁷¹									
18/05/00 ²⁰⁷²									
18/10/00 ²⁰⁷³									
01/02/01 ²⁰⁷⁴									
01/06/01 ²⁰⁷⁵									
28/09/01 ²⁰⁷⁶									
31/01/02 ²⁰⁷⁷									
18/06/02 ²⁰⁷⁸									
28/10/02 ²⁰⁷⁹									
19/01/03 ²⁰⁸⁰									
14/02/03 ²⁰⁸¹									
17- 18/06/03 ²⁰⁸²									
30- 31/10/03 ²⁰⁸³									
06/02/04 ²⁰⁸⁴									
19/04/04 ²⁰⁸⁵									

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- 2066 (…)
 - 2067 (…)
 - 2068 (…)
 - 2069 (…)
 - 2070 (…)
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 - 2072 (…)
 - 2073 (…)
 - 2074 (…)
 - 2075 (…)
 - 2076 (…)
 - 2077 (…)
 - 2078 (…)
 - 2079 (…)
 - 2080 (…)
 - 2081 (…)
 - 2082 (…)
 - 2083 (…)
 - 2084 (…)
 - 2085 (…)

3-4/06/04 ²⁰⁸⁶									
15/10/04 ²⁰⁸⁷									

2086 (...)
2087 (...)

Annex [7]
Meetings of Michelangelo – Italy

Michelangelo					
12/03/96 ²⁰⁸⁸					
14/05/96 ²⁰⁸⁹					
18/07/96 ²⁰⁹⁰					
26/02/97 ²⁰⁹¹					
21/04/97 ²⁰⁹²					
23/09/97 ²⁰⁹³					
14/11/97 ²⁰⁹⁴					
30/01/98 ²⁰⁹⁵					
17/04/98 ²⁰⁹⁶					
8/07/98 ²⁰⁹⁷					
6/11/98 ²⁰⁹⁸					
14/05/99 ²⁰⁹⁹					
15/07/99 ²¹⁰⁰					
22/10/99 ²¹⁰¹					
14/01/00 ²¹⁰²					
16/03/00 ²¹⁰³					
12/05/00 ²¹⁰⁴					
20/07/00 ²¹⁰⁵					
26/10/00 ²¹⁰⁶					
09/03/01 ²¹⁰⁷					
29/06/01 ²¹⁰⁸					
14/09/01 ²¹⁰⁹					
25/01/02 ²¹¹⁰					
12/04/02 ²¹¹¹					
19/07/02 ²¹¹²					
25/07/03 ²¹¹³					

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- 2088 (…)
 - 2089 (…)
 - 2090 (…)
 - 2091 (…)
 - 2092 (…)
 - 2093 (…)
 - 2094 (…)
 - 2095 (…)
 - 2096 (…)
 - 2097 (…)
 - 2098 (…)
 - 2099 (…)
 - 2100 (…)
 - 2101 (…)
 - 2102 (…)
 - 2103 (…)
 - 2104 (…)
 - 2105 (…)
 - 2106 (…)
 - 2107 (…)
 - 2108 (…)
 - 2109 (…)
 - 2110 (…)
 - 2111 (…)
 - 2112 (…)

**Annex [8]
Meetings of HCT – BELGIUM
(Home Comfort Team)**

HCT			
10/03/03 ²¹¹⁴			
14/04/03 ²¹¹⁵			
12/05/03 ²¹¹⁶			
16/06/03 ²¹¹⁷			
07/07/03 ²¹¹⁸			
08/09/03 ²¹¹⁹			
27/11/03 ²¹²⁰			
08/12/03 ²¹²¹			
12/01/04 ²¹²²			
16/02/04 ²¹²³			
08/03/04 ²¹²⁴			
16 or 19/04/04 ²¹²⁵			
10/05/04 ²¹²⁶			
14/06/04 ²¹²⁷			
09/08/04 ²¹²⁸			

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- 2114 (...)
 - 2115 (...)
 - 2116 (...)
 - 2117 (...)
 - 2118 (...)
 - 2119 (...)
 - 2120 (...)
 - 2121 (...)
 - 2122 (...)
 - 2123 (...)
 - 2124 (...)
 - 2125 (...)
 - 2126 (...)
 - 2127 (...)
 - 2128 (...)

Annex [9]
Meetings of Amicale du Sanitaire– BELGIUM

AMICALE DU SANITAIRE			
21/09/00 ²¹²⁹			
5/02/01 ²¹³⁰			
16/10/01 ²¹³¹			
12/12/01 ²¹³²			
15/03/02 ²¹³³			
20/09/02 ²¹³⁴			
15/11/02 ²¹³⁵			
14/03/03 ²¹³⁶			
3/06/03 ²¹³⁷			
17/09/03 ²¹³⁸			
Early 2004 ²¹³⁹			
10/06/04 ²¹⁴⁰			

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- 2129 (…)
 - 2130 (…)
 - 2131 (…)
 - 2132 (…)
 - 2133 (…)
 - 2134 (…)
 - 2135 (…)
 - 2136 (…)
 - 2137 (…)
 - 2138 (…)
 - 2139 (…)
 - 2140 (…)

Annex [10]
Meetings of VC group– BELGIUM
(Vitreous China group)

VC GROUP					
28/08/01 ²¹⁴¹					
30/10/01 ²¹⁴²					
29/01/02 ²¹⁴³					
13/05/02 ²¹⁴⁴					
17/09/02 ²¹⁴⁵					
14/01/03 ²¹⁴⁶					
28-29/04/03 ²¹⁴⁷					
08/09/03 ²¹⁴⁸					
13/09/04 ²¹⁴⁹					

2141 (...)
2142 (...)
2143 (...)
2144 (...)
2145 (...)
2146 (...)
2147 (...)
2148 (...)
2149 (...)

Annex [11]
Meetings of AFICS – France
(Association Française des Industries de Céramique Sanitaire)

AFICS					
25/02/04 ²¹⁵⁰					
29/04/04 ²¹⁵¹					
23/07/04 ²¹⁵²					

2150 (...)
2151 (...)
2152 (...)

Annex [12]
Meetings of AFPR²¹⁵³ – France
(Association Française des Pompes et de la Robinetterie)

AFPR SECTION ROBINETTERIE, DEPARTEMENT BATIMENT SANITAIRE				
10/12/02 ²¹⁵⁴				
28/02/03 ²¹⁵⁵				
14/05/03 ²¹⁵⁶				
12/09/03 ²¹⁵⁷				
09/12/03 ²¹⁵⁸				
08/03/04 ²¹⁵⁹				
11/05/04 ²¹⁶⁰				
10/09/04 ²¹⁶¹				

²¹⁵³ (...) As previously noted, AFIR merged with AFCP in 2000 to create AFPR. Until 1998, the meetings listed above were AFIR meetings. From 1998 until the official merger of the two associations in 2000, the meetings listed above were joint AFIR-AFCP meetings. Finally, from 2002 onwards, the association has been using the new name AFPR. It is further noted that, during the AFIR period, the relevant meetings were those of the sub-committee "Equipement du Bâtiment".

²¹⁵⁴ (...)
²¹⁵⁵ (...)
²¹⁵⁶ (...)
²¹⁵⁷ (...)
²¹⁵⁸ (...)
²¹⁵⁹ (...)
²¹⁶⁰ (...)
²¹⁶¹ (...)

Annex [13]
Meetings of Sanitair Fabrikanten Platform (SFP) – The Netherlands

The Netherlands: SFP									
29/03/94 ²¹⁶²									
10/06/94 ²¹⁶³									
28/09/94 ²¹⁶⁴									
30/11/94 ²¹⁶⁵									
20/12/94 ²¹⁶⁶									
21/02/95 ²¹⁶⁷									
4/04/95 ²¹⁶⁸									
13/06/95 ²¹⁶⁹									
14/09/95 ²¹⁷⁰									
26/10/95 ²¹⁷¹									
28/11/95 ²¹⁷²									
31/01/96 ²¹⁷³									
19/03/96 ²¹⁷⁴									
23/04/96 ²¹⁷⁵									
9/05/96 ²¹⁷⁶									
25/06/96 ²¹⁷⁷									
13/09/96 ²¹⁷⁸									
23/10/96 ²¹⁷⁹									
26/11/96 ²¹⁸⁰									
11/02/97 ²¹⁸¹									
22/04/97 ²¹⁸²									
24/06/97 ²¹⁸³									
09/09/97 ²¹⁸⁴									
29/10/97 ²¹⁸⁵									
19/11/97 ²¹⁸⁶									
05/03/98 ²¹⁸⁷									
21/04/98 ²¹⁸⁸									

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- 2162 (...)
 - 2163 (...)
 - 2164 (...)
 - 2165 (...)
 - 2166 (...)
 - 2167 (...)
 - 2168 (...)
 - 2169 (...)
 - 2170 (...)
 - 2171 (...)
 - 2172 (...)
 - 2173 (...)
 - 2174 (...)
 - 2175 (...)
 - 2176 (...)
 - 2177 (...)
 - 2178 (...)
 - 2179 (...)
 - 2180 (...)
 - 2181 (...)
 - 2182 (...)
 - 2183 (...)
 - 2184 (...)
 - 2185 (...)
 - 2186 (...)
 - 2187 (...)

16/06/98 ²¹⁸⁹									
22/09/98 ²¹⁹⁰									
28/10/98 ²¹⁹¹									
20/01/99 ²¹⁹²									

2188 (...)
2189 (...)
2190 (...)
2191 (...)
2192 (...)