— The applicant did not participate in the infringement alleged between 10 April 2008 and 27 October 2008.

— The applicant did not participate in an infringement on 28 October 2008.

— There is insufficient evidence to show that the applicant was aware either of the cartel's overall plan or of its general scope and essential characteristics.

— Legal consequences of the Commission's failure to prove the infringement alleged.

4. Fourth plea in law, alleging that the Commission failed to establish, to the requisite legal and evidential standard, that it had jurisdiction to apply Article 101 TFEU and Article 53 of the EEA Agreement.

5. Fifth plea in law, alleging that the Commission committed manifest errors of fact and law in calculating the amount of the fine, and breached the duty to state its reasons.

— The Commission erred in fact and in law when calculating the basic amount, and failed to state its reasons.

— The Commission failed to use the best available figures on the value of the applicant's sales.

— The Commission violated the principle of equal treatment when calculating the basic amount.

— The Commission committed errors of assessment in considering gravity and mitigating circumstances.

Action brought on 4 January 2016 — Hitachi-LG Data Storage and Hitachi-LG Data Storage Korea v Commission

(Case T-1/16)

(2016/C 098/65)

Language of the case: English

Parties

Applicants: Hitachi-LG Data Storage, Inc. (Tokyo, Japan), and Hitachi-LG Data Storage Korea, Inc. (Seoul, Republic of Korea) (represented by: L. Gyselen and N. Ersbøll, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— reduce the amount of the fine imposed on the applicants by Article 2(d) of the decision of the Commission of 21 October 2015 in Case AT.39639 — Optical Disk Drives, relating to a proceeding under Article 101 TFUE and Article 53 EEA Agreement, thereby reflecting the particularities of the case; and

— order the costs of the proceedings to be borne by the Commission.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the principle of good administration and its duty to state reasons by failing to respond to the applicants' request pursuant to point 37 of the Commission's 2006 guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 ([1]) (the 'Fining Guidelines').

   — In the course of the administrative procedure before the Commission, the applicants submitted a request to the Commission for a reduction of the fine in light of 'particular circumstances' within the meaning of point 37 of the Fining Guidelines. The Commission's case team did not respond to this request and the Commission did not address it in its decision. The applicants must assume that the Commission's services have either not assessed its request at all or that they have not shared any such assessment with the advisory committee and the college of commissioners for their review. As a consequence, it cannot be excluded that, had they done so, the fine ultimately imposed on the applicants might have been lower. The Commission has thus infringed the principle of good administration and its duty to state reasons.

2. Second plea in law, alleging that the Commission erred by failing to depart from the methodology in the Fining Guidelines in order to reduce the fine imposed on the applicants in light of the particularities of the case and the role of the applicants. The 'particular circumstances' within the meaning of point 37 of the Fining Guidelines are as follows:

   — the applicants, who derive the majority of their revenue from one product (optical disk drives), diversified their business in 2014, the year used by the Commission as reference year for the calculation of the 10 % cap set forth in Article 23(2) of Regulation No 1/2003;

   — the applicants are the only among the companies fined that remain committed to the optical disk drives market and the level of the fine imposed on them will adversely affect their capacity to serve the customers in this market in a sustainable fashion; and

   — the applicants face a precarious financial situation, while at the same time deploying significant efforts to overcome their financial difficulties.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1 p. 1).

Action brought on 7 January 2016 — Awg Allgemeine Warenvertriebs v OHIM — Takko (Southern Territory 23°48'25"S)

(Case T-6/16)

(2016/C 098/66)

Language in which the application was lodged: German

Parties

Applicant: Awg Allgemeine Warenvertriebs GmbH (Köngen, Germany) (represented by: T. Sambuc, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Takko Holding GmbH (Telgte, Germany)