

Appeal brought on 29 March 2016 by Toshiba Corporation against the judgment of the General Court (First Chamber) delivered on 19 January 2016 in Case T-404/12: Toshiba Corporation v European Commission

(Case C-180/16 P)

(2016/C 175/16)

Language of the case: English

Parties

Appellant: Toshiba Corporation (represented by: J. F. MacLennan, Solicitor, A. Schulz, Rechtsanwalt, S. Sakellariou, Δικηγόρος, J. Jourdan, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claim that the Court should:

- Set aside the Judgment of the General Court in Case T-404/12, and
 - i. Annul the Decision of the European Commission in Case COMP/39.966 — *Gas Insulated Switchgear re-adoption*; or
 - ii. Reduce the fine imposed on Toshiba, in application of Article 261 TFEU; or
 - iii. Refer the case back to the General Court for determination in accordance with the judgment of this Court as to points of law; and in any event
- Order the European Commission to pay the costs.

Pleas in law and main arguments

The present application is founded on three pleas in law:

- a) First plea: The General Court erred in law in finding that Toshiba's rights of defence were not breached by the European Commission; in particular in so far as the Commission did not issue a Statement of Objections to Toshiba prior to adopting the re-adoption decision in 2012;
- b) Second plea: The General Court erred in law in concluding that the methodology applied by the European Commission to calculate Toshiba's fine did not infringe the principle of equal treatment; in particular in so far as the Commission used the starting amount calculated for the joint venture TM T&D as a basis to calculate Toshiba's fine, and not a turnover relevant to Toshiba, contrary to what the Commission did for the European addressees of the decision adopted in 2007; and
- c) Third plea: The General Court erred in law in concluding that the European Commission, by not reducing Toshiba's fine to reflect its relative participation in the infringement, did not infringe the principle of equal treatment; in particular in so far as the Commission did not consider that Toshiba's more limited participation in the collusive conduct, in comparison to that of the European addressees of the decision adopted in 2007, justified being reflected in the fine amount.