JUDGMENT OF THE GENERAL COURT (Second Chamber)
23 October 2017 (*)
(Competition — Agreements, decisions and concerted practices — Abuse of a dominant position — Selective repair system — Refusal of Swiss watch manufacturers to supply spare parts to independent watch repairers — Primary market and aftermarket — Elimination of all effective competition — Decision rejecting a complaint)

In Case T-712/14,

Confédération européenne des associations d'horlogers-réparateurs (CEAHR), established in Brussels (Belgium), represented initially by P. Mathijsen and P. Dyrberg, subsequently by M. Sánchez Rydelski and lastly by P. Benczek, lawyers,

applicant,

v

European Commission, represented initially by F. Ronkes Agerbeek, M. Farley and C. Urraca Caviedes, and subsequently by A. Dawes, F. Ronkes Agerbeek and J. Norris-Usher, acting as Agents,

defendant,

supported by

LVMH Moët Hennessy-Louis Vuitton SA, established in Paris (France), represented by C. Froitzheim, lawyer, and R. Subiotto QC,

by

Rolex, SA, established in Geneva (Switzerland), represented by M. Araujo Boyd, lawyer,

and by

The Swatch Group SA, established in Neuchâtel (Switzerland), represented initially by A. Israel and M. Jakobs, and subsequently by A. Israel and J. Lang, lawyers,

interveners,

APPLICATION pursuant to Article 263 TFEU for the annulment of Commission Decision C(2014) 5462 final of 29 July 2014, by which the Commission rejected the complaint lodged by the applicant concerning alleged infringements of Articles 101 and 102 TFEU (Case AT.39097 — Watch Repair),

THE GENERAL COURT (Second Chamber),

composed of M. Prek, President, E. Buttigieg and B. Berke (Rapporteur), Judges,

Registrar: C. Heeren, Administrator,

having regard to the written part of the procedure and further to the hearing on 10 February 2017,

gives the following

Judgment

Background to the dispute and the contested decision

Administrative procedure

The applicant, the Confédération européenne des associations d'horlogers-réparateurs (European confederation of watch repairers' associations; CEAHR), is a non-profit-making association consisting of nine national associations from eight Member States representing the interests of independent watch repairers.

On 20 July 2004, the applicant lodged a complaint with the Commission of the European Communities against The Swatch Group SA, Richemont International SA, LVMHMoët Hennessy-Louis Vuitton SA, Rolex, SA, Manufacture des montres Rolex SA, Société anonyme de la Manufacture d'horlogerie Audemars Piguet & Cie and Patek Philippe SA Manufacture d'Horlogerie ('the Swiss watch manufacturers'), alleging the existence of an agreement or a concerted practice between them and an abuse of a dominant position resulting from the refusal of those manufacturers to continue to supply spare parts to independent watch repairers.

On 10 July 2008, the Commission adopted Decision C(2008) 3600 (Case COMP/E-1/39.097 — Watch Repair), in which it rejected CEAHR's complaint on the ground that there was insufficient European Union interest in continuing the investigation into the alleged infringements.

On 15 December 2010, the General Court annulled that decision of the Commission rejecting the complaint. It held that the Commission had infringed its obligation to take into consideration all the relevant matters of law and of fact and to consider attentively all those matters of fact and of law which the applicant had brought to its attention, that it had not provided sufficient grounds for its statement that the complaint concerned, at most, a market segment of a limited size and consequently also of limited economic importance, and that it had made a manifest error of assessment in concluding that

the market for watch repair and maintenance services did not constitute a separate relevant market but had to be examined together with the market for luxury/prestige watches. Accordingly, it held that the illegalities on the part of the Commission were such as to affect its assessment of the existence of sufficient European Union interest for it to continue its examination of the complaint (judgment of 15 December 2010, *CEAHR* v *Commission*, T-427/08, EU:T:2010:517, paragraphs 33 to 43, 76 to 119 and 157 to 178).

Following that judgment, the Commission opened, on 1 August 2011, a procedure against the Swiss watch manufacturers under Article 7 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18). On 29 July 2013, the Commission communicated to the applicant its provisional position regarding the complaint at a state-of-play meeting. After consideration, it decided not to pursue its investigation.

By letter of 3 September 2013, it formally informed the applicant of its intention to reject the complaint.

By letter of 27 September 2013, the applicant submitted to the Commission its observations on the rejection of the complaint. It maintained that the Swiss watch manufacturers' refusal to supply spare parts constituted an infringement of Articles 101 and 102 TFEU.

Having received the observations of Richemont, Rolex and The Swatch Group on 16 September, 18 and 19 November 2013, respectively, and having forwarded to the applicant those observations and the non-confidential documents on which it based its assessment, the Commission informed the applicant, on 16 January and 5 March 2014 at state-of-play meetings, that its observations did not contain significant new elements likely to change the Commission's initial position.

On 29 July 2014, the Commission adopted Decision C(2014) 5462 final in Case AT.39097 — Watch Repair ('the contested decision') rejecting the applicant's complaint on account of the disproportionate nature of the resources which a more detailed investigation would require in view of the low probability of establishing an infringement of Articles 101 and 102 TFEU.

Contested decision

The Commission limited its investigation to watches which, for economic and technical reasons, are worth repairing and maintaining, that is to say, watches sold at a price exceeding EUR 1 000 ('prestige watches').

As a preliminary point, the Commission drew attention to the competitive nature of the market for the manufacture of prestige watches.

The operation of the repair and maintenance services is described in recitals 65 to 73 of the contested decision. In that regard, the Commission states that most of the Swiss watch manufacturers have set up selective repair systems enabling independent repairers to become authorised repairers provided that they meet criteria relating to their training, experience and equipment and the suitability of their premises. Those systems have been gradually set up by certain manufacturers at different times, while other manufacturers continue to supply spare parts to independent repairers. In addition, some Swiss watch manufacturers which have set up such systems still use the services of independent repairers for old watches. The authorised repairers have access to spare parts and brand-specific tools as well as to the necessary technical information. They cannot resell the spare parts to unauthorised repairers and are often also retailers of those watches and responsible for after-sales services. The Swiss watch manufacturers have also set up in-house repair networks. The investment required to become an authorised repairer depends on the brand and the repair services provided, which may be basic or complete, that is to say, involving the dismantling of the mechanism which rotates the hands and powers any additional functions, namely the movement. For some of the Swiss watch manufacturers, the proportion of repairs made by authorised repairers is very high. Furthermore, prestige watches often have more complex mechanical movements requiring more sophisticated know-how than quartz movements.

Market definition

In recitals 85 to 91 of the contested decision, the Commission examined the market for the sale of prestige watches (the primary market), the market for the supply of maintenance and repair services for those watches and the market for the supply of spare parts (the secondary markets), the geographic scope of which covers the European Economic Area (EEA). It considered that the primary market and the secondary markets were separate and distinct markets.

As regards repair and maintenance services, the Commission found that there was limited substitutability between repair services across brands, to the extent that it could be considered that there were separate markets for each brand.

As regards the supply of spare parts, it found that substitutability was very limited since the parts were not generally interchangeable across brands and, where they were, consumers preferred to use original parts so as to prevent the value of the watch from depreciating. As with repair and maintenance, there were therefore several distinct markets, each associated with a brand.

Assessment under Article 102 TFEU

The Commission considered that it could not be ruled out that the Swiss watch manufacturers were in a dominant position on the markets for repair services and for the supply of spare parts, since entry to those markets required a substantial investment on account of their characteristics.

However, since the Swiss watch manufacturers had set up selective repair systems allowing independent repairers to become authorised repairers, provided that they met objective criteria, the Commission decided that, contrary to the precedents relied on by the applicant, it could not be concluded that those manufacturers had reserved the secondary markets to themselves by preventing the entry of independent repairers to those markets. Moreover, it stated that such systems did not eliminate effective competition, since competition continued to exist among authorised repairers, particularly since they were able to repair watches of different brands.

In the absence of special circumstances and in view of the fact that a selective repair system was set up based on qualitative criteria, the refusal to continue supplying spare parts was not, therefore, according to the Commission, sufficient to establish the existence of abuse. That refusal could also be explained by objective justifications and the pursuit of productivity gains, in particular the preservation of brand image and the quality of products, the prevention of counterfeiting and the increase in the technical complexity of mechanical watches, which makes high quality repair necessary. In the light of those considerations, the Commission decided that the likelihood of establishing the existence of an abuse of a dominant position in this case was limited.

Assessment under Article 101 TFEU

As regards the existence of an agreement or concerted practices designed to restrict competition, the Commission found, following its investigation, that the selective repair systems had not been set up at the same time by all the Swiss watch manufacturers. Further, some of them continued to supply spare parts to independent repairers. Therefore, according to the Commission, it could not be concluded that there was an agreement or concerted practices. Moreover, it considered that the existence of separate spare parts markets for each brand would make it unnecessary to put in place a concerted practice aimed at discontinuing the supply of spare parts, for each brand, to independent repairers.

As regards the conformity of the selective repair systems with Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) [TFEU] to categories of vertical agreements and concerted practices (OJ 2010 L 102, p. 1), the Commission indicated that its investigation had not made it possible to establish that authorised repairers were not free to determine the prices of repairs, since the contracts stipulated only indicative prices or a maximum price. It also stated that the analysis of the contracts had also failed to identify any hardcore restrictions within the meaning of that regulation. In any event, since the manufacturers generally had a market share above 30% on the secondary markets of their brand, the Commission took the view that that regulation was not applicable.

The Commission then examined whether the selective repair systems met the criteria in the case-law to fall outside the scope of Article 101(1) TFEU. In the first place, it considered that the nature of the product made a selective repair system necessary in order to preserve the quality of the watches, ensure their optimal use, prevent counterfeiting and preserve the brand image and aura of exclusivity and prestige attached to those luxury products from the point of view of their consumers. In the second place, it considered that its investigation had not revealed that the selection of authorised repairers was not carried out on the basis of objective criteria applied in a uniform and non-discriminatory manner. In the third place, it considered that the criteria concerning the training and experience of repairers, and the tools, equipment and stock of spare parts at their disposal, used to assess their ability to carry out repairs within a reasonable period, though varying between manufacturers, were indeed qualitative criteria and did not go beyond what was necessary to achieve the objective of the system. Moreover, the Commission's investigation had revealed that authorised repairers were not contractually obliged to refrain from repairing watches of other brands and that the large investments to be made could not be regarded as artificial barriers to market entry and were not disproportionate, since they were justified by the objective of quality and it was not uncommon for repairers to work for several brands.

Consequently, the Commission decided that those systems were unlikely to fall within the scope of Article 101 TFEU.

As regards prohibiting authorised repairers from supplying spare parts to independent repairers, it pointed out that this was an element inherent in selective systems, which also fell outside the scope of Article 101 TFEU and which was not expressly regarded by Regulation No 330/2010 as a hardcore restriction, contrary to the provision made for the motor vehicle sector. The analogy with that sector made by the applicant was therefore not relevant. Nor, according to the Commission, did that prohibition on reselling constitute an infringement of Article 101 TFEU.

Consequently, the Commission decided that, even if additional resources were allocated to the investigation of the complaint, the likelihood of establishing the existence of an infringement of the competition rules would be low, and therefore the allocation of such resources would be disproportionate.

Procedure and forms of order sought

By application lodged at the Court Registry on 7 October 2014, the applicant brought the present action.

By documents lodged at the Court Registry on 23 January, 30 January and 23 February 2015, respectively, the interveners, The Swatch Group, LVMH Moët Hennessy-Louis Vuitton and Rolex sought leave to intervene in the present proceedings in support of the Commission. By order of 21 April 2015, the President of the Ninth Chamber of the General Court granted them leave to intervene.

By document lodged at the Court Registry on 31 March 2015, Cousins Material House Ltd sought leave to intervene in the present proceedings in support of the form of order sought by the applicant. By order of 11 November 2015, the President of the Ninth Chamber of the General Court dismissed Cousins Material House's application for leave to intervene.

The interveners lodged their statements within the prescribed period.

By decision of the President of the General Court, the present case was assigned to a new Judge-Rapporteur sitting in the Second Chamber.

The applicant claims that the Court should:

annul the contested decision;

order the Commission to pay the costs.

The Commission, supported by the interveners, contends that the Court should:

dismiss the action;

order the applicant to pay the costs.

Law

In support of the action, the applicant essentially puts forward six pleas in law. The first plea alleges an error in the description of the market power of the Swiss watch manufacturers. The second plea alleges an error in the assessment of the existence of an abuse arising from the refusal by the Swiss watch manufacturers to supply spare parts to independent repairers. The third plea alleges an error in the assessment of the objectively justified nature of the selective repair system and of the refusal to supply spare parts. The fourth plea alleges an error in the assessment of the existence of an agreement or concerted practices. The fifth plea alleges a breach of the duty to state reasons. The sixth plea alleges an infringement of the principle of good administration.

It should be recalled that, according to settled case-law, Article 7(2) of Regulation No 773/2004 does not give a complainant the right to insist that the Commission take a final decision as to the existence or non-existence of the alleged infringement and does not oblige the Commission to continue the proceedings, whatever the circumstances, right up to the stage of a final decision (see, to that effect, judgments of 19 September 2013, *EFIM* v *Commission*, C-56/12 P, not published, EU:C:2013:575, paragraph 57; of 18 September 1992, *Automec* v *Commission*, T-24/90, EU:T:1992:97, paragraph 75; and of 30 May 2013, *Omnis Group* v *Commission*, T-74/11, not published, EU:T:2013:283, paragraph 42).

The Commission, entrusted by Article 105(1) TFEU with the task of ensuring application of the principles laid down in Articles 101 and 102 TFEU, is responsible for defining and implementing the orientation of EU competition policy. In order to perform that task effectively, it is entitled to give differing degrees of priority to the complaints brought before it and has a broad discretion in that respect (see, to that effect, judgments of 4 March 1999, *Ufex and Others* v *Commission*, C-119/97 P, EU:C:1999:116, paragraphs 88 and 89; of 17 May 2001, *IECC* v *Commission*, C-449/98 P, EU:C:2001:275, paragraph 36; and of 30 May 2013, *Omnis Group* v *Commission*, T-74/11, not published, EU:T:2013:283, paragraph 43).

When, in the exercise of that broad discretion, the Commission decides to assign differing degrees of priority to the examination of complaints submitted to it, it may not only decide on the order in which the complaints are to be examined but also reject a complaint on the ground that there is an insufficient European Union interest in further investigation of the case (see, to that effect, judgment of 15 December 2010, *CEAHR* v *Commission*, T-427/08, EU:T:2010:51, paragraph 27 and the case-law cited).

In order to assess the European Union interest in further investigation of a case, the Commission must take account of the circumstances of the case, and especially of the matters of fact and of law set out in the complaint referred to it. In particular, the Commission is required, after evaluating with all due care the matters of fact and of law put forward by the complainant, to weigh the significance of the alleged infringement as regards the functioning of the internal market against the probability of its being able to establish the existence of the infringement and the extent of the investigative measures required in order to fulfil, under the best possible conditions, its task of ensuring that Articles 101 and 102 TFEU are complied with (judgments of 18 September 1992, *Automec* v *Commission*, T-24/90, EU:T:1992:97, paragraph 86, and of 15 December 2010, *CEAHR* v *Commission*, T-427/08, EU:T:2010:51, paragraph 158).

In that respect, review by the Courts of the European Union of the Commission's exercise of the broad discretion conferred on it in dealing with complaints must not lead them to substitute their assessment of the European Union interest for that of the Commission (see, to that effect, judgments of 15 December 2010, *CEAHR* v *Commission*, T-427/08, EU:T:2010:51, paragraph 65, and of 11 July 2013, *BVGD* v *Commission*, T-104/07 and T-339/08, not published, EU:T:2013:366, paragraph 219).

Furthermore, since the assessment of the European Union interest raised by a complaint depends on the circumstances of each individual case, the number of criteria of assessment to which the Commission may refer should not be limited, nor, conversely, should the Commission be required to have recourse exclusively to certain criteria. Accordingly, the Commission may give priority to a single criterion for assessing the European Union interest (judgments of 17 May 2001, *IECC* v *Commission*, C-450/98 P, EU:C:2001:276, paragraph 58, and of 16 October 2013, *Vivendi* v *Commission*, T-432/10, not published, EU:T:2013:538, paragraph 25).

In addition, it is an inherent feature of the complaints procedure that the burden of proving the allegation rests on the complainant. Similarly, in the context of an action seeking the annulment of the Commission's decision rejecting a complaint, it is for the applicant to present to the Courts of the European Union arguments and evidence capable of demonstrating the unlawfulness of that decision (judgment of 19 September 2013, *EFIM* v *Commission*, C-56/12 P, not published, EU:C:2013:575, paragraphs 72 and 73).

It is clear from that case-law that it is not for the General Court to criticise parts of the decision which have not been effectively challenged by the applicant nor to accept arguments which the applicant puts forward without adducing evidence.

The Commission's broad discretion is not unlimited, however. It is required to consider attentively all the matters of fact and of law which the complainant brings to its attention (judgments of 4 March 1999, *Ufex and Others* v *Commission*, C-119/97 P, EU:C:1999:116, paragraph 86, and of 30 May 2013, *Omnis Group* v *Commission*, T-74/11, not published, EU:T:2013:283, paragraph 46). In addition, the restriction of the review by the Courts of the European Union does not mean that they must decline to establish whether the evidence put forward is factually accurate, reliable and consistent and to determine whether that evidence contains all the relevant data that must be taken into consideration and whether it is capable of substantiating the conclusions drawn from it (judgments of 17 September 2007, *Microsoft* v *Commission*, T-201/04, EU:T:2007:289, paragraph 89, and of 11 July 2013, *BVGD* v *Commission*, T-104/07 and T-339/08, not published, EU:T:2013:366, paragraph 220).

The applicant's pleas in law must be examined in the light of those considerations.

It is appropriate to examine, in the first place, the third plea, alleging a manifest error in the assessment of the objectively justified nature of the selective repair systems and of the refusal to supply spare parts, in the second place, the second plea, alleging a manifest error in the assessment of the existence of an abuse resulting from the Swiss watch manufacturers' refusal to supply spare parts to independent repairers, in the third place, the first plea, alleging a manifest error in the description of the market power of the Swiss watch manufacturers, in the fourth place, the fourth plea, alleging a manifest error in the assessment of the existence of an agreement or concerted practices, in the fifth place, the fifth plea, alleging a breach of the duty to state reasons and, in the sixth place, the sixth plea, alleging an infringement of the principle of good administration.

The third plea in law, alleging a manifest error of assessment concerning the objectively justified, non-discriminatory and proportionate nature of the selective repair systems and the refusal to supply spare parts

The applicant's third plea in law comprises two parts. By the first part, the applicant argues that the Commission misinterpreted the case-law by considering that a selective distribution system and, by analogy, a selective repair system, falls outside the scope of Article 101(1) TFEU if it is objectively justified, non-discriminatory and proportionate, whereas in fact it is also necessary that such a system does not have the effect of eliminating all competition. By the second part, the applicant argues that the Commission made a manifest error of assessment in considering that the selective repair systems at issue were objectively justified, non-discriminatory and proportionate.

The Commission contends that the Court should reject that plea.

The first part of the third plea in law, concerning the conditions that a selective system must meet in order to comply with Article 101(1) TFEU

The applicant disputes the Commission's interpretation that the repair systems at issue are in conformity with the case-law relating to Article 101 TFEU because they are allegedly objectively justified, non-discriminatory and proportionate. Rather, such systems would be in conformity with that article only if, in addition to those conditions, they did not have the effect of eliminating all competition, that is to say, if the restrictions they imposed were offset by other competitive factors between products of the same brand or by the existence of effective competition between different brands, which is not the case here. It adds that the question of the conformity of selective distribution systems is not relevant in assessing the question of the conformity of selective repair systems, inasmuch as the market for primary products is distinct from the market for repair and maintenance services.

The Commission contests those arguments.

In recital 154 of the contested decision, the Commission stated that a qualitative selective distribution system is generally considered to fall outside the scope of Article 101(1) TFEU for lack of anticompetitive effects, provided that it is objectively justified, non-discriminatory and proportionate. It then applied those conditions to the selective repair systems at issue.

In that respect, the Court of Justice has held (i) that the existence of differentiated distribution channels adapted to the particular characteristics of the various producers and the needs of the various categories of consumers is in particular justified in the sector covering the production of high quality and technically advanced consumer durables, where a relatively small number of large- and medium-scale producers offer a varied range of items which are readily interchangeable and (ii) that such products may indeed require a sales service and after-sales service specially adapted to their characteristics and linked to their distribution (judgment of 22 October 1986, *Metro* v *Commission*, 75/84, EU:C:1986:399, paragraph 54).

It follows from the reference to a specially adapted after-sales service that the conditions used in order to determine whether a selective distribution system is in conformity with Article 101 TFEU may also be used in order to evaluate whether a selective repair system, which constitutes an after-sales service,

has harmful effects on competition. The criteria relating to selective distribution systems may therefore be applied, by analogy, in order to evaluate the selective repair systems at issue.

The applicant's argument that the characterisation of a selective system as objectively justified, non-discriminatory and proportionate also depends on the existence of competition between products and services of different brands capable of offsetting the restrictions on competition between products of the same brand arising from a selective system is based on a misinterpretation of the case-law.

The Court of Justice has already held that agreements constituting a selective distribution system necessarily affect competition in the internal market (judgments of 25 October 1983, *AEG-Telefunken* v *Commission*, 107/82, EU:C:1983:293, paragraph 33, and of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraph 39). However, it has recognised that there are legitimate requirements, such as the maintenance of a specialist trade capable of providing specific services as regards high-quality and high-technology products, which may justify a reduction of price competition in favour of competition relating to factors other than price. Systems of selective distribution, in so far as they aim at the attainment of a legitimate goal capable of improving competition in relation to factors other than price, therefore constitute an element of competition which is in conformity with Article 101(1) TFEU (judgments of 25 October 1983, *AEG-Telefunken* v *Commission*, 107/82, EU:C:1983:293, paragraph 33, and of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraph 40).

In addition, the organisation of such a distribution network is not prohibited by Article 101(1) TFEU, to the extent that resellers are chosen on the basis of objective criteria of a qualitative nature, laid down uniformly for all potential resellers and not applied in a discriminatory fashion, that the characteristics of the product in question necessitate such a network in order to preserve its quality and ensure its proper use and, finally, that the criteria laid down do not go beyond what is necessary (judgments of 25 October 1977, *Metro SB-Großmärkte* v *Commission*, 26/76, EU:C:1977:167, paragraph 20; of 11 December 1980, *L'Oréal*, 31/80, EU:C:1980:289, paragraphs 15 and 16; and of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraph 41).

However, it does not follow from the case-law that it is necessary to verify that those distribution networks do not have the effect of eliminating all competition. If the conditions mentioned above are met, that is sufficient to consider that a selective system constitutes an element of competition which is in conformity with Article 101(1) TFEU.

The Commission therefore did not err in considering that a selective distribution system, and, by analogy, a selective repair system, was in conformity with Article 101(1) TFEU, provided that it was objectively justified, non-discriminatory and proportionate.

The second part of the third plea in law, alleging a manifest error in the assessment that the selective repair systems are objectively justified, non-discriminatory and proportionate

The applicant submits that the selective repair systems at issue are objectively unjustified, discriminatory and disproportionate.

The Commission contests that line of argument.

– *The first complaint, concerning the objectively justified nature of the selective repair systems*

The applicant criticises the reasons on which the Commission based its finding that the selective repair systems at issue were objectively justified. In particular, it argues that the watches do not have any particular complexity capable of justifying the establishment of those systems, that maintaining a prestigious image cannot be a legitimate aim for restricting competition and that those systems are not capable of enhancing protection against counterfeiting. According to the applicant, the fact that the contested decision did not address the complaint appropriately is also clear from the response to its arguments concerning the analogy with the motor vehicle sector, in which manufacturers cannot hinder the access of independent repairers to spare parts.

The Commission contends that that complaint should be rejected.

In that respect, the Commission submitted, in recital 133 of the contested decision, that it was likely that those systems were justified by the objectives put forward by the Swiss watch manufacturers, namely, the need to take account of the increased complexity of prestige watch models, the preservation of brand image, the maintenance of high and uniform quality repair services and the prevention of counterfeiting.

In the first place, although the applicant asserts that the mechanisms of the watches are not complex, it advances no specific argument or evidence in support of that assertion which is capable of calling into question the Commission's finding in that respect. As for the criticism that the Commission did not consult an expert in order to verify that complexity, it suffices to note that if the Commission is under no obligation to rule on the existence or non-existence of an infringement, it cannot be compelled to carry out an investigation, because such an investigation could have no purpose other than to seek evidence of the existence or non-existence of an infringement which it is not required to establish (judgments of 18 September 1992, *Automec* v *Commission*, T-24/90, EU:T:1992:97, paragraph 76, and of 16 October 2013, *Vivendi* v *Commission*, T-432/10, not published, EU:T:2013:538, paragraph 68). It cannot therefore be criticised for failing to consult an expert.

In the second place, as regards the applicant's contention that there is neither a credible risk of counterfeiting nor a need for a selective repair system in order to enhance the protection against that risk, the applicant's unsupported assertions are likewise not capable of calling into question the

Commission's finding. That is also the case as regards the applicant's submissions concerning the dedication of independent repairers and their opposition to counterfeiting.

It is apparent from the file that the Swiss watch manufacturers attest to the existence of a risk of counterfeiting of prestige watches and of their spare parts and that the prevention of counterfeiting is one of the objectives pursued by the implementation of selective repair systems. The applicant has not advanced any arguments or evidence capable of demonstrating that there is no risk of counterfeiting and that controlling the supply of spare parts is not a means of limiting the counterfeiting of those parts.

Consequently, the applicant's unsupported allegations do not demonstrate that the Commission overstepped the limits of its discretion by considering that the establishment of selective repair systems and the refusal to supply spare parts could be justified by the objective of combating counterfeiting.

In the third place, as regards the justification of selective repair systems by the objective of preserving the brand image of prestige watches, it must be pointed out that, as the applicant submits, the Court of Justice has already held that the aim of maintaining a prestigious image is not a legitimate aim for restricting competition and cannot therefore justify a finding that a contractual clause pursuing such an aim does not fall within Article 101(1) TFEU (judgment of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraph 46).

It nevertheless follows from that judgment that, although preserving a brand image cannot justify a restriction of competition by the establishment of a selective repair system, the objective of preserving the quality of products and ensuring their proper use may, in itself, justify such a restriction. The Court of Justice has recognised that the maintenance of a specialist trade capable of providing specific services as regards high-quality and high-technology products is a legitimate requirement and that, if aimed at such an objective, the organisation of a selective distribution network is not prohibited by Article 101(1) TFEU, to the extent that resellers are chosen on the basis of objective criteria of a qualitative nature, laid down uniformly for all potential resellers and not applied in a discriminatory fashion, that the characteristics of the product in question necessitate such a network in order to preserve its quality and ensure its proper use and, finally, that the criteria laid down do not go beyond what is necessary (see, to that effect, judgment of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraphs 40 and 41).

Since preserving brand image was not the only objective regarded by the Commission as capable of justifying the establishment of selective repair systems and since the objective of preserving the quality and ensuring the proper use of watches may suffice to justify that establishment, the Commission did not make a manifest error of assessment in deciding that it was likely that the refusal to supply in question was justified in so far as the choice of repairers was made on the basis of objective qualitative criteria applied in a non-discriminatory way and not going beyond what was necessary.

In the fourth place, as regards the applicant's criticism that the Commission did not consider that the comparison with the rules applicable to the motor vehicles sector led to the conclusion that the selective repair systems established by the Swiss watch manufacturers were not objectively justified, the Commission cannot be criticised for not applying those rules to the prestige watch sector. The rules applicable to the motor vehicle sector do not apply to watches. In addition, as is apparent from recital 175 of the contested decision, the Commission pointed to several factors capable of distinguishing the prestige watches sector from the motor vehicles sector.

In particular, it indicated that the vehicles sector was subject to sector-specific legislation, that spare parts in that sector could be sold directly to end consumers, that after-sales services in the prestige watch sector constituted a less profitable market, which did not represent a high proportion of total consumer expenditure, and that, in the watch sector, it was less important to have several repair centres close to the consumers than in the automotive sector, because prestige watches could more easily be shipped to be repaired. Consequently, it cannot be held that the Commission made a manifest error of assessment in considering that the prestige watch sector could be dealt with in a manner different from that provided for in the legislation applicable to the motor vehicles sector.

The Commission therefore did not make a manifest error in deciding that it was likely that the selective repair systems at issue were justified by the need to take account of the increased complexity of prestige watch models, the maintenance of high and uniform quality repair services and the prevention of counterfeiting.

– *The second complaint, concerning the non-discriminatory nature of the selective repair systems*

The applicant argues that the selective repair systems are discriminatory, submitting that access to those systems requires significant investment, that the qualification and equipment requirements are too high in view of the fact that the most complicated repair tasks are carried out only exceptionally, and that the repairers are required to comply with each brand's specific conditions as to investment.

The Commission contends that that complaint should be rejected.

In that regard, it suffices to note that, since all those elements are objective criteria which have a link with the goal pursued by the selective repair systems, the Commission did not overstep the bounds of its discretion by deciding that they were not such as to call into question the non-discriminatory nature of those systems. Moreover, the applicant does not dispute the objective nature of the selection criteria of the repair systems.

Consequently, the elements put forward by the applicant are not capable of demonstrating that the Commission made a manifest error of assessment in considering that the selective repair systems were not discriminatory.

– *The third complaint, concerning the proportionate nature of the selective repair systems*

As regards the proportionality of the selective repair systems, the applicant submits that the lack of complexity of old or simple watches demonstrates the disproportionate nature of the repair systems at issue.

The Commission contends that that complaint should be rejected.

The applicant does not explain how making the repair of old or simpler watches subject to the same requirements as more recent watches goes beyond what is necessary to achieve the objectives pursued. In addition, it is apparent from the file that the selective repair systems entail degrees of requirements and investments, which vary depending on watch models and the type of repair, with the result that the differences between the models and the levels of services offered are taken into account.

In any event, the applicant acknowledged, during the administrative procedure, that national associations of independent watch repairers require their members to make investments in training, tools and stocks of spare parts that are similar to those required by the Swiss watch manufacturers, which confirms the proportionate nature of the investments to be made in order to be part of the selective repair systems.

In addition, the Commission rightly noted that the investments in question were common to several brands, which increased their profitability. In addition, the applicant's assertion, during the administrative procedure, that the number of authorised repairers was necessarily high and increasing confirms that those systems do not require excessive investment, since they are accessible.

Lastly, the applicant's argument that the selective repair systems at issue are characteristic of the abusive practices listed in Article 102 TFEU is not capable of calling into question their objectively justified nature since the criteria examined above are respected. It therefore cannot serve to establish a manifest error by the Commission.

The Commission therefore did not make a manifest error of assessment in considering that it was possible that the selective repair systems established by the Swiss watch manufacturers could be justified by the objective of maintaining the quality of products, since those systems were based on qualitative selection criteria applied in a non-discriminatory manner and were proportionate.

Consequently the third plea in law is unfounded.

The second plea in law, alleging a manifest error in the assessment of the existence of an abuse resulting from the refusal to continue to supply spare parts

The applicant's second plea in law is subdivided into three parts. First of all, the applicant submits that the Commission erred by considering that a refusal to supply on the part of an undertaking in a dominant position could constitute an abuse only in certain circumstances. Next, the Commission erred by inferring that the selective repair systems at issue were lawful under Article 102 TFEU from the fact that they were lawful under Article 101 TFEU. Lastly, the Commission made a manifest error of assessment by considering that the refusals to continue to supply spare parts did not arise from the Swiss watch manufacturers' intention to secure the market for themselves and that those refusals were not liable to eliminate all competition.

The Commission contends that the Court should reject that plea.

The first part of the second plea in law, alleging that the Commission erred in identifying the criteria necessary to establish an abuse

The applicant submits that the Commission wrongly considered that a refusal to supply could constitute an abuse within the meaning of Article 102 TFEU only if it were liable to eliminate all competition and that, by itself, the lack of an objective justification did not constitute a sufficient ground for the establishment of abusive conduct under Article 102 TFEU.

The Commission contests those arguments.

In that respect, the Court of Justice and the General Court have already had the opportunity to assess the conformity with Article 102 TFEU of a refusal to supply by an undertaking in a dominant position, in a situation characterised by the presence of a primary products market, a market for the repair and maintenance of those products and a spare parts market.

Furthermore, under the case-law, the refusal by an undertaking in a dominant position on the market for a given product to satisfy the orders placed by a former customer constitutes an abuse of that dominant position within the meaning of Article 102 TFEU where, without any objective justification, that conduct is liable to eliminate competition on the part of a trading partner (see, to that effect, judgments of 6 March 1974, *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission*, 6/73 and 7/73, EU:C:1974:18, paragraph 25, and of 14 February 1978, *United Brands and United Brands Continentaal* v *Commission*, 27/76, EU:C:1978:22, paragraph 183).

In paragraph 38 of the judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569), the Court of Justice also noted that, although in the judgments of 6 March 1974, *Istituto Chemioterapico Italiano and Commercial Solvents* v *Commission* (6/73 and 7/73, EU:C:1974:18), and of 3 October 1985, *CBEM* (311/84, EU:C:1985:394), it had held that the refusal by an undertaking holding a dominant position on a given market to supply an undertaking with which it was in competition on a neighbouring market with raw materials and services respectively, which were indispensable to carrying on the rival's business, constituted an abuse, it had done so to the extent that the conduct in question was likely to

eliminate all competition on the part of that undertaking (judgment of 17 September 2007, *Microsoft* v *Commission*, T-201/04, EU:T:2007:289, paragraph 326).

Thus, to find an abuse within the meaning of Article 102 TFEU, the refusal of the goods or services in question must be likely to eliminate all competition on the market on the part of the person requesting the goods or services, such refusal must not be capable of being objectively justified, and the goods or services must in themselves be indispensable to carrying on that person's business (see, to that effect, judgments of 26 November 1998, *Bronner*, C-7/97, EU:C:1998:569, paragraph 41, and of 9 September 2009, *Clearstream* v *Commission*, T-301/04, EU:T:2009:317, paragraph 147).

The Commission therefore did not err in noting, in recitals 105 and 106 of the contested decision, that it is only in certain circumstances that a refusal to supply on the part of an undertaking in a dominant position can constitute an abuse within the meaning of Article 102 TFEU. For an abuse to be established, there must be a risk of all effective competition being eliminated.Accordingly, the Commission likewise did not make an error in specifying that, by itself, the lack of an objective justification did not constitute a sufficient ground for the establishment of abusive conduct under Article 102 TFEU.

The second part of the second plea in law, alleging that the Commission erred in assessing the existence of an abuse within the meaning of Article 102 TFEU in the light of the case-law relating to Article 101 TFEU

The applicant complains that the Commission based its finding that the repair systems and the inherent prohibition on supplying parts outside the system were in conformity with Article 102 TFEU on their conformity with the case-law relating to Article 101 TFEU.

The Commission contests that line of argument.

It follows from the case-law of the Court of Justice that the applicability to an agreement of Article 101 TFEU does not prevent Article 102 TFEU being applied to the conduct of the parties to the same agreement, provided that the conditions for the application of each provision are fulfilled, and that, consequently, the fact that operators subject to effective competition have a practice which is authorised under Article 101 TFEU does not mean that the adoption of that same practice by an undertaking in a dominant position can never constitute an abuse of that position (judgment of 16 March 2000, *Compagnie maritime belge transports and Others* v *Commission*, C-395/96 P and C-396/96 P, EU:C:2000:132, paragraphs 130 and 131). Accordingly, a finding that conduct is lawful under Article 101 TFEU does not, in principle, mean that that conduct is lawful under Article 102 TFEU; rather, it is necessary to verify whether or not the conditions for the application of that latter provision are fulfilled.

It is true that, in the present case, in recitals 119, 122 and 128 of the contested decision, the Commission referred to the conformity of the selective repair systems at issue with Article 101(1) TFEU when it considered that those systems did not produce anticompetitive effects since they were based on qualitative criteria and satisfied the conditions set out in the case-law relating to Article 101(1) TFEU. It therefore used the case-law on the application of that provision in order to demonstrate that the establishment of the selective repair systems at issue was not capable of eliminating all competition, that is to say, in order to assess whether that condition for the application of Article 102 TFEU was met.

However, since selective repair or distribution systems do not fall within the scope of Article 101(1) TFEU, in so far as they are regarded as being elements of competition as a result of their fulfilling certain criteria (see, to that effect, judgments of 25 October 1983, *AEG-Telefunken* v *Commission*, 107/82, EU:C:1983:293, paragraphs 33 to 35; of 13 October 2011, *Pierre Fabre Dermo-Cosmétique*, C-439/09, EU:C:2011:649, paragraphs 40 and 41; and of 27 February 1992, *Vichy* v *Commission*, T-19/91, EU:T:1992:28, paragraph 65), the Commission, when exercising its broad discretion in accordance with the case-law cited in paragraph 34 above, could consider that the conformity of such systems with that provision was an indication which, in conjunction with other elements, was capable of establishing that it was unlikely that those systems had the effect of eliminating all competition within the meaning of the case-law relating to Article 102 TFEU.

In that respect, it must be noted that, aside from the reference to the conformity of the repair and distribution systems with Article 101(1) TFEU, the Commission also relied on other elements, such as the existence of competition between authorised repairers on the market in question (recital 118) and the fact that the selective repair systems were open to repairers who wished to join them (recital 123).

In those circumstances, the Commission did not err in evaluating the likelihood that the refusal to supply at issue would produce anticompetitive effects constituting an abuse within the meaning of Article 102 TFEU by relying, inter alia, on the conditions set out in the case-law relating to Article 101 (1) TFEU, which serve to verify that selective distribution or repair systems do not give rise to a restriction of competition which is incompatible with that provision, in particular since it based that evaluation on other factors capable of demonstrating the absence of a risk that all effective competition would be eliminated.

The third part of the second plea in law, alleging that the Commission made a manifest error in the assessment of the Swiss watch manufacturers' intent to secure the market for themselves and in the assessment of the risk that all effective competition would be eliminated

According to the applicant, the Commission made a manifest error in the assessment of the existence of an abuse in that it took into account that the Swiss watch manufacturers did not intend to secure the

market for themselvesand considered that the refusal to supply at issue was not likely to eliminate all competition.

The Commission contests those arguments.

– *The first complaint, concerning the taking into account of the Swiss watch manufacturers' intent*

In its examination of the conduct of a dominant undertaking and for the purposes of identifying any abuse of a dominant position, the Commission is obliged to consider all of the relevant facts surrounding that conduct (see judgment of 19 April 2012, *Tomra Systems and Others* v *Commission*, C-549/10 P, EU:C:2012:221, paragraph 18 and the case-law cited).

Accordingly, the existence of any anticompetitive intent constitutes only one of a number of factual circumstances which may be taken into account in order to determine whether a dominant position has been abused (judgment of 19 April 2012, *Tomra Systems and Others* v *Commission*, C-549/10 P, EU:C:2012:221, paragraph 20).

The Commission therefore did not make a manifest error by taking into account the Swiss watch manufacturers' explanation that they had put in place their selective repair systems for reasons other than an intent to secure the repair and maintenance markets for themselves, since it did not rely exclusively on that element of intent in order to justify its conclusion concerning the low probability of establishing an infringement of Article 102 TFEU.

– *The second complaint, relating to the assessment of the risk that the refusals to supply spare parts would eliminate all effective competition*

According to the applicant, the refusals to supply spare parts to independent repairers are likely to eliminate all competition on the markets in question since the number of authorised repairers is very limited and their market shares are extremely limited.

The Commission contends that this complaint should be rejected.

With regard to the condition concerning the elimination of all competition, it is not necessary, in order to establish an infringement of Article 102 TFEU, to demonstrate that all competition on the market would be eliminated; rather, it must be established that the refusal at issue is liable to, or is likely to, eliminate all effective competition on the market (judgments of 17 September 2007, *Microsoft* v *Commission*, T-201/04, EU:T:2007:289, paragraph 563, and of 9 September 2009, *Clearstream* v *Commission*, T-301/04, EU:T:2009:317, paragraph 148).

In that respect, in the first place, the Commission noted, in recitals 73, 110, 118 and 162 of the contested decision, that there was competition on the repairs market between the authorised repairers and between those repairers and the Swiss watch manufacturers, since they were selected on the basis of qualitative criteria and the selective systems were open to all independent repairers that satisfied those criteria and wished to join those systems.

Since it can be seen from the analysis of the characteristics of the selective repair systems at issue, carried out in paragraphs 60 to 81 above, that they may be regarded as elements of competition falling outside the scope of Article 101(1) TFEU, the Commission did not err in inferring from that finding and from the other matters mentioned in paragraph 107 above that it was unlikely that the establishment of those systems would be liable to eliminate all effective competition.

In the second place, the Commission stated, in recital 122 of the contested decision, that competition also arose as a result of the possibility, for authorised repairers, of repairing watches from several brands. Given the possibility of creating economies of scale, the fact that the authorised repairers may carry out repairs for several brands is also an element of competition on the repairs market which contributes to showing that it is unlikely that a risk of all competition being eliminated could be established.

In the third place, the Commission also noted, in recital 123 of the contested decision, that, during the investigation, some independent repairers had joined the selective repair systems of certain brands. The applicant neither alleges nor proves that any independent repairer satisfying the criteria would be prevented from forming part of one or more selective repair systems. Nor does it adduce evidence showing that repairers meeting the criteria were not admitted as authorised repairers.

It therefore appears, in view of all the elements put forward by the Commission, that it did not make a manifest error of assessment in considering that the risk of all effective competition being eliminated was low. In view of the manner in which the selective repair systems at issue operate, there is competition between authorised repairers as well as between those repairers and the manufacturers' in-house repair centres. In addition, the other factors examined by the Commission demonstrate that the characteristics of the selective repair systems at issue allow new actors to enter the repairs market with the result that there is potential competitive pressure capable of confirming that there is no risk of all effective competition being eliminated in the operation of the repair systems examined in the present case.

In the fourth place, the reduction in the number of independent repairers affiliated to a national association of independent repairers is not, by itself, capable of demonstrating the elimination of all effective competition. Moreover, Article 101 TFEU, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such (judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 125). The need to preserve undistorted competition therefore does not entail a need to protect the existence of independent repairers as such.

In the fifth place, the applicant's reference to an extract from a letter of 2005 allegedly containing a provisional conclusion of the Commission, according to which the Swiss watch manufacturers had sought to secure the repair and maintenance markets for themselves, cannot establish a manifest error. In fact, that conclusion cannot be inferred from the extract relied on by the applicant, in which the Commission merely notes that maintaining the value of the product requires that after-sales service be provided either by the watch manufacturers themselves, or in approved service centres, that is to say, by third parties. In addition, as the Commission indicates, that letter contains only a provisional position, set out before the annulment of the first rejection of the complaint by the General Court, and it was followed by a further examination of the markets in question. In that context, the circumstance that the Commission's final position does not correspond to its provisional position, even if it were established, is not capable of vitiating the Commission's assessment with an error.

In the sixth place, the Commission's evaluation as to the likelihood of the existence of an abuse is not called into question by the applicant's assertions that the market for spare parts and the market for maintenance and repair services are growing and that the price of the repairs and maintenance carried out by the manufacturers are not negligible. An 'abuse' is an objective concept referring to the conduct of an undertaking in a dominant position which is such as to influence the structure of a market and it does not depend on the volume of the market in question (see, to that effect, judgment of 17 December 2003, *British Airways* v *Commission*, T-219/99, EU:T:2003:343, paragraph 241). The volume of a market therefore has no bearing on the establishment of an abuse.

In the seventh place, the applicant's argument alleging that the Commission disregarded the criteria set out in the Commission Communication entitled 'Guidance on the Commission's enforcement priorities in applying Article [102 TFEU] to abusive exclusionary conduct by dominant undertakings' (OJ 2009 C 45, p. 7), is also incapable of demonstrating that the Commission made a manifest error. In accordance with that communication, the Commission will consider refusals to supply as a priority where (i) they relate to a product or service which is objectively necessary to be able to compete effectively on a downstream market, (ii) they are likely to lead to the elimination of competition on the downstream market and (iii) they are likely to lead to consumer harm. Since the Commission considered, without making a manifest error of assessment, that the probability of establishing a risk of all competition being eliminated was low, this case did not satisfy one of the cumulative criteria for being dealt with as a priority. Since one of the criteria was not met, it was not necessary to evaluate the substance of the applicant's arguments as regards the other two criteria, relating to whether spare parts were objectively necessary in order to compete effectively and to the harm that consumers would suffer.

The Commission therefore did not make a manifest error of assessment in considering that the probability of establishing a risk of all effective competition being eliminated was low.

Accordingly, the Commission did not make a manifest error of assessment in considering that it was unlikely to establish an abuse arising from the refusal to continue to supply spare parts.

Consequently the second plea in law is unfounded.

The first plea in law, alleging an error in the description of the market power of the Swiss watch manufacturers

In the context of this plea, the applicant essentially criticises the Commission for stating that it could not 'be excluded' that the Swiss watch manufacturers were in a dominant position on the market for the supply of spare parts even though those manufacturers were, in the applicant's view, in a monopoly position, and for failing to take account of that factor in assessing the likelihood of the existence of an abuse.

The Commission contends that the Court should reject that plea.

In recitals 102 and 103 of the contested decision, the Commission considered that it could not be ruled out that the Swiss watch manufacturers were in a dominant position on the markets for repair services and for the supply of spare parts, inasmuch as entry to those markets required a substantial investment on account of their characteristics.

In that respect, it follows from the case-law that the dominant position referred to in Article 102 TFEU relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors and its customers. That provision does not envisage any variation in form or degree in the concept of a dominant position. Where an undertaking has an economic strength such as that required by Article 102 TFEU in order to establish that it holds a dominant position in a particular market, its conduct must be assessed in the light of that provision. Nonetheless, the degree of market strength is, as a general rule, significant in relation to the extent of the effects of the conduct of the undertaking concerned rather than in relation to the question of whether the abuse as such exists (judgments of 17 February 2011, *TeliaSonera Sverige*, C-52/09, EU:C:2011:83, paragraphs 79 to 81, and of 19 April 2012, *Tomra Systems and Others* v *Commission*, C-549/10 P, EU:C:2012:221, paragraphs 38 and 39).

In accordance with that case-law, the question whether the Swiss watch manufacturers had a greater degree of market power than that envisaged by the Commission is, in principle, irrelevant for the purpose of examining the abusive nature of the conduct alleged against them.

In addition, since it is apparent from the examination of the second plea in law that the Commission did not make a manifest error of assessment in rejecting the possibility that the Swiss watch

manufacturers' conduct constituted an abuse, it necessarily follows that the first plea in law relating to an error in the characterisation of the market power of the Swiss watch manufacturers is ineffective.

Consequently, the first plea in law is ineffective.

The fourth plea in law, concerning a manifest error in the assessment of the likelihood that the refusal to supply spare parts was the result of an agreement or a concerted practice

The applicant submits that the Commission made a manifest error of assessment in deciding that it was unlikely that the Swiss watch manufacturers' refusal to continue to supply spare parts was the result of an agreement or a concerted practice. It puts forward, in essence, three arguments in support of that assertion. First of all, the Swiss watch manufacturers had an interest in engaging in such a concerted practice. Secondly, only by acting collectively could those manufacturers achieve the goal of securing the repair and maintenance markets for themselves. Lastly, the Commission should have further investigated that issue by obtaining the minutes of the meetings of two Swiss trade associations, at which the Swiss watch manufacturers allegedly discussed the supply of spare parts to independent repairers.

In accordance with the case-law, the gradual adoption of decisions refusing to supply, when spread over a long period as in the present case, allows the conclusion to be drawn that those decisions are not the result of an agreement, but rather a series of independent commercial decisions (see, to that effect, judgment of 15 December 2010, *CEAHR* v *Commission*, T-427/08, EU:T:2010:51, paragraphs 131 and 132).

In the contested decision, the Commission considered that the gradual adoption of policies to refuse to supply was not the result of an agreement, but rather of a series of independent commercial decisions adopted by the Swiss watch manufacturers, since those decisions were not adopted at the same time or during the same period, but rather progressively and over a relatively long period.The applicant does not dispute the temporal context in which the selective repair systems were established and the refusals to supply took place. Moreover, it adduces refusal letters from 1996, 2000 and 2002.

Consequently, in the absence of evidence proving an agreement or collusion, the Commission did not make a manifest error of assessment in deciding that it was unlikely that the refusals to supply spare parts were the result of an agreement or a concerted practice.

It must be noted that the argument that the Swiss watch manufacturers had a financial incentive to act in concert, which the Commission allegedly recognised, and the argument that only by acting collectively could those manufacturers achieve the goal of securing the repair and maintenance markets for themselves are based on unsupported assertions and on the alleged pursuit of a goal that the applicant has not demonstrated. Moreover, in the absence of evidence establishing an agreement or collusion, those arguments are not capable of demonstrating that the Commission made a manifest error of assessment.

As regards the argument that the Commission should have investigated further, it follows from the case-law referred to in paragraph 61 above that if the Commission is under no obligation to rule on the existence or non-existence of an infringement, it cannot be compelled to carry out an investigation, because such an investigation could have no purpose other than to seek evidence of the existence or non-existence of an infringement which it is not required to establish. It cannot therefore be criticised for not attempting to obtain the minutes of the meetings of two Swiss trade associations.

Consequently, the Commission did not make a manifest error of assessment in deciding that it was unlikely that the Swiss watch manufacturers' refusal to continue to supply spare parts was the result of an agreement or a concerted practice.

The fourth plea in law is therefore unfounded.

The fifth plea in law, alleging a breach of the duty to state reasons

The applicant asserts that the Commission did not provide an appropriate statement of reasons for its conclusion that it would not pursue the applicant's complaint.

In that regard, the Commission is under an obligation to state reasons if it declines to continue with the examination of a complaint. Since the reasons stated must be sufficiently precise and detailed to enable the General Court to review effectively the Commission's use of its discretion to define priorities, the Commission must set out the facts justifying the decision and the legal considerations on the basis of which it was adopted (order of 31 March 2011, *EMC Development* v *Commission*, C-367/10 P, not published, EU:C:2011:203, paragraph 75, and judgment of 21 January 2015, *easyJet Airline* v *Commission*, T-355/13, EU:T:2015:36, paragraph 70).

In the present case, it suffices to note that it is clear from the contested decision that the Commission considered that the likelihood of establishing an infringement of Article 102 TFEU was limited, given the absence of a risk that the refusals to supply spare parts and the establishment of selective repair systems would eliminate all effective competition. In addition, it considered that the likelihood of establishing an infringement of Article 101 TFEU was limited, since the refusals to supply spare parts and the setting up of selective repair systems were the result of independent commercial decisions that were taken at different times. Furthermore, the Commission addressed all of the allegations made in the complaint, which is not disputed by the applicant.

In those circumstances, the Commission fulfilled its obligation to state reasons by setting out, clearly and unequivocally, the factual and legal considerations which led it to conclude that the likelihood of establishing the existence of an infringement of Articles 101 and 102 TFEU was limited. Since those

details enable the Court to review effectively the Commission's exercise of its broad discretion in the contested decision, the contested decision is supported by a sufficient statement of reasons.

Consequently the fifth plea in law is unfounded.

The sixth plea in law, alleging an infringement of the principle of good administration

Under Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991, an application initiating proceedings must contain a summary of the pleas in law on which it is based. That summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without any other supporting information.

The application must, accordingly, specify the nature of the grounds on which the action is based, with the result that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure of 2 May 1991 (judgment of 12 January 1995, *Viho* v *Commission*, T-102/92, EU:T:1995:3, paragraph 68).

In the application, the applicant merely asserts that the Commission's conclusion is the result of a procedure during which the Commission failed to examine attentively the elements of fact and of law raised by the applicant in breach of the applicant's right to good administration, but it does not advance any further submissions capable of supporting that assertion.

The mere reference to the principle of good administration cannot be regarded as sufficient to fulfil the conditions of clarity and precision imposed by the Rules of Procedure of 2 May 1991.

Consequently, the sixth plea in law is inadmissible.

Since none of the pleas in law put forward by the applicant demonstrate that the Commission overstepped the limits of its discretion, the action is unfounded.

Costs

Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs incurred by the Commission and by the interveners, in accordance with the forms of order sought by them.

On those grounds,

THE GENERAL COURT (Second Chamber),

hereby:

Dismisses the action;

Orders the Confédération européenne des associations d'horlogers-réparateurs (CEAHR) to pay the costs.

Prek Buttigieg Berke

Delivered in open court in Luxembourg on 23 October 2017.

E. Coulon

Registrar President

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* Language of the case: English.