



The General Court annuls the fines imposed on Mitsubishi and Toshiba for their participation in the cartel on the gas insulated switchgear market

In addition, Fuji's fine of €2.4 million is reduced to €2.2 million, whereas the fine of €50.4 million imposed on Hitachi is maintained

By decision of 24 January 2007¹, the Commission imposed fines totalling €750.71 million on 20 European and Japanese companies² for their participation in a cartel on the market for gas insulated switchgear (GIS). GIS is used as a major component for electric substations to convert electrical current from high to low tension and vice versa. Its function is to protect the transformer from overload and/or insulate the circuit and the faulty transformer.

The companies which participated in the cartel concluded an agreement with a view to coordinating their commercial activity worldwide and developed a quota system aimed at determining the market shares which each group could share among its members.

According to the Commission, the cartel participants also concluded an unwritten understanding to reserve the European market to European undertakings and the Japanese market to Japanese undertakings. In its decision, the Commission found that the cartel had operated from 15 April 1988 to 11 May 2004.

The companies which were fined brought actions before the General Court seeking the annulment of the Commission's decision and a reduction of their respective fines³. As for the Japanese companies, Mitsubishi Electric (€118.58 million) and Toshiba (€90.9 million) were fined the heaviest.

In today's judgments the Court finds, first, that it is the alleged commitment of the Japanese undertakings, under the unwritten understanding, not to enter the European market which constitutes an infringement of the European Union competition rules.

In that regard, the Court notes, first, that **the existence of an unwritten understanding is proved directly by the statements of several undertakings involved in the cartel and by the witness statements of the employees of one of those undertakings.**

Second, **the Court confirms the existence of a notification and account loading mechanism attached to the quota system**, corroborated by statements made by certain participants to the

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 SA, Areva SA, 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 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.

³ For the cases involving European companies, see the judgments of 3 March 2011 in Case [T-110/07](#) Siemens AG v Commission; Cases [T-117/07](#) and [T-121/07](#) Areva, Areva T & D Holding SA, Areva T & D AG, Alstom v Commission; and Joined Cases [T-122/07 to T-124/07](#) Siemens AG Österreich, VA Tech Transmission & Distribution GmbH & Co. KEG, Siemens Transmission & Distribution Ltd., Siemens Transmission & Distribution SA, Nuova Magrini Galileo SpA v Commission; see also press release No [15/11](#).

cartel and by a credible witness. The Court notes that the Japanese undertakings refrained from entering the European market and that the European undertakings committed to notify them of the results of the allocation of GIS projects in certain European countries and to load those projects into the quota system. In doing so, the European undertakings voluntarily committed themselves not to bid for a number of GIS projects on certain international markets, in addition to their commitment not to enter the Japanese market. The European undertakings thus regarded the Japanese undertakings as being potential competitors which could have entered the European market. If they did not do so it is because they committed themselves not to.

The Court thus states that that mechanism constitutes a link between the collusive activities on the European market and the Japanese producers. It therefore constitutes **indirect evidence of the unwritten understanding**.

Accordingly, **the Court upholds the Commission's decision that the Japanese undertakings participated in the unwritten understanding and, consequently, in the cartel.**

Next, **the Court examines the method adopted by the Commission to calculate the fines** imposed on the Japanese undertakings. In so far as the Commission did not use the same reference year for Mitsubishi Electric and Toshiba (2001) and the European undertakings (2003), the Court finds that the Commission did not treat the Japanese producers and the European producers equally.

The Court notes that the Commission proceeded in that manner in order to take account of the fact that, for most of the period of infringement, Mitsubishi Electric and Toshiba participated in the cartel as individual undertakings, and not as part of their joint venture, TM T&D Corp. Consequently, in calculating their fines, the Commission took account of their turnovers for the year prior to the creation of TM T&D. However, although the objective pursued by the Commission was legitimate, the Court finds that it could have used other methods to achieve its objective without treating the Japanese producers and the European producers unequally.

Accordingly, the Court finds that **the Commission infringed the principle of equal treatment and annuls the fines imposed on the two companies concerned.**

As regards the Fuji Group, the Court notes that the Commission decided that, for the infringements committed prior to 1 October 2002, a fine of €2.4 million had to be paid joint and severally by Fuji Electric Holdings ('FEH'), the group's holding company, and by Fuji Electric Systems ('FES'), a subsidiary of the holding company⁴.

In that regard, the Court notes that FEH and FES provided the Commission with essential information relating to the cartel for the period prior to 1 October 2002, which the Commission should have taken into account when calculating the fines in accordance with the Leniency Notice.⁵

For that reason, the Court **imposes a single fine of €2.2 million on Fuji Electric, the company born of the merger between FEH and FES on 1 April 2011.**

Finally, the Court rejects the action brought by Hitachi in its entirety.

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

⁴ For the infringements committed after 1 October 2002, the date on which the Fuji Group transferred its GIS activities to the joint venture Japan AE Power Systems 'JAEPS', the Commission imposed a fine of €1.35 million on FEH and FES joint and severally with JAEPS and Hitachi, the main shareholder in the joint venture.

⁵ Commission Notice of 19 February 2002 on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

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-112/07](#), [T-113/07](#), [T-132/07](#), & [T-133/07](#)) is published on the CURIA website on the day of delivery

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