



General Court of the European Union

**PRESS RELEASE No 107/18**

Luxembourg, 12 July 2018

Judgments in Cases T-419/14 *The Goldman Sachs Group v Commission*, T-422/14 *Viscas Corp. v Commission*, T-438/14 *Silec Cable SAS and General Cable Corporation v Commission*, T-439/14 *LS Cable & System Ltd v Commission*, T-441/14 *Brugg Kabel AG and Kabelwerke Brugg AG Holding v Commission*, T-444/14 *Furukawa Electric Co. Ltd v Commission*, T-445/14 *ABB v Commission*, T-446/14 *Taihan Electric Wire Co. Ltd v Commission*, T-447/14 *NKT Veraltungs and NKT Holding A/S v Commission*, T-448/14 *Hitachi Metals, Ltd v Commission*, T-449/14 *Nexans France SAS and Nexans SA v Commission*, T-450/14 *Sumitomo Electric Industries Ltd and J-Power Systems Corporation v Commission*, T-451/14 *Fujikura Ltd v Commission*, T-455/14 *Pirelli & C. SpA v Commission*, T-475/14 *Prysmian SpA and Prysmian Cavi e Sistemi Srl v Commission*

Press and Information

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**The General Court confirms the fines of over €300 million that the Commission imposed on the main European and Asian producers of (extra) high voltage power cables for their participation in a worldwide cartel**

By decision of 2 April 2014,<sup>1</sup> the Commission imposed fines of over €300 million on a number of producers of (extra) high voltage underground and submarine power cables for participating in an anticompetitive cartel. Such cables are typically used to transmit and distribute electricity and to interconnect power grids in different countries. According to the Commission, from 1999 onwards and for almost ten years, the main European, Japanese and South Korean power cable producers participated in a cartel aimed at restricting competition for projects in specific territories by allocating markets and customers, thereby distorting the normal competitive process.

Most of the producers concerned brought actions before the General Court seeking annulment of the Commission's decision and annulment of the fines imposed or a reduction of those fines.<sup>2</sup>

In today's judgments, the Court dismisses all those actions.

In particular, the Court considers that, during its inspection at the premises of the undertakings concerned, the Commission was entitled to make copy-images of the hard disks of the computers of the staff of those undertakings in order to search subsequently on those copy-images for relevant information at its premises in Brussels. Moreover, the Court finds that the Commission is not required to examine documents solely at the undertaking's premises; the Commission was therefore entitled to continue the inspection at its premises in Brussels, in the presence of the

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<sup>1</sup> Decision C(2014) 2139 final of 2 April 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39610 — Power cables).

<sup>2</sup> The fines of the undertakings which brought actions before the General Court are as follows: €104 613 000 € for Prysmian (Pirelli and Goldman Sachs being jointly and severally liable for €67 310 000 € and €37 303 000, respectively); €70 670 000 for Nexans France (Nexans being jointly and severally liable for €65 767 000); €34 992 000 for Viscas (Furukawa and Fujikura being jointly and severally liable); €8 858 000 for Furukawa; €8 152 000 for Fujikura; €20 741 000 for JPS (Sumitomo and Hitachi being jointly and severally liable); €2 630 000 for Sumitomo; €2 346 000 for Hitachi; €11 349 000 for LS Cable; €8 490 000 for Brugg (Kabelwerke Brugg being jointly and severally liable); €6 223 000 for Taihan; €3 887 000 for NKT (NKT Holding being jointly and severally liable); €1 976 000 for Silec (General Cable being jointly and severally liable for €1 852 500); ABB enjoyed complete immunity for having revealed the cartel's existence to the Commission and thus avoided a fine of over €22 million for its participation in the cartel.

lawyers of the undertakings concerned. Lastly, the Commission was not required to give notice to the Belgian Competition Authority in order to continue the inspection at the Commission's premises in Brussels, since the examination of the documents did not start at the premises of an undertaking located in Belgium, but in other Member States.

As regards the Commission's territorial jurisdiction to penalise practices and projects implemented outside the European Economic Area (EEA), the Court observes that EU law is territorially applicable in this type of case when it is foreseeable that the practices in question will have an immediate and substantial effect in the internal market. The Court considers in that regard that the Commission was not required to show that each of the projects to be implemented outside the EEA had a sufficient impact in the EU in order to justify the application of EU competition law, since the question whether that law applies must be assessed in the light of the effects (considered as a whole and not in isolation from one another) of the various anticompetitive practices. In the present case, the Court considers that the cartel had foreseeable and immediate effects on the supply of power cables and on competition in the sector. The Court further finds that the Commission was correct to conclude that the cartel had produced substantial effects on the internal market, given the importance and number of the producers that participated in the cartel, the wide range of products affected, the gravity of the practices in question and the considerable duration of the single infringement.

With respect to the actions brought by certain undertakings ordered to pay jointly and severally the fines imposed on their subsidiaries, the Court upholds the Commission's analysis that those undertakings exercised influence over the conduct of the subsidiaries in question. In that regard, the Court concludes, as did the Commission, that where a parent company, in this case an investment bank, is able to exercise all the voting rights associated with its subsidiary's shares, in particular in combination with a very high majority stake in the share capital of that subsidiary, it can be presumed that the parent company determines the economic and commercial strategy of the subsidiary, even if it does not hold all or virtually all of the subsidiary's share capital. The Court therefore extends the presumption of the actual exercise of decisive influence laid down in the Akzo judgment<sup>3</sup> to the case where a parent company is able to exercise all the voting rights associated with the shares of its subsidiary, even if it does not hold 100% of the subsidiary's share capital. The Court further considers that the Commission correctly took account of other objective factors which support the finding that that undertaking exercised decisive influence over its subsidiary, namely the parent company's power to appoint members of the board of directors of the subsidiary, the power to call shareholder meetings, the power to propose the revocation of the members of the board of directors, the role played by the directors of the parent company within the strategic committee of the subsidiary, or the receipt by the parent company of regular updates and monthly reports on the subsidiary's business. The Court considers, lastly, that the undertaking concerned failed to show that its shareholding in its subsidiary was intended solely as a pure financial investment, rather than to manage and control the subsidiary.

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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 text of the judgments [T-419/14](#), [T-422/14](#), [T-438/14](#), [T-439/14](#), [T-441/14](#), [T-444/14](#), [T-445/14](#), [T-446/14](#), [T-447/14](#), [T-448/14](#), [T-449/14](#), [T-450/14](#), [T-451/14](#), [T-455/14](#) & [T-475/14](#) are published on the CURIA website on the day of delivery*

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<sup>3</sup> Case: [C-97/08 P](#) Akzo Nobel and Others v Commission.

