



Reports of Cases

Judgment of the Court (Seventh Chamber) of 28 November 2019 — ABB v Commission

(Case C-593/18 P)¹

(Appeal — Competition — Agreements, decisions and concerted practices — European market for underground and submarine power cables — Market allocation in connection with projects — Burden of proof — Presumption of innocence — Principle of equal treatment)

1. *Appeal — Pleas in law/Grounds — Incorrect assessment of the facts and evidence — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted — Failure to observe the rules of evidence — Question of law amenable to judicial review on appeal*

(Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.)

(see paras 28, 31, 37, 73-75)

2. *Judicial proceedings — Introduction of new pleas during the proceedings — Conditions — Plea based on matters which have come to light in the course of the procedure — Absence/Lack/None (or combine with previous headwords) — Plea raised for the first time at the hearing — Inadmissibility*

(Rules of Procedure of the Court of Justice, Art. 127(1))

(see para. 33)

3. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission — Extent of the burden of proof — Single and continuous infringement — Judicial review — Misapplication of evidentiary requirements by the General Court*

(Arts 101, 261 and 263 TFEU)

(see paras 37-46)

¹ OJ C 436, 3.12.2018.

4. *Agreements, decisions and concerted practices — Prohibition — Infringements — Agreements and concerted practices constituting a single infringement — Attribution of liability for the entire infringement to a single undertaking — Conditions — Unlawful practices and conduct forming part of an overall plan — Assessment — Criteria — Contribution to the single objective of the infringement — Knowledge or foreseeability of the overall plan of the agreement, decision or concerted practice and of its key elements*

(Art. 101(1) TFEU)

(see paras 48-53)

5. *Appeal — Pleas in law/Grounds — Plea directed against a superfluous ground — Invalid plea in law — Rejection*

(Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.)

(see paras 58-61)

6. *Appeal — Pleas in law/Grounds — Plea submitted for the first time in the context of the appeal — Inadmissibility*

(Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.)

(see para. 63)

7. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission — Extent of the burden of proof — Proof of the beginning of the infringement — Undertaking to which statement of objections addressed not challenging the factual or legal content thereof during the administrative procedure — Consequences*

(Art. 101(1) TFEU)

(see para. 72)

8. *Competition — Administrative procedure — Commission decision finding an infringement — Burden of proving the infringement and its duration on the Commission — Extent of the burden of proof — Proof of the beginning of the infringement — Compliance with the principle of the presumption of innocence*

(Art. 101(1) TFEU)

(see paras 73-78)

9. *Competition — Fines — Amount — Determination — Leniency rules — Non-imposition or reduction of the fine for cooperation of the undertaking concerned — Principle of equal treatment — Scope — Not possible for an undertaking to require non-discriminatory application of unlawful treatment granted to other undertakings concerned*

(Council Regulation No 1/2003, Arts 23(2) and (3); Commission Notice No 2006/C 298/11)

(see paras 79-87)

Operative part

1. Sets aside point 1 of the operative part of the judgment of the General Court of the European Union of 12 July 2018, *ABB v Commission* (T-445/14, not published, EU:T:2018:449), in so far as the General Court dismissed ABB Ltd and ABB AB's actions for the annulment of Commission Decision C(2014) 2139 final of 2 April 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39610 — Power cables), in so far as that decision finds those companies liable for an infringement of Article 101 TFEU and of Article 53 of the Agreement on the European Economic Area of 2 May 1992 in respect of a collective refusal to supply accessories for underground power cables with voltages from 110 kV and below 220 kV, as well as point 2 of the operative part of that judgment;
2. Dismisses the appeal as to the remainder;
3. Annuls Decision C(2014) 2139 final in so far as it finds ABB Ltd and ABB AB liable for an infringement of Article 101 TFEU and of Article 53 of the Agreement on the European Economic Area of 2 May 1992 in respect of a collective refusal to supply accessories for underground power cables with voltages from 110 kV and below 220 kV;
4. Orders ABB Ltd, ABB AB and the European Commission to bear their own costs at first instance and on appeal.