

**Action brought on 17 April 2007 — Hitachi and Others v Commission**

(Case T-112/07)

(2007/C 129/38)

*Language of the case: English*

**Parties**

*Applicants:* Hitachi Ltd (Tokyo, Japan), Hitachi Europe Ltd (Maidenhead, United Kingdom), Japan AE Power Systems Corp. (Tokyo, Japan) (represented by: M. Reynolds, P. Mansfield and D. Arts, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

The applicants respectfully request the Court:

- to annul the contested decision in so far as it concerns each of them;
- as a consequence, to cancel the fines imposed on each of them;
- in the alternative, to annul Article 2 of the contested decision in so far as it concerns each of them, or, at least to cancel or reduce the fines imposed on each of them;
- to order the Commission to pay the costs.

**Pleas in law and main arguments**

The applicants lodged an action for annulment, under Articles 225 and 230 EC against Commission decision of 24 January 2007 (Case COMP/F/38.899 — Gas Insulated Switchgear — C(2006) 6762 final), on the basis of which the Commission found the applicants, among other undertakings, liable to have infringed Article 81 EC and Article 53 EEA in the gas insulated switchgear sector (hereinafter 'GIS'), through a set of agreements and concerted practices consisting of (a) market sharing, (b) the allocation of quotas and maintenance of the respective market shares, (c) the allocation of individual GIS projects (bid-rigging) to designated producers and the manipulation of the bidding procedure for those projects, (d) price fixing, (e) agreements to cease licence agreements with non-cartel members and (f) exchanges of sensitive market information. In the alternative, the applicants apply, on the basis of Article 31 of Council Regulation (EC) No 1/2003<sup>(1)</sup>, for cancellation or reduction of the fines imposed on each of them.

The grounds on which the applicants rely may be summarised as follows. The applicants submit that the Commission has breached the fundamental rules on protection of the rights of defence, Article 2 of Regulation 1/2003 and Article 81 EC, as well as the general principles of Community law in the following respects:

First, it is submitted that the Commission violated the applicant's rights of defence through its failure to grant access to certain allegedly inculpatory evidence as well as to certain potentially exculpatory documents.

Second, the applicants claim that the Commission has failed to prove the existence of an infringement of Article 81(1) EC to the legal standard required by Article 2 of Regulation 1/2003. In this respect, the applicants submit in particular that the Commission has failed to prove the existence of a common understanding between the European and Japanese undertakings concerned in the manner alleged in the decision, or that any common understanding constituted a restrictive agreement and/or restrictive practice.

Third, the applicants contend that the Commission failed to prove that the applicants took part in a single and continuous infringement.

Fourth, the Commission has allegedly committed manifest errors in its assessment of the fines imposed on the applicants by failing to assess the specific weight of the alleged infringement committed by the applicants.

Fifth, according to the applicants, the Commission has committed a manifest error by failing to take into account factors relating to duration when assessing the applicants' fines.

Finally, the applicants claim that the method used by the Commission for assessing the fines with regard to the deterrent multiplier violates the general Community law principles of equal treatment and proportionality, both as to the risk that the applicants could cause any significant damage on the European market and so as to the non taking into account of recidivism.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25).

**Action brought on 13 April 2007 — Last Minute Network v OHIM — Last Minute Tour (LAST MINUTE TOUR)**

(Case T-114/07)

(2007/C 129/39)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Last Minute Network Ltd (London, United Kingdom) (represented by: P. Brownlow, solicitor)