



EUROPEAN COMMISSION  
Competition DG

***CASE AT.40481 – Occupant Safety  
Systems (II) supplied to the Volkswagen  
Group and the BMW Group***

(Only the English text is authentic)

**CARTEL PROCEDURE**  
**Council Regulation (EC) 1/2003**

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Article 7 Regulation (EC) 1/2003

Date: 05/03/2019

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Brussels, 5.3.2019  
C(2019) 1656 final

**COMMISSION DECISION**

**of 5.3.2019**

**relating to proceedings under Article 101 of the Treaty on the Functioning of the  
European Union and Article 53 of the EEA Agreement**

**(AT.40481 - Occupants Safety Systems (II) supplied to the Volkswagen Group and the  
BMW Group)**

(Text with EEA relevance)

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of 5.3.2019

**relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement**

**(AT.40481 - Occupants Safety Systems (II) supplied to the Volkswagen Group and the BMW Group)**

(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to 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<sup>1</sup>, and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty<sup>2</sup>, and in particular Article 10a thereof,

Having regard to the Commission Decision of 7 July 2017 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

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<sup>1</sup> OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("the Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

<sup>2</sup> OJ L 123, 27.4.2004, p. 18.

Having regard to the final report of the Hearing Officer in this case<sup>3</sup>,

Whereas:

## 1. INTRODUCTION

- (1) This Decision concerns two single and continuous infringements of Article 101 of the Treaty on the Functioning of the European Union (the 'Treaty') and Article 53 of the Agreement on the European Economic Area (the 'EEA Agreement'). The infringements consisted of exchanging commercially sensitive information and, in some instances price coordination, in respect of supplies of occupants safety systems products for certain passenger cars to companies belonging to the Volkswagen and Porsche Group ("VW Group") and to the BMW and Mini Group ("BMW Group"). The infringements took place between [...] with respect to the VW Group, and between [...] with respect to the BMW Group.
- (2) This Decision is addressed to the following undertakings and legal entities, each of which participated in the two infringements referred to in recital (1):
  - (a) Autoliv, Inc. and Autoliv B.V. & Co. KG (together referred to as "**AUTOLIV**")<sup>4</sup>;
  - (b) Takata Corporation and Takata Aktiengesellschaft (together referred to as "**TAKATA**")<sup>5</sup>;
  - (c) ZF TRW Automotive Holdings Corp., TRW Automotive Safety Systems GmbH and TRW Automotive GmbH (together referred to as "**TRW**").

## 2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS IN THIS DECISION

### 2.1. The products

- (3) The products concerned by the conduct are **seatbelts, airbags and/or steering wheels (Occupants Safety Systems ('OSS'))** for certain passenger cars supplied to companies belonging to the VW Group and to the BMW Group.
- (4) Seatbelts are safety straps designed to secure the occupants of a vehicle against harmful movement that may result from a collision or a sudden stop. Cars are equipped with front and rear seatbelts, driver and passenger seatbelts.
- (5) An airbag consists of a flexible fabric envelope or cushion designed to inflate rapidly during an automobile collision. Its purpose is to protect occupants' bodies from striking interior objects such as the steering wheel or a window during a crash. Modern vehicles may contain multiple airbag modules, namely driver airbags (DAB), passenger airbags (PAB), side airbags (SAB), curtain airbags (CAB) and/or

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<sup>3</sup> Final report of the Hearing Officer of 01.03.2019.

<sup>4</sup> Also referred to as "AL" in footnotes.

<sup>5</sup> Also referred to as "TK" in footnotes.

knee airbags (KAB). Airbags are normally designed with the intention of supplementing the protection of an occupant who is correctly restrained with a seatbelt.

- (6) A steering wheel is a type of steering control in vehicles. In passenger cars, it is generally circular and mounted to the steering column, in front of the driver's seat. Modern steering wheels normally contain the driver airbag.
- (7) The main customers of OSS are car manufacturers, also called Original Equipment Manufacturers ('OEM's). OEMs typically source OSS by way of tenders, that is to say requests for quotations ('RFQ'). OEMs can tender for different brands, single models or specific types of products.

## **2.2. Undertakings subject to the proceedings**

- (8) The following undertakings, comprising the legal entities referred to in Sections 2.2.1 to 2.2.3 were involved in the infringements described in Section 4 below.

### *2.2.1. AUTOLIV*

- (9) AUTOLIV is a manufacturer of car safety equipment worldwide, producing components such as seatbelts, airbags, anti-whiplash systems, and safety electronics<sup>6</sup>. Other products include roll-over protection systems, steering wheels (with airbags), night vision systems, radar systems, and child seats. For the fiscal year ending 31 December 2017, the worldwide consolidated turnover of AUTOLIV amounted to USD 10.38 billion or approximately EUR 9.2 billion.
- (10) The relevant legal entities of the Autoliv group that the Commission regards, for the purposes of this Decision, as constituting a single undertaking at the time of the infringements are:
  - Autoliv, Inc. having registered offices at 1209 Orange Street, City of Wilmington, County of Newcastle, State of Delaware, U.S.A. and European headquarters at Klarabergsviadukten 70, Section B, 7th floor, Stockholm, Sweden;
  - Autoliv B.V. & Co. KG, Otto-Hahn-Straße 4, 25337 Elmshorn, Germany.

### *2.2.2. TAKATA*

- (11) TAKATA manufactures airbags as well as seatbelts, steering wheels, child safety seats, and safety electronics such as crash sensors. The company also produces interior parts, such as head rests, arm rests, visors, and trim. For the fiscal year ending 31 March 2018, the worldwide consolidated turnover of TAKATA amounted to JPY 646.593 billion or approximately EUR 4.98 billion.

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<sup>6</sup> As of 29 June 2018 Autoliv has transferred its electronics business to Veoneer, Inc., which includes safety electronics, sensors and software for active safety.



- (12) The relevant legal entities of the Takata group that the Commission regards, for the purposes of this Decision, as constituting a single undertaking at the time of the infringements are:
- Takata Corporation 2-12-31, Akasaka, Minato-ku, Tokyo, Japan, renamed TKJP Corporation, registered at 2-3-9 Shiba, Minato-ku, Tokyo, Japan<sup>7</sup>;
  - Takata Aktiengesellschaft, Bahnweg 1, 63743 Aschaffenburg, Germany, renamed TB Deu Abwicklungs-Aktiengesellschaft i.L., registered in Germany (TKAG)<sup>8</sup>.

### 2.2.3. TRW

- (13) TRW is a global supplier of advanced automotive technologies, systems and components having its group headquarters in the United States of America. TRW Automotive Holding Corp. (US) was the group parent company at the time of the infringement. It was merged with another company and later renamed ZF TRW Automotive Holdings Corp. For the fiscal year ending 31 December 2017, the worldwide consolidated turnover of ZF TRW Automotive Holdings Corp. amounted to USD [10-20 billion] or approximately EUR [10-20 billion].
- (14) The relevant legal entities of the TRW group that the Commission regards, for the purposes of this Decision, as constituting a single undertaking at the time of the infringements are:
- ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.), 12001 Tech Center Drive, Livonia, Michigan 48150;
  - TRW Automotive Safety Systems GmbH, Hefner-Alteneck-Straße 11, 63473 Aschaffenburg, Germany;
  - TRW Automotive GmbH, Industriestraße 20, 73553 Alfdorf, Germany.

## 3. PROCEDURE

- (15) On 24 March 2011, TAKATA applied for immunity under the Commission Notice on immunity from fines and reduction of fines in cartel cases<sup>9</sup> ('the Leniency Notice') in relation, among others, to collusive contacts related to the supplies of OSS to the VW Group and the BMW Group. On 13 May 2011 the Commission granted

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<sup>7</sup> TKJP is a Japanese corporation (kabushiki kaisha) under the civil rehabilitation proceedings commenced by the 20th Department of the Civil Division of the Tokyo District Court (the Japanese Bankruptcy Court) on 28 June 2017. TKJP filed a rehabilitation plan with the Japanese Bankruptcy Court which mainly involves distributions of all the assets to its creditors and following winding-up and dissolution, which was approved by its creditors and confirmed by the Japanese Bankruptcy Court each on 23 May 2018. The confirmation order entered by the Tokyo District Court became final and binding on 15 June 2018.

<sup>8</sup> TKAG is a direct subsidiary of TB Eur Abwicklungsgesellschaft mbH i.L. (formerly TAKATA Europe GmbH) (TKEUR).

<sup>9</sup> Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

TAKATA conditional immunity as regards the supply of OSS to the VW and BMW Groups, pursuant to point 8(a) of the Leniency Notice.

- (16) Between 7 and 9 June 2011, the Commission carried out unannounced inspections under Article 20(4) of Regulation 1/2003<sup>10</sup> at the premises of AUTOLIV and TRW in Germany.
- (17) On 10 June 2011, TRW applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.
- (18) On 4 July 2011, AUTOLIV applied for immunity from fines or, in the alternative, for a reduction of the fine under the Leniency Notice.
- (19) On 7 July 2017, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against AUTOLIV, TAKATA AND TRW (collectively referred to as the 'parties' or, for each undertaking separately, as 'party') with a view to engaging in settlement discussions with them under the Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases<sup>11</sup> (the 'Settlement Notice'). On 7 July 2017, the Commission adopted decisions in which it preliminarily concluded that Autoliv and TRW had met the conditions of point 27 of the Leniency Notice and established the applicable ranges of the reductions in the level of fines that each of the undertakings would receive in respect of the two infringements, provided that they continued to meet the conditions of point 12 of the Leniency Notice.
- (20) After each party had confirmed its willingness to engage in settlement discussions, settlement meetings and contacts took place between November 2017 and November 2018.
- (21) In the course of the settlement procedure, the Commission informed the parties of the objections it envisaged raising against them and disclosed to them the key evidence on the Commission's file on which it relied to establish those potential objections. The parties had access to the relevant documentary evidence on file, to a list of all documents in the case file and, at the premises of the Commission, to the oral statements submitted under the Leniency Notice. The Commission also provided the parties with an estimation of the range of fines likely to be imposed by the Commission.
- (22) Each party was given the opportunity of expressing their views on the objections which the Commission envisaged raising against it. The comments of the parties were carefully considered by the Commission and taken into account where justified.
- (23) At the end of the settlement discussions, all parties considered that there was sufficient common understanding between them and the Commission regarding the

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<sup>10</sup> 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 of 4.1.2003, p. 1).

<sup>11</sup> OJ C 167, 2.7.2008, p. 1.

potential objections and regarding the range of likely fines to continue the settlement process.

- (24) On [...], the parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (the "settlement submissions"). The settlement submission of each party contained:
- an acknowledgement in clear and unequivocal terms of the party's liability for each of the two infringements describing briefly its object, the main facts, their legal qualification, including the party's role and the duration of its participation in the infringements in accordance with the results of the settlement discussions;
  - an indication of the maximum amount of the fine the party expects the Commission to impose and which it would accept in the context of a settlement procedure;
  - a confirmation that the party has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
  - a confirmation that the party does not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the statement of objections and the decision;
  - the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.
- (25) Each party made its settlement submission conditional upon the imposition of a fine by the Commission which does not exceed the amount specified in that settlement submission.
- (26) On 10 January 2019, the Commission adopted a statement of objections addressed to the parties. All of the parties replied to the statement of objections by confirming that it reflected the contents of their settlement submissions and that they remained committed to following the settlement procedure.
- (27) Having regard to the clear and unequivocal acknowledgments of the parties given in their settlement submissions and to their clear and unequivocal confirmation that the statement of objections reflected their settlement submissions, the Commission concludes that the addressees of this Decision should be held liable for the infringements described in this Decision.

#### **4. DESCRIPTION OF THE CONDUCT**

##### **4.1. Nature, scope and duration of the conduct**

- (28) The present case comprises two single and continuous infringements which concerned the supply of certain types of OSS (namely certain seatbelts, airbags

and/or steering wheels) to the VW and BMW Groups. These infringements consisted principally in exchanging commercially sensitive information but, in some instances, also extended to more concrete forms of coordination between or among AUTOLIV, TAKATA and TRW concerning supplies of certain seatbelts, airbags and/or steering wheels to: (i) the VW Group (Infringement I) and (ii) the BMW Group (Infringement II).

- (29) The overall aim of Infringement I was to maintain the status quo for some of the parties' existing business with the VW Group and, at times, to resist the VW Group's requests to reduce prices, for example when the VW Group asked for quotes for the re-sourcing of previously awarded business regarding specific OSS.
- (30) The overall aim of Infringement II was to reduce uncertainty as to the parties' individual strategies in their negotiations with the BMW Group and, at times, to resist the BMW Group's requests to reduce prices, in particular during annual price negotiations.
- (31) The aims of the infringements were mainly pursued by exchanging commercially sensitive information related to pricing elements.
- (32) On some occasions there was a discussion between or among the parties to try to find an agreed outcome. Although in many cases the parties were unable to reach a specific agreement or did not respect the arrangements reached, a common intention to restrict competition with respect to the relevant supplies of OSS to the VW or BMW Group governed the discussions.
- (33) The timing of the collusive contacts had a connection to the relevant business cycles. The contacts had a varied frequency in the course of the overall duration of the conduct, and generally intensified when specific RFQs and/or other requests for price reductions were launched by the VW or BMW Group.

#### 4.1.1. *Infringement I: supply of certain OSS to the VW Group*

- (34) The infringement consisted of bilateral, and in some cases trilateral, contacts between AUTOLIV, TAKATA and TRW. The parties colluded by exchanging certain commercially sensitive information and, in some instances, coordinating or attempting to coordinate on (i) responses to certain RFQs for the (re-)sourcing of OSS for certain car models or vehicle platforms<sup>12</sup>, (ii) responses to the VW Group's periodical requests for price reviews and cost reductions<sup>13</sup>, (iii) certain development costs and/or other pricing elements<sup>14</sup>, and/or (iv) prices for materials and compensation for raw material price increases<sup>15</sup>. The contacts took place via e-mail exchanges, face to face meetings or telephone conversations.

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<sup>12</sup> See for example [...]

<sup>13</sup> See for example [...]

<sup>14</sup> See for example [...]

<sup>15</sup> See for example [...]

- (35) As regards duration, the evidence demonstrates that Infringement I started on 4 January 2007 when the parties met in Nuremberg<sup>16</sup>.
- (36) Based on the available evidence, the infringement ended:
- for TRW on 28 March 2011, the date of an exchange of information with AUTOLIV regarding a specific platform<sup>17</sup>;
  - for AUTOLIV and TAKATA on 30 March 2011 when the parties discussed possible price increases for compensation due to raw material cost increases<sup>18</sup>.

#### 4.1.2. *Infringement II: supply of certain OSS to the BMW Group*

- (37) The infringement consisted of bilateral, and in some cases trilateral, contacts between AUTOLIV, TAKATA and TRW. The parties colluded by exchanging certain commercially sensitive information and, in some instances, by coordinating or attempting to coordinate on (i) pricing information, including in the context of certain RFQs for the (re-)sourcing of OSS for certain car models or vehicle platforms<sup>19</sup>, (ii) the BMW Group's periodical requests for price reviews and cost reductions<sup>20</sup>, and/or (iii) prices for materials and compensation for raw material price increases<sup>21</sup>. The contacts took place via e-mail exchanges, face to face meetings or phone conversations.
- (38) As regards duration, the evidence demonstrates that Infringement II started on 28 February 2008 for TAKATA and AUTOLIV when the two parties exchanged an e-mail about an annual price reduction request from BMW<sup>22</sup>. TRW's participation started on 5 June 2008, date of a telephone call with AUTOLIV in which TRW informed AUTOLIV about its withdrawal from an ongoing RFQ<sup>23</sup>.
- (39) Based on the available evidence, the infringement ended:
- for AUTOLIV on 16 September 2010, the date of a trilateral meeting in Munich<sup>24</sup>.
  - for TAKATA and TRW on 17 February 2011, the date of a TAKATA telephone call with TRW regarding price reduction negotiations with BMW<sup>25</sup>.

## 4.2. **Geographic scope of the conduct**

- (40) The geographic scope of each of the two infringements was the European Economic Area ('EEA') throughout the respective relevant periods. Although the infringements

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<sup>16</sup> See [...]

<sup>17</sup> See [...]

<sup>18</sup> See [...]

<sup>19</sup> See for example [...]

<sup>20</sup> See for example [...]

<sup>21</sup> See for example [...]

<sup>22</sup> See [...]

<sup>23</sup> See [...]

<sup>24</sup> See [...]

<sup>25</sup> See [...]

were initiated in Germany and most of the anticompetitive contacts took place in Germany, the contacts themselves concerned the supply of certain OSS to the VW or BMW Groups which have production facilities throughout the EEA and related to sales covering at least the entire territory of the EEA<sup>26</sup>.

## 5. LEGAL ASSESSMENT

(41) The legal assessment set out in this Section takes into account the facts and the body of evidence as described in Section 4, the parties' clear and unequivocal acknowledgement of those facts and the legal qualification thereof in their settlement submissions, as well as the parties' replies to the statement of objections.

### 5.1. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

#### 5.1.1. Agreements and concerted practices

##### 5.1.1.1. Principles

(42) Article 101 of the Treaty prohibits *agreements* between undertakings, decisions by associations of undertakings and *concerted practices* which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

(43) Article 53(1) of the EEA Agreement, which is modelled on Article 101(1) of the Treaty, contains a similar prohibition. However the reference in Article 101(1) to trade "between Member States" is replaced by a reference to trade "between contracting parties" and the reference to competition "within the common market" is replaced by a reference to competition "within the territory covered by the EEA Agreement".

(44) An *agreement* under Article 101 of the Treaty and Article 53 of the EEA Agreement may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of *concerted practice* and that of *agreements between undertakings*, the objective is to bring within the scope of the prohibition of those Articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Thus, conduct may fall under Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt

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<sup>26</sup> See [...]

or adhere to collusive devices which facilitate the coordination of their commercial behaviour<sup>27</sup>.

- (45) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement preclude any direct or indirect contact between economic operators of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates adopting, on the market, where the object or effect of those contacts is to restrict competition<sup>28</sup>.
- (46) The concepts of *agreement* and *concerted practice* are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It is not necessary to define exactly whether a certain conduct constitutes an agreement or a concerted practice as long as it is established that the infringement involved anti-competitive agreements or concerted practices, and that the participating undertakings intended to contribute by their own conduct to the common objectives pursued by all the participants and were aware of the actual conduct planned or put into effect by the other undertakings in pursuit of the same objectives or could reasonably have foreseen it and were prepared to take the risk<sup>29</sup>.

#### 5.1.1.2. Application in this Decision

- (47) For each of the two infringements, it emerges from the facts described in Section 4 that the relevant parties exchanged certain commercially sensitive information and in some instances coordinated or attempted to coordinate on prices, which constituted agreements or concerted practices, whereby the undertakings knowingly substituted practical co-operation between them for the risks of competition.
- (48) Based on the submissions of the parties and the other evidence obtained during the course of the Commission's investigation, the Commission has therefore reached the conclusion that each of the two sets of conduct referred to in Section 4 concerning, on the one hand, the VW Group, and on the other hand, the BMW Group, presents all the characteristics of an agreement or concerted practice, or both, within the meaning of Article 101(1) of the Treaty as well as Article 53(1) of the EEA Agreement, which had the objective of preventing, restricting and/or distorting competition in respect of the supply of OSS products for certain passenger cars supplied to companies belonging to the VW Group and to the BMW Group.

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<sup>27</sup> Case T-7/89, *Hercules v Commission*, ECLI:EU:T:1991:75, para. 256 | Case 48/69, *Imperial Chemical Industries v Commission*, ECLI:EU:C:1972:70, para. 64 | Joined Cases 40-48/73, *Suiker Unie and Others v Commission*, ECLI:EU:C:1975:174, paras. 173-174.

<sup>28</sup> Case T-396/10, *Zucchetti v Commission*, ECLI:EU:T:2013:446, para. 56 and case law cited therein.

<sup>29</sup> Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paras. 81-87.

## 5.1.2. *Single and continuous infringement*

### 5.1.2.1. Principles

- (49) An infringement of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from a continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an ‘overall plan’, because their identical object distorts competition within the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole<sup>30</sup>.
- (50) An undertaking that has participated in such a single and complex infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anti-competitive object for the purposes of Article 101(1) of the Treaty and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participating undertakings and that it was aware of the anti-competitive conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk<sup>31</sup>.
- (51) An undertaking may thus have participated directly in all the aspects of anti-competitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anti-competitive conduct comprising a single infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole<sup>32</sup>.
- (52) On the other hand, if an undertaking has directly taken part in one or more of the aspects of anti-competitive conduct comprising a single infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel and that it was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it

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<sup>30</sup> Joined Cases C-204/00 etc., *Aalborg Portland et al.* ECLI:EU:C:2004:6, para. 258.

<sup>31</sup> Case C-441/11 P, *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, para. 42.

<sup>32</sup> Case C-441/11 P *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, para. 43.



participated directly and the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk<sup>33</sup>.

#### 5.1.2.2. Application in this Decision

- (53) Based on the submissions of the parties and the other evidence obtained during the course of the Commission's investigation, the Commission considers that for each of the two infringements referred to in Section 4, the conduct in question constitutes a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (54) In Infringement I, namely the supply of certain OSS to the VW Group, the evidence on file shows that AUTOLIV, TAKATA and TRW engaged in anticompetitive practices which formed part of an overall plan pursuing the common objective, which remained the same during the whole of the infringement, of maintaining the status quo for some of the parties' existing business with the VW Group; at times, resisting the VW Group's requests to reduce prices; and in certain cases coordinating their replies for certain (re-)sourcings. To achieve this aim, the parties exchanged certain commercially sensitive information related to pricing elements and on some occasions sought to find or reached an agreed outcome. The single and continuous nature of the infringement is demonstrated by a clear continuity of: the meetings and other contacts; the individuals involved; and the modalities of the infringing behaviour. The parties were aware of each of the other parties' participation in the infringement and the general characteristics of the infringement as they attended trilateral meetings<sup>34</sup> or reported back on information obtained during bilateral contacts<sup>35</sup>.
- (55) In Infringement II, namely the supply of certain OSS to the BMW Group, the evidence on file shows that AUTOLIV, TAKATA and TRW engaged in anticompetitive practices which formed part of an overall plan pursuing the common objective, which remained the same during the whole of the infringement, of reducing uncertainty as to their individual strategies in negotiations with the BMW Group; at times, resisting the BMW Group's requests to reduce prices; as well as in certain cases coordinating or attempting to coordinate their replies for certain (re-)sourcings. To achieve this aim, the parties exchanged certain commercially sensitive information related to pricing elements and on some occasions sought to find or reached an agreed outcome. The single and continuous nature of the infringement is demonstrated by a clear continuity of: the meetings and other contacts; the individuals involved; and the modalities of the infringing behaviour. The parties were aware of each other's participation in the infringement as they attended bilateral and trilateral meetings<sup>36</sup>.

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<sup>33</sup> Case C-441/11 P *Commission v Verhuizingen Coppens* ECLI:EU:C:2012:778, para. 44.

<sup>34</sup> See [...]

<sup>35</sup> See [...]

<sup>36</sup> See [...]

### 5.1.3. Restriction of competition

#### 5.1.3.1. Principles

- (56) To come within the prohibition laid down in Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.
- (57) In that regard, it is apparent from the case-law of the Court of Justice of the European Union (the ‘Court’) that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects<sup>37</sup>. That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition<sup>38</sup>. Article 101 of the Treaty is intended to not only the interests of competitors or consumers, but also the structure of the market and thus competition as such<sup>39</sup>.
- (58) Consequently, certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, is so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purpose of applying Article 101(1) of the Treaty, to prove that it has actual effects on the market<sup>40</sup>.

#### 5.1.3.2. Application in this Decision

- (59) Based on the submissions of the parties and the other evidence obtained during the course of the Commission's investigation, in each of the two infringements, the relevant competitors exchanged commercially sensitive information and, in some instances, coordinated their behaviour to reduce uncertainty between themselves in relation to the supply of specific OSS components in the EEA.
- (60) Therefore, the object of the parties' behaviour in each of the two infringements was to restrict competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

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<sup>37</sup> Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, para. 49 | Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, para. 113.

<sup>38</sup> Joined Cases 56/64 and 58/64, *Consten and Grundig v Commission*, ECLI:EU:C:1966:41. | Joined Cases 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, *Limburgse Vinyl Maatschappij and Others v Commission*, ECLI:EU:C:2002:582, para. 508 | Case C-389/10 P, *KME Germany and Others v Commission*, ECLI:EU:C:2011:816, para. 75 | Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, para. 50 | Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, para. 114.

<sup>39</sup> Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, *GlaxoSmithKline Services and Others v Commission and Others*, ECLI:EU:C:2009:610, para. 63.

<sup>40</sup> Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, para. 51 | Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, para. 115.

#### 5.1.4. *Effect upon trade between Member States and Contracting Parties to the EEA Agreement*

##### 5.1.4.1. Principles

(61) Article 101(1) of the Treaty prohibits agreements and concerted practices which might harm unfettered competition in the Union or the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53(1) of the EEA Agreement prohibits agreements that undermine the achievement of a homogeneous EEA between the Contracting Parties to the EEA Agreement<sup>41</sup>.

##### 5.1.4.2. Application in this Decision

(62) For each of the two separate infringements, the relevant OSS components were supplied to production facilities of the relevant OEMs across the EEA. Significant cross-border trade within the EEA and also supplies into several EEA countries took place.

(63) The application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement to a cartel is not, however, limited to that part of the participants' sales that actually involves the transfer from one Member State to another. Nor is it necessary, in order for those provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States.

(64) In this Decision, each of the infringements concerned the whole EEA and the relevant OSS components were supplied to production facilities of the relevant car manufacturers across the EEA, thereby involving a substantial volume of trade between Member States as well as supplies into several countries in the EEA. Each of the two infringements was therefore capable of having an appreciable effect upon trade between Member States and between the Contracting Parties to the EEA Agreement within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

#### 5.1.5. *Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement*

##### 5.1.5.1. Principles

(65) The provisions of Article 101 of the Treaty and Article 53 of the EEA-Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA-Agreement, respectively, where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives and does not afford the undertakings concerned the

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<sup>41</sup> Joined Cases T-25/95 a.o., *Cement*, ECLI:EU:T:2000:77, para. 3930; Case C-306/96, *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, ECLI:EU:C:1998:173, paras. 16-17.

possibility of eliminating competition in respect of a substantial part of the products in question..

#### 5.1.5.2. Application in this Decision

- (66) There is no indication that the parties' behaviour entailed any efficiency benefits or otherwise promoted technical or economic progress. Complex infringements amounting to secretly organised exchanges of commercially sensitive information and/or price coordination between competitors are, by definition, among the most detrimental restrictions of competition. They do not benefit consumers.
- (67) Therefore, the conditions for the exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement have not been met in respect of either of the two infringements.

## 6. LIABILITY

### 6.1. Principles

- (68) Union/EEA competition law refers to the activities of undertakings and the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed<sup>42</sup>.
- (69) When such an entity infringes competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement. The conduct of the subsidiary can be imputed to the parent company where the parent company exercises a decisive influence over it, namely where that subsidiary does not decide independently upon its own conduct on the market but carries out, in all material respects, the instructions given to it by the parent company. In effect, as the controlling company in the undertaking, the parent is deemed to have itself committed the infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement<sup>43</sup>.
- (70) The Commission cannot merely find that a legal entity is able to exert decisive influence over another legal entity, without checking whether that influence was actually exerted. On the contrary, it is, as a rule, for the Commission to demonstrate such decisive influence on the basis of factual evidence, including, in particular, any management power one of the legal entities may have over the other<sup>44</sup>.

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<sup>42</sup> Case C-511/11 P, *Versalis v Commission*, ECLI:EU:C:2013:386, para. 51.

<sup>43</sup> Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, para. 61 | Case C-521/09 P, *Elf Aquitaine v Commission*, ECLI:EU:C:2011:620, paras. 57 and 63 | Joined cases C-628/10 P and C-14/11 P, *Alliance One International and Standard Commercial Tobacco v Commission* and *Commission v Alliance One International and Others*, ECLI:EU:C:2012:479, paras. 43 and 46 | Case C-508/11 P, *ENI v Commission*, ECLI:EU:C:2013:289, para. 47 | Case C-286/98 P, *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:C:2000:630, para. 29 | Case T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, para.77 | Case C-440/11 P, *Commission v Stichting Administratiekantor Portielje*, ECLI:EU:C:2013:514, para. 41.

<sup>44</sup> Joined Cases T-56/09 and T-73/09 *Saint-Gobain Glass France and others v Commission*, ECLI:EU:T:2014:160, para. 311.

- (71) However, in particular in those cases where one parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of the Union/EEA competition rules, there is a rebuttable presumption that that parent company in fact does exercise a decisive influence over its subsidiary. In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies<sup>45</sup>.
- (72) In addition, when an entity which has committed an infringement of the competition rules is subject to a legal or organisational change, this change does not necessarily create a new undertaking free of liability for the conduct of its predecessor which infringed the competition rules, when, from an economic point of view, the two entities are identical. Where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not as such preclude imposing a penalty on the entity to which its economic activities were transferred. In particular, applying penalties in this way is permissible where those entities have been under the control of the same person and have, therefore, given the close economic and organisational links between them, carried out, in all material respects, the same commercial instructions<sup>46</sup>.
- (73) Where several legal entities may be held liable for the participation in an infringement of one and the same undertaking, they must be regarded as jointly and severally liable for that infringement.

## **6.2. Application in this Decision**

- (74) Having regard to the body of evidence and the facts set out in Section 4, and in the light of the parties' clear and unequivocal acknowledgement of those facts and their legal qualification in their settlement submissions, as well as the parties' replies to the statement of objections, liability for the infringements g resulting from the conduct referred to in Section 4, should be imputed to the undertakings concerned consisting of the following legal entities, as referred to in recitals (75) to (85).

### *6.2.1. AUTOLIV*

- (75) For both Infringements I and II, AUTOLIV participated directly in the conduct. The following legal entities should be held liable for both infringements:
- (1) Autoliv, Inc.;
  - (2) Autoliv B.V. & Co. KG.
- (76) Autoliv B.V. & Co. KG directly participated in the conduct and clearly and unequivocally acknowledged liability for its direct participation. During the periods of the infringements, Autoliv B.V. & Co. KG was wholly owned by the ultimate parent company of the group, Autoliv, Inc. Therefore, Autoliv, Inc. is presumed to

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<sup>45</sup> Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, para. 60.

<sup>46</sup> Case C-434/13 P, *Commission v Parker Hannifin Manufacturing and Parker-Hannifin*, ECLI:EU:C:2014:2456, paras. 40-41.

have exercised decisive influence over Autoliv B.V. & Co. KG. Autoliv, Inc. clearly and unequivocally acknowledged, as well, liability for the conduct of its subsidiary.

- (77) Liability for Infringements I and II should therefore be imputed jointly and severally to Autoliv B.V. & Co. KG, for its direct involvement, and Autoliv, Inc. as parent company of Autoliv B.V. & Co. KG.

#### 6.2.2. *TAKATA*

- (78) For both Infringements I and II, TAKATA directly participated in the conduct. The following legal entities should be held liable for both infringements:

- (1) TKJP Corporation (formerly Takata Corporation);
- (2) TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft).

- (79) Takata Aktiengesellschaft (renamed TB Deu Abwicklungs-Aktiengesellschaft i.L.) directly participated in the conduct. TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft) clearly and unequivocally acknowledged, as well, liability for its direct participation.

- (80) During the period of the infringements, Takata Aktiengesellschaft (renamed TB Deu Abwicklungs-Aktiengesellschaft i.L.) was wholly owned by the ultimate parent company of the group, Takata Corporation (renamed TKJP Corporation). Therefore, Takata Corporation (renamed TKJP Corporation) is presumed to have exercised decisive influence over Takata Aktiengesellschaft (renamed TB Deu Abwicklungs-Aktiengesellschaft i.L.). TKJP Corporation (formerly Takata Corporation) clearly and unequivocally acknowledged, as well, liability for the conduct of its subsidiary.

- (81) Liability for Infringements I and II should therefore be imputed jointly and severally to TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft) for its direct involvement, and TKJP Corporation (formerly Takata Corporation) as parent company of Takata Aktiengesellschaft.

#### 6.2.3. *TRW*

- (82) For both Infringements I and II, TRW directly participated in the conduct. The following legal entities should be held liable for both infringements:

- (1) ZF TRW Automotive Holdings Corp., formerly TRW Automotive Holdings Corp.;
- (2) TRW Automotive Safety Systems GmbH;
- (3) TRW Automotive GmbH.

- (83) TRW Automotive Safety Systems GmbH and TRW Automotive GmbH directly participated in the conduct. Both those entities clearly and unequivocally acknowledged liability for their respective direct participation in the infringements.

- (84) During the period of the infringements, TRW Automotive Safety Systems GmbH and TRW Automotive GmbH were subsidiaries wholly owned by the ultimate parent

company of the group, TRW Automotive Holdings Corp. (renamed ZF TRW Automotive Holdings Corp.) which is therefore presumed to have exercised decisive influence over TRW Automotive Safety Systems GmbH and TRW Automotive GmbH. ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.) clearly and unequivocally acknowledged, as well, liability for the conduct of both its subsidiaries.

- (85) Liability for Infringements I and II should therefore be imputed jointly and severally to TRW Automotive Safety Systems GmbH and TRW Automotive GmbH (for their direct participation) and ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.) (as parent company of TRW Automotive Safety Systems GmbH and TRW Automotive GmbH).

## 7. DURATION OF THE PARTICIPATION OF THE PARTIES IN THE INFRINGEMENTS

- (86) Having regard to the evidence set out in Section 4, the following Table 1 sets out the duration of the participation of each party in the infringements:

**Table 1 – Duration of participation in the infringements**

<b>Infringement</b>	<b>Party</b>	<b>START</b>	<b>END</b>
<b>I</b>	<b>AUTOLIV</b>	4/01/2007	30/03/2011
	<b>TAKATA</b>	4/01/2007	30/03/2011
	<b>TRW</b>	4/01/2007	28/03/2011
<b>II</b>	<b>AUTOLIV</b>	28/02/2008	16/09/2010
	<b>TAKATA</b>	28/02/2008	17/02/2011
	<b>TRW</b>	5/06/2008	17/02/2011

## 8. REMEDIES

### 8.1. Article 7 of Regulation (EC) No 1/2003

- (87) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (88) Given the secrecy in which cartel arrangements are usually carried out and the gravity of such infringements, it is appropriate for the Commission to require the undertakings to which this Decision is addressed to bring the infringements to an end, if they have not already done so, and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

## 8.2. Article 23(2) of Regulation (EC) No 1/2003

- (89) Pursuant to Article 23(2) of Regulation (EC) No 1/2003<sup>47</sup>, the Commission may by decision impose fines on undertakings where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement. For each undertaking participating in an infringement, the fine must not exceed 10% of its total turnover in the preceding business year.
- (90) On the basis of the facts set out in Section 4, the Commission considers that both infringements were committed intentionally.
- (91) Fines should therefore be imposed on the undertakings concerned for each of the infringements for which the Commission holds them liable.
- (92) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fines, have regard both of the gravity and the duration of each infringement. In determining the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003<sup>48</sup> (“Guidelines on fines”).
- (93) Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

## 8.3. Calculation of the fines

- (94) In accordance with the Guidelines on fines, for each of the two infringements, a basic amount is to be determined for each undertaking's fine, which results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year which is normally, the last full business year of the infringement, multiplied by the number of years the undertaking participated in the infringement<sup>49</sup>. The additional amount is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement<sup>50</sup>. The resulting basic amount can then be increased or reduced for each undertaking if there are either aggravating or mitigating circumstances<sup>51</sup>.
- (95) The Commission may depart from the methodology set out in the Guidelines on fines where this is justified by the particularities of a given Decision or the need to achieve deterrence in a particular Decision<sup>52</sup>.

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<sup>47</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area (OJ L 305, 30.11.1994, p. 6) “the Community rules giving effect to the principles set out in Articles 85 and 86 of the EC Treaty [now Articles 101 and 102 TFEU] (...) shall apply *mutatis mutandis*”.

<sup>48</sup> OJ C 210, 1.9.2006, p. 2

<sup>49</sup> Points 21 and 24 of the Guidelines on fines.

<sup>50</sup> Point 25 of the Guidelines on fines.

<sup>51</sup> Points 28 and 29 of the Guidelines on fines.

<sup>52</sup> Point 37 of the Guidelines on fines.



### 8.3.1. *The value of sales*

- (96) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales<sup>53</sup>, that is the value of the undertakings' sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area in the EEA.
- (97) The Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement<sup>54</sup>. If the last full business year is not sufficiently representative, the Commission may take into account another full business year or other full business years for the determination of the value of sales.
- (98) The relevant values of sales are:
- in Infringement I, the values of sales of seatbelts, airbags and steering wheels to the VW Group in the EEA;
  - in Infringement II, the values of sales of seatbelts, airbags and steering wheels to the BMW Group in the EEA.
- (99) In the light of the considerable volatility of the parties' sales during the infringement period, the Commission considers it appropriate to calculate the applicable value of sales on the basis of the parties' average yearly sales during the infringement period rather than on the basis of the sales generated during the last full business year of their participation in the infringements<sup>55</sup>.
- (100) Accordingly, the values of sales for each party, for each infringement, are as set out in Tables 2 and 3, as follows:

**Table 2 – Value of sales in Infringement I (OSS to the VW Group):**

Infringement	Undertaking	Value of Sales (EUR)
I	AUTOLIV	[300 000 000 – 350 000 000]
	TAKATA	[180 000 000 – 220 000 000]
	TRW	[450 000 000 – 550 000 000]

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<sup>53</sup> Point 12 of the Guidelines on fines.

<sup>54</sup> Point 13 of the Guidelines on fines.

<sup>55</sup> For the determination of the yearly average value of sales of AUTOLIV in Infringement I, the value of sales corresponding to the period of partial immunity granted to AUTOLIV ([...], see point 8.5.1.2.) was not considered.

**Table 3 – Value of sales in Infringement II (OSS to the BMW Group):**

Infringement	Undertaking	Value of Sales (EUR)
II	AUTOLIV	[160 000 000 – 200 000 000]
	TAKATA	[80 000 000 – 100 000 000]
	TRW	[110 000 000 – 140 000 000]

(101) Each party has, in its settlement submission, confirmed the relevant values of sales for the calculation of the fine in respect of each infringement.

### 8.3.2. *Determination of the basic amount of the fines*

(102) The basic amount of the fine consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of each infringement and multiplied by the number of years of the undertaking's participation in each infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of the duration of the infringement<sup>56</sup>.

#### 8.3.2.1. Gravity

(103) In order to determine the proportion of the value of sales to be taken into account in an infringement, the Commission takes a number of factors into account, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.

(104) Price coordination and exchanges of commercially sensitive information between competitors are, by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements is set at the higher end of the scale<sup>57</sup>.

(105) The Commission also takes into account the fact that each infringement concerned the entire EEA.

(106) Therefore, the proportion of the value of sales to be taken into account should be 16% for each infringement.

#### 8.3.2.2. Duration

(107) In calculating the fine to be imposed, the duration of each party's participation in the respective infringements, as described in Section 7, should also be taken into account. The duration of each party's involvement in the relevant infringement is calculated in days.

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<sup>56</sup> Points 19 to 26 of the Guidelines on fines.

<sup>57</sup> Point 23 of the Guidelines on fines.

- (108) The time period to be taken into account for the purpose of calculating, for each party and for each infringement, the fine and the multiplier corresponding to that period, is set out in Table 4.

**Table 4 – Duration factors:**

Infringement	Undertaking	Factor
I	AUTOLIV	4.23
	TAKATA	4.23
	TRW	4.23
II	AUTOLIV	2.55
	TAKATA	2.97
	TRW	2.70

#### 8.3.2.3. Determination of the additional amount

- (109) The infringements committed concern both price coordination and exchanges of commercially sensitive information between competitors. Therefore, the basic amount of the fines to be imposed should include a sum of between 15% and 25% of the value of sales to deter parties from even entering into such illegal practices<sup>58</sup>.
- (110) In this Decision, for the purpose of determining the proportion of the value of sales to be taken into account for each of the two infringements, the Commission considered the factors relating to the nature and the geographic scope of the infringement set out in recitals (103) to (106). The proportion of the value of sales to be taken into account for the purpose of calculating the additional amount should be 16% for each infringement.

#### 8.3.2.4. Calculation of the basic amount

- (111) In applying the criteria set out in this Section, the basic amounts of the fines to be imposed on each party, for each infringement, are set out in Tables 5 and 6.

**Table 5 – Basic amounts of the fine – Infringement I**

Infringement	Undertaking	Basic Amounts (EUR)
I	AUTOLIV	[250 000 000 – 300 000 000]
	TAKATA	[150 000 000 – 180 000 000]
	TRW	[350 000 000 – 425 000 000]

<sup>58</sup> Point 25 of the Guidelines on fines.

**Table 6 – Basic amounts of the fine – Infringement II**

Infringement	Undertaking	Basic Amounts (EUR)
II	AUTOLIV	[90 000 000 – 110 000 000]
	TAKATA	[50 000 000 – 70 000 000]
	TRW	[70 000 000 – 90 000 000]

### 8.3.3. *Adjustments to the basic amount: aggravating or mitigating factors*

(112) The Commission may increase the basic amount of the fine where there are aggravating circumstances. Those aggravating circumstances are listed non-exhaustively in point (28) of the Guidelines on fines. The Commission may also reduce the basic amount where mitigating circumstances exist. Those mitigating circumstances are listed non-exhaustively in point (29) of the Guidelines on fines.

(113) The Commission does not consider that there are any aggravating or mitigating circumstances relevant for the purposes of this Decision.

## 8.4. **Application of the 10% of turnover limit**

(114) Article 23(2) of Regulation (EC) No 1/2003 provides that the fines imposed on each undertaking which participated in an infringement of Article 101 of the Treaty must not exceed 10% of its total turnover in the preceding business year.

(115) None of the fines calculated in this Decision exceed 10% of the total turnover in 2017 of any of the undertakings.

## 8.5. **Application of the Leniency Notice**

### 8.5.1. *Infringement I – supply of certain OSS to the VW Group*

#### 8.5.1.1. Immunity from fines

(116) TAKATA submitted an application under the Leniency Notice on 24 March 2011 and was granted conditional immunity from fines for Infringement I on 13 May 2011. TAKATA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. TAKATA is therefore granted immunity from fines for Infringement I.

#### 8.5.1.2. Partial immunity

(117) AUTOLIV was the first party to submit compelling evidence, in accordance with point (25) of the Leniency Notice concerning collusive conduct relating to the period [...], that enabled the Commission to include that period in the infringement. In accordance with point (26) of the Leniency Notice, the Commission will not take that period into account when setting the fine to be imposed on AUTOLIV for Infringement I.

### 8.5.1.3. Reduction of fines

- (118) TRW was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement I. On 7 July 2017 the Commission informed TRW of its intention to grant TRW a leniency reduction within the range of 30% to 50% of any fine that would otherwise have been imposed for Infringement I. Pursuant to recital (17), TRW applied for leniency at a very early stage in the procedure, just one day after the end of the inspection and submitted<sup>59</sup> evidence of Infringement I which represents significant added value with respect to the evidence which was already in the Commission's possession. In particular, TRW described the recollection of some of its employees regarding certain contacts with competitors, thus providing further explanations and details of the conduct with respect to the facts already revealed by TAKATA. TRW supported this recollection by providing contemporaneous evidence (internal e-mails, calendar entries, handwritten notes and direct e-mail exchanges) corroborating its participation in the infringement with TAKATA and AUTOLIV. TRW is therefore granted a reduction of 50% of the fine that would otherwise have been imposed for Infringement I.
- (119) AUTOLIV was the second undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement I. On 7 July 2017 the Commission informed AUTOLIV of its intention to grant AUTOLIV a leniency reduction within the range of 20% to 30% of any fine that would otherwise have been imposed for Infringement I. Pursuant to recital (18), AUTOLIV applied for leniency at an early stage in the procedure, one month after having been inspected and submitted<sup>60</sup> evidence of Infringement I which represents significant added value with respect to the evidence already in the Commission's possession. In particular, AUTOLIV described the recollection of some of its employees regarding certain contacts with competitors and provided evidence which was relevant for the Commission to prove the duration and the scope of the infringement. AUTOLIV supported its employees' recollection by providing contemporaneous evidence (internal e-mails, calendar entries, minutes of cartel meetings and direct e-mail exchanges) corroborating its participation in the infringement with TAKATA and TRW. AUTOLIV is therefore granted a reduction of 30% of the fine that would otherwise have been imposed for Infringement I.
- (120) By virtue of the granting of partial immunity, the time period to be taken into account for the purpose of calculating the value of sales and the multiplier corresponding to that period for AUTOLIV and the basic amounts of the fine to be imposed on AUTOLIV, should be as set out in the following Tables 7 and 8, respectively:

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<sup>59</sup> [...]  
<sup>60</sup> [...]

(121) **Table 7: Duration factor for AUTOLIV with partial immunity**

Infringement	Party	Factor
I	AUTOLIV	3.10

(122) **Table 8: Basic amounts of the fine for AUTOLIV with partial immunity**

Infringement	Party	Basic Amounts (EUR)
II	AUTOLIV	[190 000 000 – 230 000 000]

8.5.2. *Infringement II – supply of certain OSS to the BMW Group*

8.5.2.1. Immunity from fines

(123) TAKATA submitted an application under the Leniency Notice on 24 March 2011 and was granted conditional immunity from fines for Infringement II on 13 May 2011. TAKATA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. TAKATA is therefore granted immunity from fines for Infringement II.

8.5.2.2. Reduction of fines

(124) TRW was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement II. On 7 July 2017 the Commission informed TRW of its intention to grant TRW a leniency reduction within the range of 30% to 50% of any fine that would otherwise have been imposed for Infringement II. Pursuant to recital (17) TRW applied for leniency at a very early stage in the investigation, just one day after the end of the inspection and submitted<sup>61</sup> evidence of Infringement II which represents significant added value with respect to the evidence already in the Commission's possession. In particular, TRW provided valuable contemporaneous evidence (internal e-mails, calendar entries, handwritten notes and direct e-mail exchanges) corroborating its participation in the infringement with TAKATA and AUTOLIV. TRW is therefore granted a reduction of 50% of the fine that would otherwise have been imposed for Infringement II.

(125) AUTOLIV was the second undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement II. On 7 July 2017 the Commission informed AUTOLIV of its intention to grant AUTOLIV a leniency reduction within the range of 20% to 30% of any fine that would otherwise have been imposed for Infringement II. Pursuant to recital (18) AUTOLIV applied for leniency at an early stage in the procedure, one month after having been inspected and submitted<sup>62</sup> evidence of Infringement II which represents significant added value with respect to the evidence already in the Commission's possession. In particular, AUTOLIV provided valuable contemporaneous evidence (internal e-mails, minutes of cartel meetings and direct e-mail exchanges) corroborating its participation in the

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<sup>61</sup> [...]

<sup>62</sup> As of [...]

infringement with TAKATA and TRW. AUTOLIV is therefore granted a reduction of 30% of the fine that would otherwise have been imposed for Infringement II.

#### **8.6. Application of the Settlement Notice**

- (126) In accordance with point (32) of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the application of a 10% of turnover limit in accordance with the Guidelines on Fines. Pursuant to point (33) of the Settlement Notice, when settled cases also involve leniency applicants, the reduction of the fine is added to the reduction for those applicants' cooperation under the Leniency Notice.
- (127) Consequently, the amount of the fines to be imposed on each party should be further reduced by 10%.

#### **8.7. Application of point 37 of the Guidelines on Fines**

- (128) Point 37 of the Guidelines on Fines provides that the Commission may depart from the methodology set out in the Guidelines where it is justified by the particularities of a given case. The general principle of Union law that decisions following administrative proceedings relating to competition policy must be adopted within a reasonable time must be respected. The reasonableness of the period, however, depends on the specific circumstances of each case.
- (129) The Commission considers that, given the circumstances of this case, the investigation was carried out within a reasonable period. However, even though the anticompetitive conduct was far from being prescribed under Article 25 of Regulation (EC) 1/2003, the fact that the Commission decided to separate its investigations of the OSS-related infringements into two separate proceedings<sup>63</sup>, led to a total period of investigation which was longer than what it would have been had there been no separation of the investigation. The Commission considers that separation to be an exceptional factor which justifies a reduction of the fine to be imposed on each of the addressees. That consideration is made by the Commission in the exercise of its discretion when setting fines and does not affect the finding that the reasonable time principle was not infringed in this case<sup>64</sup>.
- (130) Consequently, the amount of the fines after leniency and settlement reductions to be imposed on each party should be further reduced by 5%.

#### **8.8. Conclusion: final amount of individual fines to be imposed**

- (131) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in the following Tables 9 and 10:

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<sup>63</sup> See also Commission Decision C(2017) 7670 final of 22.11.2017 in case AT.39881 – *Occupant Safety Systems supplied to Japanese Car Manufacturers while the present Decision concerns Occupants Safety Systems supplied to the VW and BMW Groups*

<sup>64</sup> See T-276/04 *Compagnie Maritime Belge* ECLI:EU:T:2008:237, paragraph 46

**Table 9 - Fines – Infringement I**

Infringement	Undertaking	Amount (EUR)
I	TAKATA	0
	AUTOLIV	121 211 000
	TRW	158 824 000

**Table 10 – Fines – Infringement II**

Infringement	Undertaking	Amount (EUR)
II	TAKATA	0
	AUTOLIV	58 175 000
	TRW	30 067 000

HAS ADOPTED THIS DECISION:

*Article 1*

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated in this Article, in a single and continuous infringement covering the whole of the European Economic Area consisting of the exchange of certain commercially sensitive information and in some instances price coordination concerning the sale of certain occupants safety systems for passengers cars to the Volkswagen Group:

- (a) TKJP Corporation (formerly Takata Corporation) and TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft), from 4 January 2007 to 30 March 2011;
- (b) Autoliv, Inc. and Autoliv B.V. & Co. KG, from 4 January 2007 to 30 March 2011;
- (c) ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.), TRW Automotive Safety Systems GmbH and TRW Automotive GmbH, from 4 January 2007 to 28 March 2011.

*Article 2*

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated in this Article, in a single and continuous infringement covering the whole of the European Economic Area consisting of the exchange of certain commercially sensitive information and in some instances price coordination concerning the sale of certain occupants safety systems for passengers cars to the BMW Group:



- (a) TKJP Corporation (formerly Takata Corporation) and TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft), from 28 February 2008 to 17 February 2011;
- (b) Autoliv, Inc. and Autoliv B.V. & Co. KG, from 28 February 2008 to 16 September 2010; and
- (c) ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.), TRW Automotive Safety Systems GmbH and TRW Automotive GmbH, from 5 June 2008 to 17 February 2011.

### *Article 3*

- (1) For the infringement referred to in Article 1, the following fines are imposed:
  - (a) on TKJP Corporation (formerly Takata Corporation) and TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft), jointly and severally, the sum of EUR 0;
  - (b) on Autoliv, Inc. and Autoliv B.V. & Co KG., jointly and severally, the sum of EUR 121 211 000 ;
  - (c) on ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.), TRW Automotive Safety Systems GmbH and TRW Automotive GmbH, jointly and severally, the sum of EUR 158 824 000.
- (2) For the infringement referred to in Article 2, the following fines are imposed:
  - (a) on TKJP Corporation (formerly Takata Corporation) and TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft), jointly and severally, the sum of EUR 0;
  - (b) on Autoliv, Inc. and Autoliv B.V. & Co. KG, jointly and severally, the sum of EUR 58 175 000;
  - (c) on ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.), TRW Automotive Safety Systems GmbH and TRW Automotive GmbH, jointly and severally, the sum of EUR 30 067 000.

The fines shall be credited, in euro, within three months of the date of notification of this Decision to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT

1–2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref.: European Commission – BUFI/AT.40481

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Articles 1 or 2 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>65</sup>.

#### *Article 4*

The undertakings listed in Articles 1 and 2 shall immediately bring to an end the infringements referred to in those Articles insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Articles 1 and 2, and from any act or conduct having the same or similar object or effect.

#### *Article 5*

This Decision is addressed to:

TKJP Corporation (formerly Takata Corporation),  
2-3-9 Shiba, Minato-ku, Tokyo, Japan

TB Deu Abwicklungs-Aktiengesellschaft i.L. (formerly Takata Aktiengesellschaft),  
Bahnweg 1, 63743 Aschaffenburg, Germany

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<sup>65</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 of 30.7.2018).

Autoliv, Inc.,  
1209 Orange Street, City of Wilmington, County of Newcastle, State of Delaware, U.S.A.

Autoliv B.V. & Co. KG,  
Otto-Hahn-Straße 4, 25337 Elmshorn, Germany

ZF TRW Automotive Holdings Corp. (formerly TRW Automotive Holdings Corp.),  
12001 Tech Center Drive, Livonia, Michigan 48150, United States of America

TRW Automotive Safety Systems GmbH,  
Hefner-Alteneck-Straße 11, 63473 Aschaffenburg, Germany;

TRW Automotive GmbH,  
Industriestraße 20, 73553 Alfdorf, Germany.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 5.3.2019

*For the Commission*  
*Margrethe VESTAGER*  
*Member of the Commission*

