

- in the further alternative, again having determined and assessed the liability of the ECB pursuant to Article 340 TFEU, order the defendant to make good the damage arising in the amount of at least EUR 2 667 651,19, or in such other amount as the Court may deem just and fair, subject to updating in the course of the proceedings, together with interest at the statutory rate and default interest on the amount, accruing from the due dates to the date of actual payment;
- in the further and final alternative, order the ECB to make good the damage, on the basis of the lawful nature of the conduct in question or liability without fault, in the amount the Court deems just and fair;
- order the ECB to pay the costs.

### **Pleas in law and main arguments**

The applicants in the present proceedings submit that the defendant has incurred non-contractual liability on account of the manner in which it intervened in the restructuring of the Greek debt, and claim that the ECB is liable pursuant to the third paragraph of Article 340 TFEU, since all the requirements for such liability are satisfied, namely, the alleged conduct of the ECB challenged by the applicants is unlawful, there is actual damage and there is a causal link between the damage and the conduct of the institution itself.

In that connection, the applicants state that the defendant:

- concluded in secret with the Hellenic Republic a bond swap agreement dated 15 February 2012;
- failed or refused to participate in the restructuring of the Greek debt imposed on the Hellenic State in order to obtain the second *tranche* of aid, in a conflict of interest, since the ECB is itself part of the Troika;
- adopted the decision of 5 March 2012 which made the eligibility of Greek securities as collateral conditional upon the provision of a buy-back scheme in favour of national central banks (NCBs) only, even if lacking credit quality.

In support of the action, the applicants submit that the defendant's course of conduct has had a direct, negative, causal impact on their legal positions which have suffered from the increase in the size of the 'haircut' for private investors, deferment of credit and the downgrading of private investors to the category of 'junior' creditors.

The applicants submit that the conduct in question constitutes a clear infringement of higher rules of law intended to protect individuals, in particular the principles of (i) the equal treatment of creditors, (ii) non-discrimination and equality, (iii) proportionality, (iv) protection of legitimate expectations, (v) the protection of the legitimate expectations of the holders of securities, and (vi) legal certainty.

In the alternative, should the Court of Justice not categorise the ECB's conduct as unlawful, the applicants submit none the less that there is still strict liability or liability without fault on the part of the ECB or liability for a lawful act, since the ECB's course of conduct challenged in the present proceedings has caused abnormal and special harm, in the light also of the fundamental rights as protected by the Charter of Nice, post the Treaty of Lisbon, referred to in Article 17 (property), Article 21 (principle of non-discrimination), Article 38 (consumer protection) and Article 41 (right to good administration) of that charter.

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### **Action brought on 13 February 2013 — Panasonic and MT Picture Display v Commission**

(Case T-82/13)

(2013/C 101/57)

*Language of the case: English*

#### **Parties**

*Applicants:* Panasonic Corp. (Kadoma, Japan) and MT Picture Display Co. Ltd (Matsuocho, Japan) (represented by: R. Gerrits, A. Bischke, lawyers, M. Hoskins, QC, and S. Abram, Barrister)

*Defendant:* European Commission

#### **Form of order sought**

The applicants claim that the Court should:

- Annul Commission Decision C(2012) 8839 final adopted on 5 December 2012 in case COMP/39437 — TV and Computer Monitor Tubes, in whole or in part, as appropriate, insofar as it finds that the applicants infringed Article 101 TFEU and Article 53 EEA Agreement;
- Annul the penalties imposed on the applicants, or reduce such penalties, as appropriate; and
- Order the defendant to pay the applicants' costs for these proceedings.

#### **Pleas in law and main arguments**

In support of the action, the applicants rely on four pleas in law.

1. First plea in law, alleging breach of right to a fair hearing in relation to the period up to 10 February 2003, as:

- The contested decision bases its finding that Matsushita Electric Industrial Co., Ltd. ('MEI') participated in the alleged single and continuous infringement of Article 101 TFEU relating to colour picture tubes (the 'CPT cartel') in the period before 10 February 2003 on two new claims, which did not appear in the Statement of Objections: first that MEI knew, or should have known, about the CPT cartel and secondly that MEI made a strategic decision to participate in the CPT cartel through bilateral contacts. Similarly, the contested decision relies for the first time on certain oral statements and documentary evidence, or parts thereof, in support of these allegations;
  - The inclusion of these allegations and materials for the first time in the contested decision constitutes a serious breach of Panasonic Corporation's ('Panasonic') rights of defence is inadmissible and requires annulment of the said decision against MEI in respect of this period.
2. Second plea in law, alleging failure to prove that MEI knew or should have known of the existence and/or content of the CPT cartel in relation to the period up to 10 February 2003, as:
- Even if the allegations and/or evidence referred to under the first plea in law were admissible, the Commission has failed to prove that MEI knew or should have known that the bilateral contacts in which it participated were part of an overall plan and that the overall plan included all of the constituent elements of the alleged CPT cartel;
  - Neither does the evidence relied on show that MEI made a strategic choice to participate in any CPT cartel via bilateral meetings.
3. Third plea in law, alleging failure to prove that MEI/MT Picture Display Co., Ltd. ('MTPD') participated in the single and continuous infringement identified in the contested decision as from 10 February 2003, as:
- The activities in Europe and Asia as from 10 February 2003 did not form part of a common plan with a single objective;
  - MEI/MTPD did not participate in any multilateral CPT meetings in Europe;
  - In relation to MEI/MTPD's bilateral contacts during this period, the Commission has failed to prove that MEI/MTPD knew or should have known of the existence and/or content of the multilateral cartel activities in Europe involving other addressees of the contested decision.

4. Fourth plea in law, alleging that the penalty imposed on Panasonic/MTPD should be overturned completely, alternatively reduced, as:

- Panasonic/MTPD's primary case is that the findings of infringement against each of them should be annulled in their entirety and the penalty imposed on each of them should be overturned completely;
- Alternatively, if Panasonic/MTPD's application for annulment is successful on some but not all grounds, the penalty imposed on Panasonic/MTPD should be reduced accordingly;
- Further or alternatively, even if the finding of infringement is sustained, the fine imposed on Panasonic/MTPD is excessive, because the contested decision uses a flawed methodology which assigns an erroneously inflated value to intra-group sales for fine calculation purposes;
- Further or alternatively still, if it is not overturned completely, the fine imposed on Panasonic/MTPD should be reduced in recognition of its lesser involvement in the alleged CPT cartel.

**Appeal brought on 11 February 2013 by BS against the judgment of the Civil Service Tribunal of 12 February 2012 in Case F-90/11, BS v Commission**

(Case T-83/13 P)

(2013/C 101/58)

*Language of the case: Italian*

**Parties**

*Appellant:* BS (Messina, Italy) (represented by C. Pollicino, lawyer)

*Other party to the proceedings:* European Commission

**Form of order sought by the appellant**

- Declare the appeal admissible and well founded;
- Set aside the judgment under appeal;
- Confirm that the 'Rules on insurance against the risk of accident and occupational disease for officials of the European Communities' cover 'the entire cutaneous system' and not just 'deep cutaneous burns and pathological cutaneous scarring';