EUROPEAN COMMISSION
Competition DG

CASE AT.40760-Hand grenades

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 21/09/2023

EUROPEAN
COMMISSION

Brussels, 21.9.2023
C(2023) 6290 final

COMMISSION DECISION

of 21.9.2023

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

AT.40760 – HAND GRENADES

(Text with EEA relevance)

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AT.40760 – HAND GRENADES

(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[1], 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[2], and in particular Article 10a thereof,

Having regard to the Commission decision of 18 January 2023 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,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

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1 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 two sets of provisions are, in substance, identical. Pursuant to Article 5(3) of the Treaty of Lisbon, references in legal acts to Articles 81 and 82 of the EC Treaty are to be understood as references to Articles 101 and 102 of the Treaty when appropriate.

2 OJ L 123, 27.4.2004, p. 18.

1. INTRODUCTION

(1) This Decision relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the EEA Agreement (the "EEA Agreement"). The infringement consisted in the allocation of national markets between the two addressees of this Decision for the sale of military hand grenades ("hand grenades"). This also included exchange of competitively sensitive information. The infringement lasted from 7 November 2007 to 23 November 2021 and covered the European Economic Area ("EEA").

(2) This Decision is addressed to the following legal entities:

(a) SwissP Defence AG (formerly RUAG Ammotec AG), located in Thun, Switzerland, and RUAG International Holding AG, located in Bern, Switzerland, (together referred to as "**RUAG**")

(b) Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG), located in Überlingen, Germany, and Diehl Stiftung & Co. KG, located in Nürnberg, Germany, (together referred to as "**Diehl**").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

(3) The product concerned by the anticompetitive conduct are hand grenades.

(4) Hand grenades can be 'offensive' and 'defensive', they have different explosive power and different splinter effects. Both offensive and defensive hand grenades for military purposes are covered by these proceedings.

(5) Suppliers of hand grenades are usually selected on the basis of open tenders. Competent national authorities, such as the ministries of defence, the military or special forces or other state authorities typically invite suppliers (that can be both domestic and foreign suppliers) to participate in tenders for hand grenades. Such tenders take place only every few years. The specifications in these tenders often determine the type or specification of hand grenade the customers will procure for a longer period of time. Moreover, there are also instances when the national authorities address a direct request for an offer to a supplier of hand grenades under specific provisions of national public procurement rules.

2.2. Undertakings subject to the present proceedings

(6) The following undertakings comprising the legal entities mentioned below were involved in the relevant conduct:

2.2.1. The undertaking RUAG

(7) During the period of the infringement RUAG was active in different business segments including aerospace as well as defence and law enforcement. RUAG Ammotec AG focused on the area of defence and law enforcement and in this context, it developed, produced and supplied ammunition and hand grenades. RUAG's total worldwide turnover in 2022 was EUR 941 409 000.

(8) The relevant legal entities for the purpose of these proceedings are:

(a) SwissP Defence AG (formerly RUAG Ammotec AG),[3]

(b) RUAG International Holding AG.

2.2.2. The undertaking Diehl

(9) Diehl is active in the following business segments: metal, controls for household appliances, aviation, metering and defence. Diehl Defence produces, among others, military equipment, weaponry and ammunition. Diehl's total worldwide turnover in 2022 was EUR 3 505 676 000.

(10) The relevant legal entities for the purpose of these proceedings are:

(a) Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG),

(b) Diehl Stiftung & Co. KG.

3. PROCEDURE

(11) On 15 April 2021, RUAG applied for immunity from fines under points (14) and (15) of the Commission notice on immunity from fines and reduction of fines in cartel cases[4] ("the Leniency Notice"). The application was followed by a number of submissions consisting of corporate statements and documentary evidence. On 12 November 2021, the Commission granted RUAG conditional immunity from fines pursuant to point (18) of the Leniency Notice.

(12) Between 23 November and 25 November 2021, the Commission carried out an unannounced inspection at the premises of Diehl.

(13) On 24 February 2022, Diehl applied for immunity from fines under point (14) of the Leniency Notice or, in the alternative, for a reduction of fines under point (27) of the Leniency Notice.

(14) On 18 January 2023, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003[5] against the addressees of this Decision (also referred to as "Parties" or individually "Party") with a view to engage in settlement discussions with the Parties. After each Party had confirmed its willingness to engage in settlement discussions, the discussions started in February 2023.

(15) Between February and May 2023, settlement meetings took place between the Commission and each Party. During those meetings, the Commission informed the Parties of the objections it envisaged raising against them and disclosed the main pieces of evidence in the file on which the Commission would rely to establish these objections. The Parties were given copies of the relevant pieces of evidence in the file and a list of all the documents in the file. They were also granted access to the corporate statements via eLeniency. The Commission also provided the Parties with an estimation of the range of fines likely to be imposed by the Commission.

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[3] In July 2022, RUAG Ammotec AG was acquired by another company and was renamed SwissP Defence AG.

[4] Commission notice on immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

[5] 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.

(16) Each Party expressed its view on the objections which the Commission envisaged raising against them. The Parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, both Parties considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.

(17) In June 2023, the Parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004[6] (the "settlement submissions"). The settlement submission of each Party contained:

– an acknowledgement in clear and unequivocal terms of the Party's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the Party's role and the duration of its participation in the infringement;

– an indication of the maximum amount of the fine the Party expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;

– the Party's confirmation that it 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;

– the Party's confirmation that it does not envisage requesting access to the file or requesting to be heard 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.[7]

(18) Each Party made its settlement submission conditional upon the imposition of a fine by the Commission, which does not exceed the amount specified in its settlement submission.

(19) On 3 July 2023, the Commission adopted a Statement of Objections addressed to the Parties. All the Parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the infringement

(20) The conduct consisted in the allocation of national markets between the two Parties for the sale of hand grenades. This also included exchange of competitively sensitive information.

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6 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, OJ L 123, 27.4.2004, p. 18. Regulation as amended by Commission Regulation (EC) No 622/2008 (OJ L 171, 1.7.2008, p. 3) and Commission Regulation (EU) 2015/1348 (OJ L 208, 5.8.2015, p.3).

7 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.

(21) The Parties formalized the market allocation between them in the context of two written cooperation agreements concluded in November 2007[8] ("the cooperation agreements"). The agreements concerned the sales of hand grenades in various countries, including most EEA countries.[9] The annexes to these agreements (called "Annex 2" in both agreements), contained a list of the countries attributed to either one or to the other Party.[10]

(22) Following this allocation of the national markets between the two Parties, only the designated Party would be entitled to sell hand grenades in the national market concerned. If any of the Parties intended to sell its hand grenades in the national market allocated to the other Party, it was required to ask for the latter's consent in advance.[11]

(23) The market allocation concerned both sales via tenders and replies to direct requests for an offer by national authorities.[12] The Parties adhered to the market allocation as established in Annex 2 to the cooperation agreements.[13] In a limited number of instances one of the Parties participated in tenders or replied to direct requests for an offer in a country allocated to the other Party. However, a Party only participated in such tenders or replied to direct requests for an offer after receiving the other Party's prior consent.[14]

(24) The Parties also discussed updating the list of the national markets allocated to each of them.[15] It appears, though, that the original national market allocation (as established in Annex 2 to the cooperation agreements) was still in place throughout the whole duration of the infringement.[16]

(25) The implementation of the market allocation and its monitoring was carried out through regular bilateral meetings (so-called cooperation meetings,[17] steering committee ('SC') meetings[18] and management team ('MT') meetings[19]), exchange of emails,[20] phone contacts[21] and meetings at trade fairs.[22]

(26) In some instances, the country lists with the allocation of the national markets by the Parties were disseminated internally within the respective organisation so that all relevant departments would be aware of these lists.[23]

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8 The cooperation agreements concerned the specialization in the supply of certain components between the two Parties and the distribution of hand grenades.

9 […]

10 […]

11 See for example […]

12 See for example […]

13 See for example […]

14 See for example […]

15 See for example […]

16 See […]

17 See for example […]

18 See for example […]

19 See for example […]

20 See for example […]

21 See for example […]

22 See for example […]

23 See for example […]

(27) The Parties adhered to the market allocation in the EEA throughout the duration of the infringement. This also included exchange of competitively sensitive information.[24]

4.2. Geographic scope of the infringement

(28) The geographic scope of the infringement that this Decision covers is EEA-wide.

4.3. Duration of the conduct

(29) The conduct started on 7 November 2007 when the cooperation agreements were signed.

(30) RUAG's participation in the conduct is considered to have ended on 15 April 2021, when it applied from immunity from fines. Diehl's participation in the conduct is considered to have ended on 23 November 2021, which is the first day of the Commission's inspection.

5. LEGAL ASSESSMENT

(31) Having regard to the body of evidence, the facts as described in Section 4 and the Parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submissions, and their replies to the Statement of Objections, the legal assessment is set out as follows.

5.1. Jurisdiction

(32) In this case, the Commission is competent to apply Article 101 TFEU and Article 53 of the EEA Agreement on the basis of Article 56 of the EEA Agreement since the cartel arrangements were capable of having an appreciable effect upon trade between Member States/Contracting Parties.

5.2. Application of Article 101(1) TFEU and Article 53(1) of the EEA Agreement

5.2.1. Agreements and concerted practices

5.2.1.1. Principles

(33) Article 101(1) TFEU prohibits *agreements* between undertakings, decisions by associations of undertakings and *concerted practices*[25] 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.

(34) Article 53(1) of the EEA Agreement (which is modelled on Article 101(1) TFEU) contains a similar prohibition. However, the reference of 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".

(35) An *agreement* may be said to exist when the undertakings adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining

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[24] See for example […]

[25] The case-law of the Court of Justice and the General Court in relation to the interpretation of Article 101 TFEU applies equally to Article 53 of the EEA Agreement. See recitals (4) and (15) as well as Article 6 of the EEA Agreement and Article 3(2) of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

the lines of their mutual action or abstention from action in the market. Although Article 101(1) TFEU and Article 53(1) of the EEA Agreement draw a distinction between the concept of *concerted practices* and that of *agreements between undertakings*, the object is to bring within the prohibition of these Articles a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition.[26] Thus, conduct may fall under Article 101 TFEU 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 or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour.[27]

(36) 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.

5.2.1.2. Application in this case

(37) As it emerges from the facts described under Section 4, the Parties agreed to allocate national markets between them for the sales of hand grenades in the EEA. This also included exchange of competitively sensitive information.

(38) The objective of the conduct described under Section 4, was for the Parties to allocate national markets. They substituted the risks of competition through their conduct which had as object the prevention, restriction or distortion of competition within the internal market.

(39) This conduct presents all the characteristics of an "agreement" and/or "concerted practice" within the meaning of Article 101(1) TFEU and Article 53(1) of the EEA Agreement. The infringement was committed intentionally or at least negligently.

5.2.2. Single and continuous infringement

5.2.2.1. Principles

(40) An infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from 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 those provisions. When the different actions form part of an 'overall plan', because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole.[28]

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[26] Case 48/69 *Imperial Chemical Industries v Commission*, ECLI:EU:C:1972:70, paragraph 64.

[27] See Case T-7/89 *Hercules v Commission* ECLI:EU:T:1991:75, paragraph 256. See also Case 48/69 *Imperial Chemical Industries* v *Commission* ECLI:EU:C:1972:70, paragraph 64, and Joined Cases 40-48/73, 50/73, 54-56/73, 111/73 and 113-114/73 *Suiker Unie and Others* v *Commission,* ECLI:EU:C:1975:174, paragraphs 173-174.

[28] Joined Cases C-204/00, *Aalborg Portland et al*., ECLI:EU:C:2004:6, paragraph 258.

(41) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anticompetitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.[29]

5.2.2.2. Application in this case

(42) In this case, the Commission considers that the conduct as described in Section 4 constitutes a single and continuous infringement of Article 101 TFEU and Article 53(1) of the EEA Agreement.

(43) The evidence and facts described in Section 4 show that the Parties, by allocating the national markets, which also included exchange of competitively sensitive information, and subsequently implementing the allocation agreed as described in recitals (20) to (27), engaged in an anticompetitive conduct, which formed part of an overall plan in pursuit of a common objective. That objective remained the same throughout the period of infringement.

(44) The elements of a single and continuous infringement, namely the continuity of the Parties concerned and the modus operandi of the conduct, remained the same throughout the period of infringement. As described at recital (25), the contacts between the Parties continued on a regular basis, took place in the same or similar manner in regular bilateral meetings (the cooperation meetings, SC meetings and MT meetings), exchange of emails, phone contacts and meetings at trade fairs and covered identical or largely similar topics.

(45) On the basis of all these elements and of the Parties' clear and unequivocal acknowledgements of the single and continuous nature of the infringement, the Commission concludes that the Parties concerned participated in a single and continuous infringement of Article 101 TFEU and Article 53(1) of the EEA Agreement.

5.2.3. Restriction of competition

5.2.3.1. Principles

(46) Article 101(1) TFEU and Article 53(1) of the EEA Agreement expressly prohibit as incompatible with the internal market such agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions.

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[29] In Case 49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 83, the Court of Justice ruled that: *"an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk."*

(47) It is settled case-law that, for the purpose of the application of Article 101 TFEU and Article 53(1) of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved.[30] The same applies to concerted practices.[31]

5.2.3.2. Application in this case

(48) Through their conduct the Parties restricted competition between them in the allocated markets. They coordinated their behaviour on the market, through market allocation, which also included exchange of competitively sensitive information in relation to the sale of hand grenades in the EEA. Therefore, the object of the behaviour of the cartel participants was restricting competition within the meaning of Article 101 TFEU and Article 53(1) of the EEA Agreement.

(49) Such conduct constitutes a restriction of competition and can be regarded, by its very nature, as being harmful to the proper functioning of normal competition.

(50) The conduct, therefore, had as its object the restriction of competition within the meaning of Article 101 TFEU and Article 53(1) of the EEA Agreement.

5.2.4. Effect upon trade between Member States and between EEA Contracting Parties

5.2.4.1. Principles

(51) Article 101(1) TFEU and Article 53(1) of the EEA Agreement are aimed at agreements and concerted practices which might harm the attainment of an internal market between the Member States/Contracting Parties, whether by partitioning national markets or by affecting the structure of competition within the internal market.

5.2.4.2. Application in this case

(52) In this case, the Parties allocated the market between them within the EEA.

(53) Therefore, the infringement was capable of having an appreciable effect upon trade between Member States and between Contracting Parties to the EEA Agreement.[32]

5.2.5. Non-applicability of Article 101(3) TFEU and Article 53(3) of the EEA Agreement

5.2.5.1. Principles

(54) The provisions of Article 101(1) TFEU and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) TFEU 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 possibility of eliminating competition in respect of a substantial part of the products

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30 See, for example, Case T-62/98 *Volkswagen AG* v *Commission,* ECLI:EU:T:2000:180, paragraph 178 and case-law cited therein.

31 See Case C-199/92 P *Hüls* v *Commission*, ECLI:EU:C:1999:358, paragraphs 158-166.

32 See Case C-125/07 P, *Erste Bank der österreichischen Sparkassen v Commission*, ECLI:EU:C:2009:576, paragraph 39.

in question. The undertaking bears the burden of proving that the above conditions are fulfilled.

5.2.5.2. Application in this case

(55) On the basis of the facts before the Commission, there are no indications that the conditions for exemption provided for in Article 101(3) TFEU and Article 53(3) of the EEA Agreement could be fulfilled with regard to this cartel.

5.3. Conclusion

(56) On the basis of all the above considerations and of the Parties' clear and unequivocal acknowledgements of their participation in the infringement described above, it is concluded that the conduct presents all the characteristics of a single and continuous infringement consisting in an agreement and/or concerted practices within the meaning of Article 101 TFEU and of Article 53 of the EEA Agreement concerning the allocation of national markets between the two Parties in relation to the sale of hand grenades in the EEA. This also included exchange of competitively sensitive information. The conduct lasted from 7 November 2007 to 23 November 2021.

6. DURATION OF PARTIES' PARTICIPATION TO THE INFRINGEMENT

(57) As set out in Section 4.3, RUAG and Diehl started their participation in the infringement on 7 November 2007. RUAG's participation in the infringement is considered to have ended on 15 April 2021. Diehl's participation in the infringement is considered to have ended on 23 November 2021.

7. LIABILITY

7.1. Principles

(58) Article 101(1) TFEU refers to the activities of undertakings. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The concept of an undertaking, in that same context, must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.

(59) When such an economic entity infringes Article 101(1) TFEU, that entity must be held liable for the infringement. The infringement must be imputed unequivocally to a legal person on whom fines may be imposed and the decision must be addressed to that person.

(60) The conduct of a subsidiary may be imputed to its parent company in particular where, although having a separate legal personality, 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, having regard in particular to the economic, organisational and legal links between those two legal entities. That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking within the meaning of Article 101(1) TFEU, which enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement.

(61) In those cases where a parent company holds all or almost all of the capital in a subsidiary which has committed an infringement of Article 101(1) TFEU, there is a rebuttable presumption that the parent company does in fact exercise a decisive

influence over the conduct of its subsidiary. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary.

7.2. Application in this case

(62) Having regard to the body of evidence and the facts described in recitals (20) to (30), the clear and unequivocal acknowledgements by the Parties in their settlement submissions of the facts and the legal qualification thereof, the Commission imputes liability to the following legal entities for the above described single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement.[33]

*7.2.1. **RUAG***

(63) For RUAG's participation in the infringement, the Commission holds liable:

(a) SwissP Defence AG (formerly RUAG Ammotec AG)

(b) RUAG International Holding AG

(64) SwissP Defence AG (formerly RUAG Ammotec AG) has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 7 November 2007 to 15 April 2021.

(65) RUAG International Holding AG has clearly and unequivocally acknowledged that it is jointly and severally liable from 7 November 2007 to 15 April 2021 as the parent company holding 100% of the shares in former RUAG Ammotec AG. Throughout the infringement RUAG Ammotec AG was wholly owned by RUAG International Holding AG, while the latter was wholly owned by BGRB Holding AG. After the infringement had ended, in July 2022, RUAG Ammotec AG was acquired by another company and was renamed SwissP Defence AG. After the infringement had ended, in June 2022, RUAG International Holding AG was merged with its direct parent company BGRB Holding AG. The new legal entity resulting from the merger between RUAG International Holding AG and BGRB Holding AG as described above was renamed to RUAG International Holding AG.

(66) The Commission, therefore, holds SwissP Defence AG (formerly RUAG Ammotec AG) and RUAG International Holding AG jointly and severally liable for the infringement, as follows:

– **SwissP Defence AG** (formerly RUAG Ammotec AG) for its direct participation from 7 November 2007 to 15 April 2021, and

– **RUAG International Holding AG** from 7 November 2007 to 15 April 2021 as the parent of SwissP Defence AG (formerly RUAG Ammotec AG).

*7.2.2. **Diehl***

(67) For Diehl's participation in the infringement, the Commission holds liable:

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[33] See Case C-97/08 P, *Akzo Nobel NV and others v Commission*, ECLI:EU:C:2009:536, paragraphs 60-61, Case T-455/14, *Pirelli & C.SpA v Commission*, ECLI:EU:T:2018:450, paragraphs 68-69, 97, 99, Case C-595/18 P, *The Goldman Sachs Group Inc v Commission*, ECLI:EU:C:2021:73, esp. paragraphs 29, 31, 35, 36.

(a) Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG)

(b) Diehl Stiftung & Co. KG

(68) Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG) has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 7 November 2007 to 23 November 2021.

(69) Diehl Stiftung & Co. KG has clearly and unequivocally acknowledged that it is jointly and severally liable from 7 November 2007 to 23 November 2021 as the parent company holding 100% of the shares in Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG).

(70) The Commission, therefore, holds Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG) and Diehl Stiftung & Co. KG jointly and severally liable for the infringement, as follows:

– **Diehl Defence GmbH & Co. KG** (formerly Diehl BGT Defence GmbH & Co. KG for its direct participation from 7 November 2007 to 23 November 2021, and

– **Diehl Stiftung & Co. KG** from 7 November 2007 to 23 November 2021 as the parent of Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG)).

8. REMEDIES

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

(71) Where the Commission finds that there is an infringement of Article 101 TFEU 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.

(72) Given the gravity of such infringements, it is appropriate for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

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

(73) Pursuant to Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 101 TFEU and Article 53 of the EEA Agreement.[34] For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

(74) In this case, the Commission considers that, based on the facts described in this Decision and the assessment contained above, the infringement has been committed

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

intentionally or at least negligently. The infringement described above consists in a market allocation between competitors. It also included exchange of competitively sensitive information.

(75) Fines should therefore be imposed on the undertakings to which this Decision is addressed.

(76) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard shall be had both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission will refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[35] ("the Guidelines on fines").

(77) In assessing the gravity of the infringement, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.

(78) Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.[36]

8.3. Calculation of the fine

(79) In applying the Guidelines on fines, the basic amounts for each Party result 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 (normally, the last full business year of the infringement) multiplied with the number of years of the undertaking's participation in the infringement. The additional amount ("entry fee") is set as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each company if either aggravating or mitigating circumstances are retained.

(80) The Commission may depart from the methodology set out in the Guidelines on fines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case.[37]

8.3.1. The value of sales

(81) 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,[38] that is, the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area within the EEA. In this case, the relevant goods and the relevant geographic area to which the infringement is related are those described in Sections 4.1 and 4.2.

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35 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003, OJ C 210, 1.09.2006, p. 2.

36 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 (OJ C 167, 2.7.2008, p. 1).

37 Point 37 of the Guidelines on fines.

38 Point 12 of the Guidelines on fines.

(82) The Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement.[39] If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales.

(83) In this case, in view of the long duration of the infringement and the fact that the sales fluctuated considerably during the infringement period, the Commission takes into account the annual average of the undertakings' sales during the entire duration of infringement period (as defined in Section 4.3) in the geographic area as defined in Section 4.2.

(84) Accordingly, the value of sales for each undertaking is as set out in Table 1.

Table 1: Value of sales

Undertaking	Value of sales (EUR)
RUAG	[…]
Diehl	[…]

8.3.2. Determination of the basic amount of the fine

(85) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration.[40]

8.3.2.1. Gravity

(86) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission will have regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.[41]

(87) In this case assessment, the Commission considers the facts described in this Decision, and in particular the fact that cartels 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 will generally be set at the higher end of the scale of the value of sales.[42]

(88) Given the specific circumstances of this case, taking into account the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account should be 16%.

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39 Point 13 of the Guidelines on fines.
40 Points 19-26 of the Guidelines on fines.
41 Points 21 and 22 of the Guidelines on fines.
42 Point 23 of the Guidelines on fines.

8.3.2.2. Duration

(89) In assessing the fine to be imposed on each undertaking, the Commission also takes into consideration the respective duration of the infringement, as described in Section 4.3. The increase for duration (duration multiplier) is determined based on each Party's exact number of days of participation in the infringement.

(90) The time period to be taken into account for the purpose of setting fines, for each Party to the infringement, and the multiplier corresponding to that period, is set out in Table 2.

Table 2: Duration

Undertaking	Participation in the infringement	Multipliers
RUAG	7.11.2007 – 15.4.2021 (4 909 days)	13.43
Diehl	7.11.2007 – 23.11.2021 (5 131 days)	14.04

8.3.3. Determination of the additional amount

(91) The infringement committed by the Parties relates to a cartel. Therefore, the Commission will include in the basic amount a sum of between 15% and 25% of the value of purchases to deter undertakings from even entering into such illegal practices, on the basis of the criteria listed with respect to the variable amount.[43]

(92) For the purpose of determining the proportion of the value of sales to be taken into account for the infringement, the Commission considers the factors relating to the nature and the geographic scope of the infringement as set out in recitals (86) and (88). Therefore, the proportion of the value of sales to be taken into account for the purpose of setting the additional amount should be set at 16%.

8.3.4. Calculations and conclusions on basic amounts

(93) Based on the criteria explained in recitals (79) to (92), the basic amount of the fine for each Party is presented in Table 3.

Table 3: Basic amounts of the fine

Undertaking	Basic amount (EUR)
RUAG	[…]
Diehl	[…]

8.4. Adjustments to the basic amount of the fine

8.4.1. Aggravating or mitigating circumstances

(94) The Commission may consider aggravating circumstances that result in an increase of the basic amount. These circumstances are listed in a non-exhaustive way in point

[43] Point 25 of the Guidelines on fines.

28 of the Guidelines on fines. The Commission may also consider mitigating circumstances that result in a reduction of the basic amount. These circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(95) In this case neither aggravating nor mitigating circumstances are applicable to any of the addressees of this Decision.

8.4.2. Increase of the fine pursuant to point 37 of the Guidelines on fines

(96) In this case, following the general methodology of the Guidelines on fines a sufficiently deterrent effect would not be achieved, as the resulting fine would be particularly low taking into account the high total turnover of the undertakings concerned. A sufficiently deterrent fine is not only necessary to sanction the undertakings concerned in this Decision (specific deterrence) but also to deter other undertakings from engaging in this type of infringement (general deterrence).

(97) In order to take this particularity into account and to achieve sufficient deterrence, it is appropriate for the Commission to apply, under point 37 of the Guidelines on fines, an increase of the amount of the fine by a multiplying factor of 3.75 for both undertakings held liable for the infringement. This leads to a fine which is sufficiently deterrent and proportionate, considering both the economic strength of the parties and the specificities of the infringement as well as each of the Parties' role in the infringement.

(98) The resulting adjusted basic amounts are set out in Table 4.

Table 4: Adjusted basic amounts

Undertaking	Adjusted basic amount (EUR)
RUAG	[…]
Diehl	[…]

8.5. Application of the 10% turnover limit

(99) The fine imposed on each undertaking participating in the infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.[44]

(100) In this case, none of the adjusted basic amounts of the fines calculated exceeds 10% of the respective undertaking's total turnover in 2022 (see recitals (7) and (9)).

8.6. Application of the Leniency Notice

8.6.1. Immunity from fines

(101) On 12 November 2021, the Commission granted RUAG conditional immunity from fines under point (18) of the Leniency Notice (see recital (11)). RUAG's cooperation fulfilled the requirements under the Leniency Notice. RUAG is, therefore, granted immunity from fines.

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[44] Article 23(2) of Regulation (EC) No 1/2003.

8.6.2. Reduction of fines

(102) Diehl applied for a reduction of fines based on the Leniency Notice on 24 February 2022. Diehl was the first undertaking to provide the Commission with evidence of the infringement which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided. Diehl meets the requirements of points (24) and (25) of the Leniency Notice. Consequently, a reduction of the fine of 50% is granted to Diehl.

8.7. Application of the Settlement Notice

(103) As foreseen in point 32 of the Settlement Notice, the reward for settlement results in a reduction of 10% of the amount of the fine to be imposed on a Party after the 10% turnover cap has been applied having regard to the Guidelines on fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement will be added to their leniency reward.

(104) Consequently, the amount of the fine to be imposed on each Party is further reduced by 10%.

8.8. Conclusion: final amount of individual fines to be imposed in this Decision

(105) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 5.

Table 5: Fines

Undertaking	Fines (EUR)
RUAG	0
Diehl	1 200 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement, consisting in the allocation of market shares, which also included exchange of competitively sensitive information, in relation to the sales of military hand grenades in the EEA:

(a) SwissP Defence AG (formerly RUAG Ammotec AG) and RUAG International Holding AG, from 7 November 2007 until 15 April 2021

(b) Diehl Defence GmbH & Co. KG (formerly Diehl BGT Defence GmbH & Co. KG) and Diehl Stiftung & Co. KG, from 7 November 2007 until 23 November 2021

Article 2

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

(a) SwissP Defence AG and RUAG International Holding AG, jointly and severally liable: EUR 0

(b) Diehl Defence GmbH & Co. KG and Diehl Stiftung & Co. KG, jointly and severally liable: EUR 1 200 000

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

BANQUE CENTRALE DU LUXEMBOURG
2, boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40760

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 Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, by either providing an acceptable bank 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.[45]

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in Article 1 insofar as they have not already done so.

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

[45] 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 European Union (OJ L 193, 30.7.2018, p. 80).

Article 4

This Decision is addressed to:

(a) SwissP Defence AG, Uttigenstraße 67, 3602 Thun, Switzerland

(b) RUAG International Holding AG, Bahnhofplatz 10b, 3011 Bern, Switzerland

(c) Diehl Defence GmbH & Co. KG, Alte Nußdorfer Straße 13, 88662 Überlingen, Germany

(d) Diehl Stiftung & Co. KG, Stephanstraße 49, 90478 Nürnberg, Germany

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

Done at Brussels, 21.9.2023

(Signed)
For the Commission

Didier REYNDERS
Member of the Commission