



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 3/17**

Luxembourg, 18 January 2017

Judgment in Case C-623/15 P  
Toshiba Corp. v Commission

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## **The Court confirms the fine of €82 million imposed jointly and severally on Toshiba and Panasonic/MTPD for their participation in the cartel on the market for tubes for television sets**

By decision of 5 December 2012,<sup>1</sup> the Commission imposed fines totalling approximately €1.47 billion on seven undertakings which had participated in one or two separate cartels on the market for cathode ray tubes ('CRTs') between 1996/1997 and 2006.

A CRT is an evacuated glass envelope containing an electron gun and a fluorescent screen. At the material time, there were two different types of CRT: colour display tubes for computer monitors ('CDTs') and colour picture tubes for television sets ('CPTs'). They were essential components for the production of computer monitors or colour televisions and came in a number of different sizes.

Those types of CRT were the subject of two infringements, namely a CDT cartel and a CPT cartel. The cartels consisted, in essence, of price-fixing, market and customer-sharing and output limitations. Furthermore, the participating undertakings regularly exchanged commercially sensitive information.

In the context of the CPT cartel, the Commission, among other things, imposed a fine of €28 048 000 on Toshiba individually, and a fine of €86 738 000 on Toshiba jointly and severally with Panasonic and their joint subsidiary, MTPD.<sup>2</sup>

Ruling on actions for annulment brought against the Commission's decision, the General Court, by judgments of 9 September 2015,<sup>3</sup> annulled the fine of €28 048 000 imposed on Toshiba individually and reduced from €86 738 000 to €82 826 000 the fine imposed jointly and severally on Toshiba and Panasonic/MTPD. In essence, the General Court considered that the Commission had not established to the requisite legal standard that between 16 May 2000 (the date on which Toshiba was alleged to have begun participating in the cartel) and 31 March 2003 (the date on which MTPD was created) Toshiba had been aware, or had actually been kept informed, of the existence of the CPT cartel, or that it had intended to contribute by its own conduct to all of the common objectives pursued by the cartel participants.

Toshiba asks the Court of Justice to set aside the judgment of the General Court and to annul the fine imposed jointly and severally. It argues that it was not in a position to exercise decisive influence over MTPD throughout the duration of the infringement and that it therefore could not be held liable for the infringement committed by MTPD.

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<sup>1</sup> Commission Decision C(2012) 8839 final of 5 December 2012 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.437 — TV and Computer Monitor Tubes).

<sup>2</sup> On 31 March 2003, Panasonic and Toshiba transferred their entire CRT business to a joint venture, MT Picture Display ('MTPD'). Until 31 March 2007, MTPD was held as to 64.5% by Panasonic and as to 35.5% by Toshiba; on that date Toshiba transferred its shareholding to Panasonic and MTPD thus became its wholly-owned subsidiary.

<sup>3</sup> Cases: [T-82/13](#) Panasonic and MT Picture Display v Commission and [T-104/13](#) Toshiba v Commission; see also Press Release No [97/15](#).

By its judgment delivered today, **the Court** dismisses Toshiba's appeal and **confirms the fine of more than €82 million imposed jointly and severally on Toshiba and Panasonic/MTPD.**

According to the Court, the General Court correctly held that, where it follows from statutory provisions or contractual stipulations that the commercial conduct of a joint subsidiary (in this case, MTPD) must be determined jointly by several parent companies (in this case, Toshiba and Panasonic), it may reasonably be concluded that that conduct was indeed determined jointly, with the result that, in the absence of evidence to the contrary, the parent companies must be regarded as having exercised decisive influence over their subsidiary.

The Court also holds that the General Court did not err in law in concluding that Toshiba had a right of veto over MTPD's business plan for the entire duration of its existence, and that the holding of such a right was in itself sufficient for the view to be taken that Toshiba had indeed exercised decisive influence over that undertaking together with Panasonic. It follows that, contrary to Toshiba's assertions, the General Court was not required to determine whether Toshiba had influenced MTPD's operational management in order to conclude that those two companies formed part of a single economic unit. Furthermore, the mere fact that Toshiba never exercised its right of veto does not allow the conclusion that it did not exercise decisive influence over MTPD's conduct.

The Court also confirms the General Court's analysis that the possibility for a parent company (Toshiba) to prohibit its subsidiary (MTPD) from taking decisions involving outlays which appear relatively modest in the light of that subsidiary's capital constitutes an indication of the capacity to exercise decisive influence over that subsidiary. Lastly, the General Court was right to take the view that Toshiba's appointment of one of the two directors entitled to represent MTPD (namely the vice-president of that undertaking) was an indication of Toshiba's capacity to exercise decisive influence over MTPD's conduct.

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**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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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