



Press and Information

Court of Justice of the European Union
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Judgment in Case C-180/16 P
Toshiba v Commission

The Court upholds the €61.44 million fine imposed on Toshiba (of which €4.65 million jointly and severally with Mitsubishi) for its participation in the gas insulated switchgear cartel

The fine thus becomes final

By decision of 24 January 2007,¹ 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) between 1988 and 2004. The undertakings 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.

Toshiba and Mitsubishi Electric were fined €86.25 million and €113.92 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. That amount corresponds to the infringement committed by TM T&D Corp., a company jointly owned in equal shares by Toshiba and Mitsubishi, through which Toshiba had carried on its GIS business between October 2002 and April 2005.

By judgments of 12 July 2011,³ the General Court of the European Union annulled the fines imposed on Toshiba and Mitsubishi, finding that the Commission had infringed the principle of equal treatment in calculating those fines. By contrast, the General Court confirmed that Toshiba and Mitsubishi had participated in the cartel. The judgments of the General Court were upheld by the Court of Justice in a judgment of 19 December 2013.⁴

The Commission recalculated the fines imposed on Toshiba and Mitsubishi and fixed them at and €56.79 million and €74.82 million respectively. The amount to be paid joint and severally by those two undertakings was again fixed at €4.65 million.⁵

By judgments of 19 January 2016,⁶ the General Court upheld those new fines, rejecting the actions Toshiba and Mitsubishi had brought against that new Commission decision.

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

² 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 et VA Tech Transmission & Distribution.

³ Case [T-113/07](#) Toshiba v Commission and Case [T-133/07](#) Mitsubishi Electric v Commission see also Press Release [No 70/11](#).

⁴ Joint cases [C-239/11 P](#) Siemens v Commission, [C-489/11 P](#) Mitsubishi Electric v Commission and [C-498/11 P](#) Toshiba v Commission, see also Press Release [No 161/13](#).

⁵ Commission Decision C(2012) 4381 of 27 June 2012 amending the 2007 decision to the extent that it was addressed to Mitsubishi Electric Corporation and Toshiba Corporation (Case COMP/39.966 — Gas Insulated Switchgear — Fines).

⁶ Case [T-404/12](#) Toshiba v Commission and Case [T-409/12](#) Mitsubishi Electric v Commission, see also Press Release [No 2/16](#).

Since Mitsubishi did not bring an appeal before the Court of Justice against the judgment of the General Court of 19 January 2016, the fine imposed on Mitsubishi (€79.47 million – of which €4.65 million to be paid jointly and severally with Toshiba) became final.

Toshiba, however, brought an appeal against the General Court's judgment, asking that it be set aside.

By today's judgment, the Court of Justice dismisses Toshiba's appeal. The fine imposed by the Commission on Toshiba (€61.44 million – of which €4.65 million to be paid jointly and severally with Mitsubishi) also becomes final.

According to the Court, the General Court rightly held that, even though the Commission did not send Toshiba, before the second calculation of fines, a new statement of objections, Toshiba's rights of defence were not infringed.

With regard to the determination of the amount of the fine, the fact that, in 2003, Toshiba had no turnover of its own in the GIS sector is a factor which objectively differentiates its situation from that of other undertakings that participated in the cartel, in particular the European undertakings. Toshiba cannot therefore assert an infringement of the principle of equal treatment in that respect.

Last, the Court confirms that Toshiba could not criticise the Commission for not granting it, on account of its non-participation in the agreement of the European group of producers, a reduction in the amount of its fine. The General Court correctly held that the fact that Toshiba did not participate in that European agreement was a mere consequence of its participation in the common understanding and thus does not mean that its conduct was less serious than that of the European producers.

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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