Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

12 July 2019*

(Competition — Agreements, decisions and concerted practices — Market for optical disk drives — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Collusive agreements relating to procurement events organised by two computer manufacturers — Unlimited jurisdiction — Infringement of the principle of good administration — Obligation to state reasons — Point 37 of the 2006 Guidelines on the method of setting fines — Particular circumstances — Error of law)

In Case T-1/16,

**Hitachi-LG Data Storage, Inc**., established in Tokyo (Japan),

**Hitachi-LG Data Storage Korea, Inc**., established in Seoul (South Korea),

represented by L. Gyselen and N. Ersbøll, lawyers,

applicants,

v

**European Commission**, represented initially by A. Biolan, M. Farley, C. Giolito and F. van Schaik, and subsequently by A. Biolan, M. Farley and F. van Schaik, acting as Agents,

defendant,

ACTION under Article 263 TFEU seeking a reduction of the amount of the fine imposed by the European Commission on the applicants in its Decision C(2015) 7135 final of 21 October 2015 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39639 — Optical Disk Drives),

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, I. Labucka and I. Ulloa Rubio (Rapporteur), Judges,

Registrar: N. Schall, Administrator,

having regard to the written part of the procedure and further to the hearing on 3 May 2018,

gives the following

* Language of the case: English.

# Judgment [1]

## I. Background to the dispute

### A. Applicants and relevant market

1 The applicants, Hitachi-LG Data Storage, Inc. and its subsidiary Hitachi-LG Data Storage Korea, Inc., are manufacturers and suppliers of optical disk drives ('ODDs'). In particular, Hitachi-LG Data Storage is a joint venture created by the Japanese company Hitachi, Ltd and by the Korean company LG Electronics Inc. It has operated on the market since 1 July 2001.

2 The infringement concerns ODDs used in personal computers (desktops and notebooks) ('PCs') produced by Dell Inc. and Hewlett Packard ('HP'). ODDs are also used in a wide range of other consumer appliances such as compact disc ('CD') or digital versatile disc ('DVD') players, game consoles and other electronic hardware devices (contested decision, recital 28).

3 ODDs used in PCs differ according to their size, loading mechanisms (slot or tray) and the types of discs that they can read or write. ODDs can be split into two groups: half-height ('HH') drives for desktops and slim drives for notebooks. The slim drive group includes drives that vary by size. Both HH and slim drives differ by type depending on their technical functionality (contested decision, recital 29).

4 Dell and HP are the two most important original equipment manufacturers on the global market for PCs. Those two companies use standard procurement procedures carried out on a global basis which involve, inter alia, quarterly negotiations over a worldwide price and overall purchase volumes with a limited number of pre-qualified ODD suppliers. Generally, regional issues did not play any role in ODD procurement other than that related to forecasted demand from regions affecting overall purchase volumes (contested decision, recital 32).

5 The procurement procedures included requests for quotations, electronic requests for quotations, internet negotiations, e-auctions and bilateral (offline) negotiations. At the close of a procurement event, customers would allocate volumes to participating ODD suppliers (to all or at least most of them, unless there was an exclusion mechanism in place) depending on their quoted prices. For example, the winning bid would receive 35% to 45% of the total market allocation for the relevant quarter, the second best 25% to 30%, the third 20% and so on. These standardised procurement procedures were used by customers' procurement teams with the purpose of achieving efficient procurement at competitive prices. To this end, they used all possible practices to stimulate the price competition between the ODD suppliers (contested decision, recital 33).

6 As regards Dell, it carried out bidding events mainly by internet negotiation. That negotiation could last for a specific period of time or end after a defined period, for example 10 minutes after the last bid, when no ODD supplier continued bidding. In certain circumstances, internet negotiations could last several hours if the bidding was more active or if the duration of the internet negotiation was extended in order to incentivise ODD suppliers to continue bidding. Conversely, even where the length of the internet negotiation was indefinite and depended on the final bid, Dell could announce at some point that the internet negotiation had closed. Dell could decide to change from a 'rank only' to a 'blind' procedure. Dell could cancel the internet negotiation if the bidding or its result were found to be unsatisfactory and run a bilateral negotiation instead. The internet negotiation process was monitored by Dell's responsible Global Commodity Managers (contested decision, recitals 34 and 37).

1 Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

7 With respect to HP, the main procurement procedures used were requests for quotations and electronic requests for quotations. Both procedures were carried out online using the same platform. As regards (i) the requests for quotations, they were quarterly. They combined online and bilateral offline negotiations spread over a period of time, usually 2 weeks. ODD suppliers were invited to a round of open bidding for a specified period of time to submit their quote to the online platform or by email. Once the first round of bidding had elapsed, HP would meet with each participant and start negotiations based on the ODD supplier's bid to obtain a better bid from each supplier without disclosing the identity or the bid submitted by any other ODD supplier. As regards (ii) the electronic requests for quotations, they were normally run in the format of a reverse auction. In that format, bidders would log onto the online platform at the specified time and the auction would start at a price set by HP. Bidders entering progressively lower bids would be informed of their own rank each time a new bid was submitted. At the end of the allotted time, the ODD supplier having entered the lowest bid would win the auction and other suppliers would be ranked second and third according to their bids (contested decision, recitals 41 to 44).

**B. Administrative procedure**

8 On 14 January 2009, the European Commission received a request for immunity under its Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17) ('the Leniency Notice') from Koninklijke Philips NV ('Philips'). On 29 January and 2 March 2009, that request was supplemented in order to include, alongside Philips, Lite-On IT Corporation and their joint venture Philips & Lite-On Digital Solutions Corporation ('PLDS').

9 On 29 June 2009, the Commission sent a request for information to undertakings active in the ODD sector.

10 On 30 June 2009, the Commission granted conditional immunity to Philips, Lite-On IT and PLDS.

11 On 4 and 6 August 2009, the applicants submitted an application to the Commission for a reduction of the amount of the fine under the Leniency Notice.

12 On 18 July 2012, the Commission initiated a proceeding and adopted a statement of objections against 13 ODD suppliers, including the applicants. In that statement of objections, the Commission stated, in essence, that those companies had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) by participating in a cartel on ODDs from 5 February 2004 until 29 June 2009, consisting in orchestrating their conduct with respect to invitations to tender organised by two computer manufacturers, Dell and HP.

13 On the same day the Commission granted conditional immunity to the applicants.

14 On 29 and 30 November 2012, all the addressees of the statement of objections took part in a hearing before the Commission.

15 On 14 December 2012, the Commission requested all the parties to provide the relevant documents received from Dell and HP during the infringement period. All the parties replied to those requests and each was granted access to the replies provided by the other ODD suppliers.

16 On 18 February 2014, the Commission adopted two supplementary statements of objections to supplement, amend and clarify the objections addressed to certain addressees of the statement of objections as regards their liability for the alleged infringement.

17 On 26 February 2015, the applicants requested the Commission to reduce the amount of the fine because of the 'particular circumstances' for the purpose of point 37 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Commission Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2) ('the Guidelines').

18 On 5 March 2015, the applicants and their outside counsel met the Commission in order to present their request for a reduction of the amount of the fine.

19 On 1 June 2015, the Commission adopted another supplementary statement of objections. The purpose of this new statement of objections was to supplement the earlier statements of objections by addressing the objections set out in those statements to additional legal entities belonging to the groups of undertakings (parent companies or predecessors) which had already been addressees of the original statement of objections.

20 The addressees of the statements of objections of 18 February 2014 and 1 June 2015 made known their views to the Commission in writing but did not request a hearing.

21 On 3 June 2015, the Commission issued a letter of facts to all the parties. The addressees of the letter of facts made known their views to the Commission in writing.

22 On 14 September 2015, the applicants submitted a second request to the Commission for a reduction of the amount of the fine. The purpose of this request was to provide an update of certain data presented in their request of 26 February 2015.

23 On 18 September 2015, the applicants and their outside counsel took part in a second meeting with the Commission concerning the state of the file.

24 On 5 and 15 October 2015, the Advisory Committee on Restrictive Practices and Dominant Positions ('the Advisory Committee') was consulted by the Commission.

25 On 21 October 2015, the Commission adopted Decision C(2015) 7135 final relating to a proceeding pursuant to Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39639 — Optical Disk Drives) ('the contested decision').

## C. Contested decision

### *1. The infringement at issue*

26 In the contested decision, the Commission considered that the cartel participants had coordinated their competitive behaviour, at least between 23 June 2004 and 25 November 2008. It specified that that coordination took place through a network of parallel bilateral contacts. It stated that the cartel participants sought to accommodate their volumes on the market and ensure that the prices remained at levels higher than they would have been in the absence of those bilateral contacts (contested decision, recital 67).

27 The Commission specified, in the contested decision, that the coordination between the cartel participants concerned the customer accounts of Dell and HP, the two most important original equipment manufacturers on the global market for PCs. According to the Commission, in addition to bilateral negotiations with their ODD suppliers, Dell and HP applied standardised procurement procedures, which took place at least on a quarterly basis. The Commission stated that the cartel members used their network of bilateral contacts to manipulate those procurement procedures, thus thwarting their customers' attempts to stimulate price competition (contested decision, recital 68).

28 According to the Commission, regular exchanges of information in particular enabled the cartel members to possess a very complex knowledge of their competitors' intentions even before they had entered the procurement procedure, and therefore to foresee their competitive strategy (contested decision, recital 69).

29 The Commission added that, on a regular basis, the cartel members exchanged pricing information regarding specific customer accounts as well as information unrelated to pricing, such as existing production and supply capacity, inventory status, the qualification status, and timing of the introduction of new products or upgrades. The Commission stated that, in addition, the ODD suppliers monitored the final results of closed procurement events, that is the rank, the price and the volume obtained (contested decision, recital 70).

30 The Commission further stated that, whilst taking into account that the cartel members must keep their contacts secret from customers, to contact each other suppliers used the means they deemed sufficiently appropriate to achieve the desired result. The Commission specified that in fact an attempt to convene a kick-off meeting to hold regular multilateral meetings between ODD suppliers had failed in 2003 after having been revealed to a customer. According to the Commission, instead, there were bilateral contacts, mostly via phone calls and, from time to time, via emails, including private (hotmail) addresses and instant messaging services, or meetings, mostly at the level of global account managers (contested decision, recital 71).

31 The Commission found that the cartel participants contacted each other regularly and that the contacts, mainly by telephone, became more frequent around the procurement events, amounting to several calls per day between some pairs of cartel participants. It stated that, generally, contacts between some pairs of cartel participants were significantly higher than between other pairs (contested decision, recital 72).

### *2. The applicants' liability*

32 The applicants' liability was established owing to their direct participation in the cartel from 23 June 2004 until 25 November 2008, in particular for their coordination with other competitors with regard to Dell and HP (contested decision, recital 494).

### *3. The fine imposed on the applicants*

33 As regards the calculation of the amount of the fine imposed on the applicants, the Commission relied on the Guidelines.

34 First of all, in order to determine the basic amount of the fine, the Commission considered that, in view of the considerable differences in the duration of the suppliers' participation and in order better to reflect the actual impact of the cartel, it was appropriate to use an annual average calculated on the basis of the actual value of sales made by the undertakings during the full calendar months of their respective participation in the infringement (contested decision, recital 527).

35 The Commission thus explained that the value of sales was calculated on the basis of sales of ODDs for PCs and invoiced to HP and Dell entities located in the EEA (contested decision, recital 528).

36 The Commission further considered that, since the anticompetitive conduct with regard to HP had begun later and in order to take the evolution of the cartel into account, the relevant value of sales would be calculated separately for HP and for Dell, and that two duration multipliers would be applied (contested decision, recital 530).

37 Next, the Commission decided that, since price coordination agreements are by their very nature among the worst kind of infringements of Article 101 TFEU and Article 53 of the EEA Agreement, and since the cartel covered at least the whole of the EEA, the percentage for gravity used in this case would be 16% for all addressees of the contested decision (contested decision, recital 544).

38 Furthermore, the Commission stated that, given the circumstances of the case, it was necessary to add an amount of 16% for deterrence (contested decision, recitals 554 and 555).

39 Moreover, since the adjusted basic amount of the fine imposed on the applicants did not reach the cap of 10% of their turnover, the Commission was not required to make a fresh adjustment on the basis of Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1). The adjusted basic amount of the fine imposed on the applicants, calculated according to the methodology described above, came to 8.45% of their total turnover in 2014, the business year preceding the adoption of the contested decision (contested decision, recitals 570 to 572).

40 Lastly, the applicants received a reduction of 50% of the amount of their fine for having cooperated in the investigation in the context of the Commission's leniency programme, and also partial immunity for having enabled the Commission to establish that the cartel was of longer duration (contested decision, recitals 575 and 582 to 592).

41 The operative part of the contested decision, in so far as it concerns the applicants, reads as follows:

'Article 1

The following undertakings infringed Article 101 TFEU and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement, which consisted of several separate infringements, in the optical disk drives sector covering the whole of the EEA, which consisted of price coordination arrangements:

...

(d) [the applicants] from 23 June 2004 to 25 November 2008, for their coordination with regards to Dell and HP.

...

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

...

(d) [the applicants], jointly and severally liable: EUR 37 121 000.'

## II. Procedure and forms of order sought

42 By application lodged at the Court Registry on 4 January 2016, the applicants brought the present action.

43 The Commission lodged the defence on 29 April 2016.

44 On a proposal from the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, requested the applicants to lodge a document and to make written submissions on certain aspects of the dispute. The applicants complied with those requests within the prescribed period.

45 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 3 May 2018.

46 The applicants claim that the Court should:

– reduce the amount of the fine imposed on them in Article 2(d) of the contested decision to take account of the particularities of the case;

– order the Commission to pay the costs.

47 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

## III. Law

### A. The scope of the dispute

48 In support of the action, the applicants raise two pleas in law. First, they claim that the Commission breached the principle of good administration and its obligation to state reasons by not responding to their request under point 37 of the Guidelines. Second, they submit that the Commission erred in law in not derogating from the general method set out in the Guidelines in order to reduce the amount of the fine imposed on them in the light of the particular characteristics of the case and the applicants' role in the market for ODDs.

49 By their first head of claim, and as is apparent from paragraphs 3, 7, 41 and 43 of the application and paragraphs 11 to 18 of the reply, the applicants request the Court to exercise its unlimited jurisdiction under Article 261 TFEU and reduce the amount of the fine imposed on them. They state, moreover, that they do not seek annulment of the contested decision in the event that the Court should find that there has been a breach by the Commission of the obligation to state reasons or of the principle of good administration.

50 The Court, by way of measures of organisation of procedure under Article 89 of the Rules of Procedure, invited the applicants to clarify whether, as the application and reply appear to indicate, they did not intend to submit, in the context of their application, a claim for annulment, but only a claim for reduction of the amount of the fine.

51 In their reply to the measures of organisation of procedure of the Court, the applicants stated that they were requesting the Court to exercise its unlimited jurisdiction by reviewing the Commission's implicit decision to reject their request for a reduction of the amount of the fine under point 37 of the Guidelines and by reviewing the substance of that request.

52 Nevertheless, in that reply to the measures of organisation of procedure, the applicants also stated that they were aware of the fact that to ask the Court to exercise its unlimited jurisdiction with regard to the fine under Article 261 TFEU 'necessarily comprises or includes a request for the annulment, in whole or in part, of that decision' and that, if, in its review of legality under Article 263 TFEU, the Court concluded that the Commission made no error of law, it could carry out a full review of the amount of the fine in accordance with Article 261 TFEU.

53 In that connection, it must be borne in mind that the Treaty does not recognise the 'action under the Court's unlimited jurisdiction' as an autonomous remedy. Article 261 TFEU confines itself to providing that regulations adopted pursuant to the provisions of the Treaties may give the European Union judicature unlimited jurisdiction with regard to the penalties provided for in those regulations (order of 9 November 2004, *FNICGV* v *Commission*, T-252/03, EU:T:2004:326, paragraph 22).

54 Furthermore, that unlimited jurisdiction can be exercised by the EU judicature only in the context of the review of acts of the institutions, more particularly in actions for annulment. The sole effect of Article 261 TFEU is to enlarge the extent of the powers the EU judicature has in the context of the action referred to in Article 263 TFEU (see, to that effect, order of 9 November 2004, *FNICGV* v *Commission*, T-252/03, EU:T:2004:326, paragraphs 24 and 25).

55 Consequently, an action in which the EU judicature is asked to exercise its unlimited jurisdiction with respect to a decision imposing a penalty, a jurisdiction conferred by Article 261 TFEU, but exercised pursuant to Article 263 TFEU, necessarily comprises or includes a request for the annulment, in whole or in part, of that decision (see, to that effect, order of 9 November 2004, *FNICGV* v *Commission*, T-252/03, EU:T:2004:326, paragraph 25).

56 It is therefore only after the Court has finished reviewing the legality of the decision referred to it, in the light of the pleas in law submitted to it and of grounds which, where applicable, it has raised of its own motion, that, in the event that it does not annul the decision in full, it is to exercise its unlimited jurisdiction in order, first, to draw the appropriate conclusions from its findings with respect to the lawfulness of that decision and, secondly, to establish, according to the information which has been brought to its attention (see, to that effect, judgments of 8 December 2011, *KME Germany and Others* v *Commission*, C-389/10 P, EU:C:2011:816, paragraph 131, and of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 213), whether it is appropriate, on the date on which it adopts its decision (judgments of 11 July 2014, *RWE and RWE Dea* v *Commission*, T-543/08, EU:T:2014:627, paragraph 257; of 11 July 2014, *Sasol and Others* v *Commission*, T-541/08, EU:T:2014:628, paragraph 438; and of 11 July 2014, *Esso and Others* v *Commission*, T-540/08, EU:T:2014:630, paragraph 133), to substitute its own assessment for that of the Commission, so that the amount of the fine is appropriate.

57 In the present case, although, in the application, the applicants submitted a claim only for variation and have indicated that they do not seek annulment of the contested decision, it is apparent from their subsequent explanations that they do not object to the Court reclassifying their claim in accordance with the case-law referred to in paragraphs 53 to 56 above.

58 It must therefore be held that the present action consists of (i) a claim for annulment in part of the contested decision, in so far as the Commission rejected the applicants' request for a reduction, under point 37 of the Guidelines, of the amount of the fine imposed on them in Article 2(d) of the contested decision and (ii) a claim for variation of that decision asking the Court to uphold that request itself and, consequently, to reduce that amount.

## B. The claim for annulment

…

### *1. First plea: breach of the principle of good administration and of the obligation to state reasons*

…

#### *(a) The first part: alleging breach of the obligation to state reasons*

…

*(2) The Commission's obligation to state the reasons for not taking into account the particular circumstances alleged by the applicants*

77 As regards the applicants' argument that the Commission breached its obligation to state reasons by not indicating, in the contested decision, the reasons for which it did not depart, following their request and pursuant to point 37 of the Guidelines, from the general methodology for calculating the amount of the fine, it should be noted that, as is apparent from the case-law cited in paragraphs 65 and 75 above, the Commission has no obligation to highlight in its decision all the matters of fact and of law which may have been dealt with during the administrative procedure and those which it did not take into account when calculating the amount of the fine imposed.

78 In addition, it should be noted that the applicable rules provide that the Commission may depart from the general methodology for setting the amount of the fine, on a purely exceptional basis, in two circumstances. First, pursuant to point 35 of the Guidelines, the Commission may take into account, for the purposes of setting the amount of the fine, an undertaking's inability to pay. In the present case, it should be noted that, during the informal meeting of 5 March 2015, the Commission explicitly asked the applicants to confirm that they were not claiming an inability to pay the fine under point 35 of the Guidelines, and that the applicants confirmed that they were not requesting that that procedure be applied. Second, pursuant to point 37 of the Guidelines, it is foreseen that the particularities of a case or the need to achieve deterrence in a particular case may justify the Commission departing from the methodology set out in those guidelines.

79 However, according to the case-law, it must be held that the discretion conferred on the Commission in the Guidelines does not extend to exempting it from the obligation to justify recourse to this exception. The Commission must specify the particularities of the case or the need to achieve a particular level of deterrence justifying recourse to this exception (see, to that effect, judgment of 6 February 2014, *AC-Treuhand* v *Commission*, T-27/10, EU:T:2014:59, paragraph 306).

80 In particular, when the Commission decides to depart from the general methodology set out in the Guidelines, by which it limited the discretion it may itself exercise in setting the amount of fines, and relies on point 37 of those guidelines, the requirements relating to the duty to state reasons must be complied with all the more rigorously. In that regard, it is appropriate to refer to the settled case-law to the effect that those guidelines lay down a rule of conduct indicating the approach to be adopted from which the Commission cannot depart, in an individual case, without giving reasons which are compatible with, inter alia, the principle of equal treatment. Those reasons must be all the more specific because point 37 of the Guidelines simply makes a vague reference to 'the particularities of a given case' and thus leaves the Commission a broad discretion where it decides to make an exceptional adjustment of the basic amount of the fines to be imposed on the undertakings concerned. In such a case, the Commission's respect for the rights guaranteed by the EU legal order in administrative procedures, including the obligation to state reasons, is of even more fundamental importance (see judgment of 13 December 2016, *Printeos and Others* v *Commission*, T-95/15, EU:T:2016:722, paragraph 48 and the case-law cited).

81 By contrast, in the present case, the Commission took the view that the particular circumstances provided for in point 37 of the Guidelines were not met and, consequently, opted for the application of the general methodology in order to calculate the amount of the fine imposed on the applicants. Accordingly, and as is clear from the case-law cited in paragraphs 65 and 75 above, the Commission was required only to state the reasons, in the contested decision, relating to the methodology applied to calculate the amount of the fine and not the factors that it did not take into account in that calculation and, in particular, the reasons for which it did not have recourse to the exception laid down in point 37 of the Guidelines. As has already been noted (see paragraph 77 above), the Commission is not obliged to adopt a position on all of the arguments relied on by the parties concerned. It is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision.

82 In those circumstances, it is necessary to reject the applicants' arguments that the Commission did not comply with its obligation to state reasons in the contested decision on account of not having given reasons in that decision for the failure to apply the exception provided for in point 37 of the Guidelines following the applicants' request. The first part of the first plea must therefore be rejected.

***(b) Second part: breach of the principle of good administration***

…

89 In the present case, it is apparent from the case file (i) that the Advisory Committee was consulted twice, on 5 and 15 October 2015, before the adoption of the contested decision and (ii) that a whole set of documents on this case was sent to the members of that committee in accordance with Article 14(3) of Regulation No 1/2003. Among those documents, the Commission asserts that it provided: a summary of the case file, its letter of facts dated 3 June 2015, the replies to that letter by the companies affected by the fine, including the applicants' reply of 26 June 2015, the draft decision including the annexes, a fines table with a detailed overview of how they would be calculated, the statement of objections and the replies thereto.

90 In the first place, it should be noted that the Advisory Committee had been informed of the main points of fact and law of the proceedings, in particular, the market, the addressees, the objections, the duration of the infringement, the methodology and calculation of the fines and the views expressed by the addressees in response to the objections raised by the Commission. Those documents could therefore be considered 'the most important documents' within the meaning of Article 14(3) of Regulation No 1/2003.

91 In the second place, it should be noted that Article 14 of Regulation No 1/2003 does not require that the applicants' requests be attached to those documents. Indeed, under Article 14(3) of Regulation No 1/2003, the dispatch of the notice convening the Advisory Committee is accompanied by 'a summary of the case, an indication of the most important documents and a preliminary draft decision'. The expression 'an indication of the most important documents' cannot mean that the Commission is required to forward to the Advisory Committee all the documentation exchanged with the companies concerned.

92 In the third place, it should be noted that the Commission sent to the Advisory Committee a letter of facts dated 3 June 2015 as well as the applicants' reply to that letter dated 26 June 2015. It should therefore be observed that the applicants had the opportunity (i) to acquaint themselves with the most important facts to be taken into consideration by the Commission for calculating the amount of the fine and (ii) to submit their observations on those facts set out by the Commission. Those observations were, moreover, communicated to the Advisory Committee.

93 Therefore, to the extent that the applicants' first request –– seeking a reduction in the amount of the fine due to 'particular circumstances' specific to them for the purpose of point 37 of the Guidelines –– was made on 26 February 2015, namely well before the date that the letter of facts was communicated by the Commission to the applicants, they cannot criticise the Commission for not having communicated that information to the Advisory Committee. Even though the Commission did not include that information in the statement of facts or in the indication of the most important documents, the applicants had the opportunity to describe the importance that that information had for the calculation of the amount of the fine in their observations of 26 June 2015.

94 Moreover, in so far as the information adduced by the applicants as part of their second request of 14 September 2015 does not contain substantial amendments as compared with the first request, since it is an update of the facts already set out, the Commission, which was not required to hear the applicants again before adopting the contested decision, was not required to carry out a fresh consultation of the Advisory Committee (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 118). Nevertheless, it should be noted that the Commission had another informal meeting with the applicants, on 18 September 2015, in which they were given the opportunity to comment on the new facts and that, subsequently, on 15 October 2015 the Advisory Committee was consulted again. However, the Commission considered that those facts were not decisive for the calculation of the amount of the fine imposed on the applicants, which is why they were not brought to the attention of the Advisory Committee.

95 It follows from all of the foregoing that the Commission did not breach the principle of good administration on the ground that it did not consult the Advisory Committee on the particular circumstances relied on by the applicants. Indeed, the Commission was diligent during the administrative procedure since it (i) heard the applicants and examined their observations before the Advisory Committee delivered a written opinion on the preliminary draft decision and (ii) communicated to that committee the most important information for the calculation of the amount of the fine under Article 14(3) of Regulation No 1/2003.

96 Considerations similar to those set out in paragraphs 89 to 95 above are applicable to the applicants' arguments concerning the consultation of the College of Commissioners. In that regard, it is apparent from the case file that, before adopting the contested decision, essential components of the draft decision, namely the draft and its annexes, the opinion of the Advisory Committee and the final report of the Hearing Officer, were submitted for final approval to the College of Commissioners.

…

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc. to bear their own costs and pay the costs incurred by the European Commission.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 12 July 2019.

E. Coulon
Registrar

D. Gratsias
President