

- In the alternative: partially annul Article 1(2) of the decision insofar as it concerns the starting and end dates of the applicants' participation in the colour picture tubes used in televisions ("CPT") infringement, and reduce the fine imposed on the applicants by Article 2(2) of the contested decision;
- Order the defendant to bear the costs of the proceedings.

### Pleas in law and main arguments

In support of the action, the applicants rely, with respect to the CPT infringement, on three pleas in law. With respect to the colour display tubes used in computer monitors (CDT) infringement, the applicants rely on three pleas in law.

With respect to the CPT infringement, the applicants rely on the following pleas in law:

1. First plea in law, alleging that the Commission erred in applying Article 101 TFEU to find that there was a single and continuous infringement covering all types of CPTs during the entire duration of the infringement and the entire arrangements that took place in Asia.
2. Second plea in law, in the alternative, alleging that the Commission erred in determining both the starting date and the end date of the applicants' participation in the CPT infringement, which led to extend the total duration of the cartel by at least sixteen months.
3. Third plea in law, in the alternative, alleging that the Commission's decision not to grant the applicants the maximum 50 % leniency reduction is based on incorrect facts and manifestly erroneous.

With respect to the CDT infringement, the applicants rely on the following pleas in law:

1. First plea, alleging that the Commission violated its Fining Guidelines<sup>(1)</sup> by including the sales of CDTs delivered to Samsung Electronics in Europe in the value of sales for the fine calculation, notwithstanding the fact that the competition for these sales entirely took place in Korea.
2. Second plea, alleging that the Commission violated its Fining Guidelines by taking the average annual turnover over the entire period of the infringement for the calculation of the fine, thereby deviating from the rule of taking the last full business year of the infringement.

3. Third plea, alleging that the Commission's decision not to grant the applicants the maximum 50 % leniency reduction is based on incorrect facts and manifestly erroneous.

<sup>(1)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2)

### Action brought on 18 February 2013 — Calestep v ECHA

(Case T-89/13)

(2013/C 108/82)

*Language of the case: Spanish*

#### Parties

*Applicant:* Calestep, SL (Estepa, Espana) (represented by: E. Cabezos Mateos, lawyer)

*Defendant:* European Chemicals Agency (ECHA)

#### Form of order sought

The applicant claims that the Court should, applying all the steps of the procedure, uphold the application and annul the decision of the European Chemicals Agency (ECHA) to which the application relates.

### Pleas in law and main arguments

The applicant in the present proceedings, as a result of its classification as a small company, has been paying the reduced fee referred to in Article 74(3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1), and in Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency (OJ 2008 L 107, p. 6), which in turn refer to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36).

Having made checks, the ECHA considered that the applicant cannot be considered to be a small company, as it is part of a group. Upon finding that that company did not fulfil the requirements, the defendant ordered the applicant to pay the balance of the full fee due for a medium-sized company, as well as an administrative charge.

In support of its action, the applicant invokes a single plea in law based on failure to comply with two of the requirements of Article 2(2) of the Annex to the above Recommendation.

It is suggested in that regard that in order to prevent a company from being considered a small company, it is not enough that that company has more than 50 employees; it is necessary also to show that one of the other requirements under that provision is satisfied, as the provision contains the conjunction 'and'. This has not been done in the present case.

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### Action brought on 14 February 2013 — LG Electronics v Commission

(Case T-91/13)

(2013/C 108/83)

*Language of the case: English*

#### Parties

*Applicant:* LG Electronics, Inc. (Seoul, Korea) (represented by: G. van Gerven and T. Franchoo, lawyers)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

- Annul, in whole or in part, Articles 1.1(d) and 1.2(g), Articles 2.1(d) and 2.1(e), and Articles 2.2(d) and 2.2(e) of the European Commission's decision C(2012) 8839 final of 5 December 2012 in Case COMP/39.437 — TV and Computer Monitor Tubes, insofar as they concern the applicant; and/or
- Reduce the fines imposed on the applicant in Articles 2.1(d) and (e) and Articles 2.2(d) and (e) of the contested decision;
- Order the defendant to pay the costs.

#### Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law.

Plea pursuant to Article 263 TFEU, seeking the annulment of Articles 1 and 2 of the contested decision insofar as they concern the applicant:

1. First plea in law, alleging violation of the applicant's rights of defence (breach of an essential procedural requirement), in that LG Philips Displays ('LPD') was kept outside the proceedings as a defendant.

Pleas seeking the (partial) annulment of Articles 1 and 2 of the contested decision pursuant to Article 263 TFEU and a corresponding reduction of applicant's fines pursuant to Article 261 TFEU:

2. Second plea in law, alleging violation of Article 101 TFEU and Article 23.2 of Regulation (EC) No 1/2003<sup>(1)</sup>, violation of the principle of personal liability, and manifest error of assessment, in that the applicant is held liable for infringements committed by LPD.
3. Third plea in law, alleging violation of Article 25 of Regulation (EC) No 1/2003, in that the contested decision holds the applicant liable for any conduct prior to 1 July 2001.
4. Fourth plea in law, alleging violation of Article 101 TFEU and Article 23.2 of Regulation (EC) No 1/2003, violation of Article 296 TFEU, and violation of the principle of equal treatment, in that the contested decision includes Direct EEA Sales Through Transformed Products ("TPDS") in calculating the fine imposed on the applicant.
5. Fifth plea in law, alleging violation of Article 101 TFEU, Article 23.2 of Regulation (EC) No 1/2003, violation of the principle of personal liability, manifest error of assessment, violation of the applicant's rights of defence, in that the contested decision holds the applicant liable for the fine based on TPDS made by Philips.
6. Sixth plea in law, alleging violation of Article 296 TFEU, manifest error of assessment and violation of the principles of equal treatment and sound administration, in that the contested decision (i) fails to state sufficient reasons for not including TPDS for Samsung, and/or (ii) arbitrarily includes or excludes TPDS causing unequal treatment between the applicant and Samsung.
7. Seventh plea in law, alleging violation of Article 101 TFEU, Article 23.2 of Regulation (EC) No 1/2003 and the principles of equal treatment and sound administration, in that (i) the contested decision is not addressed to LPD and the LPD subsidiaries that participated in the infringements while another joint venture was addressed alongside its parents, and (ii) in that other parent companies in the same situation as the applicant were not addressed in the contested decision.