

- Article 2(c) [Alstom, Alstom Grid AG (formerly Areva T&D AG), T&D Holding (formerly Areva T&D Holding SA) and Alstom Grid SAS (formerly Areva T&D SA)];
- in the alternative, substantially reduce the fines imposed on the appellants;
- order the Commission to pay the costs, including those relating to the proceedings before the General Court;
- if the Court of Justice considers that the state of the proceedings is not such as to permit final judgment in the matter, refer the case back to a Chamber of the General Court with a different composition and reserve the costs.

Pleas in law and main arguments

The appellants put forward five pleas in support of their appeal.

By their first plea, which is in two parts, the appellants allege infringement of Article 269 TFEU by the General Court in so far as it holds that the Commission's decision is sufficiently reasoned. In this respect, they criticise, first, the General Court for holding, in paragraphs 90 to 99 of the judgment under appeal, that the Commission reasoned to the requisite legal standard its finding that Alstom was jointly and severally liable with Areva T&D SA and Areva T&D AG on the basis that Alstom failed to rebut the presumption of exercise of decisive influence over its subsidiaries, even though the Commission failed to respond to the evidence adduced by Alstom in order to rebut that presumption (first part). The appellants criticise, second, the General Court for holding, in paragraph 200 of the judgment under appeal, that the Commission was entitled not to provide an explanation on the reasons why two companies which do not form a single economic entity on the date of adoption of a decision can have a fine imposed on them for which they are jointly and severally liable.

By their second plea, the appellants allege infringement by the General Court of Articles 36 and 53 of the Statute of the Court of Justice, in conjunction with Article 263 TFEU, in so far as the General Court substitutes, in paragraphs 101 to 110 (first part), 148 to 150 (second part) and 214 to 216 (third part) of the judgment, its own reasoning for that of the Commission by retrospectively adding to the contested decision reasons which do not appear in that decision. Similarly, Alstom and Others criticise the General Court for holding, in paragraph 206 of the judgment under appeal, that two companies which do not form an economic unit on the date of adoption of the contested decision can have a fine imposed on them for which they are jointly and severally liable (fourth part).

The third plea, alleging imposition by the General Court of a *probatio diabolica* in breach of Article 101 TFEU, and in particular in breach of the rules governing the attributability to a parent company of the activities of its subsidiary and of the principles of the right to a fair hearing and the presumption of innocence enshrined in Articles 47 and 48 of the Charter of

Fundamental Rights of the European Union, is in two parts. The appellants submit that:

- (a) first, by upholding the Commission's attribution of liability for the activities of its subsidiaries to their parent company Alstom and by applying the case-law principles of the presumption of exercise of decisive influence, the General Court failed to have regard, in paragraphs 84 to 110 of the judgment under appeal, to the right to a fair hearing and the principle of the presumption of innocence, by adopting, in the context of attribution of liability, a definition of exercise of decisive influence by a parent company over its subsidiary which bears no relation to actual conduct on the market in question and, therefore, by rendering that presumption non-rebuttable;
- (b) second, the General Court erred in law, in paragraphs 144 to 152 of the judgment under appeal, in the assessment of the exercise of decisive influence by Areva T&D Holding SA over Areva T&D SA and Areva T&D AG during the period from 9 January to 11 May 2004.

The fourth plea alleges breach by the General Court of the concept of joint and several liability in so far as the General Court holds, in paragraphs 214 to 216 of the judgment under appeal, that joint and several liability determines the shares of the respective contributions of the companies on which a fine has been imposed jointly and severally (first part) and in so far as the General Court infringes, in paragraphs 232 to 236 and 238 to 242 of the judgment under appeal, the principle of legal certainty and the principle that the penalty must be specific to the offender, as well as Article 13 TEU, since there has been a delegation of the Commission's power to determine the liability of each of the undertakings punished.

The fifth plea alleges that the General Court infringed its obligation to respond to the pleas raised in so far as it misinterprets, in paragraphs 223 to 230 of the judgment, the scope of the plea alleging breach of the right to an effective remedy and to judicial protection and does not therefore respond to the plea raised but to another plea which was not raised.

**Order of the President of the Court of 15 April 2011
(reference for a preliminary ruling from the Tribunale di
Milano — Italy) — Vitra Patente AG v High Tech srl**

(Case C-219/09) ⁽¹⁾

(2011/C 211/38)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

⁽¹⁾ OJ C 205, 29.8.2009.
