



## **The General Court upholds the fines of €131 million imposed on Toshiba and Mitsubishi Electric for their participation in the cartel on the market for gas insulated switchgear**

By decision of 24 January 2007<sup>1</sup> the Commission imposed fines totalling €750.71 million on 20 European and Japanese companies<sup>2</sup> for their participation in a cartel<sup>3</sup> on the market for gas insulated switchgear (GIS) between 1988 and 2004. 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 any faulty transformer.

Mitsubishi Electric and Toshiba were fined €113.92 million and €86.25 million respectively. In addition to those two fines, the two Japanese companies were ordered to pay a further amount of €4.65 million joint and severally. By judgments of 12 July 2011<sup>4</sup> the General Court annulled the fines imposed on Mitsubishi and Toshiba, finding that the Commission had infringed the principle of equal treatment in calculating those fines. By contrast, the General Court confirmed that Mitsubishi and Toshiba had participated in the cartel. The judgments of the General Court were upheld by the Court of Justice in a judgment of 19 December 2013.<sup>5</sup>

The Commission recalculated the fines imposed on Mitsubishi and Toshiba and fixed them at €74.82 million and €56.79 million respectively. The amount to be paid joint and severally by those two undertakings was again fixed at €4.65 million.<sup>6</sup> The two Japanese producers then brought an action before the General Court for the annulment of the new fines.

In today's judgments, **the General Court** rejects the actions of Toshiba and Mitsubishi Electric and thus **upholds the new fines imposed by the Commission**.

The two Japanese producers complain that the Commission, inter alia, deemed them to be equally as liable for the cartel as the European producers, even though, unlike the latter, they participated

<sup>1</sup>Commission Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.899 – Gas insulated switchgear), a summary of which has been published in the Official Journal of the European Union (OJ 2008 C 5, p. 7).

<sup>2</sup>Namely, ABB, Alstom, Areva, Areva T & D AG, Areva T & D Holding, Areva T & D SA, Fuji Electric Holdings, Fuji Electric Systems, Hitachi, Hitachi Europe, Japan AE Power Systems, Mitsubishi Electric, Nuova Magrini Galileo, Schneider Electric, Siemens, Siemens Österreich, Siemens Transmission & Distribution SA, Siemens Transmission & Distribution Ltd, Toshiba and VA Tech Transmission & Distribution.

<sup>3</sup>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.

<sup>4</sup>Case [T-113/07](#) Toshiba v Commission and Case [T-133/07](#) Mitsubishi Electric v Commission see also Press Release No [70/11](#).

<sup>5</sup>Case [C-239/11 P](#) Siemens v Commission and Case [C-489/11 P](#) Mitsubishi Electric v Commission and Case [C-498/11 P](#) Toshiba v Commission see also Press Release No [161/13](#).

<sup>6</sup>Commission Decision C (2012) 4381 of 27 June 2012 amending the 2007 decision in so far as Mitsubishi Electric and Toshiba were addressees thereof (Case COMP/39.966 — Gas Insulated Switchgear — Fines) and Commission Decision C (2012) 4381 of 27 June 2012 amending the 2007 decision in so far as Mitsubishi Electric and Toshiba were addressees thereof (Case COMP/39.966 — Gas Insulated Switchgear — Fines).

in only one aspect of the cartel. The Japanese undertakings committed, vis-à-vis the European undertakings, only not to enter the EEA market. Their participation was thus merely a failure to act. By contrast, they did not participate in the allocation of market shares in the EEA. None the less, the General Court considers that the failure to act of the Japanese undertakings was a prerequisite for ensuring that the allocation of market shares in the EEA could be carried out among the European producers, with the result that those undertakings made a necessary contribution to the functioning of the infringement as a whole and their degree of liability cannot be qualified as being lower.

Toshiba and Mitsubishi Electric also submit that the determination of the fines should have been based on the value of their respective, individual GIS sales in 2003. However, in calculating the new fines the Commission did not take account of the value of sales of each of those two undertakings, but the value of sales of TM T&D, a joint venture owned in equal shares by the two Japanese undertakings. In that regard, the General Court notes that the Commission was required, following the annulment of the initial fines, to use 2003 as the reference year in order to determine the value of sales.<sup>7</sup> However, during that year, Toshiba and Mitsubishi Electric did not record any GIS sales themselves, given that that had transferred their activities in that sector to their joint venture, TM T&D. Consequently, by using 2003 as the new reference year the Commission was able to determine the value of sales in accordance with detailed rules, relying on the sales made by TM T&D.

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**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 texts [T-404/12](#) and [T-409/12](#) of the judgments are published on the CURIA website on the day of delivery*

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<sup>7</sup> In its judgments of 12 July 2011 (see footnote 4), the General Court stated that the Commission had not used the same reference year for Mitsubishi Electric and Toshiba (2001) as for the European undertakings (2003). It concluded that the Commission had not treated the Japanese producers in the same way as the European producers.