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General Court of the European Union

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Judgments in Cases T-110/07 Siemens AG; T-117/07 & T-121/07 Areva and others & Joined Cases T-122/07 to T-124/07 Siemens AG Österreich and others v Commission

The General Court reduces the fines of certain members of the gas insulated switchgear cartel

However, the General Court upholds the fine of €396.6 million imposed on Siemens (Germany)

By decision of 24 January 2007¹, the Commission imposed fines totalling €750 712 500 on 20 companies² for their participation in a cartel on the market for gas insulated switchgear (GIS). The anti-competitive practices entailed, inter alia, coordination on a worldwide scale for the award of GIS projects, involving market sharing, allocation of quotas and maintenance of market shares, the allocation of GIS projects to designated producers and manipulation of the bidding procedure for those projects in order to ensure that the contracts were awarded to those producers. The infringement also included price fixing by means of complex price arrangements for GIS projects which were not allocated, the termination of licence agreements with non-cartel members and the exchange of sensitive market information.

Among the companies fined were Alstom, Areva, Schneider Electric SA, Siemens AG, Siemens Aktiengesellschaft Österreich, Siemens Transmission & Distribution SA (SEHV), Siemens Transmission & Distribution Ltd. (Reyrolle), and VA Tech Transmission & Distribution GmbH & Co KEG (KEG). The largest fine, €396 562 500, was imposed on Siemens AG.

The business units of the Alstom Group operating in the sector concerned participated in the cartel until the subsidiaries of which they were part were transferred to the Areva Group. Thus, those business units of the subsidiaries Areva T&D SA and Areva T&D AG, now held by Areva T&D Holding SA and Areva, continued to take part in the cartel during its last four months. Consequently:

– Alstom was fined €11.475 000 individually, and €53 550 000 jointly and severally with Areva T&D SA.

– Areva T&D SA was fined €53 550 000 jointly and severally with Alstom, €25 500 000 of which was to be paid jointly and severally with Areva, Areva T&D Holding and Areva T&D AG.

The Commission also imposed fines on other undertakings, taking account of their structure and the periods during which each of them had participated in the infringement:

– Reyrolle: €22 050 000,

– Siemens Österreich and KEG: €12 600 000 jointly and severally with Reyrolle,

– SEHV and Magrini: €22 050 000, of which €17 550 000 was to be paid jointly and severally with Reyrolle, and €4 500 000 jointly and severally with Schneider Electric.

¹ Commission Decision C (2006) 6762 final relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.899 – Gas insulated switchgear).

² ABB Ltd., Alstom, société anonyme, Areva, société anonyme, Areva T&D AG, Areva T&D Holding SA, Areva T&D SA, Fuji Electric Holdings Co., Ltd, Fuji Electric Systems Co., Ltd., Hitachi Ltd., Hitachi Europe Ltd., Japan AE Power Systems Corporation, Mitsubishi Electric Corporation, Nuova Magrini Galileo S.p.a., Schneider Electric SA, Siemens AG, Siemens Aktiengesellschaft Österreich, Siemens Transmission & Distribution SA, Siemens Transmission & Distribution Ltd., Toshiba Corporation and VA Tech Transmission & Distribution GmbH & Co KEG,.

The companies on which fines were imposed brought actions before the Court³ seeking the annulment of the Commission's decision and, in the alternative, a reduction of their fines.

As regards Alstom and the companies of the Areva Group, the Court considers that, in order to assess the merits of the 50% increase in the basic amount determined by the Commission as a result of their role of leader in the infringement, it is necessary to compare the conduct of the undertaking which they managed with that of the other undertakings which participated in the cartel.

The Court finds that there is a substantial difference between how long Siemens carried out the duties of 'European secretary' to the cartel, and how long those duties were carried out by Alstom and the companies of the Areva Group. It considers that the principles of equal treatment and proportionality require that the increase in the basic amount of the fine should differ in accordance with the period during which those undertakings played the role of leader in the infringement.

Consequently, by imposing an identical increase in the basic amount of the fine on Alstom and the companies of the Areva Group, on the one hand, and on Siemens, on the other, the Commission did not comply with those principles.

The Court annuls the Commission's decision in that regard and reduces the increase in the basic amount of the fines for Alstom and the companies in the Areva Group. Consequently, it imposes the following fines:

– Alstom: €10 327 500,

– Alstom: €48 195 000 jointly and severally with Areva T&D SA, €20 400 000 of the amount due from Areva T&D SA is to be paid jointly and severally by the latter and Areva T&D AG, Areva and Areva T&D Holding SA.

As regards Siemens Österreich, KEG, Siemens Transmission & Distribution Ltd (Reyrolle) and Siemens Transmission & Distribution SA (SEHV) and Magrini, the Court considers, first of all, that the Commission committed an error in finding an infringement on their part between 1 April and 30 June 2002.

Next, it explains, with regard to the imputing of the conduct of the undertakings which participated in the cartel and the application of the rules of joint and several liability for the payment of fines, that legal entities which participated in their own right in an infringement and which have subsequently been acquired by another company continue to bear responsibility themselves for their unlawful conduct prior to their acquisition, where those companies have not purely and simply been absorbed by the acquiring undertaking but have continued their activities as subsidiaries. In such a case, the acquiring undertaking may be held responsible only for the conduct of its subsidiary with effect from its acquisition if the subsidiary continues the infringement and if the responsibility of the new parent company can be established.

In addition, the Court considers that the same principle must apply in the case where, prior to its acquisition, the company acquired participated in the infringement not independently, but as a subsidiary of another group, as was the case for SEHV and Magrini.

Next, the Court notes that the joint and several liability for payment of a fine covers only the period of the infringement during which the various companies formed an economic unit and constituted an undertaking for the purposes of competition law. In addition, it considers that it is for the Commission to determine the amount which each company is to bear in relation to the other joint and several debtors for the unlawful conduct for a specific period. In the absence of a contrary

³ Other companies, which were members of the cartel, also brought actions before the Court which are still pending: Cases [T-112/07](#) Hitachi Ltd and Hitachi Europe Ltd and Japan AE Power Systems Corp. v Commission; [T-113/07](#) Toshiba v Commission; [T-132/07](#) Fuji Electric Holding Co. Ltd and Fuji Electric Systems Co Ltd v Commission and [T-133/07](#) Mitsubishi Electric Corp v Commission

indication by the Commission in that regard, it must be considered that it attributes that infringement to them in equal measure.

The Court considers that, by failing to establish the fines imposed in accordance with the duration of the participation of the various companies in the cartel within one and the same undertaking, the Commission infringed the principle that penalties must be specific to the offender and to the offence.

Consequently, the Court annuls the Commission's decision in so far as concerns the calculation of the fine imposed on SEHV and Magrini and the determination of the amounts to be paid jointly and severally by the companies which belonged to the VA Technologie Group. The Court sets the following fines:

- Siemens Transmission & Distribution SA (SEHV) and Magrini, jointly and severally with Schneider Electric SA: €8 100 000,
- Siemens Transmission & Distribution Ltd (Reyrolle), jointly and severally with Siemens AG Österreich, KEG, Siemens Transmission & Distribution SA (SEHV) and Magrini: €10 350 000,
- Siemens Transmission & Distribution Ltd (Reyrolle), jointly and severally with Siemens AG Österreich and KEG: €2 250 000,
- Siemens Transmission & Distribution Ltd (Reyrolle) €9 450 000.

As regards Siemens AG, the Court rejects all the arguments raised by the undertaking and upholds the fine of €396 562 500.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments ([T-110/07](#), [T-117/07](#), [T-121/07](#) and [T-122/07 – T-124/07](#)) is published on the CURIA website on the day of delivery

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