



Reports of Cases

Judgment of the General Court (Third Chamber) of 9 September 2015 —

LG Electronics v Commission

(Case T-91/13)

(Competition — Agreements, decisions and concerted practices — Global market for cathode ray tubes for television sets and computer monitors — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Agreements and concerted practices on pricing, market sharing, capacity and production — Single and continuous infringement — Imputability to a parent company of an infringement committed by a joint venture — Equal treatment — Method of calculating the fine — Taking into account the value of sales of cathode ray tubes through transformed products — Limitation period — Proportionality — Duration of the administrative procedure)

1. *Competition — Union rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Imputation of the anti-competitive conduct of a joint undertaking to one of its parent companies — Conditions — Decisive influence exercised on the conduct of the joint undertaking — Burden of proof — Exercise of a decisive influence capable of being inferred from a series of indications concerning economic, organisational and legal links between the joint undertaking and the parent companies (Art. 101 TFEU; Council Regulation No 1/2003, Art. 2) (see paras 33-40, 53, 54, 57, 60-63, 65)*
2. *Competition — Administrative procedure — Observance of the rights of the defence — Scope of the principle — Infringement — Conditions — Possibility of the undertaking concerned better ensuring its defence without the procedural irregularity — General duty of care incumbent on any undertaking — Obligation to ensure conservation of the necessary evidence in the event of legal or administrative actions (Art. 101 TFEU; Council Regulation No 1/2003, Art. 27(1)) (see paras 68-70, 86)*
3. *Competition — Union rules — Infringements — Attribution — Parent company and subsidiaries — Economic unit — Imputation of the anti-competitive conduct of a joint undertaking to one of its parent companies — No imputation to the joint undertaking of responsibility for its conduct — Lawfulness (Art. 101 TFEU; EEA Agreement, Art. 53) (see paras 72-75, 81-83)*
4. *Competition — Fines — Amount — Determination — Adjustment of the basic amount — Maximum amount — Calculation — Turnover to be taken into consideration — Cumulative turnover of all the companies forming an economic entity acting as an undertaking (Art. 101(1) TFEU; Council Regulation No 1/2003, Art. 23(2)) (see paras 99-105)*

5. *Competition — Administrative procedure — Principle of sound administration — Obligation of diligence and impartiality (Art. 101 TFEU) (see paras 108, 109)*
6. *Competition — Fines — Assessment by reference to the individual conduct of the undertaking — Irrelevant that no sanction brought against another economic operator (Art. 101(1) TFEU) (see paras 110, 111)*
7. *Competition — Administrative procedure — Limitation period for fines — Point from which time starts to run — Single and continuous infringement (Art. 101 TFEU; Council Regulation No 1/2003, Art. 25) (see paras 121-123)*
8. *Competition — Fines — Amount — Determination — Determination of the base amount — Determination of the value of sales — Sales carried out in direct or indirect relation to the infringement — Incorporation of cartelised products in finished products by production units integrated vertically in the incriminated undertaking — Sale of finished products in the European Economic Area by the incriminated undertaking — Account taken of the sales value of finished products only up to the fraction of that value corresponding to the value of cartelised products — Lawfulness (Art. 101 TFEU; Council Regulation No 1/2003, Art. 23(2); Commission Notice 2006/C 210/02, point 13) (see paras 127-140)*
9. *Competition — Union rules — Territorial scope — Cartel between undertakings established outside the EEA but implemented and producing its effects in the internal market — Sale in the EU of the cartelised product — Competence of the Commission to apply EU competition rules — Conformity with public international law — Intervention of subsidiaries, agents or branches established outside the Union — Irrelevant (Art. 101 TFEU; EEA Agreement, Art. 53) (see paras 146-149)*
10. *Competition — Union rules — Territorial scope — Implementation of the cartel within the EU — Vertically integrated undertaking having production units situated outside the EEA — Incorporation of cartelised products in products finished by the said production units — Sale of the said products in the EEA by the integrated undertaking — Inclusion (Art. 101 TFEU; EEA Agreement, Art. 53) (see para. 150)*
11. *Competition — Fines — Amount — Determination — Determination of the base amount — Determination of the value of sales — Method of calculation laid down by the guidelines — Obligation on the Commission to apply the Guidelines in compliance with the equal treatment principle — Commission having wide discretion as to the method of calculating fines (Art. 101(1) TFEU; Council Regulation No 1/2003, Art. 23(2); Commission Notice 2006/C 210/02) (see paras 153-158)*
12. *Competition — Fines — Amount — Determination — Commission's margin of discretion — Limits — Observance of the principle of proportionality — Scope — Determination of the fine proportionately to the assessment factors for the gravity of the infringement (Art. 101(1) TFEU; Council Regulation No 1/2003, Art. 23(2)) (see paras 196, 197)*

13. *Competition — Administrative procedure — Obligations of the Commission — Duty to act within a reasonable time — Criteria for assessment — Infringement — None (Art. 101 TFEU) (see paras 207-212, 218)*

Re:

APPLICATION for annulment in part of Commission Decision C(2012) 8839 final of 5 December 2012 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.437 — TV and Computer Monitor Tubes) and for a reduction of the fines imposed on the applicant.

Operative part

The Court:

1. Dismisses the action;
2. Orders LG Electronics, Inc. to pay the costs.