

Fourth plea: The General Court erred in law, breached the principles of equal treatment and proportionality and failed to state reasons, in upholding the fine against Sony based on the same revenues that formed the basis for a separate fine against Lite-On.

- The General Court breached the principle, in the Fining Guidelines, that the value of sales should “reflect the economic importance of the infringement” and the “relative weight of each undertaking in the infringement,” and infringed the principles of equal treatment and proportionality.
- The General Court breached its duty to give reasons because it failed properly to address the argument that double counting inflated the economic importance of the infringement.
- The General Court erred in law in dismissing the appellants’ argument that the Commission had failed to justify its departure from its established practice.

Appeal brought on 20 September 2019 by Sony Optiarc, Inc, Sony Optiarc America, Inc against the judgment of the General Court (Fifth Chamber) delivered on 12 July 2019 in Case T-763/15: Sony Optiarc, Sony Optiarc America v Commission

(Case C-698/19 P)

(2019/C 383/60)

Language of the case: English

Parties

Appellants: Sony Optiarc, Inc, Sony Optiarc America, Inc (hereinafter referred to as Sony or appellants) (represented by: N. Levy, avocat, R. Snelders, avocat, E.M. Kelly, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- grant the forms of order sought at first instance;
- order the Commission to bear the costs, including the costs of the proceedings at first instance.

In the alternative, should the state of the proceedings not permit a decision by the Court of Justice, the appellants respectfully request that the Court:

- refer the case back to the General Court;
- reserve the costs of the proceedings at first instance and on appeal.

Pleas in law and main arguments

In support of the action, the appellants rely on four pleas in law.

First plea: The General Court erred in substituting its own reasoning for that of the decision (Commission’s decision in Case AT.39639 – Optical Disk Drives).

- The decision was based on a finding that the appellants participated in ‘several separate infringements’ that could also be characterized as a single and continuous infringement. The General Court accepted that not all of the individual contacts alleged in the decision were proven.

— Unproven contacts cannot amount to infringements of Article 101(1) TFEU. The General Court nevertheless upheld the decision's finding of a single and continuous infringement based on those unproven contacts forming part of an overall body of 'evidence and indicia which could be taken into account, considered as a whole' on which the Commission could rely. By substituting its own reasoning for that of the decision, the General Court erred in law.

Second plea: The General Court erred in law by upholding the finding of participation a single and continuous infringement based on a more limited number of contacts than had been identified in the decision.

— The General Court wrongly held that Sony Optiarc participated in the alleged infringement continuously, between July 25, 2007 and October 29, 2008, despite accepting that there was a period of approximately five months during which the Commission had failed to prove any anticompetitive contacts involving Sony Optiarc.

— The General Court's reasoning is internally inconsistent, accepting that there were no proven contacts involving Sony Optiarc for a period of approximately five months, but also finding that 'the longest established period without a contact taking place is only 3 months' and that '[m]ost of the contacts were only a month apart'.

Third plea: The General Court erred in law by treating a single continuous infringement as necessarily consisting of a series of separate infringements.

— The General Court failed to find that the Commission had breached Sony Optiarc's rights of defense, despite the Commission's finding in the decision - without previously alleging in the Statement of Objections - that the alleged conduct amounted not only to a single and continuous infringement but also several separate infringements.

— The General Court wrongly held that the Commission had provided adequate reasons for its finding that Sony Optiarc had committed several separate infringements.

Fourth plea: The General Court erred in law, breached the principles of equal treatment and proportionality, and failed to give reasons, in upholding the fine against Sony Optiarc based on the same revenues that formed the basis for a separate fine against Quanta.

— The General Court breached the principle, in the Fining Guidelines, that the value of sales should "reflect the economic importance of the infringement" and the "relative weight of each undertaking in the infringement," and infringed the principles of equal treatment and proportionality.

— The General Court breached its duty to give reasons because it failed properly to address the argument that double counting inflated the economic importance of the infringement.

— The General Court erred in law in dismissing the appellants' argument that the Commission had failed to justify its departure from its established practice.

Appeal brought on 20 September 2019 by Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corp. against the judgment of the General Court (Fifth Chamber) delivered on 12/07/2019 in Case T-8/16: Toshiba Samsung Storage Technology, Toshiba Samsung Storage Technology Korea v Commission

(Case C-700/19 P)

(2019/C 383/61)

Language of the case: English

Parties

Appellant: Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corp. (hereinafter referred to as the appellants) (represented by: M. Bay, avvocato, J. Ruiz Calzado, abogado, A. Aresu, avvocato)