— Unproven contacts cannot amount to infringements of Article 101(1) TFEU. The General Court nevertheless upheld the decision's finding of a single and continuous infringement based on those unproven contacts forming part of an overall body of 'evidence and indicia which could be taken into account, considered as a whole' on which the Commission could rely. By substituting its own reasoning for that of the decision, the General Court erred in law.

Second plea: The General Court erred in law by upholding the finding of participation a single and continuous infringement based on a more limited number of contacts than had been identified in the decision.

— The General Court wrongly held that Sony Optiarc participated in the alleged infringement continuously, between July 25, 2007 and October 29, 2008, despite accepting that there was a period of approximately five months during which the Commission had failed to prove any anticompetitive contacts involving Sony Optiarc.

— The General Court's reasoning is internally inconsistent, accepting that there were no proven contacts involving Sony Optiarc for a period of approximately five months, but also finding that 'the longest established period without a contact taking place is only 3 months' and that '[m]ost of the contacts were only a month apart'.

Third plea: The General Court erred in law by treating a single continuous infringement as necessarily consisting of a series of separate infringements.

— The General Court failed to find that the Commission had breached Sony Optiarc's rights of defense, despite the Commission's finding in the decision - without previously alleging in the Statement of Objections - that the alleged conduct amounted not only to a single and continuous infringement but also several separate infringements.

— The General Court wrongly held that the Commission had provided adequate reasons for its finding that Sony Optiarc had committed several separate infringements.

Fourth plea: The General Court erred in law, breached the principles of equal treatment and proportionality, and failed to give reasons, in upholding the fine against Sony Optiarc based on the same revenues that formed the basis for a separate fine against Quanta.

— The General Court breached the principle, in the Fining Guidelines, that the value of sales should "reflect the economic importance of the infringement" and the "relative weight of each undertaking in the infringement," and infringed the principles of equal treatment and proportionality.

— The General Court breached its duty to give reasons because it failed properly to address the argument that double counting inflated the economic importance of the infringement.

— The General Court erred in law in dismissing the appellants' argument that the Commission had failed to justify its departure from its established practice.

Appeal brought on 20 September 2019 by Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corp. against the judgment of the General Court (Fifth Chamber) delivered on 12/07/2019 in Case T-8/16: Toshiba Samsung Storage Technology, Toshiba Samsung Storage Technology Korea v Commission

(Case C-700/19 P)

(2019/C 383/61)

Language of the case: English

Parties

Appellant: Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corp. (hereinafter refferd to as the appellants) (represented by: M. Bay, avvocato, J. Ruiz Calzado, abogado, A. Aresu, avvocato)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the Judgment of the General Court under appeal;

— annul the Commission decision in case COMP/39.639 – Optical Disk Drives at issue in so far as it concerns the appellants;

— annul or reduce the amount of the fine imposed on the appellants in that decision;

— order the Commission to bear the entirety of the costs at first instance and on appeal; and

— make any other order as may be appropriate in the circumstances of the case.

Pleas in law and main arguments

In support of the appeal, the appellants rely on four pleas in law.

First plea in law, alleging errors in law as regards limbs one, two and three of the first plea at first instance, consisting of infringements of essential procedural requirements and of the rights of defence.

Second plea in law, alleging errors of law in stating the legal standard for the existence of a single and continuous infringement.

Third plea in law, alleging violation of the rights of defence and erroneous legal standard.

Fourth plea in law, alleging failure to comply with essential procedural requirements; full inadequacy of the statement of reasons supporting the rejection of the second plea, first part (lack of jurisdiction), at first instance; and errors in the legal test governing the admissibility of evidence.

Appeal brought on 20 September 2019 by Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG against the judgment of the General Court (Seventh Chamber) delivered on 11 July 2019 in Case T-582/15, Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co. KG v European Commission

(Case C-702/19 P)

(2019/C 383/62)

Language of the case: German

Parties

Appellants:

Silver Plastics GmbH & Co. KG (represented by: M. Wirtz and S. Möller, Rechtsanwälte)

Johannes Reifenhäuser Holding GmbH & Co. KG (represented by: C. Karbaum, Rechtsanwalt)