AAL submits that there are eight grounds for annulment in support of its pleas:

First, the Commission has failed, according to the applicant, to appreciate that the exemption falls within the nature and logic of the Irish tax regime and hence does not constitute aid.

Second, the applicant claims that the Commission has failed to analyse properly the relevant markets and their competitive structure. In circumstances where the Commission had itself earlier accepted that there was no distortion of competition, and in the light of the fact that the Council had authorised the exemptions until 31 December 2006, the applicant contends that it was incumbent on the Commission to demonstrate that it had carried out a thorough economic analysis which clearly demonstrated that there was an actual or threatened distortion of competition. The applicant therefore submits that the Commission failed to establish that the exemption constituted aid.

Third, the applicant advances that should the exemption nonetheless be considered to constitute aid, the Commission has failed to treat the aid in question as existing aid falling under Article 88(1) EC. The aid was the subject of a binding commitment given before Ireland's accession to the European Communities, notified in January 1983. As the Commission did not act until 17 July 2000, the ten-year limitation period was exceeded and recovery was, thus, precluded. The applicant claims thus that the aid cannot be characterised as an aid scheme.

Fourth, the applicant puts forward that the Commission should have had regard to the overall *acquis* on excise harmonisation, in order to determine whether and how to exercise its powers under the State aid provisions of the EC Treaty. The contested decision constitutes a serious breach of the principle of legal certainty since it allegedly undermines authorisations granted by the Council under Article 93 EC, on the basis of a Commission proposal. Moreover, the Commission has allegedly failed to appreciate that the Council measures taken on the basis of Article 93 EC constituted *lex specialis* that should have prevailed over any inconsistent application of the State aid rules. In addition, the Commission has failed, according to the applicant's contentions, to use the procedures available to it under Article 8 of Directive 92/81/EEC to resolve State aid or other concerns, or indeed to seek the annulment of relevant Council decisions and has, hence, undermined the *effet utile* of the Council measures.

Fifth, the applicant claims that in adopting the contested decision, the Commission has failed to take account of the fundamental requirements of Articles 3 and 157 EC, to strengthen competitiveness of Community industry and to ensure that the conditions necessary for the competitiveness of the Community's industry exist.

Sixth, in finding that 20 % of the exemption constituted aid, the Commission has allegedly failed to appreciate that the applicant was subject to a number of environmental obligations and to consider measures which would have had the same incentive effect as a requirement to pay a significant proportion of the national tax.

Seventh, the applicant sustains that the contested decision violates the principles of protection of legitimate expectations and of legal certainty.

Eighth, the excessive length of the procedure under Article 88 (2) EC contravenes the principles of good administration and of legal certainty and is even more serious, according to the applicant, since the Commission had, before initiating the procedure, already failed to act in relation to the 1983 notification.

Action brought on 19 April 2007 — Fuji Electric Holdings and Fuji Electric Systems v Commission

(Case T-132/07)

(2007/C 140/61)

Language of the case: English

Parties

Applicants: Fuji Electric Holdings Co., Ltd (Kawasaki, Japan) and Fuji Electric Systems Co., Ltd. (Tokyo, Japan) (represented by: P. Chapatte, P. Walter, Solicitors)

Defendant: Commission of the European Communities

Form of order sought

The applicants respectfully request the Court to:

— annul Article 1(g) of the decision in so far as it finds that the infringement imputed to FEH by that provision existed after September 2000;

— annul Article 1(h) of the decision in its entirety;

— annul Article 2(d) of the decision in so far as it imputes joint and several liability upon FES for the fine imposed pursuant to that provision;

— annul Article 2(f) of the decision in so far as it imputes joint and several liability upon Fuji for the fine imposed pursuant to that provision;

— reduce the fine imposed on Fuji; and

— order the Commission to bear its own costs and those incurred by Fuji.

Pleas in law and main arguments

The applicants lodged an action for annulment, under Article 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(1) EC and from 1 January 1994 also 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 for a substantial reduction of the fines imposed.

The decision holds Fuji Electric Systems (hereinafter 'FES') liable for participating in the infringement from 15 April 1988 to 30 September 2002.

However, FES disputes that it participated in the GQ agreement and claims that it was not involved in the GIS sales up until 1 July 2001, around nine months after Fuji Electric Holdings ('FEH') had ceased participating in the cartel. In finding that FEH continued its participation in the GQ agreement after the Japanese members' meeting which took place around September 2000, it is submitted that the Commission committed a manifest error of assessment, an error of law with regards to the burden of proof as well as an error of law in relation to equal treatment.

Moreover, Fuji maintains that it should not be held jointly and severally liable for the involvement of Japan AE Power Systems Corporation (hereinafter 'JAEPS') in the cartel since it neither had the ability to exercise decisive influence over JAEPS nor did it have any knowledge of its alleged participation in the cartel. Hence, the applicant submits that the Commission committed a manifest error of assessment with regards to the infringement of FES.

Finally, Fuji sustains that the decision is vitiated by manifest errors of assessment with regards to the duration of the infringement as well as the liability for the alleged infringement of JAEPS. In addition, the Commission has incorrectly determined the value of the information provided by the applicants, in holding that it did not warrant a reduction of the fine imposed upon the applicants pursuant to the Leniency Notice. In this respect, Fuji claims that the fines imposed should be substantially reduced.

Action brought on 18 April 2007 — Mitsubishi Electric v Commission

(Case T-133/07)

(2007/C 140/62)

Language of the case: English

Parties

Applicant: Mitsubishi Electric Corp. (Tokyo, Japan) (represented by: R. Denton, Solicitor and K. Haegeman, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant respectfully requests:

— the annulment of the decision, in particular Articles 1 to 4 thereof, to the extent that it applies to Melco and to TMT&D for the period which Melco shares joint and several liability with Toshiba for the activities of TMT&D; or

— the annulment of Article 2(g) of the decision and Article 2 (h) insofar as it pertains to Melco; or

— the modification of Article 2 of the decision as it pertains to Melco, so as to annul or in the alternative substantially reduce the fine imposed on Melco therein; and, in any event;

— an order that the Commission pay its own costs and Melco's costs in connection with these proceedings.

Pleas in law and main arguments

The applicant, Mitsubishi Electric Corporation (hereinafter 'Melco') lodged an action for annulment, under Articles 230 and 229 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 applicant, among other undertakings, liable to have infringed Article 81(1) EC and from 1 January 1994 also 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 applicant applies for a cancellation or reduction of the fine imposed.