



Court of Justice of the European Union

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Judgments in Joined Case C-231/11P, C-232/11 P and C-233/11 P and in
Joined Cases C-247/11 P and C-253/11 P
Commission v Siemens Österreich and Others, Siemens
Transmission & Distribution v Commission, Siemens
Transmission & Distribution and Nouva Magrini Galileo v Commission, Areva
v Commission, and Alstom and Others v Commission

Press and Information

The Court in part allows the appeals in the cases concerning the cartel on the gas insulated switchgear market

The Court restores the fine originally imposed by the Commission on Schneider, SEHV and Magrini and alters the allocation of the fines for which Areva T & D SA and its successive parent companies were held jointly and severally liable

By decision of 24 January 2007¹, the Commission imposed fines totalling €750.71 million on 20 companies for their participation in a cartel on the gas insulated switchgear market. By a number of judgments of 3 March 2011, the General Court annulled that decision in part². It decided to reduce the increase in the basic amount of the fines for the Areva and Alstom group companies ('the **Areva cases**'), with the effect that Alstom was ordered to pay a fine of €48.19 million, for which it was jointly and severally liable with Areva T & D SA (it being noted that Areva T & D AG, Areva and Areva T & D Holding SA were jointly and severally liable in respect of €20.4 million of the amount payable by Areva T & D SA)³. In its judgment relating to Siemens Transmission & Distribution Ltd ('Reyrolle'), Siemens Transmission & Distribution SA ('SEHV') and Nova Magrini Galileo SpA ('Magrini') ('the **Siemens cases**')⁴, the General Court annulled the Commission's decision in so far as concerns the calculation of the amount of the fine imposed on SEHV and Magrini jointly and severally with Schneider (the General Court increasing the fine from €4.5 million to €8.1 million), whereas Reyrolle was ultimately ordered to pay, alone or jointly and severally, a fine of €22.05 million.

In the Siemens cases, three appeals were lodged before the Court of Justice, first by the Commission, second by Reyrolle, and third by SEHV and Magrini. Areva and the Alstom group both lodged their own appeal before the Court.

In its judgment today concerning the **Siemens cases**, the Court dismisses Reyrolle's appeal, but upholds in part the appeal lodged by the Commission and that of SEHV and Magrini. With regard to the **Commission's appeal**, the Court observes that, while the Commission has the possibility of holding jointly and severally liable for payment of a fine a number of legal persons forming part of one and the same undertaking that is responsible for the infringement, the EU competition rules and the principles of EU law concerning personal liability for an infringement and the principle that the penalty must be specific to the offender and the offence (including the question of joint and several liability) relate only to the undertaking per se, not the natural or legal persons forming part of the undertaking. It follows that the Commission cannot, beyond the determination of joint and several liability from its external perspective, determine the shares of the fine to be paid by those

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 An appeal was also brought before the Court of Justice by Siemens AG against the judgment of the General Court in Case [T-110/07](#) *Siemens v Commission* and by Mitsubishi Electric Corp. and Toshiba Corp. against the judgments in Case [T-133/07](#) *Mitsubishi Electric v Commission* and Case [T-113/07](#) *Toshiba v Commission*. The Court of Justice ruled on those three appeals by judgment of 19 December 2013 in Joined [Cases C-239/11 P, C-489/11 P and C-498/11 P](#); see Press Release [No 161/13](#).

³ Joined Cases [T-117/07 and T-121/07](#) *Areva and Others v Commission*. See also Press Release [No 15/11](#).

⁴ Joined Cases [T-122/07 to T-124/07](#) *Siemens Österreich and Others v Commission*. See also Press Release [No 15/11](#).

held jointly and severally liable from the perspective of their internal relationship. On the contrary, it is for the national courts to determine those shares, in a manner consistent with EU law, by applying the national law concerned. The General Court therefore erred in finding that it is exclusively for the Commission to determine those shares and in itself determining, in the exercise of its unlimited jurisdiction, the shares of the fine to be paid by the companies in the context of their internal relationship. The Court of Justice therefore decides to set aside that part of the judgment; it should be noted, however, that the amount of the fines itself has not changed.

As regards the **appeal lodged by SEHV and Magrini**, the Court points out that, in the judgment under appeal, the General Court varied the fine imposed jointly and severally on SEHV, Magrini and Schneider, increasing it from €4.5 million to €8.1 million. The Court observes in that regard that Schneider did not bring an action for annulment before the General Court, so that the Commission's decision has become final as regards Schneider. By varying the fine imposed jointly and severally on SEHV, Magrini and Schneider, the General Court exceeded its powers, since that variation may be to SEHV's and Magrini's disadvantage, both from the external and internal perspective of the imposition of joint and several liability. It follows that the original fine imposed jointly and severally by the Commission on those three companies (namely €4.5 million) remains unchanged.

With regard to the **Areva cases**, the Court upholds in part the appeals lodged by Areva and Alstom. It considers that the definition of joint and several liability adopted by the Commission and confirmed by the General Court constitutes an infringement of the principle of legal certainty and the principle that the penalty must be specific to the offender and the offence, in so far as both the Commission and the General Court imposed de facto joint and several liability as between Areva and Alstom and thus infringed the rules governing joint and several liability for payment of fines. Joint and several liability cannot be used to force one company to bear the risk of the insolvency of another company where those companies have never formed part of the same undertaking. Where the Commission intends to make a subsidiary (Areva T & D SA) which has committed an infringement jointly and severally liable with each of the parent companies with which it has, in succession, formed a separate undertaking during the infringement period (Alstom initially and, subsequently, the Areva group), it must fix separately for each of the undertakings involved (Areva T & D SA and Alstom, on the one hand, and Areva T & D SA and Areva, on the other) the amount of the fine for which the companies forming part of the undertaking are jointly and severally liable, according to the gravity of the infringement for which each of the undertakings concerned is individually responsible and the duration of that infringement. The Court also points out that the total amount which the successive parent companies may be required to pay cannot be greater than the amount which the subsidiary must pay, a principle which neither the Commission nor the General Court followed.

The Court has therefore decided to determine the amounts of the fines in accordance with a method which, unlike that used by the Commission and the General Court, complies with the rules governing joint and several liability, and imposes a fine of €27.79 million on Alstom, jointly and severally with Areva T & D SA⁵, and a fine of €20.4 million on Areva, Areva T & D Holding⁶ and Areva T & D AG⁷, jointly and severally with Areva T & D SA.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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⁵ Now Alstom Grid SAS.

⁶ Now T & D Holding.

⁷ Now Alstom Grid AG.

The full texts of the judgments (Joined Cases [C-231/11 P to C-233/11 P](#) and Joined Cases [C-247/11 P and C-253/11 P](#)) are published on the CURIA website on the day of delivery.

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