



EUROPEAN COMMISSION
Competition DG

***CASE AT.AT.39881 – Occupant Safety
Systems supplied to Japanese Car
Manufacturers***

(Only the English text is authentic)

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

Article 7 Regulation (EC) 1/2003

Date: 22/11/2017

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Brussels, 22.11.2017
C(2017) 7670 final

COMMISSION DECISION

of 22.11.2017

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

(AT.39881 – Occupant Safety Systems supplied to Japanese Car Manufacturers)

(Only the English text is authentic)

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COMMISSION DECISION

of 22.11.2017

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

(AT.39881 – Occupant Safety Systems supplied to Japanese Car Manufacturers)

(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 Treaty¹, 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 Treaty², and in particular Article 10a thereof,

Having regard to the Commission Decision of 4 April 2016 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 case³,

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 Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU is used throughout this Decision.

² OJ L 123, 27.4.2004, p. 18.

³ Final report of the Hearing Officer of 21 November 2017.

Whereas:

1. INTRODUCTION

- (1) This Decision concerns four 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 concerned price coordination and market sharing in respect of the supply of occupant safety systems (OSS) products for passenger cars to a number of Japanese car manufacturers active in the European Economic Area ("EEA"). The infringements took place at various periods between 2004 and 2010.
- (2) This Decision is addressed to the following undertakings and legal entities, each of which participated in one or more of the four cartels described in this Decision:
 - (a) Tokai Rika Co., Ltd. ("**TOKAI RIKA**");
 - (b) Takata Corporation ("**TAKATA**");
 - (c) Autoliv, Inc. and Autoliv Japan Ltd. (collectively referred to as "**AUTOLIV**");
 - (d) Toyoda Gosei Co., Ltd. ("**TOYODA GOSEI**");
 - (e) Marutaka Co., Ltd. ("**MARUTAKA**").

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS IN THIS DECISION

2.1. The products

- (3) The products concerned by the cartels are **seatbelts**, **airbags** and **steering wheels** which are **OSS** for passenger cars supplied to a number of Japanese car manufacturers with production facilities in the EEA.
- (4) Seatbelts are safety straps designed to secure the occupant of a vehicle against harmful movement that may occur as a result of a collision or a sudden stop. Cars can be equipped with front and rear seatbelts, driver and passenger seatbelts.
- (5) An airbag is a flexible fabric envelope or cushion designed to inflate rapidly during an automobile collision. Its purpose is to cushion occupants during a crash and provide protection to their bodies when they strike interior objects such as the steering wheel or a window. Modern vehicles may contain multiple airbag modules: driver airbags, passenger airbags, side airbags, curtain airbags and knee airbags. Airbags are normally designed with the intention of supplementing the protection of an occupant who is correctly restrained by 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 ("**OEMs**"). OEMs typically source OSS by way of tenders (Requests for Quotations (RFQs)). 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 2.2.5, were involved in one or more of the four cartels described below.

2.2.1. TOKAI RIKA

- (9) Tokai Rika is active in the manufacturing of automobile parts, driver interface components and safety systems, including switches (turn and wiper switches, steering wheel switches and steering angle sensors), keys, locks and seatbelts. For the fiscal year ending 31 March 2017, the worldwide consolidated turnover of Tokai Rika amounted to JPY 459,070 million or approximately EUR 3.86 billion.

- (10) The relevant legal entity of the Tokai Rika group for the purposes of this Decision is Tokai Rika Co., Ltd, with its registered offices in Oguchi-cho, Niwa-gun, Aichi-Ken, 480-0195, Japan.

2.2.2. TAKATA

- (11) Takata manufactures airbags, seatbelts, steering wheels, child safety seats, and safety electronics such as crash sensors. The company also produces interior parts (head rests, arm rests, visors, and trim). For the fiscal year ending 31 March 2017, the worldwide consolidated turnover of Takata amounted to JPY 662,533 million or approximately EUR 5.6 billion.

- (12) The relevant legal entity of the Takata group for the purposes of this Decision is Takata Corporation with its registered offices in 2-12-31, Akasaka, Minato-ku, Tokyo, Japan.

2.2.3. AUTOLIV

- (13) Autoliv is a manufacturer of car safety equipment worldwide, producing components such as seatbelts, airbags, anti-whiplash systems, and safety electronics. Other products include rollover protection systems, steering wheels (with airbags), night vision systems, radar systems, and child seats. For the fiscal year ending 31 December 2016, the worldwide consolidated turnover of Autoliv amounted to EUR 9,101 million.

- (14) The relevant legal entities of the Autoliv group that, for the purposes of this Decision, the Commission regards as constituting a single undertaking at the time of the infringement are:

- Autoliv, Inc. with its registered offices at 1209 Orange Street, Wilmington, Delaware 19801, U.S.A. and European headquarters at Klarabergsviadukten 70, Section B, 7th floor, Stockholm, Sweden;

- Autoliv Japan Ltd., with its registered offices at 4F Innotech Building, 3-17-6 Shin-Yokohama, Kohoku-ku Yokohama 222-8580, Japan.

2.2.4. *TOYODA GOSEI*

- (15) Toyota Gosei is a producer of automobile components (automotive sealing products, functional components, interior and exterior parts, safety system products), but its business areas also include the production and sales of optoelectronic products, and the production and sales of other general industry products. For the fiscal year ending 31 March 2017, the worldwide consolidated turnover of Toyota Gosei amounted to JPY 755,601 million or approximately EUR 6.36 billion.
- (16) The relevant legal entity of the Toyota Gosei group for the purposes of this Decision is Toyota Gosei Co., Ltd., with its registered offices at 1 Haruhinagahata, Kiyosu, Aichi 452-8564, Japan.

2.2.5. *MARUTAKA*

- (17) Marutaka is a Japanese trading company that, amongst other things, distributes in Japan seatbelts produced by Takata for Toyota. For the fiscal year ending 30 June 2017, the worldwide consolidated turnover of Marutaka amounted to JPY 41,837 million or approximately EUR 351 million.
- (18) The relevant legal entity of the Marutaka group for the purpose of this Decision is Marutaka Co., Ltd., with its registered offices at 1-47-1, Nagono, Nakamura-Ku, Nagoya Kokusai Center Bldg. 21F, Nagoya, Aichi 450-0001, Japan.

3. **PROCEDURE**

- (19) On 9 February 2011, TOKAI RIKA applied for immunity under point (14) of the Commission Notice on Immunity from fines and reduction of fines in cartel cases⁴ ("the **Leniency Notice**") in relation to collusive contacts related to the supplies of seatbelts to Toyota. On 14 April 2011, the Commission granted TOKAI RIKA conditional immunity from fines for the infringement regarding the supply of seatbelts to Toyota vehicles, pursuant to point (8)(a) of the Leniency Notice.
- (20) On 24 March 2011, TAKATA applied for immunity or, alternatively, for a reduction of the fine under the Leniency Notice that would otherwise have been imposed on it in respect of a number of OSS products and provided information on contacts with several competitors. On 16 January 2013 and 4 April 2016, pursuant to point 8(a) of the Leniency Notice, the Commission granted TAKATA conditional immunity from fines for the infringements regarding the supply of airbags to Toyota vehicles, the supply of seatbelts to Suzuki vehicles and the supply of seatbelts, airbags and steering wheels to Honda vehicles.

⁴ Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

- (21) Between 7 and 9 June 2011, the Commission carried out unannounced inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of AUTOLIV in Germany.
- (22) On 4 July 2011 AUTOLIV applied for immunity or, alternatively, for a reduction of the fine under the Leniency Notice that would otherwise have been imposed on it.
- (23) On 12 November 2013, TOYODA GOSEI applied for immunity or, alternatively, for a reduction of the fine under the Leniency Notice that would otherwise have been imposed on it.
- (24) On 4 April 2016, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of this Decision (collectively referred to as "the **Parties**") with a view to engaging in settlement discussions with them pursuant to 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 cases⁵ ("the **Settlement Notice**"). On 4 April 2016, the Commission adopted decisions in which it preliminarily concluded that TOKAI RIKA, TAKATA, AUTOLIV and TOYODA GOSEI 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 those undertakings would receive in respect of the infringements in which they were involved, provided that they continued to meet the conditions of point (12) of the Leniency Notice.
- (25) After each Party had confirmed its willingness to engage in settlement discussions, settlement meetings and contacts took place between July 2016 and May 2017.
- (26) In the course of the settlement procedure, the Commission informed the Parties of the potential objections it envisaged raising against them and disclosed to them the key evidence in the Commission file relied upon to establish those potential objections. The Parties had access to the relevant documentary evidence on file, a list of all documents in the case file and, at the premises of the Commission, the oral statements submitted under the Leniency Notice. The Commission also provided the Parties with an estimate of the range of fines likely to be imposed by the Commission.
- (27) Each Party expressed its view 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.
- (28) At the end of the settlement discussions, all of the Parties considered that there was sufficient common understanding between them and the Commission regarding the potential objections and regarding the range of likely fines to continue the settlement process.

⁵ OJ C 167, 2.7.2008, p. 1.

- (29) Between [...], the parties submitted to the Commission their formal request to settle pursuant to Article 10a (2) of Commission Regulation (EC) No 773/2004⁶ ("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 regarding its object, the main facts, their legal qualification, including the Party's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;
 - an indication of the maximum amount of the fine that the Party expects the Commission to impose and which it would accept in the context 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 again in an oral hearing, unless the Commission does not reflect the Party's 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.
- (30) 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.
- (31) On 26 September 2017, 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.
- (32) Having regard to the clear and unequivocal acknowledgments of all of the Parties to those proceedings described 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.

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, as amended by Commission Regulation 1792/2006/EC of 23 October 2006 (OJ L 362/1, 20.12.2006) and by Commission Regulation 622/2008/EC of 30 June 2008 (OJ L 171/3, 1.7.2008).

4. DESCRIPTION OF THE CONDUCT

4.1. Nature, scope and duration of the conduct

- (33) The Commission's investigation in this Decision covered four separate cartels which concern the supply of certain types of OSS (namely seatbelts, airbags and/or steering wheels) to Japanese OEMs. These cartels are:
- I) Coordination between TOKAI RIKA, TAKATA, AUTOLIV and MARUTAKA concerning certain supplies of seatbelts to Toyota;
 - II) Coordination between TAKATA, AUTOLIV and TOYODA GOSEI concerning certain supplies of airbags to Toyota;
 - III) Coordination between TAKATA and TOKAI RIKA concerning certain supplies of seatbelts to Suzuki;
 - IV) Coordination between TAKATA and AUTOLIV concerning certain supplies of seatbelts, airbags and steering wheels to Honda.
- (34) The essence of each of the four cartels concerned the maintenance of each competitor's incumbent "*commercial rights*" to supply a specific type of OSS for a particular passenger car model. When the OEM in question developed new models of certain existing passenger vehicles, the relevant competitors coordinated in an attempt to ensure that the supplier who had won the award for supplying the relevant OSS equipment for the previous model (that is to say the incumbent supplier) would also supply the OSS for the new model.
- (35) The relevant Parties also met when the OEM in question introduced certain completely new models. In the absence of pre-existing "*commercial rights*", the relevant Parties sought to find a common understanding as to which Party would supply the relevant OSS equipment to the OEM for that model.
- (36) The overall aim of each of the four cartels was to respect the incumbency principle and to coordinate on prices. This aim was pursued by coordination of responses to specific RFQs and exchanges of commercially sensitive information on requests from OEMs which were not related to a specific procurement event, with a view to coordinating the relevant competitors' conduct. For example, OEMs generally requested annual price reductions ("APRs"). These reviews related to particular OSS equipment currently being supplied to the OEM (for which production had already started) and took place during specific periods of the year. The relevant Parties coordinated their positions in an attempt to submit a common reaction to the OEM. Occasionally, some Parties also discussed the coordination of possible price increases to be passed on to the relevant OEMs due to increases in the cost of raw materials.
- (37) Even though on some occasions the relevant Parties may have been unable to reach an agreement or did not respect the arrangements reached, in most cases there was at least a discussion between the relevant competitors to try to find an agreed outcome.

(38) The timing of many of the collusive contacts was naturally related to the timing of the business cycle. The contacts had a varying frequency in the course of the overall duration of the collusion. Contacts generally intensified when specific RFQs were launched.

4.1.1. Infringement I: supply of seatbelts to Toyota

(39) TOKAI RIKA, TAKATA and AUTOLIV colluded on prices and the allocation of supply of seatbelts to Toyota. The discussions covered the maintenance of commercial rights⁷, collusion on certain RFQs⁸, exchanges of commercially sensitive information and coordination on Toyota periodical requests for price reviews / cost reductions⁹, and inquiries related to raw material cost increases¹⁰. The contacts took place via email exchanges, face-to-face meetings or phone meetings.

(40) MARUTAKA was present at and facilitated meetings between TAKATA and TOKAI RIKA and it was in contact with both TOKAI RIKA and AUTOLIV on behalf of TAKATA in order to exchange competitively sensitive information and organise meetings¹¹.

Duration

(41) The evidence demonstrates that the cartel started on **6 July 2004** for TOKAI RIKA, TAKATA and MARUTAKA, when TOKAI RIKA and TAKATA met at MARUTAKA's premises to coordinate on responses to cost reduction requests¹².

(42) During the course of 2006, AUTOLIV started receiving invitations from Toyota for it to provide quotes for seatbelts and thereafter became involved in the collusive contacts¹³. AUTOLIV's participation started on **18 December 2006**, the date of a contact with TAKATA regarding coordination for an upcoming RFQ¹⁴.

(43) Based on the available evidence, the cartel ended:

- for MARUTAKA on **15 April 2009**, when a cartel meeting was held between TAKATA and TOKAI RIKA at MARUTAKA's premises¹⁵;

⁷ See for example [...].

⁸ See for example [...].

⁹ See for example [...].

¹⁰ See for example [...].

¹¹ See for example [...].

¹² [...].

¹³ [...].

¹⁴ [...].

¹⁵ [...].

- for TOKAI RIKA on **11 February 2010**, the date of an exchange of information with TAKATA on cost reductions¹⁶;
- for TAKATA and AUTOLIV on **25 March 2010**, the date of an exchange of information regarding APR.¹⁷

4.1.2. *Infringement II: supply of airbags to Toyota*

(44) TAKATA, TOYODA GOSEI and AUTOLIV colluded on sales of airbags to Toyota. The discussions covered the maintenance of commercial rights¹⁸, coordination on certain RFQs¹⁹, exchanges of commercially sensitive information and coordination on Toyota's periodical requests for price reviews / cost reductions²⁰. The contacts took the form of email exchanges, telephone calls and meetings, and occurred most often on a bilateral basis between TOYODA GOSEI and AUTOLIV, on the one hand, and between TOYODA GOSEI and TAKATA, on the other hand. AUTOLIV and TAKATA also engaged in their own bilateral contacts during this period, and on occasion, the contacts involved all three competitors²¹.

Duration

(45) The evidence demonstrates that the cartel started on **14 June 2005** for TAKATA and TOYODA GOSEI, when the two parties met to discuss an upcoming RFQ²² and that AUTOLIV's participation started on **18 July 2006**, the date of a TAKATA internal document showing a contact with AUTOLIV regarding cost reduction²³.

(46) Based on the available evidence, the cartel ended:

- for TOYODA GOSEI on **15 July 2009**, the date of an internal e-mail confirming an agreement reached with TAKATA for an ongoing RFQ²⁴;
- for TAKATA and AUTOLIV on **26 July 2010**, the date of an exchange of information between the two Parties regarding pricing²⁵.

¹⁶ [...].

¹⁷ [...].

¹⁸ See for example [...].

¹⁹ See for example [...].

²⁰ See for example [...].

²¹ [...].

²² [...].

²³ [...].

²⁴ [...].

²⁵ [...].

4.1.3. *Infringement III: supply of seatbelts to Suzuki*

- (47) TOKAI RIKA and TAKATA colluded on sales of seatbelts to Suzuki. The collusion covered the maintenance of commercial rights²⁶, the coordination on certain RFQs²⁷, exchanges of commercially sensitive information and coordination on periodical requests for price reviews²⁸. The contacts took place via email exchanges, face-to-face-meetings or phone meetings²⁹.

Duration

- (48) The evidence demonstrates that the cartel started on **14 February 2008**, the date of a meeting where the Parties started to coordinate on certain RFQs³⁰ for two models and ended on **18 March 2010**, the date of an exchange of information on material price negotiations³¹.

4.1.4. *Infringement IV: supply of seatbelts, airbags and steering wheels to Honda*

- (49) TAKATA and AUTOLIV colluded with respect to sales of seatbelts, airbags and steering wheels to Honda. The discussions covered project allocation (respecting "incumbent's rights")³², exchanges of pricing information³³, exchanges of (and in some cases, coordination on) prices for raw materials³⁴ and exchanges of commercially sensitive information on cost reductions³⁵. The contacts took place via email exchanges, face-to-face meetings or phone meetings.

Duration

- (50) The evidence demonstrates that the cartel started on **28 March 2006**, the date of a contact between the parties to coordinate on a quotation for an RFQ³⁶ and ended on

²⁶ [...].

²⁷ [...].

²⁸ [...].

²⁹ See for example [...].

³⁰ [...].

³¹ [...].

³² See for example ID [...].

³³ [...].

³⁴ [...].

³⁵ See for example [...].

³⁶ [...].

22 May 2010, the date of a TAKATA internal e-mail confirming the agreement reached with AUTOLIV for the quotation of an RFQ³⁷.

4.2. Geographic scope of the conduct

- (51) The geographic scope of each of the four cartels was EEA-wide throughout the respective relevant periods. While the contacts took place mainly in Japan, the arrangements included the entire territory of the EEA³⁸.

5. LEGAL ASSESSMENT

- (52) 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

- (53) Article 101(1) 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. Similarly, Article 53(1) of the EEA Agreement prohibits agreements and concerted practices between undertakings which may affect trade between Contracting Parties to the EEA Agreement and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement.
- (54) An *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 an *agreement between undertakings*, the objective is to bring within 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. 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 or adhere to

³⁷ [...].

³⁸ See for example for infringement I [...]; for infringement II [...]; for infringement III, [...]; for infringement IV [...].

collusive devices which facilitate the coordination of their commercial behaviour³⁹. 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 to either 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 competition⁴⁰.

- (55) The concepts of *agreement* and *concerted practice* may overlap. Indeed, it may not even be possible to distinguish between the two concepts, as an infringement may simultaneously present the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as being one rather than the other. It is not necessary to define exactly whether 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, or both, and that the participating undertakings intended to contribute by their own conduct to the common objectives pursued by all of 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 anticipated it and were prepared to take the risk)⁴¹.
- (56) Passive modes of participation in the infringement, such as the presence of an undertaking in meetings at which anticompetitive agreements were concluded, without that undertaking clearly opposing them, are also indicative of collusion capable of rendering the undertaking liable under Article 101(1) of the Treaty. A party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, encourages the continuation of the infringement and compromises its discovery.⁴²
- (57) Finally, nothing in the wording of Article 101(1) TEFU indicates that the prohibition laid down therein is directed only at the parties to such agreements or concerted practices who are active on the markets affected by those agreements or practices, or that the terms ‘agreement’ and ‘concerted practice’ presuppose a mutual restriction of freedom of action on one and the same market on which all the parties are present.⁴³

³⁹ Case T-7/89, *Hercules v Commission*, ECLI:EU:T:1991:75, paragraph 256; Case 48/69, *Imperial Chemical Industries v Commission*, ECLI:EU:C:1972:70, paragraph 64; Joined Cases 40-48/73, *Suiker Unie and Others v Commission*, ECLI:EU:C:1975:174, paragraphs 173-174.

⁴⁰ Case T-396/10, *Zucchetti v Commission*, ECLI:EU:T:2013:446, paragraph 56 and case law cited therein.

⁴¹ Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraphs 81 to 87.

⁴² Case C-194/14 P, *AC-Treuhand v Commission*, EU:C:2015:717, paragraph 31.

⁴³ Case C-194/14 P, *AC-Treuhand v Commission*, EU:C:2015:717, paragraph 27 and 33.

5.1.1.2. Application in this Decision

- (58) For each of the four cartels, it emerges from the facts described in Section 4 that the relevant Parties coordinated on prices, engaged in the allocation of specific projects and exchanged commercially sensitive information, which constituted agreements or concerted practices, or both, whereby the undertakings knowingly substituted practical cooperation between them for the risks of competition.
- (59) 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 four sets of conduct described in Section 4 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 occupant safety systems products for passenger cars to the Japanese car manufacturers listed in recital (33), which are active in the EEA.

5.1.2. *Single and continuous infringement*

5.1.2.1. Principles

- (60) 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 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 whole⁴⁴.
- (61) 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 risk⁴⁵.

⁴⁴ Joined Cases C-204/00 etc., *Aalborg Portland et al.* ECLI:EU:C:2004:6, paragraph 258.

⁴⁵ Case C-441/11 P, *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 42; Case C-194/14 P, *AC-Treuhand v Commission*, EU:C:2015:717, paragraph 30;

- (62) 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 whole⁴⁶.
- (63) 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 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 risk⁴⁷.

5.1.2.2. Application in this Decision

- (64) 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 four cartels described in Section 4, the conduct in question constitutes a single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement.
- (65) In Infringement I (Toyota seatbelts), the evidence on file shows that TAKATA, TOKAI RIKA, AUTOLIV and MARUTAKA engaged in anticompetitive practices which formed part of an overall plan to pursue the common objective, which remained the same during the whole of the infringement, of restricting and/or distorting competition by way of project allocation, price coordination and exchanges of commercially sensitive information for the supply of seatbelts to Toyota. The single and continuous nature of the infringement is demonstrated by the clear continuity of: the meetings and other contacts; the individuals involved; and the modalities of the cartel behaviour. The participants (TAKATA, TOKAI RIKA, AUTOLIV and MARUTAKA) were aware of each of the other Parties' participation in the infringement and the general characteristics of the infringement. At least one trilateral meeting between TAKATA, TOKAI RIKA and AUTOLIV is reported.

⁴⁶ Case C-441/11 P *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 43.

⁴⁷ Case C-441/11 P *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 44.

Moreover, there is evidence showing that during bilateral contacts, each Party was aware of, and took into account, the role played by the other two Parties. MARUTAKA was present at and facilitated meetings at which anticompetitive agreements were concluded between TAKATA and TOKAI RIKA, and was in contact with both TOKAI RIKA and AUTOLIV on behalf of TAKATA in order to exchange competitively sensitive information and organise meetings.

- (66) In Infringement II (Toyota airbags), the evidence on file shows that TAKATA, TOYODA GOSEI and AUTOLIV engaged in anticompetitive practices which formed part of an overall plan to pursue the common objective, which remained the same during the whole of the infringement, of restricting and/or distorting competition by way of project allocation, price coordination and exchanges of commercially sensitive information for the supply of airbags to Toyota. The single and continuous nature of the infringement is demonstrated by the clear continuity of: the meetings and other contacts; the individuals involved; and the modalities of the cartel behaviour. The three Parties held at least two trilateral meetings and were aware of each other's participation in the infringement. Furthermore, at some bilateral meetings the participants discussed the role of all three Parties and considered their respective positions.
- (67) In Infringement III (Suzuki seatbelts), the evidence on file shows that TAKATA and TOKAI RIKA engaged in anticompetitive practices which formed part of an overall plan to pursue the common objective, which remained the same during the whole of the infringement, of restricting and/or distorting competition by way of project allocation, price coordination and exchanges of commercially sensitive information for the supply of seatbelts to Suzuki. The single and continuous nature of the infringement is demonstrated by a continuity of: the meetings and other contacts; the individuals involved; and the modalities of the cartel behaviour.
- (68) In Infringement IV (Honda seatbelts, airbags and steering wheels), the evidence on file shows that TAKATA and AUTOLIV engaged in anticompetitive practices which formed part of an overall plan to pursue the common objective, which remained the same during the whole of the infringement, of restricting and/or distorting competition by way of project allocation, price coordination and exchanges of commercially sensitive information for the supply of seatbelts, airbags and steering wheels to Honda. The single and continuous nature of the infringement is demonstrated by a continuity of: the meetings and other contacts; the individuals involved; and the modalities of the cartel behaviour.

5.1.3. Restriction of competition

5.1.3.1. Principles

- (69) To come within the scope of the prohibition laid down in Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement, an agreement between undertakings, 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.

- (70) In that regard, it is apparent from the General Court's and Court of Justice's case law 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 effects⁴⁸. 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 competition⁴⁹. Article 101 of the Treaty is intended to protect not only the interests of competitors or consumers, but also the structure of the market and thus competition as such⁵⁰.
- (71) 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 purposes of applying Article 101(1) of the TFEU, to prove that it has actual effects on the market⁵¹.

5.1.3.2. Application in this Decision

- (72) Based on the submissions of the Parties and the other evidence obtained during the course of the Commission's investigation, in each of the four infringements, the relevant competitors coordinated their behaviour to reduce uncertainty between themselves in relation to the supply of specific OSS components in the EEA. They did this by engaging, to varying degrees, in project allocation, price coordination and exchanges of commercially sensitive information.
- (73) Therefore, the object of the parties' behaviour in each of the four infringements was to restrict competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

⁴⁸ Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 49; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, paragraph 113.

⁴⁹ 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, paragraph 508; Case C-389/10 P, *KME Germany and Others v Commission*, ECLI:EU:C:2011:816, paragraph 75; Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 50; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, paragraph 114.

⁵⁰ 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, paragraph 63.

⁵¹ 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

- (74) Article 101(1) of the Treaty is aimed at 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 is directed at agreements that undermine the achievement of a homogeneous EEA between the Contracting Parties to the EEA Agreement⁵².
- (75) If an agreement, decision or practice is to be capable of affecting trade between Member States, it must be possible to anticipate with a sufficient degree of probability, on the basis of a set of objective factors of law or of fact, that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in such a way as to cause concern that it might hinder the attainment of a single market between Member States. Moreover, that effect must not be insignificant⁵³.

5.1.4.2. Application in this Decision

- (76) For each of the four separate infringements, the relevant OSS components were supplied to production facilities of the relevant OEMs both within and outside of the EEA. Significant cross-border trade within the EEA and supply to several EEA countries took place.
- (77) The application of Article 101(1) TFEU 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 States⁵⁴.
- (78) In this Decision, each of the infringements concerned the whole EEA and the relevant supplies involved a substantial volume of trade between Member States. Each of the four 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 TFEU and Article 53 of the EEA Agreement.

⁵² Joined Cases T-25/95 a.o., *Cement*, ECLI:EU:T:2000:77, paragraph 3930 ; Case C-306/96, *Javico International and Javico AG v Yves Saint Laurent Parfums SA*, ECLI:EU:C:1998:173, paragraphs 16-17.

⁵³ Case C-125/07 P, *Erste Bank der österreichischen Sparkassen v Commission*, ECLI:EU:C:2009:576, paragraph 36.

⁵⁴ Case 193/83, *Windsurfing*, ECLI:EU:C:1986:75, paragraph 96; Case T-77/94, *Vereniging van Groothandelaren in Bloemkwekerijprodukten*, ECLI:EU:T:1997:70, paragraph 126; Case T-2/89, *Petrofina*, ECLI:EU:T:1991:57, paragraph 226.

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

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

5.1.5.2. Application in this Decision

(80) 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 price coordination, market sharing and/or the exchange of commercially sensitive information between competitors are, by definition, among the most detrimental restrictions of competition. They do not benefit consumers. The conditions for the exemption provided for in Article 101(3) TFEU and Article 53(3) of the EEA Agreement have not been met in this Decision in respect of any of the four infringements.

6. DURATION OF THE PARTICIPATION OF THE PARTIES IN THE INFRINGEMENTS

(81) Having regard to the evidence set out in Section 4, the duration of the participation of each party in the infringements was as follows:

Table 1 – Duration

Infringement	Party	START	END
I	TOKAI RIKA	06/07/2004	11/02/2010
	TAKATA	06/07/2004	25/03/2010
	AUTOLIV	18/12/2006	25/03/2010
	MARUTAKA	06/07/2004	15/04/2009
II	TAKATA	14/06/2005	26/07/2010
	AUTOLIV	18/07/2006	26/07/2010
	TOYODA GOSEI	14/06/2005	15/07/2009
III	TAKATA	14/02/2008	18/03/2010
	TOKAI RIKA	14/02/2008	18/03/2010
IV	TAKATA	28/03/2006	22/05/2010
	AUTOLIV	28/03/2006	22/05/2010

7. LIABILITY

7.1. Principles

- (82) Union and 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 financed⁵⁵.
- (83) 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 a subsidiary can be imputed to the parent where the parent 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 or Article 53 of the EEA Agreement, or both⁵⁶.
- (84) 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 other⁵⁷.
- (85) However, in particular in those cases where one parent holds all or almost all of the capital in a subsidiary which has committed an infringement of the Union or EEA competition law, there is a rebuttable presumption that that parent company does, in fact, 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 applies⁵⁸.
- (86) 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

⁵⁵ Case C-511/11 P, *Versalis v Commission*, ECLI:EU:C:2013:386, paragraph 51.

⁵⁶ Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, paragraph 61; Case C-521/09 P, *Elf Aquitaine v Commission*, ECLI:EU:C:2011:620, paragraphs 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, paragraphs 43 and 46; Case C-508/11 P, *ENI v Commission*, ECLI:EU:C:2013:289, paragraph 47; Case C-286/98 P, *Stora Kopparbergs Bergslags v Commission*, ECLI:EU:C:2000:630, paragraph 29; Case T-391/09, *Evonik Degussa et AlzChem v Commission*, ECLI:EU:T:2014:22, paragraph 77; Case C-440/11 P, *Commission v Stichting Administratiekantoor Portielje*, ECLI:EU:C:2013:514, paragraph 41.

⁵⁷ Joined Cases T-56/09 and T-73/09 *Saint-Gobain Glass France and others v Commission*, ECLI:EU:T:2014:160, paragraph 311.

⁵⁸ Case C-97/08 P, *Akzo Nobel and others v Commission*, ECLI:EU:C:2009:536, paragraph 60.

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 instructions⁵⁹.

- (87) 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.

7.2. Application in this Decision

- (88) Having regard to the body of evidence and the facts described in Section 4, and in 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 found in this Decision should be imputed to the undertakings concerned consisting of the following legal entities, as described in recitals (89) to (99).

7.2.1. TOKAI RIKA

- (89) For the infringements committed by TOKAI RIKA (Infringements I and III), Tokai Rika Co., Ltd. directly participated in cartel contacts. This entity also clearly and unequivocally acknowledged liability for its direct participation.
- (90) Liability for Infringements I and III should therefore be imputed to **Tokai Rika Co., Ltd.**

7.2.2. TAKATA

- (91) For the infringements committed by TAKATA (Infringements I, II, III and IV), Takata Corporation directly participated in cartel contacts. This entity also clearly and unequivocally acknowledged liability for its direct participation.
- (92) Liability for Infringements I, II, III and IV should therefore be imputed to **Takata Corporation.**

7.2.3. AUTOLIV

- (93) For the infringements committed by AUTOLIV (Infringements I, II and IV), the following legal entities should be held liable:
- (a) Autoliv Japan Ltd.
 - (b) Autoliv, Inc.

⁵⁹ Case C-434/13 P, *Commission v Parker Hannifin Manufacturing and Parker-Hannifin*, ECLI:EU:C:2014:2456, paragraphs 40 to 41.

- (94) Autoliv Japan Ltd. directly participated in cartel contacts. This entity also clearly and unequivocally acknowledged liability for its direct participation. During the periods of Infringements I, II and IV, Autoliv Japan Ltd. was wholly owned by the ultimate parent company of the group, Autoliv, Inc.. Therefore, Autoliv, Inc. is presumed to have exercised decisive influence over Autoliv Japan Ltd.. Autoliv, Inc. also clearly and unequivocally acknowledged liability for the conduct of this subsidiary.
- (95) Liability for Infringements I, II and IV should therefore be imputed jointly and severally to **Autoliv Japan Ltd.** (for its direct involvement) and **Autoliv, Inc.** (as parent indirectly holding 100% of the shares in Autoliv Japan Ltd.).

7.2.4. *TOYODA GOSEI*

- (96) For the infringement committed by TOYODA GOSEI (Infringement II), Toyoda Gosei Co., Ltd. directly participated in cartel contacts. This entity also clearly and unequivocally acknowledged liability for its direct participation.
- (97) Liability for Infringement II should therefore be imputed to **Toyoda Gosei Co., Ltd.**

7.2.5. *MARUTAKA*

- (98) For the infringement committed by MARUTAKA (Infringement I), Marutaka Co., Ltd. directly participated in cartel contacts. This entity also clearly and unequivocally acknowledged liability for its direct participation.
- (99) Liability for Infringement I should therefore be imputed to **Marutaka Co., Ltd.**

8. **REMEDIES**

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

- (100) 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.
- (101) 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 whom 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**

- (102) Pursuant to Article 23(2) of Regulation (EC) No 1/2003⁶⁰, the Commission may by decision impose fines on undertakings where, either intentionally or negligently, they

⁶⁰ 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

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.

- (103) Based on the facts set out in Section 4, the Commission considers that all four infringements were committed intentionally.
- (104) Fines should therefore be imposed on the undertakings concerned for each of the infringements for which the Commission holds them liable.
- (105) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fines, have regard both to the gravity and the duration of each infringement. In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on fines⁶¹.
- (106) Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.

8.3. Calculation of the fines

- (107) In accordance with the Guidelines on fines, for each of the four 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 (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in the infringement⁶². The additional amount is calculated as a percentage between 15% and 25% of the value of sales, irrespective of the duration of the infringement⁶³. The resulting basic amount can then be increased or reduced for each undertaking if there are either aggravating or mitigating circumstances⁶⁴. The Commission may depart from the methodology set out in the Guidelines where this is justified by the particularities of a given Decision or the need to achieve deterrence in a particular Decision⁶⁵.

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*".

⁶¹ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ C 210, 1.9.2006, p. 2)

⁶² Points 21 and 24 of the Guidelines on fines.

⁶³ Point 25 of the Guidelines on fines.

⁶⁴ Points 28 and 29 of the Guidelines on fines.

⁶⁵ Point 37 of the Guidelines on fines.

8.3.1. *The value of sales*

- (108) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of their sales⁶⁶, 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.
- (109) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement⁶⁷. 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.
- (110) The relevant values of sales are:
- in Infringement I: the sales of seatbelts in the EEA destined for Toyota vehicles;
 - in Infringement II: the sales of airbags in the EEA destined for Toyota vehicles;
 - in Infringement III: the sales of seatbelts in the EEA destined for Suzuki vehicles;
 - in Infringement IV: the sales of seatbelts, airbags and steering wheels in the EEA destined for Honda vehicles.
- (111) An average of the undertakings' yearly sales during the infringement period should be used to properly reflect the considerable volatility of sales by the Parties during the infringement period.
- (112) MARUTAKA does not have any EEA sales, as it is active as TAKATA's distributor in Japan only. It is necessary, therefore, to determine a proxy for Marutaka's value of sales that can be used for calculating the basic amount of the fines. For the purposes of identifying an appropriate proxy for MARUTAKA's value of sales, the Commission recalls that Marutaka acted as a facilitator in respect of Infringement I and that, therefore, its contribution to that infringement is linked to the sales realised in the EEA by the other Parties to Infringement I. In this regard, the Commission has calculated the proxy for MARUTAKA's value of sales by applying to its global turnover the average ratio between (i) the other Parties' value of sales in the EEA of seatbelts destined for Toyota vehicles and (ii) their global turnover. The result is then divided by four, to take into account the number of participants in the infringement, and is further reduced by 1/3, in consideration of MARUTAKA's more limited role as a facilitator.

⁶⁶ Point 12 of the Guidelines on fines.

⁶⁷ Point 13 of the Guidelines on fines.

(113) Accordingly, the values of sales for each Party are as set out in Table 2 to Table 5:

Table 2 – Value of sales in Infringement I (Toyota seatbelts):

Infringement	Undertaking	Value of Sales (EUR)
I	TOKAI RIKA	[15,000,000 – 20,000,000]
	TAKATA	[25,000,000 – 30,000,000]
	AUTOLIV	[0 – 1,000,000]
	MARUTAKA	[0 – 500,000]

Table 3 – Value of sales in Infringement II (Toyota airbags):

Infringement	Undertaking	Value of Sales (EUR)
II	TAKATA	[25,000,000 – 30,000,000]
	AUTOLIV	[15,00,000 – 20,000,000]
	TOYODA GOSEI	[25,000,000 – 30,000,000]

Table 4 – Value of sales in Infringement III (Suzuki seatbelts):

Infringement	Undertaking	Value of Sales (EUR)
III	TAKATA	[5,000,000 – 10,000,000]
	TOKAI RIKA	[5,000,000 – 10,000,000]

Table 5 – Value of sales in Infringement IV (Honda OSS):

Infringement	Undertaking	Value of Sales (EUR)
IV	TAKATA	[50,000,000 – 60,000,000]
	AUTOLIV	[10,000,000 – 15,000,000]

(114) 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*

(115) 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 infringement⁶⁸.

⁶⁸ Points 19 to 26 of the Guidelines on fines.

8.3.2.1. Gravity

- (116) 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 or whether or not the infringement has been implemented.
- (117) Price coordination and market sharing arrangements 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 of the value of sales⁶⁹.
- (118) Furthermore, each infringement (i) consisted of two different types of anti-competitive practices, namely price coordination and market sharing, and (ii) concerned the entire EEA.
- (119) Therefore, the proportion of the value of sales to be taken into account should be 17% for each infringement.

8.3.2.2. Duration

- (120) In calculating the fine to be imposed, the duration of each Party's participation in the respective infringements, as described in Section 6, should also be taken into account. The duration of each Party's involvement in the relevant infringement is calculated on the basis of days.
- (121) The time period to be taken into account for the purposes of calculating the fine and the multiplier corresponding to that period for each party is set out in Table 6.

Table 6 – Duration factors:

Infringement	Undertaking	Factor
I	TOKAI RIKA	5.60
	TAKATA	5.72
	AUTOLIV	3.26
	MARUTAKA	4.77
II	TAKATA	5.11
	AUTOLIV	4.02
	TOYODA GOSEI	4.08
III	TAKATA	2.09
	TOKAI RIKA	2.09
IV	TAKATA	4.15
	AUTOLIV	4.15

⁶⁹ Point 23 of the Guidelines on fines.

8.3.2.3. Determination of the additional amount

- (122) The infringements committed concern both price coordination and market sharing. 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 practices⁷⁰.
- (123) In this Decision, for the purposes of deciding the proportion of the value of sales to be taken into account for each of the four infringements, the Commission considered the factors relating to the nature and the geographic scope of the infringement set out in recitals (117) to (118). The proportion of the value of sales to be taken into account for the purpose of calculating the additional amount should be 17% for each infringement.

8.3.2.4. Calculation of the basic amount

- (124) In applying the criteria set out in Section 8.3.2., the basic amounts of the fine to be imposed on each Party are set out in Tables 7 to 10.

Table 7 –Basic amounts of the fine – Infringement I

Infringement	Undertaking	Basic Amounts (EUR)
I	TOKAI RIKA	[15,000,000 – 20,000,000]
	TAKATA	[30,000,000 – 35,000,000]
	AUTOLIV	[0 – 1,000,000]
	MARUTAKA	[0 – 500,000]

Table 8 –Basic amounts of the fine – Infringement II

Infringement	Undertaking	Basic Amounts (EUR)
II	TAKATA	[25,000,000 – 30,000,000]
	AUTOLIV	[15,000,000 – 20,000,000]
	TOYODA GOSEI	[20,000,000 – 25,000,000]

Table 9 –Basic amounts of the fine – Infringement III

Infringement	Undertaking	Basic Amounts (EUR)
III	TAKATA	[0 – 5,000,000]
	TOKAI RIKA	[0 – 5,000,000]

Table 10 –Basic amounts of the fine – Infringement IV

⁷⁰ Point 25 of the Guidelines on fines.

Infringement	Undertaking	Basic Amounts (EUR)
IV	TAKATA	[45,000,000 – 55,000,000]
	AUTOLIV	[5,000,000 – 10,000,000]

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

(125) The Commission may increase the basic amount of the fine if there are aggravating circumstances. Those 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 circumstances are listed non-exhaustively in point (29) of the Guidelines on fines.

(126) The Commission does not consider that there are any aggravating or mitigating circumstances in this Decision.

8.3.4. *Deterrence*

(127) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect. To that end, the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased⁷¹.

(128) There is no need to adjust the basic amount of the fine for the purposes of deterrence in this Decision.

(129) Accordingly, there is no adjustment to the basic amounts set out in Tables 7 to 10.

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

(130) 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.

(131) In this Decision, none of the fines calculated exceed 10% of the respective undertaking's total turnover in 2016.

8.5. **Application of the Leniency Notice**

8.5.1. *Infringement I – Toyota Seatbelts*

8.5.1.1. Immunity from fines

(132) TOKAI RIKA was granted conditional immunity from fines for Infringement I. TOKAI RIKA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. TOKAI RIKA should therefore be granted immunity from fines for Infringement I.

⁷¹ Point 30 of the Guidelines on fines.

8.5.1.2. Partial immunity

- (133) AUTOLIV was the first party to submit compelling evidence in accordance with point (25) of the Leniency Notice that enabled the Commission to extend the duration of Infringement I to the period [...]. In accordance with point (26) of the Leniency Notice, the Commission will not take the mentioned duration into account when setting the fine to be imposed on AUTOLIV for Infringement I.

8.5.1.3. Reduction of fines

- (134) The Commission has already informed TAKATA of its intention to grant TAKATA a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for Infringement I. TAKATA was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement I. TAKATA applied for leniency at a very early stage in the investigation and provided further explanations and details with respect to the facts revealed by TOKAI RIKA. [...]. TAKATA should therefore be granted a reduction of 50% of the fine that would otherwise have been imposed for Infringement I.
- (135) The Commission has already informed AUTOLIV of its intention to grant AUTOLIV a leniency reduction within the range of 20%-30% of any fine that would otherwise have been imposed for Infringement I. AUTOLIV was the second undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement I. AUTOLIV applied for leniency early in the investigation, and provided further explanations and details with respect to the facts revealed by TOKAI RIKA and TAKATA. [...]. AUTOLIV should therefore be granted a reduction of 30% of the fine that would otherwise have been imposed for Infringement I.

8.5.2. *Infringement II – Toyota Airbags*

8.5.2.1. Immunity from fines

- (136) TAKATA was granted conditional immunity from fines for Infringement II. TAKATA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. TAKATA should therefore be granted immunity from fines for Infringement II.

8.5.2.2. Partial immunity

- (137) AUTOLIV was the first party to submit compelling evidence in accordance with point (25) of the Leniency Notice that enabled the Commission to extend the duration of Infringement II to the period [...]. In accordance with point (26) of the Leniency Notice, the Commission will not take the mentioned duration into account when setting the fine to be imposed on AUTOLIV for Infringement II.
- (138) TOYODA GOSEI was the first party to submit compelling evidence in accordance with point (25) of the Leniency Notice that enabled the Commission to extend the duration of Infringement II to the period [...]. In accordance with point (26) of the Leniency Notice, the Commission will not take the mentioned duration into account when setting the fine to be imposed on TOYODA GOSEI for Infringement II.

8.5.2.3. Reduction of fines

- (139) The Commission has already informed AUTOLIV of its intention to grant AUTOLIV a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for Infringements II. AUTOLIV was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement II. AUTOLIV applied for leniency at an early stage in the investigation and provided further explanations and details with respect to the facts revealed by TAKATA. [...]. AUTOLIV should therefore be granted a reduction of 50% of the fine that would otherwise have been imposed for Infringement II.
- (140) The Commission has already informed TOYODA GOSEI of its intention to grant TOYODA GOSEI a leniency reduction within the range of 20%-30% of any fine that would otherwise have been imposed for Infringement II. TOYODA GOSEI was the second undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement II. TOYODA GOSEI applied for leniency relatively late in the investigation but provided further explanations and details with respect to the facts revealed by TAKATA and AUTOLIV. [...]. TOYODA GOSEI should therefore be granted a reduction of 28% of the fine that would otherwise have been imposed for Infringement II.

8.5.3. *Infringement III – Suzuki Seatbelts*

8.5.3.1. Immunity from fines

- (141) TAKATA was granted conditional immunity from fines for Infringement III. TAKATA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. TAKATA should therefore be granted immunity from fines for Infringement III.

8.5.3.2. Reduction of fines

- (142) The Commission has already informed TOKAI RIKA of its intention to grant TOKAI RIKA a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for Infringement III. TOKAI RIKA was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement III. TOKAI RIKA applied for leniency relatively late in the investigation, but its leniency application and continuous cooperation provided further explanations and details with respect to the facts revealed by TAKATA. [...]. TOKAI RIKA should therefore be granted a reduction of 46% of the fine that would otherwise have been imposed for Infringement III.

8.5.4. *Infringement IV – Honda OSS*

8.5.4.1. Immunity from fines

- (143) TAKATA was granted conditional immunity from fines for Infringement IV. TAKATA's cooperation fulfilled the requirements of the Leniency Notice throughout the procedure. TAKATA should therefore be granted immunity from fines for Infringement IV.

8.5.4.2. Partial immunity

(144) AUTOLIV was the first party to submit compelling evidence in accordance with point (25) of the Leniency Notice that enabled the Commission to extend the duration of Infringement IV to the period [...]. In accordance with point (26) of the Leniency Notice, the Commission will not take the mentioned duration into account when setting the fine to be imposed on AUTOLIV for Infringement IV.

8.5.4.3. Reduction of fines

(145) The Commission has already informed AUTOLIV of its intention to grant AUTOLIV a leniency reduction within the range of 30%-50% of any fine that would otherwise have been imposed for Infringement IV. AUTOLIV was the first undertaking to meet the requirements of points (24) and (25) of the Leniency Notice as regards Infringement IV. AUTOLIV applied for leniency at an early stage in the investigation and provided further explanations and details with respect to the facts revealed by TAKATA. [...]. AUTOLIV should therefore be granted a reduction of 50% of the fine that would otherwise have been imposed for Infringement IV.

(146) It is to be noted that, by virtue of the granting of partial immunity, (i) the time period to be taken into account for the purposes of calculating the fine and the multiplier corresponding to that period for AUTOLIV and TOYODA GOSEI and (ii) the basic amounts of the fine to be imposed on AUTOLIV and TOYODA GOSEI, should be as set out in Table 11 and Table 12 respectively:

Table 11: Duration factors for AUTOLIV and TOYODA GOSEI with partial immunity

Infringement	Party	Factor
I	AUTOLIV	3.15
II	AUTOLIV	2.91
	TOYODA GOSEI	2.99
IV	AUTOLIV	3.10

Table 12: Basic amounts of the fine for AUTOLIV and TOYODA GOSEI with partial immunity

Infringement	Party	Basic Amounts (EUR)
I	AUTOLIV	[0 – 1,000,000]
II	AUTOLIV	[10,000,000 – 15,000,000]
	TOYODA GOSEI	[15,000,000 – 20,000,000]
IV	AUTOLIV	[5,000,000 – 10,000,000]

8.6. Application of the Settlement Notice

(147) 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 10% of turnover limit has been applied having regard to 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 their cooperation under the Leniency Notice.

- (148) Consequently, the amount of the fines to be imposed on each Party should be further reduced by 10%.

8.7. Conclusion: final amount of individual fines to be imposed

- (149) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Tables 13 to 16.

Table 13 - Fines – Infringement I

Infringement	Undertaking	Amount (EUR)
I	TOKAI RIKA	0
	TAKATA	12 724 000
	AUTOLIV	265 000
	MARUTAKA	156 000

Table 14 – Fines – Infringement II

Infringement	Undertaking	Amount (EUR)
II	TAKATA	0
	AUTOLIV	4 957 000
	TOYODA GOSEI	11 262 000

Table 15 – Fines – Infringement III

Infringement	Undertaking	Amount (EUR)
III	TAKATA	0
	TOKAI RIKA	1 818 000

Table 16 – Fines – Infringement IV

Infringement	Undertaking	Amount (EUR)
IV	TAKATA	0
	AUTOLIV	2 829 000

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 a single and continuous infringement covering the whole of the European Economic Area consisting of price coordination and market sharing concerning the sale of seatbelts for passengers cars to Toyota:

- (a) Tokai Rika Co., Ltd., from 6 July 2004 to 11 February 2010;
- (b) Takata Corporation, from 6 July 2004 to 25 March 2010;
- (c) Autoliv, Inc. and Autoliv Japan Ltd., from 18 December 2006 to 25 March 2010; and
- (d) Marutaka Co., Ltd., from 6 July 2004 to 15 April 2009.

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 a single and continuous infringement covering the whole of the European Economic Area consisting of price coordination and market sharing concerning the sale of airbags for passengers cars to Toyota:

- (a) Takata Corporation, from 14 June 2005 to 26 July 2010;
- (b) Autoliv, Inc. and Autoliv Japan Ltd., from 18 July 2006 to 26 July 2010; and
- (c) Toyoda Gosei Co., Ltd., from 14 June 2005 to 15 July 2009.

Article 3

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in a single and continuous infringement covering the whole of the European Economic Area consisting of price coordination and market sharing concerning the sale of seatbelts for passengers cars to Suzuki:

- (a) Takata Corporation, from 14 February 2008 to 18 March 2010; and
- (b) Tokai Rika Co., Ltd., from 14 February 2008 to 18 March 2010;

Article 4

The following undertakings have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, for the periods indicated, in a single and continuous infringement covering the whole of the European Economic Area consisting of price coordination and market sharing concerning the sale of seatbelts, airbags and steering wheels for passengers cars to Honda:

- (a) Takata Corporation, from 28 March 2006 to 22 May 2010; and

- (b) Autoliv, Inc. and Autoliv Japan Ltd., from 28 March 2006 to 22 May 2010.

Article 5

- (1) For the infringement referred to in Article 1, the following fines are imposed:
- (a) on Tokai Rika Co., Ltd.: EUR 0;
 - (b) on Takata Corporation: EUR 12 724 000;
 - (c) on Autoliv, Inc. and Autoliv Japan Ltd., jointly and severally: EUR 265 000;
 - (d) on Marutaka Co., Ltd.: EUR 156 000.
- (2) For the infringement referred to in Article 2, the following fines are imposed:
- (a) on Takata Corporation: EUR 0;
 - (b) on Autoliv, Inc. and Autoliv Japan Ltd., jointly and severally: EUR 4 957 000;
 - (c) on Toyoda Gosei Co., Ltd.: EUR 11 262 000.
- (3) For the infringement referred to in Article 3, the following fines are imposed:
- (a) on Takata Corporation: EUR 0;
 - (b) on Tokai Rika Co., Ltd.: EUR 1 818 000.
- (4) For the infringement referred to in Article 4, the following fines are imposed:
- (a) on Takata Corporation: EUR 0;
 - (b) on Autoliv, Inc. and Autoliv Japan Ltd., jointly and severally: EUR 2 829 000.

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.39881

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.

Pending an appeal, the undertaking has the option of covering the fine by the due date either by providing a bank guarantee acceptable to the Accounting Officer of the Commission or by making a provisional payment of the fine.

Article 6

The undertakings listed in Articles 1 to 4 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 to 4, and from any act or conduct having the same or similar object or effect.

Article 7

This Decision is addressed to:

Tokai Rika Co., Ltd, Oguchi-cho, Niwa-gun, Aichi-Ken, 480-0195, Japan.;

Takata Corporation, 2-12-31, Akasaka, Minato-ku, Tokyo, Japan;

Autoliv, Inc., Klarabergsviadukten 70, Section B, 7th floor, SE-107 24 Stockholm, Sweden;

Autoliv Japan Ltd., 4F Innotech Building, 3-17-6 Shin-Yokohama, Kohoku-ku Yokohama 222-8580, Japan;

Toyoda Gosei Co., Ltd., 1 Haruhinagahata, Kiyosu, Aichi 452-8564, Japan;

Marutaka Co., Ltd., 1-47-1, Nagono, Nakamura-Ku, Nagoya Kokusai Center Bldg. 21F, Nagoya, Aichi 450-0001, Japan.

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

Done at Brussels, 22.11.2017

*For the Commission
Margrethe VESTAGER
Member of the Commission*