— As a consequence, to annul Articles 2.1 (b) and 2.2(b) of the Commission's decision insofar as they concern the Appellants and to reduce the relevant fines;

— To order the European Commission to pay the costs at first instance and for the present appeal.

Pleas in law and main arguments

In support of the appeal, the Appellants rely on four pleas in law. The first two concern the CPT cartel and the last two — the CDT cartel.

First plea: the General Court failed to address SDI's plea according to which sales of non-cartelized products should have been excluded from the CPT cartel fine calculation. Even assuming that the General Court's reasoning regarding the existence of a single and continuous infringement offers an implicit justification for the rejection of SDI's plea (quod non), such implicit justification violates the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 ([1]) (the Fining Guidelines).

Second plea: as regards the determination of the end date of the CPT cartel, the General Court dismissed without any valid reasons SDI's plea that collusion requires the involvement of at least two undertakings, and further violated Article 101 TFEU insofar as the judgment concluded that SDI's participation in the CPT cartel lasted, alone, until 15 November 2006. Further, the General Court violated the principle of equal treatment insofar as it refused to reduce the fine imposed on SDI.

Third plea: the General Court made an error in law by taking into account in the calculation of the CDT cartel fine SDI's sales to Samsung Electronics Corporation (SEC). The General Court misapplied the concept of EEA sales under the Fining Guidelines insofar as it failed to determine the place where competition takes place.

Fourth plea: the General Court committed an error of law in assessing the application of the Leniency Notice, which resulted in a failure to grant SDI a 50 % fine reduction in relation to the CDT cartel. The General Court's conclusions regarding the CPT cartel are legally irrelevant in the context of the CDT cartel. Furthermore, the General Court misapplied the Leniency Notice and erred in upholding the Commission's finding that the lack of description of the market sharing aspect of the infringement by SDI in its reply to the Statement of Objections could, in itself, impact the assessment of SDI's cooperation during the administrative procedure.

([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 L 1, p. 1.

Appeal brought on 19 November 2015 by Koninklijke Philips Electronics NV against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-92/13: Koninklijke Philips Electronics NV v European Commission

(Case C-622/15 P)

(2016/C 027/29)

Language of the case: English

Parties

Appellant: Koninklijke Philips Electronics NV (represented by: E. Pijnacker Hordijk, J. K. de Pree, S. Molin, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court in Case T-92/13;

— annul in whole or in part, Articles 1.1(c) and 1.2(f), Articles 2.1(c) and 2.1(e), and Articles 2.2(c) and 2.2(e) of the Commission Decision of 5 December 2012 in Case COMP/39437 — TV and Computer Monitor Tubes (the 'Decision'), insofar as they concern KPNV; and/or reduce the fines imposed on KPNV in Articles 2.1(c) and 2.1(e) and Articles 2.2(c) and 2.2(e) of the Decision;

— order the Commission to pay the costs in first instance and on appeal.

Pleas in law and main arguments

In support of the action, the applicant relies on the following main pleas and arguments:

The General Court erred in law in the application of Article 101 TFEU and Article 23(2) of Regulation No. 1/2003 ([1]) by holding that the Commission could characterize the sales of Cathode Ray Tubes ('CRTs') made by the LPD Group to the Philips Group (and the LGE Group) as intragroup sales and by holding that the Commission was entitled to include the value of Direct EEA Sales through Transformed Products ('DSTP') in the calculation of KPNV's fine, where it concerned downstream sales of computer screens and colour televisions by subsidiaries of KPNV incorporating CRTs supplied by the LPD Group.

The General Court erred in law by holding that the Commission did not violate KPNV's rights of defence when it chose — even in the circumstances of this case — not to include the LPD Group in the administrative proceedings and issue a statement of objections to it on the ground that KPNV would have a general duty of care to keep records in its books and files regarding the activities of the LPD Group, even in case of the bankruptcy of LPD.

The General Court committed an error of assessment in that it misrepresented the plea raised by KPNV regarding the treatment of DSTP and thereby failed to address one of the main grounds of appeal of KPNV against the Decision. The appellant further submits it was deprived of the protection of the fundamental principle of equal treatment in that the General Court failed to recognize that different legal standards were applied to different undertakings in determining the basis for the calculation of the fine. This discriminatory treatment resulted in a significantly higher fine for KPNV.

([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 L 1, p. 1.

Appeal brought on 20 November 2015 by Toshiba Corp. against the judgment of the General Court (Third Chamber) delivered on 9 September 2015 in Case T-104/13: Toshiba Corp. v European Commission

(Case C-623/15 P)

(2016/C 027/30)

Language of the case: English

Parties

Appellant: Toshiba Corp. (represented by: J. F. MacLennan, Solicitor, A. Schulz, Rechtsanwalt, J. Jourdan, avocat, A. Kadri, Solicitor)